

LFC Requester:

AGENCY BILL ANALYSIS
2019 REGULAR SESSION

WITHIN 24 HOURS OF BILL POSTING, EMAIL ANALYSIS TO:

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and

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{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 March 5, 2019

Bill No: HB267ss

Sponsor: HAFC Substitute
Short Criminal Justice
Title: Reforms

Agency Name
and Code
Number:

Administrative Office of the
District Attorneys (AODA) 264

Person Writing

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SECTION II: FISCAL IMPACT

APPROPRIATION (dollars in thousands)

Appropriation		Recurring or Nonrecurring	Fund Affected
FY19	FY20		
0	0	n/a	n/a

(Parenthesis () Indicate Expenditure Decreases)

REVENUE (dollars in thousands)

Estimated Revenue			Recurring or Nonrecurring	Fund Affected
FY19	FY20	FY21		
0	0	0	n/a	n/a

(Parenthesis () Indicate Expenditure Decreases)

ESTIMATED ADDITIONAL OPERATING BUDGET IMPACT (dollars in thousands)

	FY19	FY20	FY21	3 Year Total Cost	Recurring or Nonrecurring	Fund Affected
Total	0	minimal	minimal	minimal	recurring	general

(Parenthesis () Indicate Expenditure Decreases)

Duplicates/Conflicts with/Companion to/Relates to: HB342, SB493, HB370
Duplicates/Relates to Appropriation in the General Appropriation Act:

SECTION III: NARRATIVE

BILL SUMMARY

Synopsis:

HB267ss is the House Appropriations and Finance Committee Substitute for the House Judiciary Committee Substitute for HB267.

HB267ss creates the Crime Reduction Grant Act, and amends existing statutes related to criminal justice issues.

Sentencing Commission. Section 1 of HB267s amends Section 9-3-10 NMSA 1978 to change the make-up of the Sentencing Commission, and to require the Commission to create and maintain a data-sharing network.

HB267s replaces the member from the court of appeals with a magistrate judge to be appointed by the chief justice of the supreme court, and adds 3 new members, which will increase the size of the Commission from 24 to 27. The new members are:

- A representative from the behavioral health services division of the human services department;
- One public member appointed by the minority floor leader of the senate; and
- One public member appointed by the minority floor leader of the house of representatives.

The data-sharing network is to receive, store, analyze and disseminate criminal justice data for and between participating criminal justice and behavioral health agencies for the purpose of evaluating local and statewide criminal justice systems and programs and supporting information sharing. The Commission is to provide data analysis as requested by criminal justice agencies and criminal justice coordinating councils.

The Commission is to promulgate rules governing the data-sharing network and data analysis, including procedures to:

- Fulfill any requirements related to data privacy, security and protection;
- Guide participating agencies to ensure accuracy, completeness currency and reliability of information;
- Allow data querying and reporting tools for those authorized users who want to perform statistical analysis;
- Provide safeguards to actively monitor and record access and use, and the nature of

information exchange, and identify and recognize authorized users.

Arrest Records. Section 2 of HB267ss amends Section 29-3-8 NMSA 1978 regarding arrest records. It clarifies and simplifies the provisions regarding the collection of fingerprint and palm print impressions and photographs, describing them all as “biometric identifying information.” It requires electronic collection of biometric identifying information from a person arrested for felonies, offenses punishable by imprisonment for more than six months under the laws of the state or a political subdivision of the state, or a violation of Section 66-8-102 NMSA 1978 or the violation of a municipal or county ordinance prescribing criminal penalties for driving while under the influence of intoxicating liquor or drugs.

HB267ss sets out what goes into an arrest record, including elements that will assist the state database: a state arrest tracking number, a state personal identification number, and a “charge code” for offenses. The department is to promulgate rules addressing the collection and submission of biometric identifying information and the creation of a state personal identification number system to identify a person arrested and charged with a crime and the creation of a state arrest tracking number system for each arrest record.

The booking facility is to forward the arrest record to the department, and the department shall provide the biometric identifying information to the federal bureau of investigation and the state personal identification number to agencies at all levels of government that are engaged in the apprehension, prosecution or defense, adjudication, incarceration or rehabilitation of criminal offenders, and send arrest records to the administrative office of the district attorneys for submission to the appropriate prosecuting authority. The department shall forward the disposition of all criminal cases to the federal bureau of investigation and the national crime information center within five business days of receipt.

Uniform Crime Reporting System. Section 3 of HB267ss amends Section 29-3-11 NMSA 1978, to require the department of public safety to provide the New Mexico sentencing commission access to the data collected and maintained by the department, and to use the new code system required by HB267ss. The department must make its annual report and other statistical data reports available to the administrative office of the courts.

Release of Information Under the Mental Health and Developmental Disabilities Act. Section 4 of HB267ss amends Section 43-1-19 NMSA 1978 of the Mental Health and Developmental Disabilities Act, to provide that authorization from the client is not required for the release of confidential information of inmates with a mental or developmental disability to assure continuity of care, or when the disclosure is made to a governmental agency, its agent or a state educational institution, a duly organized state or county association of licensed physicians or dentists, a licensed health facility or staff committees of such a facility for the purpose of research.

The Crime Reduction Grant Act. Sections 5-10 of HB267ss create the Crime Reduction Grant Act, to be administered by the New Mexico sentencing commission.

- *Criminal Justice Coordinating Council.* It creates a criminal justice coordinating council for each judicial district to be convened by the chief judge of the district court in the district. Membership may include representation from within the district for each court in the district, the district attorney, the district public defender office, law

enforcement agencies, jails, correctional facilities, behavioral health programs or other agencies and entities agreed upon by the council. The council shall develop a strategic plan to review the criminal justice system in the judicial district to identify problems and develop data-driven policies and evidence-based best practices; apply as necessary for grants; facilitate the sharing of information; and, in consultation with the commission, develop data-sharing agreements.

- *Application for grants.* HB267ss sets out the procedures for a council to apply for a grant on behalf of a member. HB267ss lists 4 criminal justice-related reasons for which a grant may be sought: to develop, expand and improve evidence-based treatment and supervision alternatives to incarceration; to reduce barriers to participation by criminal offenders in pre-prosecution diversion or specialty court programs; to develop or improve pretrial service programs; and to purchase equipment or provide training to support any of the purposes provided in the section. The grants have 8 conditions attached, including that the council and the recipient member use no more than five percent of a grant for administrative costs, develop data-sharing agreements and methods of data-sharing, develop best practices and performance measures, collect data to evaluate effectiveness, perform quarterly evaluations, and provide monthly and annual reports.
- *Rules.* The Commission, in consultation with each grant administration agency, shall promulgate uniform procedural rules necessary to administer the provisions of the Act, and each grant administration agency shall adopt the uniform procedures.
- *Reports.* Each grant administration agency shall report to the commission annually regarding its grants. The commission shall report to the legislature annually.

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.

District attorneys in each district will participate in the criminal justice coordinating councils, which will involve costs in money and time.

HB267ss contains no appropriation to fund the grant program.

SIGNIFICANT ISSUES

HB267s creates a criminal justice coordinating council in each judicial district to review criminal justice issues in the district and develop policies and practices to address those issues. The council may apply for grants for their members to address the issues. HB267ss imposes reporting requirements and oversight. However, HB267ss does not contain any appropriation to fund the grants.

In addition, HB267ss creates the framework for data-sharing among criminal justice agencies.

PERFORMANCE IMPLICATIONS

The criminal justice coordinating councils are established in each judicial district, so the entity examining issues and proposing solutions is local. This should help with finding local solutions to local problems.

HB267ss provides no funding for the grant program or for the criminal justice data-sharing network it mandates.

Note that the data-sharing network may include data subject to Inspection of Public Records Act (IPRA) requests. The law enforcement exception under IPRA is very narrow. It protects only

law enforcement records that reveal confidential sources, methods, information or individuals accused but not charged with a crime. Law enforcement records include evidence in any form received or compiled in connection with a criminal investigation or prosecution by a law enforcement or prosecuting agency, including inactive matters or closed investigations to the extent that they contain the information listed in this paragraph.

Section 14-2-1 NMSA 1978. Note that while SB267ss seeks to gather and share criminal records for use by law enforcement agencies, other bills proposed this session seek to expunge criminal records. See SB493 and HB370.

Including metropolitan court and magistrate court members, and a member from the behavioral health services, on the sentencing commission provides better representation from entities that see the direct impacts of criminal justice policy. Adding members from the senate and house minority create a more bi-partisan commission.

ADMINISTRATIVE IMPLICATIONS

HB267ss provides no funding for the grant program or the data-sharing network.

CONFLICT, DUPLICATION, COMPANIONSHIP, RELATIONSHIP

HB342 also relates to criminal justice reform, but for the most part addresses different issues. Note that while HB267ss sets up record keeping systems for arrests, other bills would expunge criminal records. See SB493 and HB370.

TECHNICAL ISSUES

None found.

OTHER SUBSTANTIVE ISSUES

None noted.

ALTERNATIVES

None noted.

WHAT WILL BE THE CONSEQUENCES OF NOT ENACTING THIS BILL

Status quo.

AMENDMENTS

None proposed.