

<b>LFC Requester:</b>	
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**AGENCY BILL ANALYSIS  
2025 REGULAR SESSION**

**WITHIN 24 HOURS OF BILL POSTING, UPLOAD ANALYSIS TO:**

**AgencyAnalysis.nmlegis.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}*

*Check all that apply:*

**Original**     **Amendment**    \_\_\_\_\_  
**Correction**    \_\_\_\_\_ **Substitute**    \_\_\_\_\_

**Date** January 30, 2025  
**Bill No:** HB 163-280

**Sponsor:** Andrea Reed, William A. Hall II  
and Nicole Chavez  
**Short Title:** “Additions to “Delinquent Act”

**Agency Name and Code**    280-LOPD  
**Number:** \_\_\_\_\_  
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**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 Expenditure Decreases)

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

	<b>FY25</b>	<b>FY26</b>	<b>FY27</b>	<b>3 Year Total Cost</b>	<b>Recurring or Nonrecurring</b>	<b>Fund Affected</b>
<b>Total</b>						

(Parenthesis ( ) Indicate Expenditure Decreases)

Duplicates/Conflicts with/Companion to/Relates to: HB 134  
Duplicates/Relates to Appropriation in the General Appropriation Act

**SECTION III: NARRATIVE**

**BILL SUMMARY**

This bill proposes to reorganize and add to the definition of what constitutes a “delinquent act.” First, the bill proposes to create two subsections of definitions, rather than retaining the current list, which is not subdivided. The first proposed subsection would include all but one of the current offenses classified as “delinquent acts.” It would remove offenses relating to alcohol (“buying, attempting to buy, receiving or possessing or being served...”). That offense would, under this proposal, fall into a new subsection, which would include the alcohol offenses and add “cannabis use or attempted use or possession.” It would also include being present in a cannabis establishment, unless accompanied by a parent, guardian, or adult spouse.

**FISCAL IMPLICATIONS**

This bill proposes to increase the juvenile consequences for buying, attempting to buy, or possessing cannabis from what is currently a purely civil violation punishable by a four-hour class and community service to a delinquent offense punishable by up to two years in a juvenile facility. *See* NMSA 1978, Sections 26-2C-27(D) and 26-2C-30(A). This means that juveniles cited for such conduct currently do not qualify for public defender representation, but if HB 163 were enacted, they would.

The dramatic proposed change in penalties means that LOPD is likely to need to hire more trial attorneys. These cases would be handled by entry-level or mid-level attorneys. Depending on the volume of cases in the geographic location there may be a significant recurring increase in needed FTEs for the office and contract counsel compensation. The entry-level Assistant Trial Attorney’s mid-point salary including benefits is \$121,723.30 in Albuquerque/Santa Fe and \$130,212.59 in the outlying areas (due to salary differential required to maintain qualified employees). Assessment of the impact on the LOPD upon enactment of this bill would be necessary after the implementation of the proposed scheme. Recurring statewide operational costs per attorney would be \$12,909.00 with start-up costs of \$5,210.00; additionally, average support staff (secretarial, investigator and social worker) costs per attorney would total \$123,962.51.

It is important to remember that indigent criminal defense is a constitutionally mandated right, and that LOPD does not control the decision to charge or the number of resultant cases assigned to the agency. All that can be said at this time is that if more charges, case assignments and trials result, LOPD may need to hire more attorneys and staff.

## **SIGNIFICANT ISSUES**

In 2021, the Cannabis Regulation Act passed and is currently the law. *See* NMSA 1978, Sections 26-2C-1 to 26-2C-42. That act punishes possession or production as a civil violation with no fine. Rather, the act requires that an offender under eighteen years of age: “(1) attendance at a four-hour evidence-based drug education and legal rights program at no cost to the person; or (2) four hours of community service.” *See* Sections 26-2C-27(D) and 26-2C-30(A).

Meanwhile, a children’s court judge has a variety of dispositions at its disposal. Children can be committed to a juvenile facility for up to two years. *See generally* NMSA 1978, Section 32A-2-19. Such an outcome is not unlikely. Analyst herself has represented a minor child who was committed to a facility for two years for possession of marijuana. *See State v. Santiago V.*, No. A-1-CA-38362, mem. op. (N.M. Ct. App. Feb. 10, 2021) (non-precedential).

Increasing consequences, to include punitive outcomes like commitment or even intensive probation supervision, has the potential to damage children and increase their likelihood of recidivism as adults. The American Academy of Pediatrics does not recommend legal consequences for children who experiment with cannabis. It’s website states:

The AAP believes that legal penalties for using marijuana shouldn't ruin a child's future. Already, hundreds of thousands of young people have been arrested, jailed and imprisoned for cannabis use. Having a criminal record can make it hard—if not impossible—to get college loans, financial aid, housing and many kinds of jobs.

Even though we strongly believe cannabis use is dangerous for young people, we realize that some kids will experiment with it—and some will continue to use or develop addiction. We believe treatment and prevention, not jail time, is the healthier approach. Decriminalizing cannabis use among minors will help ensure that young people get the help and support they need to quit.

*See* [Is Cannabis Harmful for Children & Teens? AAP Policy Explained - HealthyChildren.org](https://www.healthychildren.org/About-Health-Coverage/Insurance-Coverage/Pages/Is-Cannabis-Harmful-for-Children-Teens-AAP-Policy-Explained.aspx)

Finally, the harms inflicted by bringing a child into the legal system may also be compounded if HB 134 is passed. That bill proposes to allow, with prior notice to the court, a party to reference a juvenile record in conditions of release and sentencing hearings. This has the potential to make cannabis arrests public, and therefore more damaging to a child. HB 134 would also allow a child committed for cannabis possession to be transferred to an adult facility upon their eighteenth birthday. The existing consequences under the CRA properly account for the realities of youth and the desire to preserve a child’s future after minor infractions.

## **PERFORMANCE IMPLICATIONS**

*See supra* Fiscal Implications.

## **ADMINISTRATIVE IMPLICATIONS**

None noted.

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

HB 134 also proposes amendments to the Delinquency Act.

### **TECHNICAL ISSUES**

The wording of the proposed cannabis subsection is extremely unclear. It does not appear to follow grammatical rules and is repetitive.

### **OTHER SUBSTANTIVE ISSUES**

None noted.

### **ALTERNATIVES**

None noted.

### **WHAT WILL BE THE CONSEQUENCES OF NOT ENACTING THIS BILL**

Status quo

### **AMENDMENTS**

None noted.