

LFC Requester:	
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**AGENCY BILL ANALYSIS
2026 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 1/22/2026
Bill No: HB 79-280

Sponsor: Andrea Reeb
Short Title: Evidence in Probation Revocation

Agency Name and Code LOPD 280
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:
Duplicates/Relates to Appropriation in the General Appropriation Act

SECTION III: NARRATIVE

BILL SUMMARY

Synopsis:

HB 79 proposes to amend existing Section 32A-2-4 in the Children’s Code. Specifically, in Subsection (B) of the statute, the bill proposes to change the standard of proof in juvenile probation revocation proceedings to preponderance of the evidence from its current standard of proof of beyond a reasonable doubt.

FISCAL IMPLICATIONS

The fiscal impact of HB 79 on the LOPD is not as clear as, for instance, creating a new criminal offense. The bill reduces the standard of proof in juvenile probation revocation proceedings, which, as a practical matter, creates a high possibility that a more lenient standard of proof would encourage prosecutors to pursue such revocations more often than before, and defense counsel may have to develop a stronger rebuttal case to defend against revocation. Currently, the more onerous standard may give prosecutors pause to move forward with a revocation proceeding when evidence of the violation is as minimal as it often the case in an adult revocation proceeding.

And, as discussed below, the more troubling aspect of the proposed bill is that it would create a standard of proof for juveniles that is seemingly less onerous than the “reasonable certainty” standard applicable to adult revocation proceedings in New Mexico. The risk exists that easing the prosecution’s burden of proof in this context would create a surge in revocations, necessitating an increase in workload for LOPD attorneys handling such cases or else a need to add additional attorneys to the system.

Increase in the number of revocations brought about by changes to criminal laws necessarily results in a need for an increase in indigent defense funding to maintain compliance with constitutional mandates for effective representation. Presently, LOPD workload is already so heavy in some offices that lawyers have been required to move to withdraw from new cases in order provides constitutionally mandated effective assistance to existing clients. Increase in revocations brings about an increase in need for indigent defense funding. In any event, accurate prediction of the fiscal impact is impossible to speculate; assessment of the required resources would be necessary after implementation of the proposed statutory change.

Analyst is unaware whether this legislation is germane under Art. IV, Section 5. It is not a budget

bill and analyst is unaware that it has been drawn pursuant to a special message of the Governor.

SIGNIFICANT ISSUES

While the change this bill proposes seems simple, its effect is profound. At least two significant problems are evident.

First, New Mexico has seen fit to require that juveniles be afforded the same rights and procedures in revocation proceedings that they are afforded in delinquency (i.e., trial) proceedings. *See, e.g., In re Aaron L.*, 2000-NMCA-024, ¶ 24, 128 N.M. 641. This is no small pronouncement. The notion that revocation proceedings are afforded process equivalent to delinquency proceedings raises issues regarding a plethora of rights and criminal procedures New Mexico has deliberately extended to juveniles. *See generally* Rule 10-201 et seq. (Children’s Court Rules and Forms, Article 2 addressing Delinquency Proceedings); NMSA 1978, § 32A-2-24(A) (2009) (setting forth that petitions to revoke shall be screened, reviewed and prepared in same manner and shall contain same information as petitions alleging delinquency). For example, the rules of evidence apply to the adjudicatory phase of juvenile revocation proceedings and the violations must be alleged in a formal petition as opposed to a written report addressed at an informal hearing as would be the case with an adult. *State v. Erickson, K.*, 2002-NMCA-058, ¶ 18. 132 N.M. 258. (“Our conclusion that the Rules of Evidence apply to the adjudicatory phase of juvenile probation revocation proceedings is consistent with our long legislative and judicial tradition of affording juveniles enhanced procedural protections.”). Moreover, juveniles have a full Sixth Amendment right of confrontation at probation revocation hearings, just as an adult would have in a trial. *State v. Trevor M.*, 2015-NMCA-009, ¶ 8, 341 P.3d 25.

Thrusting a lesser burden of proof into the mix is entirely at odds with what New Mexico has embraced. Moreover, it would necessitate a comprehensive review of how altering that standard affects any other provision of the Children’s Code that touches on revocation proceedings or rights afforded juveniles generally.

Second, the prosecution’s burden of proof **in adult revocation proceedings** is that it must prove a violation with “reasonable certainty.” *State v. Leon*, 2013-NMCA-911, ¶ 36. New Mexico has not explicitly stated in the revocation context that this language is the equivalent of proof by a “preponderance of the evidence.” Congruent with this, a body of case law currently exists in which the bounds of “reasonable certainty” in a sufficiency context is explored. That there may be an equivalence between “reasonable certainty” and “preponderance of the evidence” is a legal issue other jurisdictions have struggled with in the context of their own jurisprudence. *See, e.g., State of Louisiana, By and Through its Division of Administration v. 13 Verticals Incorporated*, 81 F.4th 483, 489 (5th Cir. 2023) (discussing whether the two standards are the same).

Because New Mexico has not used “preponderance of the evidence” in this context, its meaning would be, at best, unclear in light of existing probation revocation precedent. In any event, New Mexico has not apparently stated with certainty that the two are the same. *Compare Kilpatrick v. Wiley, Rein & Fielding*, 37 P.3d 1130, 1146 (Utah 2001) (stating “reasonable certainty” means with “sufficient certainty that reasonable minds might believe from a preponderance of the evidence”) with *State v. Gonzales*, 1981-NMCA-131, ¶ 20-36 (in the context of border searches, appearing to treat “preponderance of the evidence” and “reasonable certainty” as different standards) and *Camino Real Mobile Home Park Partnership v. Wolfe*, 1995-NMSC-013, 119 N.M. 436 (citing Colorado civil case for proposition that reasonable certainty standard imposes

on plaintiff the burden of proving damage by preponderance of evidence). Thus, an entirely new body of law would have to develop in order to engage in line-drawing case-by-case.

In sum, what appears to be a simple change is not simple and is contrary to the core spirit of the Children's Code which is designed to afford children *at least if not more* procedural safeguards than we provide to similarly situated adults. Protracted litigation is likely, in order to protect the rights of children.

PERFORMANCE IMPLICATIONS

See above

ADMINISTRATIVE IMPLICATIONS

See above

CONFLICT, DUPLICATION, COMPANIONSHIP, RELATIONSHIP

See above

TECHNICAL ISSUES

Analyst is unaware whether this legislation is germane under Art. IV, Section 5. It is not a budget bill and analyst is unaware that it has been drawn pursuant to a special message of the Governor.

OTHER SUBSTANTIVE ISSUES

See above

ALTERNATIVES

The alternative is to leave the language in the statute unchanged. That the prosecution will have to continue to adhere to the standards set forth there is not an overwhelming proposition.

WHAT WILL BE THE CONSEQUENCES OF NOT ENACTING THIS BILL

Status quo

AMENDMENTS