

LFC Requester:

Rachel Mercer-Garcia

AGENCY BILL ANALYSIS - 2025 REGULAR SESSION

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: Senator Pete Campos

Agency Name and Code Number: 305 – New Mexico Department of Justice

Person Writing

Short Title: Delinquency Act Changes

Analysis: Michael J. Thomas

Phone: 505-537-7676

Email: legisfir@nmdoj.gov

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 revenue 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: N/A

Duplicates/Relates to Appropriation in the General Appropriation Act: N/A

SECTION III: NARRATIVE

This analysis is neither a formal Opinion nor an Advisory Letter issued by the New Mexico Department of Justice. This is a staff analysis in response to a committee or legislator's request. The analysis does not represent any official policy or legal position of the NM Department of Justice.

BILL SUMMARY

Synopsis: The bill contains fairly extensive revisions to the Delinquency Act, NMSA 1978, §§ 32A-2-1 to – 33 (1993, as amended).

Section 1 amends the purpose of the Delinquency Act via changes in Section 32A-2-2. For example, Section 32A-2-2(B) would be amended to clarify that the purpose of the Act to provide effective deterrents to acts of juvenile delinquency applies “if deterrents are appropriate[.]” It also would amend Section 32A-2-2(H) to provide that the purpose of developing community-based alternatives depends on their being “appropriate[.]”

Section 2 would also amend the definitions contained in Section 32A-2-3 in numerous respects. The definition of “delinquent act” (Section 32A-2-3(A)) would be amended by deleting the current inclusion of homicide by vehicle (currently found at Section 32A-2-3(A)(1)(e)). Also, the word “death” would be deleted in Section 32A-2-3(A)(1)(b) such that failure to stop in the event of an accident that causes death would be excluded from the definition of “delinquent act.”

The definition of “serious youthful offender” in Section 32A-2-3(H) would also be amended. It would be amended so as to mean a child **fourteen** (instead of the current fifteen years minimum) to eighteen years of age who is charged with at least one of a number of listed crimes. (Currently the only predicate crime is first-degree murder). To the current item of first-degree murder, the bill would add murder in the second degree, voluntary manslaughter, robbery while armed with a deadly weapon, shooting at a dwelling or occupied building that results in great bodily harm, and shooting at or from a motor vehicle that results in great bodily harm.

The definition of “youthful offender” in Section 32A-2-3(J) would be amended by removing the predicate offense of second-degree murder, because second-degree murder would be covered by the term “serious youthful offender,” as noted above. It would also change the requirement that the child be “adjudicated” with respect to an offense, to simply require that the child be “charged” with one of a list of offenses. It would amend Section 32A-2-3(J)(1)(g), for shooting at a dwelling or occupied building, or shooting at or from a motor vehicle, to clarify that with regard to either offense, it must NOT result in great bodily harm to another person. (If great bodily harm were to result from either of those crimes, they would be covered by “serious youthful offender” as noted above). The list of predicate crimes would be expanded by including unlawful possession of a handgun by a person, homicide by vehicle, involuntary manslaughter, and failing to stop when the vehicle is involved in an accident that results in injury or death.

Section 32A-2-3(J)(2) would be amended, to accord with a change noted above, to delete a reference to a fourteen-year-old adjudicated for first-degree murder, because that specific factual scenario would be covered (under the bill) by the term “serious youthful offender.” As applicable, some re-lettering of unaffected definitions would occur.

Section 3 would amend Section 32A-2-4.1 by adding a new subsection, (C), which would provide that a serious youthful offender shall be transported to a district court when the serious youthful offender’s appearance is ordered by the district court, provided 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.

Section 4 would amend Section 32A-2-8 by eliminating the requirement that the children’s court attorney consult with probation services prior to initiating delinquency proceedings.

Section 5 would amend Section 32A-2-11, governing criteria for detention of children, by deleting several references to a “detention risk assessment instrument.” Additionally, subsection (C) (which had called for a report to the legislature by 2004, regarding such an instrument) of Section 32A-2-11 would be entirely deleted.

Section 6 would amend Section 32A-2-12(D) by providing that a child who reaches the age of 18 while in a juvenile detention facility shall be transferred to a county jail. (For some context, the same subsection currently provides that the opposite is true, i.e., that a child who reaches 18 while in a juvenile detention facility shall not be transferred to a county jail solely on the basis of attaining the age of 18).

Section 7 would amend Section 32A-2-13, governing detention hearings. It would amend subsection (A)(1) by deleting the words “or special master or magistrate[.]” As a result, the determination of probable cause must be made by a judge. It would also amend subsection (A)(3) by adding language clarifying that a detention hearing may be conducted by electronic means (remote hearings) not only upon request of a party but also “[a]t the court’s discretion[.]” (That does not seem to materially alter the current law, because the statute already states that the court may permit a hearing to be conducted by electronic communication, and a court has inherent ability to suggest that sua sponte, but it adds clarity). Existing language in (A)(3), which requires the court to find that holding a hearing via electronic communication avoids an undue hardship, and similar language, would be deleted. Additionally, current subsection (B), which refers to the ability to appoint a special master, would be deleted. Remaining references to “special master” in remaining subsections of Section 32A-2-13 would be deleted. Due to the deletion of current subsection (B), remaining subsections in Section 32A-2-13 would be re-lettered.

Section 8 would amend Section 32A-2-14 by revising subsection (A) by adding the language “In addition to the rights provided by the Delinquency Act,” immediately at the beginning of that subsection. The language appears to largely be designed to make that subsection easier to read, given language deleted in that same subsection. It would amend subsection (M) by providing that a serious youthful offender (currently entitled to bail) only has a right to a hearing to consider or address conditions of release as provided by state Supreme Court rule. It would also add a new subsection (N) which provides that 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 would amend Section 32A-2-17(A) by providing that certain predisposition reports

shall be provided to the parties prior to disposition or sentencing “[i]f directed by the court” by adding that quoted language.

Section 10 would amend Section 32A-2-18(A) by allowing greater use of the juvenile disposition of a child (and any related evidence given in a hearing in court) in sentencing proceedings, by deleting some language currently limiting the use of such in sentencing proceedings. Additionally, new language would be added to subsection (A) to provide that such evidence (i.e. juvenile disposition of a child and related evidence given in a hearing in court) may be used in a hearing held pursuant to Article 2, Section 13 of the New Mexico Constitution, or in accordance with any applicable New Mexico Supreme Court rule to consider or address conditions of release.

Section 11 would amend Section 32A-2-19, governing the disposition of an adjudicated delinquent offender. Specifically, it would add language to subsection (B)(1) providing 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 twenty-five (25) years of age. (That age is increased from the current age of 21). Certain language (which currently sets forth a non-exclusive list of the types of commitments allowed) is deleted, simplifying subsection (B). Subsection (D) would be amended by clarifying that a delinquent child who reaches the age of 18 can be transferred to a penal institution housing adult criminal offenders. That specific part is aligned with the change discussed above, to a different statutory section, in Section 6 of the bill.

Section 12 would amend Section 32A-2-20 by, among other ways, adding the words “AND SERIOUS YOUTHFUL OFFENDER” to the title, which currently refers only to the disposition of a “YOUTHFUL OFFENDER.” Subsection (C) would also be amended by adding language expressly providing that, in making the findings (regarding non-amenability to treatment) required by subsection (B), the court may not weigh any one factor in subsection (C) more heavily than another. A related change would be made to subsection (C)(4) deleting language which currently states that greater weight shall be given to offenses against persons compared to offenses against property. Also, slight changes would be made to subsections (G) and (H) to accord with the change to the definition of “serious youthful offender” discussed above with regard to Section 2 of the bill.

Section 13 would amend Section 32A-2-22 which governs consent decrees. In subsection (A), it would replace a reference to terms agreed to by “all the parties affected” with new language referring to terms agreed to by “the state and the child’s defense attorney and approved by the court.” It would also amend subsection (C) by adding language providing that a consent decree shall not be available to a child charged as a youthful offender or serious youthful offender.

Section 14 would amend Section 32A-2-23 by deleting subsections (D) and (E), which currently address the possible extensions of, respectively, the judgments supporting a short-term commitment and a long-term commitment. The bill’s deletion of current subsections (D) and (E) appears to be related to the bill’s amendment of current subsection (F). Specifically, the bill would add to subsection (F) the words “or commitment” to make it clear that prior to the expiration of a judgment of probation or commitment, the court may exercise discretion and extend the judgment based on the child’s unique circumstances and history, up to the date that the child reaches the age of twenty-five. The bill would re-letter the subsections as needed based on the deletions.

Section 15 would amend Section 32A-2-23.1, addressing release eligibility, by deleting current

subsection (A), which currently provides that the department (CYFD) shall have exclusive jurisdiction and authority to release an adjudicated delinquent child. It also would delete current subsection (C), which currently provides that a child may request release from custody (from CYFD) at any time sixty days after the child has been committed.

Section 16 would amend Section 32A-2-24(B) by changing the standard of proof with regard to probation revocation of delinquent children from the current standard of “evidence beyond a reasonable doubt” to a standard of “preponderance of the evidence[.]”

Section 17 would amend Section 32A-2-26 by adding a new subsection, (L), which provides that only with prior notice to the court, a party may reference a juvenile record and the contents of a juvenile record for the purposes of a release related hearing pursuant to Article 2, Section 13 of the state Constitution, pursuant to a state Supreme Court rule, or a sentencing hearing. Subsection (L) would also provide that a party may reference the existence of a juvenile record in written pleadings but may not disclose the contents of such a record unless otherwise allowed by law.

Section 18 would repeal Section 32A-2-32.1. For context, Section 32A-2-32.1, enacted in 2007, provides that a state agency, political subdivision of the state, including a school district, shall not disclose on a public access website any information concerning the arrest or detention of a child, delinquency proceedings for a child and related information.

FISCAL IMPLICATIONS

N/A

SIGNIFICANT ISSUES

The amendment to Section 32A-2-20(C) contained in Section 12 of the bill, adding the language that a court “may not weigh one factor more heavily than another,” could be misconstrued from its apparent purpose. It appears that this proposed language is intended to ensure that a court making an amenability determination consider each of the 8 factors enumerated in Section 32A-2-20(C)(1)-(8), in totality, and without deeming any one or more factors more important than the others as a matter of law. This would be consistent with the Court of Appeals’ holding in *State v. Nehemiah G.*, 2018-NMCA-034, ¶¶ 50-55. *See id.* (holding that the trial court abused its discretion by construing supreme court case law as mandating that it give less weight to the offense-specific factors in Section 32A-2-20(C)(1)-(4) and more weight to the offender-specific factors in Section 32A-2-20(C)(5)-(8) as a matter of law); *see also id.* ¶ 54 (“The Delinquency Act creates no rigid delineation between offense-specific and offender-specific factors.”). However, the proposed language could be construed as necessitating that all factors be given equal weight irrespective of what the individual circumstances of a particular case warrant. Under this construction, a court may, for example, determine that it must give a juvenile sentence because the majority of factors on balance slightly favor that disposition, even if the factors supporting an adult sentence weigh in favor of that disposition more heavily under the facts of the case. It may be more accurate to replace “but may not weigh one factor more heavily than another” with a phrase such as “in totality.”

PERFORMANCE IMPLICATIONS

None.

ADMINISTRATIVE IMPLICATIONS

None.

CONFLICT, DUPLICATION, COMPANIONSHIP, RELATIONSHIP

HB 134 is the House duplicate bill.

HB 163 would amend the definition of a “delinquent act” in a manner (to include attempting to purchase cannabis) that differs from SB 326.

TECHNICAL ISSUES

None.

OTHER SUBSTANTIVE ISSUES

Section 8 of the bill adds a provision, Section 32A-2-14(N), allowing a “youthful offender” to waive an amenability hearing and agree to be sentenced as an adult. New Mexico appellate courts are unlikely to uphold such a waiver if challenged unless the record clearly reflects that the waiver is knowing, intelligent, and voluntary. “Knowingly, intelligently and voluntarily” could be added before “waive” in proposed Section 32A-2-14(N) to ensure a court clearly establishes a record that would withstand scrutiny as to the waiver. Similar language is contained in other subsections addressing waiver of other rights in Section 32A-2-14.

ALTERNATIVES

None.

WHAT WILL BE THE CONSEQUENCES OF NOT ENACTING THIS BILL

Status quo.

AMENDMENTS

N/A.