
Bill Analysis 2018 Regular Session

SPONSOR: Representative Monica Youngblood and Senator Gregory Baca

SHORT TITLE: Dual Sentencing for Youthful Offenders/Stayed Adult Sentence on Juvenile Offender

SYNOPSIS OF BILL: Creates “dual sentencing” for youthful offenders found amenable to a juvenile disposition, requiring judges to nevertheless assign an adult sentence, which could subsequently be invoked at any time during the child’s juvenile disposition if the State alleges they violated “any condition of the stayed sentence” or committed “a new offense.”

STRENGTHS: In theory, the threat of an adult sentence is meant to encourage the juvenile’s engagement with the rehabilitation process for juveniles found “amenable” to juvenile treatment.

WEAKNESSES: For invoking an adult sentence, “violating conditions” or “committing a new offense” are extremely broad grounds. Standard conditions can be very restrictive and a new offense could include a misdemeanor; the violation need not be a new “youthful offender” offense nor represent an unwillingness to succeed. Increasing the number of children who receive adult sanctions is contrary to the wisdom of United States Supreme Court doctrine and the entire foundation of New Mexico’s Delinquency Act, both of which recognize the unique vulnerabilities of children as requiring a protective, treatment-based system. *See State v. Jones*, 2010-NMSC-012, ¶ 10, 148 N.M. 1, 9 (“We interpret this legislative history as evidence of an evolving concern that children be treated as children so long as they can benefit from the treatment and rehabilitation provided for in the Delinquency Act.”). Under HB 190/SB 243, an adult sanction could be invoked for “typical” teenage misbehavior. Juveniles found amenable to treatment but struggling with the process need more rehabilitative intervention, not adult prison.

ADDITIONAL INFO: Studies show no reduction in juvenile crime by giving children adult sentences, and indeed, reveal an increase in juvenile recidivism among children who do receive adult sentences.^{1,2,3} This concern is compounded by a risk that the most at-risk children are the most likely to receive adult sanctions, including children of color, who already represent a disproportionate number of incarcerated youth. Youth of color comprise 38% of the youth population in the U.S., yet comprise nearly 70% of those who are confined.⁴

ALTERNATIVES: To ensure successful reentry after a juvenile disposition, legislation providing ongoing resources to juveniles who have “aged out” could ensure their continuing success without further criminalization.

<u>S</u>afer	<u>A</u>political	<u>F</u>iscally-Responsible	<u>E</u>vidence Based	Grade
In a system often employing both carrot and stick tactics, the studies show the threat of this “stick” does nothing to deter crime, and by increasing recidivism rates, may even increase it. Children sent to adult prison just learn how to be tough and less inclined to function in our communities.	Approximately 29% of youthful offenders are found to be not amenable to treatment, and thus already receive adult sanctions. See FIR (CYFD reported numbers.) This is a solution in search of a problem.	As noted in the Fiscal Impact Report, invoking the adult sanction requires a hearing with representation by counsel. Moreover, while it is difficult to anticipate an actual number, the cost of housing juveniles in prison is likely more expensive to the Corrections Department than the current resources committed to youthful offenders receiving treatment services from CYFD.	The research in this area suggests no reduction in juvenile crime and an increase in juvenile recidivism, as well as a disproportionate impact on minority and at-risk youth.	D

1 Jeffrey Butts. 2012. “Transfer of Juveniles to Criminal Court is Not Correlated With Falling Youth Violence.” New York: John Jay College of Criminal Justice Research and Evaluation Center. Retrieved at: https://johnjayrec.nyc/wp-content/uploads/2012/03/databit2012_051.pdf

2 Jason Ziedenberg. 2011. “You’re an Adult Now: Youth in Adult Criminal Justice Systems.” DOJ – National Institute of Corrections. Retrieved at: <https://csgjusticecenter.org/nrrc/publications/youre-an-adult-now-youth-in-the-adult-criminal-justice-sytem-2/>

3 Annie E. Casey Foundation. 2011. “No Place for Kids: The Case for Reducing Juvenile Incarceration.” Retrieved at: <http://www.aecf.org/m/resourcedoc/aecf-NoPlaceForKidsFullReport-2011.pdf>

4 The W. Haywood Burns Institute for Juvenile Justice, Fairness and Equity. “Fact Sheet.” Retrieved at: <https://www.burnsinstitute.org/what-is-red/fact-sheet/>