

LFC Requester: \_\_\_\_\_

**AGENCY BILL ANALYSIS  
2024 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 February 1, 2024  
Bill No: SB 261-280

Sponsor: Gregory A. Baca and Gregg Schmedes  
Short Title: Stayed Adult Sentences & Youthful Offender

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
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 overall proposes changes to the Delinquency Act to extend the ability of the court to sentence a child who has been initially found amenable to treatment (a juvenile disposition) to an adult sentence at age 21. Each section of the proposed bill is discussed below.

Sections 1 adds a definition of “amenable to treatment” to Section 32A-2-3 and provides, in part, that “amenable to treatment” means the ability of a child to be rehabilitated by age 21.

Section 3 amends NMSA 32-A-2-17 (A)(3)(b) on predisposition studies and reports which currently requires a predisposition report when sentencing a youthful offender as an adult. The bill would add a section to no longer require the report when an adult sentence is sought pursuant to 32A-2-20.1 (the proposed blended sentencing amendment.)

Section 4 adds language to limit the use of the judgment as a criminal conviction in certain circumstances. Specifically, it proposes to amend NMSA 1978, Section 32A-2-18 (B), to provide that if a judgment resulting from a youthful offender or serious youthful offender proceeding 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 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.” This section also proposes to amend Section C of the same statutory provision to provide that a proceeding which results in an adult sentence becomes a conviction, “except as provided in Subsection H of Section 32A-2-20.2.”

Section 5 of the bill proposes to amend Section 32A-2-20(A) to provide that the court has discretion to sentence a youthful offender to either adult or juvenile sanctions or may proceed pursuant to Section 32A-2-20.1. This section proposes to amend subsection B of the same statutory provision to provide that the court must make enumerated findings when invoking an adult sentence, “except when imposing an adult sentence pursuant to Section 32A-2-20.1 NMSA 1978[.]” This section also proposes to add a new section to specifically provide for an appeal by either party of the case of the court order entered under this section.

Section 6 of the bill proposes to add a new section to the Delinquency Act numbered NMSA 1978, Section 32A-2-20.1 to read Dual Disposition of A Youthful Offender Amenable to Treatment. This section proposes to allow the court to impose a juvenile disposition and an adult criminal sentence, but provides the execution of the adult sentence 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. The court would consider factors similar to those in determining amenability.

Section 7 of the bill proposes to add a new section to the Delinquency Code numbered 32A-2-20.2 to read Execution of Adult Sentence. This section proposes the procedure to be followed when there is probable cause to believe a youthful offender has violated any condition of the stayed sentence or alleged to have committed a new offense. If it is established after a hearing that the youthful offender violated the terms of the stayed sentence, the court shall order the execution of the adult sentence, unless the court makes written findings of mitigating factors that justify continuing with the stay. If the stay is revoked, the court's jurisdiction over the delinquent acts would be terminated and jurisdiction for any ongoing adult sanction would be with the adult court. This section also would require the court to hold a hearing for any offender who received a stayed adult sentence before they reach the age of 21. The court shall either revoke the stayed adult sentence and send the person to prison, order execution of the adult sentence and place the person on probation, or release the person. The court must make findings when ordering the execution of the adult sentence, including that the child was not amenable to treatment.

## **FISCAL IMPLICATIONS**

The bill's proposed review of a person at age 21 could require additional attorneys well-trained in juvenile defense as well as additional social work staff and funds for expert witnesses. These hearings would constitute new proceedings the LOPD currently does not have to do (nor DAs or the courts). Depending on the volume of cases in the geographic location there may be a significant recurring increase in needed FTEs for the office and contract counsel compensation.

While it is likely that LOPD would be able to absorb some new cases under the proposed law, any increase in the number of proceedings resulting in adult sanctions for children will bring a concomitant need for an increase in indigent defense funding to maintain compliance with constitutional mandates. The continuing potential for an adult sentence could dissuade people from accepting plea agreements involving amenability proceedings. If more higher-penalty trials result, LOPD may need to hire more trial attorneys with greater experience to ensure compliance with constitutional mandates of effective assistance of counsel.

An entry-level Assistant Trial Attorney's mid-point salary *including benefits* is \$121,723.30 in Albuquerque/Santa Fe and \$130,212.59 in the outlying areas (due to salary differential required to maintain qualified employees). A mid-level felony capable Associate Trial Attorney's mid-point salary *including benefits* is \$136,321.97 in Albuquerque/Santa Fe and \$144,811.26 in the outlying areas. A senior-level Trial attorney's mid-point salary *including benefits* is \$149,063.13 in Albuquerque/Santa Fe and \$157,552.44 in the outlying areas. Recurring statewide operational costs per attorney would be \$12,780.00; additionally, average support staff (secretarial, investigator and social worker) costs per attorney would total \$126,722.33. Depending on the volume of cases in the geographic location there may be a significant recurring increase in needed FTEs for the office and contract counsel compensation.

Because more youthful offenders who currently receive a juvenile disposition would end up serving eventual adult prison sentences under this bill, the proposed legislation could also have a fiscal impact on DOC, of course. Presumably the courts, DAs and AGs would be affected in

similar measure to LOPD. Assessment would be necessary after the implementation of the proposed scheme.

## SIGNIFICANT ISSUES

This bill appears to be an attempt to address the well-known “Hobson’s choice” faced by children’s court judges in sentencing youthful offenders as recognized in *State v. Ira*, 2002-NMCA-037, ¶ 47, 132 N.M. 8 (C.J. Bosson, specially concurring). At least as far back at 2002, our Supreme Court recognized that the “district court’s dilemma in this case is not an isolated phenomenon. Indeed, a number of commentators have written extensively on the shortcomings inherent in a juvenile justice system that focuses on harsher punishment as the primary means of protecting the public from violent juvenile offenders.” *Id.* ¶ 28. As explained in the special concurrence in *Ira*:

Judges need the power to sentence juveniles conditionally, first as juveniles and later as adults, depending upon whether subsequent review indicates that adult sentencing is warranted. With conditional sentencing, courts could take advantage of the therapeutic and rehabilitative services that are uniquely available for juveniles, and would have the opportunity to observe how a child actually performs until turning twenty-one. When the juvenile became of age, the judge would have a record of performance upon which to base a more informed, predictive decision about the probability for success versus the risk to society. Conditional sentencing affords the juvenile one last opportunity for redemption, while retaining institutional control over the juvenile for the protection of society; this seems to be a win-win proposition.

2002-NMCA-037, ¶ 49 (C.J. Bosson, specially concurring.) Chief Judge Bosson concluded by noting the significant consequence an amenability decision has and suggesting that “[c]onditional sentencing, subject to later review, would make those decisions infinitely more informed than our present system.” *Ira*, ¶ 54.

The Court recognized this issue again fourteen years ago in *State v. Jones*, 2010-NMSC-012, ¶ 58, 148 N.M. 1, where it explained that a child who has “aged out” of the rehabilitative opportunities available in the juvenile system, “the accused may receive an adult sentence for an act that was committed at an age when the accused may have lacked the ability to appreciate the gravity or consequences of his actions.” *Jones* recognized that “the child loses any meaningful chance at treatment or rehabilitation on the one hand, and gets punished for an act potentially lacking the culpability required for an adult sentence. Such a result does not accomplish the ends of either the juvenile or adult justice systems.” *Id.* The Court “urge[d] the Legislature and any other interested groups to address this issue.” *Id.* See also *Jones*, ¶ 57 (“New Mexico desperately needs a legislative solution to the sentencing gaps created by the Delinquency Act and the criminal justice system.”).

However, as these cases recognize, the problem is that it is nearly impossible for judges to predict whether a child will respond to treatment and be rehabilitated sufficiently by age 21 and so the benefit of a blended sentencing scheme is that it allows the child the opportunity to keep the child in the juvenile system and take advantage of its focus on rehabilitation, while still giving the court control over the case should rehabilitation efforts fail. As recognized in *Ira*, many other states have this type of blended sentencing scheme. See *Ira*, 2002-NMCA-037, ¶ 29 (noting “a number of states around the country have enacted blended sentencing alternatives that

do give the sentencing judge the option of pursuing a juvenile, rehabilitative approach in marginal cases without sacrificing the ability to impose a long-term, adult incarceration if rehabilitation attempts prove futile.”).

The current formation of this bill requires the sentencing court to first find the child amenable to treatment before it can impose the stayed adult sentence. This does not appear to address the crux of the issue identified in *Ira* and *Jones*, but rather simply allows the court to later sentence a child already found amenable to treatment to a lengthy adult sentence. This seems contrary to New Mexico’s Children’s Code. See *Jones*, ¶ 36 (“The potential consequences flowing from a juvenile disposition clearly evince the Legislature’s consistent intent to protect children, if at all possible, from the adult consequences of criminal behavior.”); *id.* ¶ 54 (“This presumption of amenability to treatment or rehabilitation is the essence of our juvenile dispositional scheme.”).

It reverses the default position of New Mexico law to date that is supported by science that recognizing the differences between youth and adults compel a different, and often more protective, treatment for youth. See *State v. Jones*, 2010-NMSC-012, ¶ 10, 148 N.M. 1, 9 (“We interpret this legislative history as evidence of an evolving concern that children be treated as children so long as they can benefit from the treatment and rehabilitation provided for in the Delinquency Act.”) It also is contrary to the current trend in law that recognizes the unique vulnerabilities of children. See e.g., *Miller v. Alabama*, 132 S.Ct. 2455 (2012); *Graham v. Florida*, 130 S.Ct. 2011 (2010); *Roper v. Simmons*, 543 U.S. 551 (2005).

The issue that needs to be addressed involves the children for whom the court is unsure whether they are amenable to treatment and would like time to see how they do in the juvenile system’s rehabilitative facilities. There is also emerging research that children’s brains are not fully done developing until around age 25, making review at age 21 possibly premature. See *Ira*, ¶ 32 (noting “that some states have extended the jurisdiction of the juvenile court to age twenty five.”); see also 577 U.S. \_\_\_\_, 136 S.Ct. 718, 736 (2016) (acknowledging that *Roper*, *Graham*, and *Miller* recognized that “children are constitutionally different from adults in their level of culpability.” ); *Ira v. Janecka*, 2018-NMSC-027, ¶ 38, 419 P.3d 161 (recognizing “[s]ome studies conclude that a juvenile’s brain does not fully develop until early adult years.”).

While the current scheme has passed constitutional scrutiny, this new scheme will require additional litigation to determine its constitutionality. See *State v. Rudy B.*, 2010-NMSC- 045.

## **PERFORMANCE IMPLICATIONS**

Introducing an entirely new sentencing scheme with regard to youthful offenders will require significant litigation and, presumably, more trial attorneys.

## **ADMINISTRATIVE IMPLICATIONS**

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

## **TECHNICAL ISSUES**

## **OTHER SUBSTANTIVE ISSUES**

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

budget bill, analyst is unaware if it has been drawn pursuant to a special message of the Governor, and it was not vetoed following the previous regular session.

## **ALTERNATIVES**

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

Status quo.

## **AMENDMENTS**