

LFC Requester: _____

**AGENCY BILL ANALYSIS
2026 REGULAR SESSION**

WITHIN 24 HOURS OF BILL POSTING, UPLOAD ANALYSIS TO:

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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 2/6/2026

Bill No: HB 334-280

Sponsor: Rep. Reeb, Rep. Nicole Chavez,
Rep. Alan Martinez
Short Competency of Children
Title: _____

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: None

Duplicates/Relates to Appropriation in the General Appropriation Act

SECTION III: NARRATIVE

BILL SUMMARY

Synopsis: HB 334 would create a new system of criminal commitment for children who are accused of crimes and found not competent to stand trial or assist in their own defense. The new system would be substantially modeled on the system for incompetent adults who are accused of crimes.

HB 334 would eliminate NMSA 1978, § 32A-2-21(G). Currently, this section says that if a child is accused of an act that would be a misdemeanor, and the child is found to be incompetent to stand trial, the court shall dismiss the delinquency petition with prejudice and recommend proceedings under the Children’s Mental Health and Developmental Disabilities Act. If a child is accused of more serious conduct (what would otherwise be a felony) and is found incompetent, the court may order treatment to competency and stay proceedings for up to one year. If the child is still incompetent after one year or cannot be treated to competency, the court must dismiss the petition without prejudice.

In place of this existing system, HB 334 would impose a detailed system of criminal competency proceedings for children. Major features of this system would include:

- Section 1(L) of the bill would create a new requirement that the children’s court hold a competency hearing.
- Section 2 of the bill would require, for the first time, that the children’s court make a determination of whether the child is dangerous. Under Section 2(B), if the child were not dangerous, the children’s court could order nonresidential treatment or dismiss the delinquency petition. Section 2(B)(1) specifies that the court may incarcerate the child for up to seven days in order to initiate involuntary commitment proceedings.
- Under Section 2(D), if the children’s court determined that the child *were* dangerous, the court could order residential treatment. Section 3(A) would require review of the child’s progress after 90 days.
- If the child were still not competent but making progress, the court could require continued residential treatment, with a review in nine months at the most. Section 3(D)(1). If the child were not making progress, the court would hold a child commitment hearing (described below in Section 5 of the bill). The court could also “order continued care or treatment of the child by the department until the conclusion of the delinquency proceedings.” Section 3(E).
- If the court determined at any time that there was not “a substantial probability” that

the child would be restored to competency within nine months of the initial determination of incompetency, and the child were charged with any of a number of serious or violent acts, the court could hold a child commitment hearing (described in Section 5). Section 4(A). The list of acts appears to come from NMSA 1978, Section 31-9-1.5, which governs criminal commitment for adults.

- If the child were charged with other non-enumerated acts, the court could dismiss the petition, either with or without prejudice. Section 4(B)-(C). The court would also be required to initiate involuntary commitment proceedings for a child who met the criteria for them; it could incarcerate the child for up to seven days to initiate those proceedings. Section 4(C).
- Section 5 of the bill would create a new proceeding for criminal commitment of an incompetent child who was charged with a serious act. Again, the list of acts appears identical to the list in Section 31-9-1.5(A).
- The commitment hearing would be in front of a judge, without a jury. The prosecutor would be allowed to introduce evidence by hearsay or affidavit. If the court found by clear and convincing evidence that the child committed the crime and was dangerous, the child would be sent to a residential treatment program. The child could be held there until the age of 25. Section 5(E).
- The bill specifies that every year, the children's court would hold a hearing to determine whether the child has become competent (in which case the court would resume the criminal case). Section 5(E)(4)(a). Every two years, "until expiration of the period of commitment equal to the maximum sentence to which the child would have been subject had the child been convicted in a criminal proceeding," the court would review whether the child was dangerous. If the child was no longer dangerous, the child would be released. Section 5(E)(4)(b)-(c).
- Section 6 of the bill would create a new type of hearing. On a defense motion, the court would hold a hearing to determine if a child were incompetent due to a developmental or intellectual disability. Section 6(A). If so, and if the child were not likely to be restored to competency, the department would determine "whether the child presents a likelihood of serious harm to the child's self or others." Section 6(B). If so, and if the child were charged with the same list of serious acts, the department would be required to initiate involuntary commitment proceedings. Section 6(C).

FISCAL IMPLICATIONS

HB 334 would create an elaborate new juvenile criminal legal system for children who are incompetent to stand trial. While it is not clear how many cases they would affect, in those cases, they would likely require substantially more litigation. Not all LOPD attorneys handle juvenile cases; it is possible that the department would have to hire additional juvenile specialists or train more attorneys in how to handle these cases.

Additionally, because the bill would both create new, untested procedures and lead to significant deprivations of liberty for the children it would affect, it is very likely that aspects of the bill would be challenged both in the children's court and the appellate courts.

SIGNIFICANT ISSUES

HB 334 would jettison the current system for incompetent children accused of criminal acts and replace it with something that resembles the system for incompetent adults. This would be a sea

change in the juvenile justice system. Currently, a court may order treatment or supervision for an incompetent child for up to a year and then must dismiss the case. Under HB 334, a child who was charged with a serious enough offense and was found dangerous could be criminally committed until the child turned 25. The bill would lead to increased and prolonged incarceration of children—by definition, children who were not capable of understanding the charges against them or assisting in their defense.

It is also not clear where these children would go. This analyst's understanding is that there is no facility in New Mexico that can treat a child to competency; children would have to go out of state. The bill assumes that there is an infrastructure that can treat a child to competency or hold a child who has been criminally committed, but it is not clear that any of this exists. Facilities for adults are not equipped to treat children or keep them safe.

PERFORMANCE IMPLICATIONS

ADMINISTRATIVE IMPLICATIONS

CONFLICT, DUPLICATION, COMPANIONSHIP, RELATIONSHIP

TECHNICAL ISSUES

OTHER SUBSTANTIVE ISSUES

ALTERNATIVES

WHAT WILL BE THE CONSEQUENCES OF NOT ENACTING THIS BILL

Under current law, when juveniles are facing felony-equivalent charges, the court can stay proceedings for one year to restore them to competency. As incompetency in children is often the result of immaturity rather than a static diagnosis, competency is often achieved during that year, at which point, the children's court may proceed toward adjudication.

Furthermore, civil commitment has been and continues to be available for juveniles when the statutory criteria are met.

AMENDMENTS