

LFC Requester: _____

**AGENCY BILL ANALYSIS
2025 REGULAR SESSION**

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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 2.11.25

Bill No: SB 326-280

Sponsor: Pete Campos
Short Title: Delinquency Act Changes

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)

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

(Parenthesis () Indicate Expenditure Decreases)

Duplicates/Conflicts with/Companion to/Relates to: **HB 134** (identical bill)
 Duplicates/Relates to Appropriation in the General Appropriation Act

SECTION III: NARRATIVE

BILL SUMMARY

Synopsis:

- Section 1 would amend 32A-2-2, Purpose of the Delinquency Act, to add language to subsection B and H that deterrents and community based alternatives for juveniles should only be used “when appropriate.”
- Currently, the Delinquency Act creates three tiers of charges for juveniles: “delinquent acts” which are prosecuted and punished exclusively as a juvenile; “youthful offender” (“YO”) charges which are prosecuted as a juvenile but *may* incur adult sanctions only after adjudication and after assessing the Child’s “amenability to [juvenile] treatment”; and “serious youthful offender” (“SYO”) charges triggering automatic adult prosecution and sentencing (currently the *only* SYO charge is first-degree murder).

Section 2 of SB 326 would amend 32A-2-3, Definitions of the Delinquency Act, to:

- remove homicide by vehicle from the definitional list of “delinquent acts” (it is later moved into a separate definition). It would also amend the definition of “serious youthful offender” (SYO) in subsection H by lowering the age requirement from 15 years old to 14 years old.
- In addition to first-degree murder, it would expand the definition of “SYO” in subsection J to include children 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.
- This Section would also amend the definition of “youthful offender” by including children merely charged with the listed offenses. This section would remove second-degree murder and would amend shooting at or from a motor vehicle or at a dwelling to only those charges that do not result in great bodily harm (since those charges were added to SYO classification).
- This section would also add the following crimes (currently treated as “delinquent acts”) to the youthful offender definitional list: 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. This Section would also remove the age requirement of fourteen to eighteen to any child with three prior, separate felony adjudications within a three-year time period before committing another felony.

- Finally, this section would remove the age requirement in subsection 3 that classified fourteen year olds adjudicated for first-degree murder which currently treats them as youthful offenders (YOs), not serious youthful offenders (SYOs).
- Section 3 would amend Section 32A-2-4.1, Adult Jails and Lockups used as temporary holding facilities for juveniles, to require SYOs (juveniles facing SYO charges) to be physically segregated from adult offenders when transported to court.
- Section 4 would amend Section 32A-2-8, Petition—Authorization to File, to remove the requirement that the children’s court attorney consult with probation services before filing a delinquency petition.
- Section 5 would amend Section 32A-2-11, Criteria for Detention of Children, to remove the requirement for a risk assessment instrument be completed before placing a child in detention.
- Section 6 would amend Section 32A-2-12 (D), Placement or Detention, to require that a child who reaches 18 while in juvenile detention shall be transferred to a county jail (where current law expressly prohibits doing so, stating: “A child shall not be transferred to a county jail solely on the basis of attaining the age of eighteen while detained in a juvenile detention facility.”).
- Section 7 would amend Section 32A-2-13, Detention Hearing Required on Detained Children, would remove special masters or magistrates from conducting probable cause determinations or detention hearings (requiring that “judges” preside), and would allow electronic hearings at the court’s discretion.
- Section 8 would amend Section 32A-2-14 (M), Basic Rights, to remove the right to bail for youthful offenders (YOs) and instead provide for the right to a hearing to consider conditions of release. It would also add a new section (N) stating that a child fourteen years or older who is adjudicated as a YO may waive the child’s right to an amenability hearing and instead choose to be sentenced as an adult.
- Section 9 would amend Section 32A-2-17, Predisposition Studies—Reports and Examinations, to no longer require predisposition reports in every case; they must be requested by the court.
- Section 10 would amend Section 32A-2-18, Judgment—noncriminal nature—non-admissibility, to allow juvenile dispositions to be admissible in a hearing under Article 2, Section 13 of the NM constitution (seeking preventative detention of adults) or in accordance with Supreme Court rule to consider conditions of release.
- Section 11 would amend Section 32A-2-19, Disposition of an Adjudicated Delinquent Offender, limits the court’s commitment options to imposing probation or commitment on a delinquent child up to age 25, while authorizing transfer of a *delinquent child* from a juvenile

facility to an adult penal institution when they turn 18 (current law expressly prohibits *ever* transferring a delinquent child to an adult facility). It would remove the current types of commitment (short term of one year, long term of 2 years, and up to age 21 for certain offenses.) The bill would remove the option of a juvenile commitment until age 21 of a youthful offender who was found amenable to treatment.

- Section 12 of the bill would amend Section 32A-2-20, Disposition of a Youthful Offender, and would change the title to Disposition of a youthful offender and serious youthful offender, accounting for provisions addressing the disposition of an SYO who was adjudicated only for lesser non-SYO offenses. It would amend subsection C to state that the court cannot weigh one “amenability” factor more heavily than another and would remove the requirement that greater weight be given to offenses against persons. It would amend subsection H to clarify that a child charged as a SYO but found to have committed only a delinquent act that is neither an SYO nor a YO offense and shall be transferred to the children’s court for a juvenile disposition.
- Section 13 would amend Section 32A-2-22, Continuance under Supervision without Judgement—Consent Decree—Disposition, to state that a consent decree shall not be available to a child charged as a YO or SYO.
- Section 14 would amend Section 32A-2-23, Limitations on Dispositional Judgments—Modifications—Termination of Extension of Court Orders, to remove the sections that allow for extensions of short term and long term commitments up to age 21 and would instead allow the court to extend the judgment until the child reaches the age of 25 (conforming to changes made in Section 11).
- Section 15 would amend Section 32A-2-23.1, Release Eligibility, to remove “exclusive jurisdiction” from the department to release an adjudicated delinquent child, retaining the CYFD Secretary’s authority to do so, and removes the provision allowing reasonable requests for release at any time 60 days after commitment.
- Section 16 would amend Section 32A-1-24, Probation Revocation—Disposition, would lower the standard of proof for juvenile probation revocation proceedings from beyond a reasonable doubt to preponderance of the evidence (a lower burden for the State than the “reasonable certainty” standard applicable at adult probation hearings).
- Section 17 would amend Section 32A-2-26, Sealing of Records, to allow a party, with prior notice to the court, to reference a juvenile record in any subsequent adult conditions of release and sentencing hearings.
- Section 18 would repeal Section 32A-2-32.1 which protects against the disclosure of certain information on a public access website including: 1) an arrest or detention of a child; 2) delinquency proceedings; 3) an adjudication of a child; 4) an adult sentence imposed on a child, except as required by SORNA; 5) social records pertaining to a child as provided in Section 21A-2-32.

FISCAL IMPLICATIONS

This bill would create major changes to the Children's Code which would result in significantly more juveniles charged with crimes resulting in an adult sentence in the following ways:

Currently, only children age 15-18 charged with first-degree murder are classified as serious youthful offenders. This bill would dramatically increase that classification to include children age 14 and to include children charged with second-degree murder, voluntary manslaughter, robbery while armed with a deadly weapon, and shooting at or from a dwelling or motor vehicle resulting in great bodily harm. These proposed SYO offenses are currently YO offenses that *may* receive an adult sentence based on the YO's individual circumstances (amenability).

This bill would also expand the category of crimes charged as YO offenses to include currently "delinquent" offenses 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.

Additionally, Section 4 of the bill would remove the requirement to consult with juvenile probation before a petition is filed. Currently, NMSA 1978, Section 32A-2-7(E), allows probation the discretion to address less than three misdemeanors within two years. It is unclear if this amendment is intended to remove that discretion by the probation office. If so, that could potentially greatly increase the amount of juvenile cases filed.

Cumulatively, the workload increase in case numbers and the complexity of litigating those cases would absolutely require more attorneys to constitutionally defend them.

Section 14 of the bill, which would expand jurisdiction up to age 25 could also result in an increase in litigation so that more attorneys are needed. It is also unclear whether an additional facility would need to be built to house people who are over the age of 21 but still subject to commitment or whether this would dramatically increase the number of very young adults incarcerated in adult prisons instead of being committed to rehabilitation-oriented juvenile facilities. Some of this litigation would be handled by LOPD, while CYFD, NMCD, and county jails could also see a significant increase in civil litigation as well.

Juvenile cases, especially cases where a child is facing an adult sentence, require specialized training for attorneys and often require additional staff, including social workers. Preparation for an amenability hearing often involves the use of expert witnesses. LOPD would likely need more attorneys and staff to handle the increased workload and additional funding for experts if this bill passed.

The proposed penalties would necessitate assignment to mid-level felony capable attorneys (Associate Trial Attorneys), or for life-sentence charges, to higher-level attorneys (Trial Attorneys). A mid-level felony capable Associate Trial Attorney's mid-point salary *including benefits* is \$136,321.97 in Albuquerque/Santa Fe and \$144,811.26 in the outlying areas. A senior-level Trial attorney's mid-point salary *including benefits* is \$149,063.13 in Albuquerque/Santa Fe and \$157,552.44 in the outlying areas. Recurring statewide operational costs per attorney would be \$12,780.00; additionally, average support staff (secretarial, investigator and social worker) costs per attorney would total \$126,722.33.

LOPD conflict and overflow contracts cases would cost more to defend as penalties increase.

Moreover, higher-penalty cases are somewhat more likely to go to trial, as the accused are more likely to “roll the dice” than to accept a markedly increased penalty. This, of course, has fiscal implications for the DAs, LOPD, courts and AGs.

While it is likely that LOPD would be able to absorb some new cases under the proposed law, any increase in the number of proceedings resulting in adult sanctions for children will bring a concomitant need for an increase in indigent defense funding to maintain compliance with constitutional mandates.

SIGNIFICANT ISSUES

It appears the intent of the bill is to expand the category of crimes that result in a classification as a Serious Youthful Offender (SYO). Currently, only first-degree murder is classified as such. Children charged as SYOs do not get the protections of the Children’s Code and are instead treated as adults. They receive mandatory adult sentences if convicted as an SYO. **NMSA 1978, § 31-18-15.3(D)**. The bill would also expand the classification of Youthful Offenders. Together, these changes guarantee that more children will serve long adult sentences in NMCD.

The proposed changes go against the unique scheme New Mexico devised to deal with serious offenses committed by children. It significantly alters the position of New Mexico law to date that, which is supported by science, recognizing that the differences between youth and adults compel a different, and often more protective, rehabilitative treatment for youth. *See State v. Jones*, 2010-NMSC-012, ¶ 10, 148 N.M. 1 (“We interpret this legislative history as evidence of an evolving concern that children be treated as children so long as they can benefit from the treatment and rehabilitation provided for in the Delinquency Act.”) It also is contrary to the current trend in law that recognizes the unique vulnerabilities of children. *See e.g., Miller v. Alabama*, 132 S.Ct. 2455 (2012); *Graham v. Florida*, 130 S.Ct. 2011 (2010); *Roper v. Simmons*, 543 U.S. 551 (2005). The changes undermine the understanding that juveniles who commit crimes need treatment and rehabilitation, not long prison sentences which do not protect either the child nor the public. While the *current* scheme has passed constitutional scrutiny, this new scheme will require additional litigation to determine its continued constitutionality. *See State v. Rudy B.*, 2010-NMSC-045.

Overall, SB 326 simply does not give enough weight to the importance of rehabilitating wayward youth in the hope of granting them a better future. Adult prison should always be the last possible resort, as it drastically reduces the possibility that a young person will ever lead a productive adult life. While crimes committed by juveniles cannot be condoned, and public safety must be addressed, our existing statutory scheme balances that interest with the powerful societal interest in safeguarding children’s potential futures and not just giving up on them. As a policy matter, SB 326 loses sight of this critical interest.

For example, Section 6 would amend Section 32A-2-12 (D), Placement or Detention, to require that a child who reaches 18 while in juvenile detention shall be transferred to a county jail. The result is contrary to the purpose of the Delinquency Act. The current statute does not *allow* for transfer when a child turns 18 and instead, many juveniles remain in juvenile detention beyond their 18th birthday where they continue to receive the specialized treatment for very young adults that is offered by juvenile facilities that is not available in adult county jail. Treatment difference between adult and juvenile facilities include changes in medication, access to their guardian which is important for social development, educational services geared for the adolescent brain and

aligned with Core Curriculum standards. These core curriculum standards developed by the Department of Education have notable differences between adult and adolescent education. Treatment is important in reducing juvenile crime. Our Supreme Court has recognized “the juvenile justice system reflects a policy favoring the rehabilitation and treatment of children.” *Jones*, 2010-NMSC-012, ¶ 35 (internal quotation marks and citation omitted).

Another example is Section 8, which would amend Section 32A-2-14 by adding a new section (N) stating that a child fourteen years 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. This is inconsistent with long-standing New Mexico law that recognizes that a “finding of non-amenability is the trigger for the court’s authority to sentence a youthful offender as an adult,” and that the statutory right to an amenability hearing may not be waived. *Jones*, 2010-NMSC-012, ¶¶ 38, 46. The Court stated it was “hard-pressed to conceive of a decision that cuts closer to the core of society’s interest than an election to give up on one of its children.” *Jones*, 2010-NMSC-012, ¶ 46.

More recently, the Court explained that waiver would “reduce the amenability hearing to nothing more than window dressing and effectively reinstate the 1975 ‘discretionary transfer to criminal court.’ ... Given the interests at stake, we do not condone such an outcome.” *State v. Rodriguez*, 2023-NMSC-004, ¶ 23, 528 P.3d 614. The Court “will not declare an amenability determination—a determination that implicates the interests of the child, the child’s family, and society as a whole—nothing more than an empty shell along the path to imposing an adult sentence upon a juvenile.” *Id.* ¶ 24. That is exactly what this amendment proposes to do. The decision is designed to be made on what is *actually* appropriate, not a negotiated agreement. Critically, a 14-year-old is nowhere near mature enough to fully understand what an amenability evaluation encompasses, so the decision should not be left up to them, even when a plea agreement to an adult sentence with some accommodation may sound enticing.

Another example of SB 326 abandoning the rehabilitative focus of our juvenile code is found in Section 13, which would not allow a negotiated consent decree for a child *charged* as a youthful offender or serious youthful offender. This takes away discretion from the Children’s Court in cases that might have been overcharged and may result in limiting the ability for the parties to negotiate plea agreements. Under the current law, disallowing a consent decree for a serious youthful offender makes sense, but not for a youthful offender and certainly not under SB 326’s proposed changes to the classifications of both.

The amendment in Section 4 to remove the requirement to consult with juvenile probation before a petition is filed would deprive the Children’s Court Attorney and potentially the Children’s Court of valuable information about the child and his or her environment, family, education, and needs. The juvenile probation office also provides a diversion alternative to a formal petition in some instances, and that option should remain a priority in appropriate juvenile cases. Similarly, NMSA 1978, Section 32A-2-7(E) grants juvenile probation the discretion to address less than three misdemeanors within two years without referral to the district attorney. It is unclear if this amendment is also intended to remove that discretion by the probation office.

Other significant issues relate to removing the requirements for reports to aid the Court in making detention and disposition determinations. Section 5 would remove the requirement for risk assessment reports before placing a child in detention. According to the New Mexico Juvenile Justice Advisory Committee, detention risk screening is a tool used to reduce unnecessary or inappropriate secure confinement of juveniles and reduce failure to appear in court and subsequent

delinquent behavior. During state fiscal years 2019 to 2021, only 8% of juveniles released after such a screening re-offended within 30 days and only 3% had a failure to appear, both of which are below the recommended validation rates of 10%. That means that 92% of youth released after RAI screening did not re-offend within a 30-day time period. Doing away with the risk assessment would certainly increase the amount of children in detention *with no public safety benefit*.

Similarly, Section 9 would remove the requirement for predisposition reports. However, a well-prepared pre-disposition report can provide the Court with valuable information about the child. When trying to determine an appropriate outcome for a juvenile, the Court should have as much information as possible in making its determination. The amendment to Section 15, which would no longer allow a child to ask for early release from commitment, would impact the discretion of the children's court in fashioning an appropriate disposition and in responding to any changes with the child. Currently, the court is free to deny the request, but could provide incentive for a child to work hard at rehabilitation. Similarly, Section 18 would repeal the protection from public disclosure of juvenile delinquency cases. This protection recognizes that young people make mistakes. These amendments in SB 326 reflect a desire to ensure more children are incarcerated without a provable public safety benefit and in direct contravention of the guiding policy purposes of the existing Delinquency Act.

Additionally, extending children's court jurisdiction to age 25 may not be appropriate in most cases. It could result in some people being supervised or detained well into adulthood for childhood conduct in a way that prevents them from actually developing independence and adult life skills. Juvenile probation may not have the expertise or resources necessary to supervise young adults. It is difficult to assess how this expansion of juvenile jurisdiction would be applied by courts, and thus to assess its impact.

The combination of extending jurisdiction over a delinquent child until age 25 and lowering of the burden from beyond a reasonable doubt to preponderance of the evidence in probation revocation proceedings for juveniles are significant changes that could result in more incarceration. It is unclear where New Mexico would house people over the age of 21 who are subject to commitment as a juvenile. These changes also fail to recognize the unique protections New Mexico has traditionally provided its children.

PERFORMANCE IMPLICATIONS

The proposed changes to the Children's Code will require significant litigation and, presumably, more trial attorneys.

ADMINISTRATIVE IMPLICATIONS

None noted.

CONFLICT, DUPLICATION, COMPANIONSHIP, RELATIONSHIP

This bill is identical to HB 134.

TECHNICAL ISSUES

None noted.

OTHER SUBSTANTIVE ISSUES

None noted.

ALTERNATIVES

SB 326 is motivated by a desire to reduce criminal activity – especially violent criminal activity – committed by juveniles. This goal is universal, but cannot be achieved through punitive approaches that treat children like adults; they are not adults. *See, e.g.* Laurence Steinberg, *Adolescent Brain Science and Juvenile Justice Policymaking*, 23 *Psychol. Pub. Pol’y & L.* 410, 414 (2017) (outlining the science that concludes “[m]id-adolescence, therefore, is a time of high sensation-seeking but still developing self-regulation--a combination that inclines individuals toward risky behavior.”); *Roper v. Simmons*, 543 U.S. 551, 570 (2005) (“[t]he personality traits of juveniles are more transitory, less fixed” so that “[there is] a greater possibility ... that a minor’s character deficiencies will be reformed.”) (internal quotation marks and citation omitted).

If the Legislature wishes to reduce juvenile crime, it must understand why it is occurring in the first place and address the source: childhood trauma and neglect. The near-universal understanding of this issue is that the juvenile justice system is driven by Adverse Childhood Experiences (ACEs). Justice-involved youth experience high rates of ACEs, placing them in great need of behavioral health treatment. Policy makers, government agencies, and professionals working with justice-involved youth have called for trauma-informed juvenile justice reform.

Young people in the juvenile justice system have extremely high ACE histories. The study, “The Prevalence of Adverse Childhood Experiences (ACE) in the Lives of Juvenile Offenders”¹ surveyed 64,329 juvenile offenders in Florida, and only 2.8% reported no childhood adversity; and 50% reported 4 or more ACEs putting them in the high risk category. “When you raise a child with violence, they have a tendency to become violent. Fortunately, the same is also true when you raise a child with love and kindness.” Kerry Jamieson, *ACEs and Juvenile Justice*, Center for Child Counseling.²

The only way to successfully reduce juvenile crime is to *prevent and address childhood trauma*. New Mexico needs more robust assistive, *non-punitive*, intervention for families that struggle to meet children’s needs at a basic level (neglect) and a more complex level (when there is affirmative dysfunction including substance misuse and family violence in the home). New Mexico also needs robust, accessible behavioral health treatment *for adolescents and teenagers* who have already experienced ACEs in their lives. Wraparound services, counseling, educational programming, and mentorship opportunities will have a far greater impact on juvenile justice than any increase in punitive response ever could.

WHAT WILL BE THE CONSEQUENCES OF NOT ENACTING THIS BILL

Status Quo.

AMENDMENTS

¹ Available at https://www.prisonpolicy.org/scans/Prevalence_of_ACE.pdf.

² Available at <https://www.centerforchildcounseling.org/aces-and-juvenile-justice/>.

