

<b>LFC Requester:</b>	<b>Scott Sanchez</b>
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**AGENCY BILL ANALYSIS  
2024 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** February 2, 2024  
**Bill No:** SB 261

**Sponsor:** Baca  
**Short Title:** Stayed Adult Sentences and Youthful Offender

**Agency Name and Code** NM Sentencing Commission (354)  
**Number:** \_\_\_\_\_  
**Person Writing** Douglas Carver  
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**SECTION II: FISCAL IMPACT**

**APPROPRIATION (dollars in thousands)**

Appropriation		Recurring or Nonrecurring	Fund Affected
FY24	FY25		

(Parenthesis ( ) Indicate Expenditure Decreases)

**REVENUE (dollars in thousands)**

Estimated Revenue			Recurring or Nonrecurring	Fund Affected
FY24	FY25	FY26		

(Parenthesis ( ) Indicate Expenditure Decreases)

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

	<b>FY24</b>	<b>FY25</b>	<b>FY26</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:  
Duplicates/Relates to Appropriation in the General Appropriation Act

**SECTION III: NARRATIVE**

**BILL SUMMARY**

Synopsis:

SB 261 makes changes to the Delinquency Act (Section 32A-2-1 NMSA 1978, *et seq.*), creating a new type of possible disposition for a youthful offender.

A new term is added to the definitions section of the Act (Section 32A-2-3 NMSA 1978) for “amenable to treatment”, defined as “the ability of a child to be rehabilitated or treated sufficiently by the time the child reaches twenty-one years of age to protect the public's safety”.

Two new sections are added to the Act, as follows:

1. New Section 32A-2-20.1 NMSA 1978, regarding dual disposition of a youthful offender amenable to treatment, allows the court, if a youthful offender prosecution results in adjudication for an offense listed in Subsection K of Section 32A-2-3(K) and if the child is found amenable to treatment, to impose a juvenile disposition pursuant to Section 32A-2-19(B)(1)(b) or (c), and an adult criminal sentence, which shall be stayed on the condition that the offender not violate the provisions of the disposition order and not commit a new offense. Successful completion of the juvenile disposition ordered shall be a condition of suspension of the adult criminal sentence. If imposing a dual disposition under this new section, the judge shall make findings of certain factors, which are identical to those in Section 32A-2-20 NMSA 1978(C) for when the court imposes an adult sentence on a youthful offender.

2. New Section 32A-2-20.2 NMSA 1978, regarding execution of adult sentence, allows the court to direct that the youthful offender sentenced under the dual disposition provisions to be taken into custody if there is probable cause to believe that the offender has violated a condition of the stayed sentence or is alleged to have committed a new offense. The Children’s Court attorney may petition for revocation of the stay of execution of the adult sentence; the youthful offender is entitled to a hearing on the state’s petition to revoke or may waive the hearing. In a hearing, the Children’s Court attorney must present proof of the violation beyond a reasonable doubt. If the hearing establishes that the youthful offender has violated the terms of suspension of the stayed adult sentence, the court shall order the execution of the previously imposed sentence, unless it makes findings of mitigating factors that justify continuing the stay. If the stay of the adult sentence is revoked, the offender’s youthful offender status is terminated and the court’s jurisdiction over the child with respect to delinquent acts is terminated. Ongoing jurisdiction for any adult sanction other than commitment to NMCD is with the adult court.

Additionally, before an offender who has received a stayed adult sentence reaches 21, the court shall hold a hearing at which the court may revoke the suspension, order the execution of the adult sentence, and direct that the offender be taken into NMCD custody; order execution of the adult sentence and place the offender on probation; or order the offender's release. If ordering the execution of the adult sentence at this hearing, the court must make the following two findings:

1. in the instant proceeding, during the time the child was placed on probation or committed to a facility for the care and rehabilitation of adjudicated delinquent children, that the child was not amenable to treatment or rehabilitation as a child in available facilities; and
2. that the child is not eligible for commitment to an institution for children with developmental disabilities or mental disorders.

The court must also make findings of factors which are identical to those in Section 32A-2-20 NMSA 1978(C) for when the court imposes an adult sentence on a youthful offender, as well as the following:

1. in the instant proceeding, the child's behavior and conduct while placed on probation or committed to a facility for the care and rehabilitation of adjudicated delinquent children; and
2. the results of a report provided by the department of a risk assessment performed on the child using an accepted risk assessment tool that determines whether the child: 1) poses a substantial risk of harm to self; 2) poses a substantial risk of harm to others; or 3) may leave the jurisdiction of the court.

Finally, if an offender is ordered to serve probation at the hearing held before the offender turns 21, and successfully completes probation, the adjudication shall not become a conviction for purposes of the Criminal Code and the court shall enter a conditional discharge. If execution of the adult sentence is ordered and the offender is placed in the custody of the Corrections Department, all time served by the offender under the juvenile disposition shall be credited toward the adult criminal sentence imposed.

Other changes are made to the Act to comport with these new sections.

## **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 261

The dual disposition scheme outlined in SB 261 is a type of blended sentencing program for juvenile offenders, known sometimes as "juvenile and criminal inclusive blended sentencing". Advocates are critical of this and other blended sentencing schemes for often it means that youth who have not had the due process protections of the adult criminal justice system in a trade off for the relative leniency of the juvenile system end up being subject to adult sentences anyway. *See*, for example, The Campaign for Youth Justice "Fact Sheet: Blended Sentencing" (available

at:

<http://www.campaignforyouthjustice.org/images/factsheets/Blended%20Sentencing%20Fact%20Sheet.pdf>).

See also Schaefer & Uggen, “Blended Sentencing Laws and the Punitive Turn in Juvenile Justice”, *Law & Social Inquiry* (2016), which argued, in summary:

In many states, young people today can receive a “blended” combination of both a juvenile sanction and an adult criminal sentence. We ask what accounts for the rise of blended sentencing in juvenile justice and whether this trend parallels crime control developments in the adult criminal justice system. We use event history analysis to model state adoption of blended sentencing laws from 1985 to 2008, examining the relative influence of social, political, administrative, and economic factors. We find that states with high unemployment, greater prosecutorial discretion, and disproportionate rates of African American incarceration are most likely to pass blended sentencing provisions. This suggests that the turn toward blended sentencing largely parallels the punitive turn in adult sentencing and corrections—and that theory and research on adult punishment productively extends to developments in juvenile justice.

(available at: [http://users.soc.umn.edu/~uggen/Schaefer\\_Uggen\\_LSI\\_16.pdf](http://users.soc.umn.edu/~uggen/Schaefer_Uggen_LSI_16.pdf))

Advocates of blended sentencing schemes argue that it provides a good intermediary response to juvenile offending, but stress the dangers of racial bias in blended sentencing schemes and the need for use of formal risk and needs assessments and the use of enhanced services and supervision for juvenile offenders in these schemes (*See*, for example, Fred Cheesman, “A Decade of NCSC Research on Blended Sentencing of Juvenile Offenders. What Have We Learned About 'Who Gets a Second Chance?'”, National Center for State Courts (2011) (available here: <https://www.scribd.com/document/238202773/CHEESMAN-Fred-A-Decade-of-NCSC-Research-on-Blended-Sentencing-of-Juvenile-Offenders-pdf>).

## **PERFORMANCE IMPLICATIONS**

## **ADMINISTRATIVE IMPLICATIONS**

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

## **TECHNICAL ISSUES**

## **OTHER SUBSTANTIVE ISSUES**

## **ALTERNATIVES**

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

## **AMENDMENTS**