

LFC Requester:

Scott Sanchez

AGENCY BILL ANALYSIS - 2025 REGULAR SESSION

SECTION I: GENERAL INFORMATION

{Indicate if analysis is on an original bill, amendment, substitute or a correction of a previous bill}

Date Prepared: 3/19/2025

Check all that apply:

Bill Number: SB 510

Original ☐

Correction ☐

Amendment ☐

Substitute ☒

Sponsor: Sen. William E. Sharer, Sen. Pat Woods, Sen. Crystal Brantley, Sen. Anthony L. Thornton, and Sen. Nicholas A. Paul

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

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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 revenue 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: SB166 (see further detail in the “Conflicts” section, below)

Duplicates/Relates to Appropriation in the General Appropriation Act: none noted

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 of Senate Judiciary Committee Substitute:

Generally, SJC Sub for SB 510 substitutes the entirety of SB 510 with the language from SB 166, as amended.

The committee substitute bill amends NMSA 1978, Section 43-1-3 (2024) and NMSA 1978, Section 43-1B-2 (2020) to define “harm to self” and “harm to others” in the Mental Health and Development Disabilities Code (MHDDC) and the Assisted Outpatient Treatment Act (AOTA).

Section 1 amends Section 43-1-3 to replace in Subsections N and O, the definitions of “likelihood of serious harm to oneself” and “likelihood of serious harm to others.” The bill replaces these terms with “harm to oneself” and “harm to others” with their respective definitions.

The new definition of “harm to others” continues to rely on past behavior as the basis for determining whether there is a “reasonable probability” (rather than a “likelihood”) that such harm will be repeated. The new proposed definition continues to include actual harm and attempts or threats of harm as the basis (for determining reasonable probability) and adds actions creating a substantial risk of serious bodily harm to another to those bases.

The new definition of “harm to self” amends definition of “harm to self” to mean: “(1) the person’s recent behavior or behavioral history demonstrates that [they] lack[] the capacity to care for [their] own welfare or to satisfy [their] need for nourishment, personal or medical care, shelter[,] or self-protection and safety **and** that there is a reasonable probability of death, serious bodily injury[,] or serious physical or mental debilitation if treatment is not ordered; **or** (2) there is a reasonable probability of the person suffering serious physical debilitation in the near future unless adequate treatment is provided pursuant to the [MHDDC].”

Section 2 amends the Assisted Outpatient Treatment Act, Section 43-1B-2 to provide for the same replacement described above.

Synopsis of Original Bill:

Generally, SB 510 brings together SB 74 (Time Limit for Prosecuting Certain Crimes), HB 107 (Penalty for Drug Trafficking), HB 4 (amended) (Criminal Competency and Treatment), and HB 134 (Delinquency Act Changes) in their entirety; creates the new crime of “Operating a Stash House”; adds operating a stash house to the list of predicate crimes in the definition of “racketeering”; codifies NMRA 5-409(F)(6) factors to be considered in determining pretrial release; and makes an appropriation to fund GPS monitoring and pretrial services.

Section 1: (SB 74, Sec. 1) Removes the statute of limitations for commencing prosecution of human trafficking in-line with capital felonies, first degree violent felonies, and second-degree murder.

Section 2: (SB 74, Sec. 2) Increases the age cap for sexual exploitation of children by prostitution from children under the age of 16 to children under the age of 18 and limits any defense that the intended minor victim was a peace officer posing as a child.

Section 3: (HB 107, Sec. 1) amends Section 30-31-20 on trafficking controlled substances to modify the definition by adding to manufacture, distribution or possession of a substance that is a narcotic drug or a controlled substance analog of a controlled substance enumerated in Schedule I or II that is a narcotic drug, methamphetamine, its salts, isomers or salts of isomers as enumerated in Schedule II or a controlled substance analog of methamphetamine, its salts, isomers or salts of isomers. This amendment language segregates a subset of Schedule I and II substances and assigns heightened penalties to offenses that include them. The amendment also adds a heightened penalty when the first offense results in the death of a human being, leaving it as a second-degree felony but adding a minimum of twelve years in prison. For second and subsequent violations when there is the death of a human being, the amendment makes such offenses a first-degree felony (the amendment adds life imprisonment by modifying § 30-18-15 Sentencing Authority).

Section 4: (HB 107, Sec. 2) amends Section 30-21-21 on the distribution to a minor, adding a new section that makes it a first-degree felony for an adult to distribute to a minor a substance of the subset of Schedule I or II substance.

Section 5: (HB 107, Sec. 3) amends Section 30-31-22 on controlled or counterfeit substances, providing an exclusion for “a counterfeit substance of a controlled substance enumerated in Schedule I or II that is a narcotic drug or a counterfeit substance of a controlled substance analog of a controlled substance enumerated in Schedule I or II that is a narcotic drug,” distinguishing it from “a counterfeit substance enumerated in Schedule I, II, III or IV.”

Section 6: (SB 74, Sec. 3 and new material) amends Section 30-42-3, by adding the crimes of “human trafficking” and the newly created crime of “operating a stash house” from Section 8 to the definition of racketeering.

Section 7: (SB 74, Sec. 4) amends section 30-52-1, on human trafficking, to expand the elements of human trafficking to include such actions as “harboring, maintaining, patronizing,” or “providing” a victim subject to labor, services, or commercial sexual activity. Section 7 also provides a definition for “harm” as it relates to physical, psychological, financial, or reputational harm to a victim of human trafficking. Section 7 add provisions to eliminate specific acts or conditions from being a defense to prosecution for

human trafficking such as the victim's sexual history, the consent of a minor, a mistake of a victim's age, and that the intended victim was a peace officer posing as a child.

Section 8: (new material) creates the crime of "operating a stash house" in the criminal code, which would consist of a person knowingly using or allowing a property to be used to unlawfully hide or store controlled substances, a firearm, destructive device or money in the commission of a crime and imposes a third-degree felony.

Section 9: (new material) codifies the factors to be considered in the determination of pretrial release that is currently in NMRA Rule 5-409(F)(6), including: the nature and circumstances of the offense charged, including whether the offense is a crime of violence; the weight of the evidence against the defendant; the nature and seriousness of the danger to any person or the community that would be posed by the defendant's release; any facts tending to indicate that the defendant may or may not commit new crimes if released; any facts tending to indicate that the defendant may or may not appear in court as required; and the history and characteristics of the defendant. Section 9 also adds additional factors to the history and characteristics that courts may consider.

Section 10: (HB 4, Sec. 1) amends Section 31-9-1 (determination of competency – raising the issue) to clarify that a party or the court (not an ambiguous anyone) may raise a defendant's competency to stand trial (not simply proceed in a criminal case), and that the case shall be transferred to the district court, not suspended.

Section 11: (HB 4, Sec. 2, as amended) amends Section 31-9-1.1 (determination of competency – evaluation & determination) to clarify that a psychologist or psychiatrist may evaluate a defendant's competency and requires the professional who completes the evaluation shall prepare and submit a report to the court. It also adds a new Subsection describing what the evaluation report shall include and a new Subsection providing that if the professional determines that a defendant is not competent to stand trial, the report shall include additional specified information, including discussion of involuntary commitment and/or treatment. Section 31-9-1.1 is also amended to provide a specific time frame within which the competency hearing must occur.

Section 12: (HB 4, Sec. 3, as amended) amends Section 31-9-1.2 (determination of competency – commitment – report) to provide the same clarification regarding competency *to stand trial*, and to delineate that a court determines a defendant is not competent and is dangerous if the court finds by clear and convincing evidence that the defendant presents a serious threat of one or more of a list of specified acts. The amendment also permits a court to order participation in a community-based competency restoration program if the defendant is not dangerous. The amendment also clarifies that if the court dismisses the case (without prejudice), it may advise the DA to consider initiating involuntary civil commitment proceedings and detain a defendant for a maximum of 7 days to facilitate such proceedings or initiating proceedings for outpatient treatment without any detention. A new Subsection is also added to Section 31-9-1.2 to state that a community-based restoration program shall be approved by the court and provided in an outpatient setting in the community in which a defendant resides, and that the court may order a defendant to participate in such program for no longer than 90 days. The proposed additional language also provides further detail on how a defendant shall proceed through the program with timelines, reporting requirements, and a review hearing. It also adds that a court shall enter a transport order that provides for the defendant's return to the local jail "within seventy-two hours" upon being restored to

competency, completion of the competency restoration program, or as otherwise required by the court. Section 12 also changes the phrasing “locked facility” to “a secure, locked, licensed inpatient psychiatric hospital” and changes “department of health facility” to “an inpatient psychiatric facility.”

Section 13: (HB 4, Sec. 4, as amended) amends Section 31-9-1.3 (determination of competency – 90-day review – reports – continuing treatment) to specify its application to competency restoration and otherwise provide clarity with more specific language (e.g., replacing “of the original finding of incompetency” with “the court determined the defendant is not competent to stand trial” throughout). The amendments also generalize the responsible party (e.g., changing “treatment supervisor” to “department of health” throughout) and clarify that findings of dangerousness are by the court in accordance with the statute, not merely “as that term is defined in” the statute.

Section 14: (HB 4, Sec. 5, as amended) amends Section 31-9-1.4 (determination of competence – incompetent defendants) to incorporate the same clarifying language throughout this section (e.g., “be restored to competency” rather than “become competent to proceed in a criminal case”) and to incorporate the same additional restrictions and requirements discussed in the earlier sections (e.g., “within nine months” rather than “within a reasonable period of time not to exceed nine months”). This section also clarifies that the hearing is a “criminal commitment hearing” when a defendant is charged with a list of specified crimes, which expands the previous list to *also* include abuse of a child, sexual exploitation of children, and human trafficking.

Section 15: (HB 4, Sec. 6) amends Section 31-9-1.5 (determination of competency – criminal commitment – evidentiary hearing) to clarify that if the court determines that there is not a substantial probability that a defendant not competent to stand trial will be restored to competency (uses the new language incorporated in prior sections), a commitment hearing to determine the sufficiency of the evidence as to the defendant’s guilt shall be held if the defendant is charged with certain specified crimes, which the amendment expands to *also* include the same 3 additional crimes specified above. Various other amendments are incorporated to clarify and conform this section to the amendments described above. One additional amendment, however, seems to make the list of “significant changes to [a] defendant’s condition” exhaustive (Subsection (E)(3)). A new Subsection (F) is also added to state that the department of health or the DA may initiate involuntary commitment proceedings in accordance with the Mental Health and Developmental Disabilities Code (MHDDC) or the Assisted Outpatient Treatment Act (and language throughout the rest of Section 31-9-1.5 has been updated to reflect this), and to note that the defendant may be detained for a maximum of 7 days only to facilitate the initiation of proceedings pursuant to the MHDDC. Section 15 also changes the phrasing “locked facility” to “a secure, locked, licensed inpatient psychiatric hospital” consistent with similar language used in Section 3, above.

Section 16: (HB 4, Sec. 7) amends Section 31-9-1.6 (hearing to determine developmental or intellectual disability) to clean up language to conform with changes discussed above and replace “defendant has a developmental or intellectual disability” with “defendant is not competent due to a developmental or intellectual disability,” and similar language, throughout. This section is also amended to state that involuntary commitment proceedings in accordance with the MHDDC shall be initiated when a defendant is charged with specified crimes, *removing first degree murder and arson and adding CSP* (not limited to the first

degree), child abuse, sexual exploitation of children, human trafficking, felony involving the infliction of great bodily harm, felony involving the use of a firearm, and *aggravated* arson. Note that the new list matches that seen earlier in Sections 31-9-1.4 and 31-9-1.5. Section 16 also adds that when a court holds a hearing to determine whether a defendant is not competent due to an intellectual disability, “the evaluator shall be provided with the necessary and available documents reasonably required for admission pursuant to written policies adopted by the secretary of health or the secretary’s designee.”

Section 17: (HB 4, Sec. 8) amends Section 31-9-2 (competency evaluation – mental or functional examination) to clean up language, remove reference to Sections 41-13-3 and 41-13-3.1, and add a new Subsection that states that a court may authorize a DA or the department of health to use a report of any examination ordered before a determination of a defendant’s competency to stand trial for the purposes of initiating proceedings in accordance with the MHDDC or Assisted Outpatient Treatment Act.

Section 18: (HB 107, Sec. 4) amends Section 31-18-15, by adding the penalty for “trafficking a controlled substance resulting in the death of a human being” to be life imprisonment and “second degree felony for trafficking a controlled substance resulting in the death of a human being” to be eighteen years imprisonment. The amendment also adds pecuniary penalties to the offenses. For a second-degree felony of trafficking resulting in death the penalty is \$12,500. For a first-degree felony of trafficking resulting in death the penalty is \$17,500.

Section 19: (HB 74, Sec. 5) amends Section 31-26-3 by adding victims of human trafficking and sexual exploitation to the enumerated list of victims in the Victims of Crime Act.

Section 20: (HB 134, Sec. 1) amends Section 32A-2-2 delineating the purposes of the Act by making clear that the purposes of deterring acts of juvenile delinquency and providing community-based alternatives to detention are purposes of the Act only where “appropriate.”

Section 21: (HB 134, Sec. 2) adds to the definitions of “serious youthful offender” and “youthful offender” contained in Section 32A-2-3. It expands the definition of “serious youthful offender” to include anyone between the ages of 14 and 18 who is charged with first- or second-degree murder, voluntary manslaughter, robbery while armed with a deadly weapon, and shooting at a dwelling or occupied building resulting in great bodily harm or shooting at or from a motor vehicle resulting in great bodily harm. Under the current scheme, only persons between the ages of 15 and 18 charged with first-degree murder are “serious youthful offenders.” Section 21 also expands the definition of “youthful offender” to include any person between the ages of 14 and 18 charged with unlawful possession of a handgun, homicide by vehicle, involuntary manslaughter, and failing to stop a vehicle involved in an accident that results in injury or death.

Section 22: (HB 134, Sec. 3) amends Section 32A-2-4.1, which governs the use of adult jails as temporary holding facilities for juveniles. It adds a section that requires a “serious youthful offender” to be transported to district court where their appearance is required but mandates that the “serious youthful offender” be segregated from adult offenders by sight and sound to the “fullest extent possible.”

Section 23: (HB 134, Sec. 4) amends Section 32A-2-8, which governs the initiation of delinquency proceedings. The current scheme requires the children’s court attorney to consult with probation services prior to filing a petition; and the bill deletes that consultation requirement.

Section 24: (HB 134, Sec. 5) amends Section 32A-2-11, which governs pretrial detention for juveniles. It removes the requirement that a juvenile cannot be held in detention unless a detention risk assessment is completed by CYFD.

Section 25: (HB 134, Sec. 6) amends Section 32A-2-12, which governs the placement of a detained juvenile. It requires that a detained juvenile be transferred to an adult county jail upon reaching the age of 18.

Section 26: (HB 134, Sec. 7) amends Section 32A-2-13, which governs pretrial detention hearings. Currently, under this section, a court may hold a detention hearing by electronic communication when certain requirements are met, including that the proceedings be recorded and preserved as part of the record, the juvenile have legal counsel personally present with them, and that no plea is taken during the electronic hearing. The court must also find that the undue hardship of holding an in-person hearing substantially outweighs any prejudice likely to result to the juvenile. This bill deletes these requirements and broadly allows a detention hearing to be conducted by electronic communication at the court's discretion. This bill also requires that a judge, not a special master or magistrate, conduct the pretrial detention hearing.

Section 27: (HB 134, Sec. 8) amends Section 32A-2-14, which governs a juvenile's basic rights. The bill amends this section to allow a "youthful offender" to waive an amenability hearing and instead be sentenced as an adult. This legislatively overrules *State v. Jones*, 2010-NMSC-012, 148 N.M. 1, where the New Mexico Supreme Court held that the Delinquency Act does not evince legislative intent to allow for a youthful offender to waive an amenability hearing (such as part of a plea).

Section 28: (HB 134, Sec. 9) amends Section 32A-2-17, which mandates that CYFD and adult probation and parole prepare predisposition reports prior to a court sentencing a "serious youthful offender." This bill makes these predisposition reports discretionary, only to be prepared if directed by the court.

Section 29: (HB 134, Sec. 10) amends Section 32A-2-18, which generally provides that a juvenile disposition is not deemed a criminal conviction or used as such in other proceedings other than sentencing proceedings. This bill expands the exception to include pretrial detention hearings held pursuant to Article 2, Section 13 of the New Mexico Constitution and accompanying Supreme Court rules.

Section 30: (HB 134, Sec. 11) amends Section 32A-2-19, which governs the disposition of an adjudicated delinquent offender. It expands the commitment options available to the district court for a delinquent offender, allowing it to consider the delinquent's unique needs and history and expanding the jurisdiction of the court to impose commitment or probation on the delinquent offender until the delinquent offender reaches the age of 25. It also allows a delinquent offender committed past the age of 18 to be transferred to an adult facility at the age of 18.

Section 31: (HB 134, Sec. 12) amends 32A-2-20, which currently governs the disposition for a "youthful offender." It provides that in order to impose an adult sentence, the court must find that the juvenile is not amenable to treatment as a child in available facilities or eligible for commitment to an institution for children with developmental disabilities or mental disorders. In making that determination, the court is required to consider 8 factors, such as the seriousness of the alleged offense, whether a firearm was used, the maturity of the child,

the child's record and previous history, etc. This bill adds the language that the court "may not weigh one factor more heavily than another" in applying the factors when making its determination of whether to impose an adult sentence. This bill eliminates the provision that a court must consider crimes committed against persons as weighing more heavily in favor of an adult sentence than crimes committed against property; under this bill, both crimes against persons and crimes against property would weigh more heavily than other offenses.

Section 32: (HB 134, Sec. 13) amends Section 32A-2-22, which governs consent decrees, which are continuances under supervision without judgment. This bill restricts a consent decree from being available for a juvenile charged as a "youthful offender" or "serious youthful offender."

Section 33: (HB 134, Sec. 14) amends Section 32A-2-23, which governs limitations on dispositional judgments. This bill allows a court to extend a disposition for an additional period until the juvenile reaches the age of 25 based on the unique circumstances and history of the juvenile.

Section 34: (HB 134, Sec. 15) amends Section 32A-2-23.1, which governs release eligibility. This bill deletes CYFD's exclusive jurisdiction to release a juvenile adjudicated delinquent. It deletes the provision that allows CYFD to consider a reasonable request for release at any time 60 days after the juvenile has been committed.

Section 35: (HB 134, Sec. 16) amends Section 32A-2-24, which governs probation revocation proceedings. This bill changes the standard of proof in probation revocation proceedings from proof beyond a reasonable doubt to a preponderance of the evidence.

Section 36: (HB 134, Sec. 17) amends Section 32A-2-26, which governs the sealing of records. The bill provides that a party may "reference" sealed delinquency records in written pleadings; and it may disclose contents of sealed records, with prior notice to the court, at hearings on pretrial detention motions held pursuant to Article 2, Section 13 of the New Mexico Constitution.

Section 37: (HB 74, Section 6) amends Section 33-2-34 to add human trafficking as an optional serious violent offense as to be determined by a judge which could prohibit earned meritorious deductions for a human trafficking sentence.

Section 38: (HB 4, Sec. 9, as amended) amends Section 43-1B-4 (petition to the court) to add "a district attorney or the attorney general" to the list of persons who may file a petition for an order authorizing assisted outpatient treatment and to change the time frame from 10 to 30 days prior to the filing of the petition, since the qualified professional had examined the respondent.

Section 39: (new material) appropriates \$500,000 to the administrative office of the courts for costs associated with global position system monitoring and other pretrial release conditions.

Section 40: (HB 134, Sec. 18) repeals section 32A-2-32.1, which prohibits a state agency or subdivision from disclosing juvenile arrests, delinquency proceeds, adjudications, or adult sentences imposed on juveniles on public access websites.

FISCAL IMPLICATIONS

On the Committee Sub:

- None.

On the Original Bill

- Sections 10-17 - The new authorization to file petitions under Section 43-1B-4 could result in increased case load for the New Mexico Department of Justice.

SIGNIFICANT ISSUES

On the Committee Sub:

- Currently, the phrases “likely to result in serious harm to others” and “likely to result in serious harm to self” is used in NMSA 1978, Sections 43-1B-3, 43-1B-7, 43-1B-11, and 43-1B-13. Given the tenets of statutory construction, it may provide further clarity to amend those sections to remove the word “serious” to avoid unintended interpretations of the new definitions. *See Baker v. Hedstrom*, 2013-NMSC-043, ¶ 24 (“The Legislature is presumed not to have used any surplus words in a statute; each word is to be given meaning[. . .] This Court must interpret a statute so as to avoid rendering the Legislature’s language superfluous.” (internal quotation marks, alterations, and citations omitted)).
- Note: this committee sub addresses concerns raised in the analysis of SB 166 related to the definition of “harm to self” by using “or” instead of “and” between the two possible elements of “harm to self.”

On the Original Bill

- Section 2: This section increases the child’s age from 16 to 18 for Sexual Exploitation of Children by Prostitution. This would allow for the inclusion of all minors including those 16-18 years old for the purposes of this charge. This would no longer match NMSA 1978 Section 30-37-3.2 (Child Solicitation by Electronic Communication Device), which is still limited to children under the age of 16. Consider matching related statutes by also increasing the age limit to under 18 in Section 30-37.3.2 since these charges are often charged together. Defendants often utilize smartphones and the internet to sexually exploit children by solicitation and prostitution.
- Section 3 and Section 18: “resulting in the death of a human being” is undefined, leaving the statute open to challenges for vagueness. It would support the purpose of the amendment to include a definition of the term, perhaps in § 30-31-20 Trafficking in Controlled Substances, Section 1 (A) where “traffic” is defined.
- Section 7: This section seeks to penalize a person who holds or enforces the debt or obligation of a laborer and does not pay a laborer in accordance with state and local law. This could create a potential loophole where an exorbitant debt exists between defendant and victim that was established outside of New Mexico. This exorbitant debt could be related to the transportation of victim to New Mexico or the United States from a foreign country. Under this specific subsection, so long as defendant is paying victim in accordance with state and local law, this sub-section may not be prosecutable, even if that minimal payment in accordance with state and local law is being entirely used by victim to pay off an exorbitant debt.
- Section 31: The amendment to Section 32A-2-20(C) contained in Section 12 of the bill, adding the language that a court “may not weigh one factor more heavily than

another,” could be misconstrued from its apparent purpose. It appears that this proposed language is intended to ensure that a court making an amenability determination consider each of the 8 factors enumerated in Section 32A-2-20(C)(1)-(8), in totality, and without deeming any one or more factors more important than the others as a matter of law. This would be consistent with the Court of Appeals’ holding in *State v. Nehemiah G.*, 2018-NMCA-034, ¶¶ 50-55. *See id.* (holding that the trial court abused its discretion by construing supreme court case law as mandating that it give less weight to the offense-specific factors in Section 32A-2-20(C)(1)-(4) and more weight to the offender-specific factors in Section 32A-2-20(C)(5)-(8) as a matter of law)); *see also id.* ¶ 54 (“The Delinquency Act creates no rigid delineation between offense-specific and offender-specific factors.”). However, the proposed language could be construed as necessitating that all factors be given equal weight irrespective of what the individual circumstances of a particular case warrant. Under this construction, a court may, for example, determine that it must give a juvenile sentence because the majority of factors on balance slightly favor that disposition, even if the factors supporting an adult sentence weigh in favor of that disposition more heavily under the facts of the case. It may be more accurate to replace “but may not weigh one factor more heavily than another” with a phrase such as “in totality.”

PERFORMANCE IMPLICATIONS

On the Committee Sub:

- None.

On the Original Bill

- Sections 10-17 - By expanding on the meaning of dangerous (Section 31-9-1.2(A)), these sections could result in an increased number of defendants who are criminally committed.

ADMINISTRATIVE IMPLICATIONS

On the Committee Sub:

- None.

On the Original Bill

- Sections 10-17 - The new authorization to file petitions under Section 43-1B-4 could result in increased case load for the New Mexico Department of Justice.

CONFLICT, DUPLICATION, COMPANIONSHIP, RELATIONSHIP

On the Committee Sub:

- The Committee Sub duplicates language contained in SB 166, which is currently awaiting hearing in the House Health and Human Services Committee.

On the Original Bill

- This bill contains duplicated sections from SB 74 and HB 86 related to human trafficking.
- HB 112 and HB 70 relate to this bill as they also make amendments related to human trafficking.
- This bill contains duplicated sections from HB 107 related to penalties for drug trafficking.
- HB 248, HB 274, SB 95, and SB 399 relate to this bill as they also make amendments

related to drug trafficking and fentanyl.

- This bill contains duplicated sections from HB 74 related to criminal competency and treatment.
- This bill may also conflict with and is related to SB 1, SB 2, and SB 3 related to criminal competency and treatment.
- This bill contains duplicated sections from HB 134 on the delinquency act.
- HB 39, HB 163, and SB 326 relate to this bill as they also make amendments to the Delinquency Act.
- HB 381, HJR 9, SB 54, SB 196, and SJR 14 relate to this bill as they make changes to the pretrial detention system.
- This bill may conflict with HB 8 (relating to criminal competency and treatment and other criminal statutes), overlapping on a number of issues.

TECHNICAL ISSUES

On the Committee Sub:

- See significant issues above.

On the Original Bill

- Section 3(B)(3): consider amending the language to read “guilty of a first-degree felony for trafficking a controlled substance” so that this subsection parallels and is in harmony with the other subsections within this section.
- Section 11: Requires a qualified professional to include additional opinions in their report when they believe a defendant is not competent to stand trial, and could pose a conflict with Rule 5-602.1(B)(2) NMRA, which states that a competency evaluation is “limited to determining whether the defendant is competent to stand trial.”
- Section 15: The bill’s expanded definition of dangerousness could conflict with Rule 5-602.2(D) NMRA, which provides that “[a] determination of the defendant’s dangerousness shall take into account only evidence relevant to whether the defendant presents a serious threat of inflicting great bodily harm on another or of violating Section 30-9-11 or Section 30-9-13.”

OTHER SUBSTANTIVE ISSUES

On the Committee Sub:

- None.

On the Original Bill

- Section 27 of the bill adds a provision, Section 32A-2-14(N), allowing a “youthful offender” to waive an amenability hearing and agree to be sentenced as an adult. New Mexico appellate courts are unlikely to uphold such a waiver if challenged unless the record clearly reflects that the waiver is knowing, intelligent, and voluntary. “Knowingly, intelligently and voluntarily” could be added before “waive” in proposed Section 32A-2-14(N) to ensure a court clearly establishes a record that would withstand scrutiny as to the waiver. Similar language is contained in other subsections addressing waiver of other rights in Section 32A-2-14.

ALTERNATIVES

N/A

WHAT WILL BE THE CONSEQUENCES OF NOT ENACTING THIS BILL

- If this bill is not passed, then the status quo *may* stay the same. However, this bill contains duplicates of other bills, if passed, those bills may make some of the changes contained here.

AMENDMENTS

On the Committee Sub:

- *See* significant issues above.