

LFC Requester:

**AGENCY BILL ANALYSIS
2020 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 **Amendment**
Correction **Substitute**

Date January 31, 2020
Bill No: SB197

Sponsor: Gregory Baca
Short Title: Stayed Adult Criminal Sentence on a youthful offender

Agency Name and Code AODA 264
Number: _____
Person Writing Rosanna C Vazquez
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SECTION II: FISCAL IMPACT

APPROPRIATION (dollars in thousands)

Appropriation		Recurring or Nonrecurring	Fund Affected
FY20	FY21		

(Parenthesis () Indicate Expenditure Decreases)

REVENUE (dollars in thousands)

Estimated Revenue			Recurring or Nonrecurring	Fund Affected
FY20	FY21	FY22		

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(Parenthesis () Indicate Expenditure Decreases)

ESTIMATED ADDITIONAL OPERATING BUDGET IMPACT (dollars in thousands)

	FY20	FY21	FY22	3Year 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

BILL SUMMARY

SB 197 amends The Delinquency Act NMSA Section 32A-2-3 to include a definition of a juvenile “amendable to treatment” that would allow stay of an adult sentence. The decision is based on a number of factors, including information from a 15 day evaluation. Should the Court decide that a juvenile is amenable to treatment pursuant to the definition the juvenile follows the “Dual Disposition Tract, which is set out as new language in the Delinquency Act. The Dual Disposition Tract “stays” the adult sentence, and offers a juvenile another opportunity as is the theory behind the Delinquency Act.

The Act adds language for situations arising when a juvenile does not successfully complete the Dual Disposition Tract. The Court, after a finding of probable cause that any conditions of the stayed sentence have been violated, can impose the stayed adult sentence. If the adult sentence imposed is probation and is completed successfully it does not act as a conviction for the purposes of the Criminal Code and the Court shall enter a conditional discharge. If the adult sentence imposed is jail time, all time served through the Dual Disposition section of the Delinquency Act prior to incarceration shall be credited to the adult criminal sentence imposed.

SPECIFICS:

The juvenile that is “amenable to treatment” is specifically defined as:

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.

Dual Disposition of a Youthful Offender Amenable to Treatment calls for a Court determination that the juvenile is “amenable to treatment” and may impose a fine, and a juvenile disposition pursuant to Delinquency Act.

1. The adult disposition will be stayed provided the juvenile does not violate the conditions of the disposition order and not commit a new offense.
2. Successful completion of the juvenile disposition ordered is a condition of suspension of the adult criminal sentence.

Disposition of the sentence is guided by the following:

1. Seriousness of alleged offense
2. Whether offense was committed in an aggressive, violent, premeditated or willful manner.
3. Whether a firearm was used.
4. Whether alleged offense committed was against a person or property. Offenses against persons taken more seriously.
5. Maturity of the child as determined by consideration of children's home, environmental situations, social and emotional health, pattern of living, brain development trauma history and disability.
6. Record and previous history of juvenile.
7. Prospects for adequate protections of the public, and likelihood of reasonable rehabilitation of juvenile by use of current and available services and procedures.
8. Any other relevant factors provided.

If the Court is in the position of having to revoke dual disposition and invoke an adult sentence, Sections 32A-2-20.2 sets out the manner in which that is conducted.

1. Probable Cause standard used to determine whether a condition of the stayed sentence has been violated.
2. The Court has authority to take juvenile into immediate custody.
3. The Juvenile Court Attorney may petition the Court for revocation of dual disposition status and imposition of adult sentence. Burden to establish violation is beyond a reasonable doubt.
4. Juvenile entitled to a hearing. If juvenile challenges petition for revocation, juvenile entitled to be heard and right to counsel.
5. Proof of new offense alleged to have been committed by juvenile is not proof of guilt of such new offense.
6. The same factors as set forth in the Dual Disposition section are to be used to make a determination if the stay shall be revoked and an adult sentence imposed. Court must make findings pursuant to those factors.
 - a. Whether during the stay the juvenile was not amenable to treatment or rehabilitation.
 - b. Juvenile not eligible for commitment to developmental disabilities institutions.
 - c. Specific findings must be made on:
 - i. Seriousness of offense.
 - ii. Whether offense was committed in an aggressive manner.
 - iii. Whether a firearm was used in commission of offense.
 - iv. Whether offense was committed against a person.
 - v. Maturity of the child
 - vi. Previous record of juvenile
 - vii. Whether public will be adequately protected if juvenile placed on probation.
 - viii. Juveniles behavior while on dual disposition probation.
 - ix. Result of risk assessment report.
 - x. Any other relevant factors.

If the Court makes a determination that dual disposition is revoked, it has two options:

1. Impose adult sentence and treat juvenile as an adult. Upon revocation of stay youthful offender status is terminated.

2. If mitigating factors exist can continue the stay.
3. All time served in dual disposition applies to adult sentence.
4. If adult sentence is probation, and is successfully completed shall not be considered a prior under the Criminal Code and court shall enter a conditional discharge as so provided in NMSA 31-20-13.

FISCAL IMPLICATIONS

There is not an appropriation for after 2021, nor is it clear how many juvenile cases this will add to the Court. Additional work will be imposed on District Attorneys and expense for experts. This additional expense cannot be quantified at this time.

SIGNIFICANT ISSUES

PERFORMANCE IMPLICATIONS

ADMINISTRATIVE IMPLICATIONS

CONFLICT, DUPLICATION, COMPANIONSHIP, RELATIONSHIP

TECHNICAL ISSUES

OTHER SUBSTANTIVE ISSUES

ALTERNATIVES

WHAT WILL BE THE CONSEQUENCES OF NOT ENACTING THIS BILL

The Juvenile Court and Juvenile attorney are currently not precluded from entering imposing a juvenile sentence on a juvenile charged with adult crimes, and requirements for doing so are currently already found in the Delinquency Act. The bill as written provides the Courts and Juvenile Attorney another opportunity based on factors to rehabilitate the juvenile, furthering the intent of the Delinquency Act.

AMENDMENTS