

LFC Requester:

**AGENCY BILL ANALYSIS
2019 REGULAR SESSION**

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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 Feb 19, 2019
Bill No: HB267s

Sponsor: HJC Substitute
Short Criminal Justice
Title: Reforms

Agency Name and Code Administrative Office of the District Attorneys (AODA) 264
Number:
Person Writing Gail MacQuesten
Phone: 310 1723 **Email** gailmacquesten@Gmail.com

SECTION II: FISCAL IMPACT

APPROPRIATION (dollars in thousands)

Appropriation		Recurring or Nonrecurring	Fund Affected
FY19	FY20		
0	1,720*	nonrecurring	general
	*to the AODA		

(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:

HB267s 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 HB267s 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, misdemeanors 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.

HB267s sets out what goes into an arrest record, including elements that will assist the state database: a state arrest tracking number and a state personal identification number. 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 HB267s 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 HB267s. 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 HB267s 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 HB267s 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.* HB267s sets out the procedures for a council to apply for a grant on behalf of a member. HB267s lists 10 criminal justice-related reasons for which a grant may be sought. The grants have 8 conditions attached, including that the council and the recipient member to 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.
 - *Reports.* Each grant administration agency shall report to the commission annually regarding its grants. The commission shall report to the legislature annually.

Appropriation.

HB267 appropriates \$16,820,350 from the general fund to the following agencies as grant administration agencies for grants, distributed as follows:

1. To the administrative office of the courts:
 - \$975,000 to allocate up to \$75,000 to each council in addition to other funding received for staff to support the council; and
 - \$3,000,000 for pretrial services.
2. to the administrative office of the district attorneys:
 - \$500,000 for grants to reduce financial barriers to participation by criminal offenders in pre-prosecution diversion programs; and
 - \$960,600 for grants to recruit and train prosecutors in low population areas.
3. to the public defender department:
 - \$600,000 for grants to improve representation in areas of the state in low population areas; and
 - \$250,000 for grants to expand social work and case management services in low population areas.
4. to the sentencing commission:
 - \$2,826,000 for grants to create and implement a data-sharing network.
5. to the behavioral health services division:
 - \$3,558,750 for grants to provide transitional re-entry homes;
 - \$1,150,000 for grants to establish pre-arrest diversion programs;
 - \$1,000,000 for grants to establish residential crisis triage centers and outpatient crisis stabilization services;
 - \$1,500,000 for grants to establish, recruit and retain mental health workers in low population areas; and
 - \$500,000 for grants to provide programs in public schools in grades one through three to promote behavioral self-regulation.

HB267s also allocates

- \$260,000 to the administrative office of the district attorneys to replace the loss of fees from pre-prosecution diversion programs;
- \$7,857,800 to the corrections department for crime reduction grants to recruit, train and retain correctional officers.
- \$3,000,000 to the department of public safety for crime reduction grants to recruit, train and equip law enforcement officers in low population areas of the state.

- \$1,000,000 to the sentencing commission to contract with an entity specializing in data networks and data analysis to create, implement and develop a criminal justice data-sharing network.
- \$700,000 to the department of public safety for case disposition reporting, data sharing and augmenting the consolidated offender query system.

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.

The administrative office of the district attorneys will receive \$500,000 for grants to reduce financial barriers to participation by criminal offenders in pre-prosecution diversion programs; \$960,600 for grants to recruit and train prosecutors in low population areas; and \$260,000 to replace the loss of fees from pre-prosecution diversion.

District attorneys in each district will participate in the criminal justice coordinating councils.

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. HB267s imposes reporting requirements and oversight.

In addition, HB267s 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. HB267s also allocates funds specifically to provide services in areas of the state with less than three hundred thousand residents.

HB267s provides \$3.826 million to the sentencing commission to create and implement a criminal justice data-sharing network, and amends existing laws to ensure that data is shared among agencies, something that is essential to enforcement and prosecution. Note that the 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 SB267s 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

It appears that HB267s sets up councils in each judicial district that may seek grants – so the grant process is localized. The appropriation sections of HB267s appropriate funds to state-wide agencies as “grant administration agencies” to expend on specific programs.

Section 11 of HB267s allocates funds “to the following agencies as grant administration agencies” and provides that the agency shall not allocate more than five percent of the appropriation for administration expenses. (Allocations that are not given to agencies as “grant administration agencies” are set out in separate sections.) But Section 11(A)(2)’s allocation of \$3,000,000 to the administrative office of the courts for pretrial services is not described as being given for grants; it appears to be a direct allocation to the administrative office of the courts, for that entity to administer itself. (If the funding is to be administered by the administrative office of the courts, this appropriation should not be listed in the section listing appropriations for grants. If the funding is intended to be used for grants, the provision should have the same language as the other provisions intended to be used for grants, i.e., it is given to the administrative office of the courts for crime reduction grants for pretrial services.)

Sections 13 and 14 allocate funds to the corrections department and to the department of public safety for crime reduction grants. Note that these allocations are not included in Section 11, which lists the other allocations for grants. Sections 13 and 14 do not contain the language providing that the agency shall not allocate more than five percent of the appropriation for administrative expenses, which applies to all of the grant allocations in Section 11. If that was not the drafter’s intent, the language should be added.

CONFLICT, DUPLICATION, COMPANIONSHIP, RELATIONSHIP

HB342 also relates to criminal justice reform, but addresses different issues. HB342 does eliminate existing provisions that require defendants to pay fees for participating in a pre-prosecution diversion program. (HB267s allocates \$500,000 to the district attorneys to make up for that loss.)

Note that while HB267s sets up record keeping systems for arrests, other bills would expunge criminal records. See SB493 and HB370.

TECHNICAL ISSUES

As discussed in Significant Issues, above, it appears that HB267s is structured to distinguish between allocations made to agencies as “grant administration agencies” and allocations

made to agencies for the agency's own expenses. But the provision governing allocations to "grant administration agencies" appears to include allocations to agencies for their own uses, and there are separate allocation provisions that are clearly made to agencies as "grant administration agencies," but that do not contain all of the restrictions put on grant administration agencies.

OTHER SUBSTANTIVE ISSUES

None noted.

ALTERNATIVES

None noted.

WHAT WILL BE THE CONSEQUENCES OF NOT ENACTING THIS BILL

Status quo.

AMENDMENTS

None proposed.