

LFC Requester:	
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**AGENCY BILL ANALYSIS
2017 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 1-18-17
Bill No: HB115

Sponsor: Monica Youngblood
Short Title: Youthful Offender Transfer
To Adult Sentence

Agency Code: 264
Person Writing Gail MacQuesten
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SECTION II: FISCAL IMPACT

APPROPRIATION (dollars in thousands)

Appropriation		Recurring or Nonrecurring	Fund Affected
FY17	FY18		
0	0	n/a	n/a

(Parenthesis () Indicate Expenditure Decreases)

REVENUE (dollars in thousands)

Estimated Revenue			Recurring or Nonrecurring	Fund Affected
FY17	FY18	FY19		
0	0	0	n/a	n/a

(Parenthesis () Indicate Expenditure Decreases)

ESTIMATED ADDITIONAL OPERATING BUDGET IMPACT (dollars in thousands)

	FY17	FY18	FY19	3 Year Total Cost	Recurring or Nonrecurring	Fund Affected
Total	Unknown	Unknown	Unknown	Unknown	Recurring	General

(Parenthesis () Indicate Expenditure Decreases)

Duplicates/Conflicts with/Companion to/Relates to: HB16
Duplicates/Relates to Appropriation in the General Appropriation Act

SECTION III: NARRATIVE

BILL SUMMARY

Synopsis:

HB115 enacts new sections of the Delinquency Act to provide for stayed adult criminal sentences, and procedures for revoking the stay and imposing the adult sentence. Existing provisions in the Children’s Code are amended to reflect these new provisions.

Stayed Adult Sentences. Section 5 of HB115 provides that if a youthful offender adjudicated for specific serious offenses is found by the court to be amenable to treatment, the court may impose a fine, a juvenile disposition, and an adult criminal sentence. The adult sentence is stayed on the condition that the offender not violate the provisions of the disposition order and not commit a new offense. In determining the disposition the court is to consider the following factors:

- The seriousness of the alleged offense;
- Whether the alleged offense was committed in an aggressive, violent, premeditated or willful manner;
- Whether a firearm was used;
- Whether the alleged offense was against persons or property, with greater weight being given to offenses against persons, especially if personal injury resulted;
- The maturity of the child as determined by consideration of the child’s home, environmental situation, social and emotional health, pattern of living, brain development, trauma history and disability;
- The record and previous history of the child;
- The prospects for adequate protection of the public and the likelihood of reasonable rehabilitation of the child by the use of procedures, services and facilities currently available; and
- Any other relevant factor.

Execution of Adult Sentence. Section 6 of HB115 provides for execution of the adult sentence, either through a revocation of the stay, or upon findings when the offender reaches age 21.

Revocation of Stay. If there is probable cause to believe the youthful offender has violated any condition of the stayed sentence or is alleged to have committed a new offense, the court may direct that the youthful offender be taken into custody. The children’s court attorney may petition for revocation of the stay and notify the youthful offender in writing of the reasons supporting the petition. The youthful offender is entitled to a hearing and representation by counsel. The children’s court attorney must

prove the violation beyond a reasonable doubt. If the court finds no mitigating factors, it shall treat the youthful offender as an adult and order any of the adult sanctions authorized by the original disposition and sentence. The “youthful offender” status is terminated, and the jurisdiction for any adult sanction, other than commitment to the corrections department, is with the adult court.

Hearing Prior to Age 21. Before the offender reaches twenty-one, the court shall hold a hearing, and

- Revoke the suspension, order execution of the adult sentence, and put offender in custody of the corrections department;
- Order execution of the adult sentence and place the offender on probation; or
- Order the release of the offender.

To order execution of an adult sentence, the court must find that the child was not amendable to treatment or rehabilitation as a child in available facilities, and that the child is not eligible for commitment to an institution for children with developmental disabilities or mental disorders. In making this determination the judge shall consider the same mitigating factors set out for determining the original disposition (described above), and the child’s behavior and conduct while placed on probation or committed to a facility for the care and rehabilitation of adjudicated delinquent children. If the offender is ordered to serve probation and successfully completes probation, the adjudication shall not become a conviction for purposes of the Criminal Code. If execution of the adult sentence is ordered, all time served by the offender under the juvenile disposition shall be credited toward the adult criminal sentence.

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.

HB115 requires additional hearings, with additional presentation of evidence to support detailed findings. That will mean increased costs for the courts, the children’s court attorney and defense counsel. HB115 may result in additional adult probation and incarceration, which will also result in increased costs to the state.

SIGNIFICANT ISSUES

The Delinquency Act currently provides that a youthful offender may be subject to juvenile sanctions, or an adult sentence. A youthful offender amenable to treatment can be given a commitment up to age twenty one. If the offender does not respond to treatment, or commits new violent offenses, the term of commitment cannot be extended beyond the offender’s twenty-first birthday. Adult sentences are available only if the child is not amenable to treatment or rehabilitation as a child and is not eligible for commitment to an institution for children with developmental disabilities or mental disorders. HB115 establishes a new hybrid sentencing option for youthful offenders who are amenable to treatment. It combines juvenile sanctions with an adult sentence that is stayed unless the youthful offender violates any condition of the stayed sentence or commits a new offense. Before the youthful offender who has received a stayed adult sentence reaches age 21, the court shall hold a hearing and order execution of the sentence, place the offender on probation, or release the offender.

(“Youthful offender” is defined at NMSA 1978, Section 32A-2-3(J). The definition turns on the age of the offender at the time of the offense, and the seriousness of the crime. For a child 14 to 18 years of age, the crimes include: second degree murder, assault with intent to commit a violent felony, kidnapping, aggravated battery, shooting at a dwelling or occupied building or shooting at or from a motor vehicle, dangerous use of explosives, criminal sexual penetration, robbery, aggravated burglary, aggravated arson and abuse of a child that results in great bodily harm or death. Any felony offense committed by a child 14 to 18 may make that child a youthful offender if the child has three prior separate felony adjudications within a three-year time period. And a 14 year old child adjudicated for first degree murder is also considered a “youthful offender.”)

PERFORMANCE IMPLICATIONS

HB115 requires additional findings at the time the sentencing structure is chosen, a hearing if the state petitions to revoke the stay, and a hearing before the offender turns 21.

HB115’s imposition of a stayed adult sentence makes it a powerful deterrent, and an intermediate sanction between juvenile sanctions and adult sanctions. HB115 requires the judge to take into account various factors before imposing dual sentencing, including the seriousness of the offense, whether the offense was against persons or property, the maturity of the child, the previous history of the child, and the prospects for adequate protection of the public and the likelihood of reasonable rehabilitation. The court therefore is instructed to tailor the sentencing response to the offender and the crime, imposing dual sentencing only when it appears appropriate. Staying the adult sentence makes the youthful offender responsible for his or her future actions, with an understanding of the consequences of those actions.

ADMINISTRATIVE IMPLICATIONS

See Performance Implications, above.

CONFLICT, DUPLICATION, COMPANIONSHIP, RELATIONSHIP

HB16 also amends the Delinquency Act, but does not amend the same statutes amended by HB115.

TECHNICAL ISSUES

HB115 repeatedly describes the adult sentence imposed under the dual sentencing provisions as being stayed on the condition that the offender not violate the provisions of the disposition order or commit a new offense. Yet Section 6(F) of HB115, describing the hearing to be held before the offender turns 21, provides that the court may order execution of the adult sentence, impose probation or release the offender. It does not say that if the offender has honored the provisions of the disposition order and has not committed a new offense the offender must be released, or put on probation. Instead, it appears that an offender who has honored the provisions of the disposition order and has not committed any new offense may still be ordered to complete the adult sentence if the court, after considering the factors set out in the statute, determines that the offender was not amendable to treatment or rehabilitation as a child in available facilities. If this is the intent of the legislation, it should be made clear. If it is not the intent of the legislation, that also should be made clear.

OTHER SUBSTANTIVE ISSUES

ALTERNATIVES

None proposed.

WHAT WILL BE THE CONSEQUENCES OF NOT ENACTING THIS BILL

Youthful offenders will be subject to the current sentencing structure, which does not provide for a hybrid combination of juvenile sanctions and adult sentencing.

AMENDMENTS

None proposed.