

LFC Requester:	Marty Daly
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**AGENCY BILL ANALYSIS
2013 REGULAR SESSION**

WITHIN 24 HOURS OF BILL POSTING, EMAIL ANALYSIS TO:

LFC@NMLEGIS.GOV

And

DFA@STATE.NM.US

{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 X **Amendment**
Correction **Substitute**

Date 1/22/2013
Bill No: HB 142--305

Sponsor: Rep Tim Lewis **Reviewing** Attorney General's Office
Short Children's Code Delinquency **Person Writing** M Baber
Title: Act- multiple changes **Phone:** 827-6650 **Email** mbaber@nmag.gov

SECTION II: FISCAL IMPACT **FOR LFC OFFICIAL PURPOSES******
AGO STAFF SHOULD LEAVE SHADED AREAS BLANK

APPROPRIATION (dollars in thousands)

Appropriation		Recurring or Nonrecurring	Fund Affected
FY13	FY14		

(Parenthesis () Indicate Expenditure Decreases)

Duplicates/Conflicts with/Companion to/Relates to:

Duplicates/Relates to Appropriation in the General Appropriation Act

REVENUE (dollars in thousands)

Estimated Revenue			Recurring or Nonrecurring	Fund Affected
FY13	FY14	FY15		

(Parenthesis () Indicate Expenditure Decreases)

Duplicates, Relates to, Conflicts with, Companion to

ESTIMATED ADDITIONAL OPERATING BUDGET IMPACT (dollars in thousands)

	FY13	FY14	FY15	3 Year Total Cost	Recurring or Nonrecurring	Fund Affected
Total						

(Parenthesis () Indicate Expenditure Decreases)

SECTION III: NARRATIVE

This analysis is neither a formal Attorney General’s Opinion nor an Attorney General’s Advisory Opinion Letter. This is a staff analysis in response to the agency’s committee’s or legislator’s request.

BILL SUMMARY

HB 142 makes multiple changes in the delinquency act.

FISCAL IMPLICATIONS WITH ENACTING THIS BILL

Procedures are likely to consume more court time, more prosecution and defense counsel time, resulting in more expense.

SIGNIFICANT LEGAL ISSUES

NMSA 31018-15.3(D) is amended to remove the provision that a serious youthful offender could receive a sentence of life without possibility of parole. (p. 12)

NMSA 32A-2-3(J)(2) amends the definition of youthful offender to mean a child aged 14-18 who is adjudicated for any felony offense and who has had only 2 prior and separate felony adjudications in the past 3 years. The current law requires 3 felony adjudications to be considered a youthful offender (p. 21).

NMSA 32A-2-20 Disposition of a Youthful Offender, directs courts to use specific procedures depending on the whether the child is charged and adjudicated as a serious youthful offender, youthful offender or delinquent child. New section 20.1 is added to allow the court to impose dual dispositions if a child is adjudicated youthful offender but is found to be amenable to treatment. (p. 68)

New section 20.2 Execution of adult sentence. This provision relates to the dual disposition of a youthful offender who has had an adult criminal sentence stayed upon conditions listed in new section 20.1. In the event the youthful offender violates or commits a new offense, the court may impose a variety of sanctions including revoking the stay of the adult sentence, placing the youthful offender on adult probation or order the youthful offender into adult custody in the department of corrections.(pgs 68-71).

NMSA 32A-2-18. New section (D) is added, stating delinquent children are not eligible to receive a time reduction from the time of commitment imposed for time spent in detention while awaiting adjudication. (p.56). New section (E) states that a court shall not impose consecutive commitments, that all sentences are concurrent, with the later date controlling.(p. 56-57)

PERFORMANCE IMPLICATIONS WITH ENACTING THIS BILL

This bill provides more process for charging, adjudicating and sentencing serious youthful offenders and youthful offenders. There is clarification in situations in which serious youthful offenders or youthful offenders are charged at higher levels but adjudicated at lower levels.

ADMINISTRATIVE IMPLICATIONS WITH ENACTING THIS BILL

There may be more expense associated with maintaining delinquent children, youthful offenders

and serious youthful offenders in appropriate facilities, especially in smaller communities with no separate facilities for juveniles.

CONFLICT, DUPLICATION, COMPANIONSHIP, RELATIONSHIP WITH BILLS INTRODUCED THIS SESSION

TECHNICAL ISSUES OR DRAFTING ERROR

OTHER SUBSTANTIVE LEGAL ISSUES

NMSA 32A-2-2 (I) emphasizes that one of the purposes of the delinquency act is to eliminate or reduce disproportionate minority contact and disparities based upon race or gender (p. 15).

NMSA 32A-2-5 C deletes the language that a juvenile probation officer does not have the powers of a law enforcement officer. The next line restates the juvenile probation officer's authority to take a child into physical custody and place in detention where there is probable cause to believe the child violated conditions of probation, or may leave the jurisdiction. The implication is that juvenile probation officers have some of the powers of law enforcement officers. (p. 26)

NMSA32A-2-12 Placement or Detention, section C is replaced with new section C. The term "County jail" is omitted from new section C which refers to (1) a detention facility, licensed by the department or (2) any other suitable place designated by the court that meets the standards for detention facilities pursuant to the Children's Code and federal law..."(p. 37)

NMSA 32A-2-7 (B) is amended to include a parent or legal guardian if made a party to the petition to be advised of their basic rights. (p. 28)

NMSA 32A -2-7 (current section D) is deleted and restated in NMSA32A-2-8 new section B, Failure to file within time limits. The provisions are identical. (p. 29 and p. 31).

ALTERNATIVES TO ENACTING THIS BILL

WHAT WILL BE THE CONSEQUENCES OF NOT ENACTING THIS BILL

Status quo

AMENDMENTS NEEDED TO IMPROVE THIS BILL