

LFC Requester:	Scott Sanchez
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**AGENCY BILL ANALYSIS
2024 REGULAR SESSION**

WITHIN 24 HOURS OF BILL POSTING, EMAIL ANALYSIS TO:

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and

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{Include the bill no. in the email subject line, e.g., HB2, and only attach one bill analysis and related documentation per email message}

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: SB261

Sponsor: Gregory A. Baca, Craig W. Brandt, & Gregg Schmedes
Short Title: STAYED ADULT SENTENCES & YOUTHFUL OFFENDER

Agency Name and Code AOC 218
Number: _____
Person Writing Alison Pauk
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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		
Unknown	Unknown	Unknown	Rec.	General

(Parenthesis () Indicate Expenditure Decreases)

ESTIMATED ADDITIONAL OPERATING BUDGET IMPACT (dollars in thousands)

	FY24	FY25	FY26	3 Year Total Cost	Recurring or Nonrecurring	Fund Affected
Total	Unknown	Unknown	Unknown	Unknown	Rec.	

(Parenthesis () Indicate Expenditure Decreases)

Duplicates/Conflicts with/Companion to/Relates to: HB 155 (Conflict)
Duplicates/Relates to Appropriation in the General Appropriation Act

SECTION III: NARRATIVE

BILL SUMMARY

Synopsis: SB 261 amends statutory sections within the Children’s Code, Chapter 32A NMSA 1978, and specifically within Article 2 of Chapter 32A, the Delinquency Act, to allow for the imposition of a stayed adult criminal sentence upon adjudication of a youthful offender.

SB 261 enacts two new statutory sections, Section 32A-2-20.1 and Section 32A-2-20.2 NMSA 1978. New Section 32A-2-20.1 governs dual disposition of a youthful offender amenable to treatment, and permitting the court to impose a juvenile disposition and an adult criminal sentence, the execution of 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. Section 32A-2-20.2 enacts a new statutory section governing execution of an adult sentence when there is probable cause to believe that a youthful offender sentenced pursuant to Section 32A-2-20.1 NMSA 1978 has violated any condition of the stayed sentence or is alleged to have committed a new offense.

SB 261 specifically amends and enacts the following statutes:

- **Section 32A-2-3 NMSA 1978:** provides that as used in the Delinquency Act, “amenable to treatment” means 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.
- **Section 32A-2-6 NMSA 1978:** provides that if the defendant is not a child at the time of transfer, the court retains jurisdiction over the matter only until disposition is made by the court, unless disposition is made pursuant to Paragraph (2) of Subsection A of Section 32A-2-20.1 NMSA 1978.
- **Section 32A-2-17 NMSA 1978:** clarifies that the paragraph requiring preparation of a subsequent predisposition report for a youthful offender concerning the youthful offender’s amenability to treatment if the court makes the findings necessary to impose an adult sentence pursuant to Section 32A-2-20 NMSA 1978 shall not apply, however, to any adult sentence sought pursuant to Section 32A-2-20.1 NMSA 1978.
- **Section 32A-2-18 NMSA 1978:** clarifies that if a judgment resulting from a youthful offender or serious youthful offender proceeding under the Delinquency Act results in an adult sentence, a record of the judgment shall be admissible in any other case or proceeding in any other court involving the youthful offender or serious youthful offender, unless the sentence was imposed pursuant to Paragraph (2) of Subsection F

and Subsection H of Section 32A-2-20.2 NMSA 1978, and the offender successfully completed adult probation.

- **Section 32A-2-20 NMSA 1978:** clarifies that the court has the discretion to invoke either an adult sentence or juvenile sanctions on a youthful offender pursuant to this section, or the court may proceed pursuant to Section 32A-2-20.1 NMSA 1978, and sets out processes if the children's court attorney is seeking an adult sentence. Amends Subsection B to remove the requirement for the court to make specified findings when imposing an adult sentence pursuant to Section 32A-2-20.1 NMSA 1978. Provides that an appeal of a court order entered in accordance with this section may be filed by either party to the case.
- **Section 32A-2-20.1 NMSA 1978:** enacts a new statutory section governing dual disposition of a youthful offender amenable to treatment, and permitting the court to impose a juvenile disposition and an adult criminal sentence, the execution of 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.
- **Section 32A-2-20.2 NMSA 1978:** enacts a new statutory section governing execution of an adult sentence that permits a court, if necessary, when there is probable cause to believe that a youthful offender sentenced pursuant to Section 32A-2-20.1 NMSA 1978 has violated any condition of the stayed sentence or is alleged to have committed a new offense, to direct that the youthful offender be taken into immediate custody. (Subsection A)
 - SB 261 provides that the youthful offender shall be entitled to a hearing on the state's petition to revoke the stay or may waive a hearing if challenging the petition for revocation of the stay, and is entitled to be heard and represented by counsel. The children's court attorney is required to present proof of the violation beyond a reasonable doubt. Proof of a new offense in this hearing shall not establish guilt as to that new offense. (Subsection B)
 - Under SB 261, if it is established after a hearing that a youthful offender has violated the terms of suspension of the sentence stayed pursuant to Paragraph (2) of Subsection A of Section 32A-2-20.1 NMSA 1978, the court shall order execution of the previously imposed sentence unless the court makes written findings of mitigating factors that justify continuing the stay.
 - If the court finds that no mitigating factors are present, the court shall treat the youthful offender as an adult and order any of the adult sanctions authorized by the original disposition and sentence. (Subsection D) SB 261 provides that upon revocation of the stay and execution of the adult sentence, the offender's youthful offender status is terminated and the court's jurisdiction over the child with respect to the delinquent acts alleged in the petition is terminated.
 - The ongoing jurisdiction for any adult sanction, other than commitment to the corrections department, is with the adult court. (Subsection E) SB 261 further provides that before an offender who has received a stayed adult sentence pursuant to Section 32A-2-20.1 NMSA 1978 reaches the age of twenty-one, the court shall hold a hearing.

- SB 261 requires the court to take specified actions and to make specified findings. (Subsections F and G) Under SB 261, if an offender is ordered to serve probation pursuant to Paragraph (2) of Subsection F of this section 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 as provided for in Section 31-20-13 NMSA 1978. (Subsection H)
- 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. (Subsection I)

There is no appropriation listed in the bill.

There is no effective date of this bill. It is assumed that the effective date is May 15, 2024, which is 90 days following adjournment of the Legislature.

FISCAL IMPLICATIONS

There will be a minimal administrative cost for statewide update, distribution and documentation of statutory changes. Any additional fiscal impact on the judiciary would be proportional to the enforcement of this law and the need for additional hearings and orders regarding dual disposition of a youthful offender amenable to treatment and challenges to the same. New laws, amendments to existing laws and new hearings have the potential to increase caseloads in the courts, thus requiring additional resources to handle the increase.

By creating a dual sentencing structure for youthful offenders, the bill may increase the amount of work that needs to be done by the courts, thus requiring additional resources to handle the increased workload. SB 261 requires courts to make a number of findings at various stages in a youthful offender proceeding and requires additional hearings if there is an alleged violation of the conditions for a stayed adult sentence and when the youthful offender turns twenty-one. These hearings will have to be placed on already busy children's court dockets. The dual sentencing scheme would likely result in additional administration for both juvenile and adult courts, such as the development and implementation of:

- training for all children's court and criminal district court judges;
- court processes specific to dual dispositions for court staff statewide.
- analysis and reconfiguration of the Odyssey case management system

Under dual sentencing, the consequences of violating conditions of disposition or committing a new offence carry more stringent penalties; it is also likely that more cases will go to trial. This would result in more court time and resources.

SIGNIFICANT ISSUES

Currently in New Mexico, a youthful offender only receives an adult sentence when the young person is found to have committed one of the enumerated acts listed in Section 32A-2-3(J) *and* the state proves that the young person is not amenable to treatment at an amenability hearing.

Serious youthful offenders are those indicted for first degree murder; if found guilty of first degree murder, a serious youthful offender is not entitled to an amenability hearing under the Delinquency Act. *See State v. Ortiz*, 2021-NMSC-029. Senate Bill 261 offers a third alternative in the sentencing scheme for youthful offenders commonly called a blended sentence which is combination of a juvenile disposition and an adult criminal sentence.

1) Over the past decade, the U.S. Supreme Court evolved its jurisprudence regarding youth status in the criminal justice system. In January of 2016, the U.S. Supreme Court issued *Montgomery v. Louisiana*, 577 U.S. 190 (2016), reiterating that, "...children are constitutionally different from adults for purposes of sentencing." "[T]he relevance of youth as a mitigating factor derives from the fact that the signature qualities of youth are transient; as individuals mature, the impetuosity and recklessness that may dominate in younger years can subside." *Montgomery* (quoting *Miller v. Alabama* 132 S.Ct. 2455 (2012))

The National Conference of State Legislatures (NCSL) reported in 2014 that many states enacted juvenile sentencing reforms in 2013, often in response to that year's U.S. Supreme Court case, *Miller v. Alabama*, 567 U.S. 460, 470, which prohibits mandatory juvenile life without parole sentencing.

In April of 2021, however, the U.S. Supreme Court, in *Jones v. Mississippi*, 593 US 98 (2021), rejected restrictions on life without parole for juveniles. As reported by NPR,

Over the past two decades, the law on juvenile sentencing has changed significantly. The Supreme Court — primed by research that shows the brains of juveniles are not fully developed, and that they are likely to lack impulse control — has issued a half dozen opinions holding that juveniles are less culpable than adults for their acts. And the court has also ruled that some of the harshest punishments for acts committed by children are unconstitutionally cruel and unusual punishment.

After striking down the death penalty for juvenile offenders, the court, in a series of decisions, limited life without parole sentences to the rarest cases — those juvenile offenders convicted of murder who are so incorrigible that there is no hope for their rehabilitation.

But all of those decisions were issued when the makeup of the court was quite different than it is now. This case was the first time the court has heard arguments in a juvenile sentencing case with three Trump appointees on the bench, including new Justice Amy Coney Barrett, who replaced the late Justice Ruth Bader Ginsburg.

Previously, Justice Anthony Kennedy, who retired in 2018, repeatedly was the deciding vote in cases involving life sentences and other harsh punishments for juvenile offenders. But with Kennedy retired and replaced by Kavanaugh, and with Ginsburg replaced by Barrett, the court in this case indicated that it is not inclined to go the extra mile to protect juvenile offenders from the harshest punishments.

See <https://www.npr.org/2021/04/22/989822872/supreme-court-rejects-restrictions-on-life-without-parole-for-juveniles> .

Additionally, the Children's Defense Fund (CDF) in May 2021 noted:

Last month, the Supreme Court ruled on the *Jones v Mississippi* case making it easier for children and teens to be sentenced to life without parole—a decision that shifts away from decades of law recognizing that children are distinct from adults and that their age should be considered in situations where they face severe punishment in the criminal justice system.

See <https://www.childrensdefense.org/blog/supreme-court-juvenile-life-without-parole/>

Likewise, with the changes in juvenile sentencing heralded in the *Jones v. Mississippi* case, states may wish to expedite legislation permitting dual sentencing of youthful offenders.

2) Evidence used in the above-mentioned *Miller* decision establishes that teenagers are a group especially susceptible to impulsive acts and failure to appreciate the consequences of their actions.

In the FIR for 2021's SB 47, substantially similar to SB 43 after multiple amendments, the LFC noted that the New Mexico Sentencing Commission concurs, citing a recent Sentencing Project report (www.sentencingproject.org/publications/juvenile-life-without-parole/), including the following paragraph:

What Makes Youth Different?

In amici briefs written on behalf of the defendants in *Roper*, *Graham*, *Miller*, and *Montgomery*, organizations representing health professionals, such as the American Academy of Child Adolescent Psychiatry and the American Psychological Association, explained current research on immature brains. In *Miller*, Justice Kagan noted that adolescence is marked by “immaturity, impetuosity, and failure to appreciate risks and consequences,” all factors that limit an adolescent’s ability to make sound judgments. Justice Kagan cited *Graham* and *J. D. B. v. North Carolina* in noting that juvenile defendants are at a substantial disadvantage in criminal proceedings; they are less able than adults to assist in their own defenses (working constructively with counsel) and they are likely to respond poorly to the high pressures of interrogation. Even before *Roper*, states routinely recognized differences between juveniles and adults in other contexts. Almost every state prohibits juveniles from voting, buying cigarettes and alcohol, serving on juries, and getting married without parental consent. Teenagers’ drivers licenses are typically restricted through age 18. The *Graham* decision emphasized the importance of giving juvenile offenders a chance to become rehabilitated. These individuals have a substantial capacity for rehabilitation, but many states deny this opportunity: approximately 62% of people sentenced to life without parole as juveniles reported not participating in prison programs in large part due to state prison policies that prohibit their participation or limited program availability. They typically receive fewer rehabilitative services than other prisoners.

See <https://www.nmlegis.gov/Sessions/21%20Regular/firs/SB0247.PDF> .

3) The Spring 2016 analysis in the *Journal of the American Bar Foundation*, entitled, “Blended Sentencing Laws and the Punitive Turn in Juvenile Justice,” concluded:

In short, the turn toward blended sentencing for juveniles largely parallels the punitive turn in adult sentencing and corrections rather than reaffirming the historic individualized treatment emphasis of the juvenile court. While blended sentences may indeed represent a “last chance” for juveniles before they are waived to adult court (Feld 1995, 1038) or an “alternative to expansion of other means of transfer to criminal court”(Dawson 2000, 75), they were likely enacted, in part, to expand harsh criminal punishments to a larger class of youthful law violators (Zimring2000).

See http://users.soc.umn.edu/~uggen/Schaefer_Uggen_LSI_16.pdf at page 454.

4) The interplay between Sections 32A-2-20 and 32A-2-20.1 may cause confusion because:

(A) The proposed language in Section 32A-2-20.1(A) states “. . . and the offender is found by the court to be amenable to treatment.” This is not the inquiry that the court is required to make to determine amenability. The inquiry established by the Legislature in §32A-2-20(B), reiterated by the N.M. Supreme Court in *Jones*, and Children’s Court Rule 10-247 is: “The burden is on the State to prove that the child is not amenable to treatment or rehabilitation as a child in available facilities and that the child is not eligible for commitment to an institution for children with developmental disabilities or mental disorders.” This may seem like an insignificant distinction, but the language in 32A-2-20.1(A) could cause questions regarding the burden of proof on amenability.

(B) Section 32A-2-20.1(A) assumes that a finding of amenability has already been made, presumably based upon the amenability factors in §32A-2-20(C), but §32A-2-20.1(B) requires the court to consider the amenability factors again for the purpose of deciding what type of disposition/sentence to impose. The proposed statute is therefore unclear regarding the specific findings required by the court.

5) Proposed Subsection D of Section 32A-2-20.2 requires a district court that finds that a youthful offender has violated the conditions of the stay to order execution of the adult sentence, absent mitigating factors that justify continuing the stay. SB 261 provides no guidance to courts about what constitute sufficient mitigating factors, which may lead to confusion and inconsistencies among jurisdictions about when it is appropriate to impose the adult sentence.

PERFORMANCE IMPLICATIONS

The courts are participating in performance-based budgeting. This bill may have an impact on the measures of the district courts in the following areas:

- Cases disposed of as a percent of cases filed
- Percentage change in case filings by case type

ADMINISTRATIVE IMPLICATIONS

See “Fiscal Implications,” above.

CONFLICT, DUPLICATION, COMPANIONSHIP, RELATIONSHIP

Related to HB 155, amending Section 31-18-23(C) NMSA 1978 to provide that a violent felony

conviction incurred by a defendant before the defendant reaches 18 shall not count as a violent felony conviction unless, “(1) the defendant was sentenced as an adult pursuant to the provisions of Section 31-18-15.3 or 32A-2-20 NMSA 1978; or...” SB 261 amends Section 32A-2-20 to provide the option of dual sentencing, where the court imposes both a juvenile disposition and an adult criminal sentence, the execution of which adult criminal sentence shall be stayed and may be suspended. There is no guidance as to whether the dual sentence would be considered as an adult sentence or juvenile disposition for the purpose of applying the HB 155 amendment to Section 31-18-23(C).

TECHNICAL ISSUES

1) SB 261 Section 6, Section 32A-2-20.1(A)(2), on page 16, lines 19-24, appears to contain duplicative language. The provision first states that a condition of a stayed sentence is that “the offender not violate the provisions of the disposition order” and then provides that “successful completion of the juvenile disposition ordered shall be a condition of suspension of the adult criminal sentence.” It is unclear how conditioning the stayed sentence on not violating the disposition order is different from conditioning the stayed sentence on successful completion of the disposition order. If there is an intended difference, clarification would help avoid any vagueness issues.

2) In SB 261, Sections 6 and 7, the terms “stay” and “suspension” are used interchangeably to refer to the adult sentences addressed in the bill. See Section 32A-2-20.1(A)(2), p. 16 and Section 32A-2-20.2(D) and (F), pp. 19 and 20. Unless the two terms are intended to have different meanings, the use of only one of the two terms is suggested.

OTHER SUBSTANTIVE ISSUES

Completion of a successful juvenile disposition would result in an order for release. However, there is nothing in SB 261 that addresses the disposal of a suspended sentence. For adult criminals, a suspended sentence that is not executed will still appear on their criminal record. For a juvenile to carry that same stigma contravenes the purpose of the Delinquency Act.

ALTERNATIVES

WHAT WILL BE THE CONSEQUENCES OF NOT ENACTING THIS BILL

AMENDMENTS