

LFC Requester:

Scott Sanchez

**AGENCY BILL ANALYSIS
2024 REGULAR SESSION**

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 X **Amendment** _____
Correction _____ **Substitute** _____

Date Prepared: 2/2/2024

Bill No: SB 261

Sponsor: Gregory A. Baca, Craig W. Brandt

Short Title: Stayed Adult Sentences & Youthful Offender

Agency Name and Code Number: 305 – New Mexico Department of Justice

Person Writing Analysis: Andrew Coffing

Phone: 505-537-7676

Email: legisfir@nmag.gov

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)

	FY24	FY25	FY26	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

This analysis is neither a formal Opinion nor an Advisory Letter issued by the New Mexico Department of Justice. This is a staff analysis in response to a committee or legislator’s request. The analysis does not represent any official policy or legal position of the NM Department of Justice.

BILL SUMMARY

Synopsis: SB 261 proposes to amend sections of NMSA Chapter 32A, Article 2, cited as the “Delinquency Act”. The proposed amendments include:

- 2 new proposed subsections
 - Section 6: 32A-2-20.1 – Dual Disposition of a Youthful Offender Amenable to Treatment
 - Essentially allows for the court to impose a juvenile disposition and a stayed adult criminal sentence, using a series of enumerated factors to determine the disposition imposed.
 - Section 7: 32A-2-20.2 – Execution of Adult Sentence
 - Addresses how the court will handle a violation of any condition of the stayed sentence or commission of new offenses.
 - Establishes the procedures around which the youthful offender may be detained after said violations or new offenses.
 - Establishes the procedures allowing for the execution of the stayed adult sentence and transfer of jurisdiction to adult court.
 - Establishes the procedures and factors for consideration for a hearing to be held prior to the youthful offender reaching the age of twenty-one, wherein the stay is either revoked and the adult sentence executed through imprisonment in the corrections department, the adult sentence is executed and offender placed on probation, or the offender is released.
- Adjusts several of the existing subsections (NMSA 32A-2-6, 32A-2-17, 32A-2-18, and 32A-2-20) to account for and incorporate the 2 new subsections;
- Providing for a definition of the term “amenable to treatment” in NMSA 32A-2-3;
- 32A-2-20 would be amended to reflect the possibility of a dual disposition, and adds a new subsection (I) that would establish that either party to the case has a right to appeal.

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

The new subsection (I) in Section 5 of SB 261 would clarify and establish a legislative intent that both parties have a right to appeal a court order on the disposition of a youthful offender. This issue was addressed in *State v. Nehemiah G.*, 2018-NMCA-034, *cert denied*. The Court of Appeals determined in that matter that NMSA 1978 Section 32A-1-17(A), which addresses appeals under the Children’s Code and provides that “[a]ny party may appeal from a judgment of the court to the court of appeals in the manner provided by law”, did not itself create a right for the State to appeal, and that an appeal must be “based on some other statute, or on the state constitution.” *Nehemiah G.*, at 11. The court went on to establish that proceedings under the Children’s Code were “special statutory proceedings”, that NMSA 1978 Section 39-3-7 provides that any aggrieved party may appeal “the entry of any final judgment or decision,...or any final order after entry of judgment which affects substantial rights, in any special statutory proceeding”, and that the actions of the district court made the State an “aggrieved party”, thereby giving the State a right to appeal in that matter. *Id.*, 13-15. While the court in *Nehemiah G.* did not find that there was a direct right for either party to appeal established in the Children’s Code, SB 261 would codify and clarify that right to an appeal.

Additionally, Section 7, Subsection H clarifies that if probation is ordered and the offender successfully completes probation, the adjudication is not considered a conviction for purposes under the Criminal Code and a conditional discharge is granted. While presumably under the dual disposition option a youthful offender who was released under the third option would have their juvenile conviction treated as any other juvenile conviction, additional language that it would not be considered a conviction for purposes under the Criminal Code would clarify the intent under the proposed dispositions.

PERFORMANCE IMPLICATIONS

None to this office.

ADMINISTRATIVE IMPLICATIONS

None.

CONFLICT, DUPLICATION, COMPANIONSHIP, RELATIONSHIP

TECHNICAL ISSUES

Subsection (I) currently contains a typo, a loose quotation mark at the end of the subsection.

OTHER SUBSTANTIVE ISSUES

ALTERNATIVES

WHAT WILL BE THE CONSEQUENCES OF NOT ENACTING THIS BILL

The status quo contains an issue that was articulated in the concurrence of *State v. Ira*, 2002-NMCA-037, and exhibited dramatically in *State v. Nehemiah G.* “Children's court judges need more flexible tools in order to adequately address the unique problems presented by youthful offenders. 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". *Ira*, 49. SB 261 seeks to address that issue.

AMENDMENTS