

LFC Requester:	
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**AGENCY BILL ANALYSIS
2019 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	<input checked="" type="checkbox"/>	Amendment	<input type="checkbox"/>	Date	Jan. 30, 2019
Correction	<input type="checkbox"/>	Substitute	<input type="checkbox"/>	Bill No:	HB342
Maestas, Chasey, Rue					
Sponsor:	And Martinez			Agency Code:	264
Short Title:	Criminal Justice Reforms			Person Writing	Gail MacQuesten
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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	unknown	unknown	unknown	recurring	n/a

(Parenthesis () Indicate Expenditure Decreases)

Duplicates/Conflicts with/Companion to/Relates to: HB267

Duplicates/Relates to Appropriation in the General Appropriation Act: none found

SECTION III: NARRATIVE

HB342 makes significant changes to New Mexico’s criminal justice system through amendments to existing laws and enactment of new statutes.

Section 1 amends Section 9-8-7.1 NMSA 1978, which describes the powers and duties of the human services department, to require the department to create, implement and continually evaluate the effectiveness of a framework for targeted, individualized interventions for incarcerated adult and juvenile offenders with behavioral health diagnoses to address those needs while they are incarcerated and connect them to resources and services immediately upon release.

Section 2 enacts a new section of the Human Services Department Act requiring the secretary to adopt rules pursuant to which a county may apply for and be awarded funding through the department.

Section 3 amends Section 30-31-27.1 NMSA 1978, to expand the provisions granting a limited immunity in overdose situations. The provisions will apply to alcohol, as well as drug, overdoses. HB342 expands the protections to cover arrest, other penalties, and civil forfeiture, for certain violations “if the evidence for which the alleged violation was obtained as a result of the need for seeking medical assistance.” HB343 expands the violations that are covered to include the provisions of Section 30-31-25.1 NSMA 1978 (possession, delivery or manufacture of drug paraphernalia), a restraining order, or the conditions of probation or parole. HB342 also adds a definition of “seeking medical assistance”

Section 4 amends Section 31-1A-2 NMSA 1978 regarding post-conviction consideration of DNA evidence. It provides that a petitioner shall be granted full, fair and prompt proceedings upon filing a petition. DNA samples obtained in connection with the petition shall be submitted for DNA testing according to the procedures in the DNA Identification Act, and the DNA record shall be entered into the federal bureau of investigation’s national DNA index system for storage and exchange of DNA records. HB342 also specifies that the rules of evidence and the rules of civil procedure for the district courts shall apply to proceedings under this section.

Section 5 amends Section 31-16A-4 NMSA 1978 regarding eligibility for a preprosecution diversion program. HB342 removes most of the current requirements, and requires only that the defendant have no prior felony convictions for a violent crime, is willing to participate in the program and submit to all program requirements, and “any additional criteria set by the district attorney.” HB342 specifically provides that a district attorney may elect not to divert a person even though that person meets the minimum criteria, and that decision is not subject to appeal and may not be raised as a defense to any prosecution or habitual offender proceeding.

Section 6 amends Section 31-16A-7 NMSA, regarding conditions for participating in preprosecution diversion, deleting a provision that required the defendant to pay costs related to participation in the program.

Section 7 amends Section 31-18-15 NMSA 1978, regarding the sentencing authority for noncapital felonies, to provide that parole shall be imposed only for felony convictions wherein a person is sentenced to imprisonment of more than one year, unless the parties to a proceeding agree that a period of parole should be imposed.

Section 8 amends Section 31-20-5 NMSA 1978, regarding probation, to articulate the purpose of probation and to require the corrections department to complete a validated risk and needs assessment and provide it to the court for consultation when the court decides what conditions of probation to impose. HB342 provides that if the defendant violates any condition of that parole, and the violation is not a “technical violation” as described in Section 16 of the act, the defendant shall be brought before the parole board.

Section 9 amends Section 31-21-4 NMSA 1978, regarding the probation and parole act, to stress the assessment of risks and needs of persons convicted of crime. HB342 requires the corrections department to use a validated risk and needs assessment; focus supervision resources on the initial period of release or placement on probation, recommend and enforce conditions that include cognitive-behavioral programming to address criminal thinking and address basic needs and transitional requirements, and apply a consistent system of incentives and sanctions to promptly respond to positive and negative behavior.

Section 10 amends Section 31-21-5 NMSA 1978, the definition section of the probation and parole act, to add definitions of terms used in HB342, including definitions of “technical” and “non-technical” violations. A “non-technical” violation is absconding or arrest for a new felony or misdemeanor; a technical violation is any other sort of violation.

Section 11 amends Section 31-21-9 NMSA 1978, regarding presentence investigations to require presentence reports to include victim impact information, record of prior convictions and the results of any validated risk and needs assessments that have been administered and such other information as the court may request.

Section 12 amends Section 31-21-10 NMSA 1978, regarding parole, to provide that an inmate sentenced to life imprisonment shall be paroled after serving 30 years of the sentence, unless the board finds that the inmate is unable or unwilling to fulfill the obligations of a law-abiding citizen. The board must enter specific findings, and may not deny parole sentenced to life imprisonment based solely on the offense for which the inmate was convicted.

Section 13 amends Section 31-21-13.1 NMSA 1978, regarding intensive supervision programs, eliminating the 40 case load maximum for officers but requiring that officers have “the training, resources and caseloads that enable them to operate effectively.” HB342 requires the judge to review the results of the validated risk and needs assessment. The corrections department is to recommend only those individuals who score as high risk.

Section 14 amends Section 31-21-14 NMSA 1978, regarding parole violations, to make a distinction between technical and non-technical violations. The board may issue an arrest warrant for, and detain, a parolee who has, in the judgment of the director, committed a non-

technical violation. If the non-technical violation is established, the board may impose detention for a fixed term up to ninety days, which shall be counted as time served under the sentence. The board may also issue a notice to appear to answer a charge of a technical violation.

Section 15 amends Section 31-21-17.1 NSMA 1978 regarding medical or geriatric parole, requiring the corrections department to implement a “medical and geriatric parole program.” Inmates who have not served their minimum sentences may be considered for parole under the program (except those convicted of first degree murder). HB342 set out the criteria to be considered, and allows the board to set terms and conditions of parole.

Section 16 sets out a new section of the Probation and Parole Act titled “Incentives—Sanctions for Technical Violations.” It requires the corrections department to create an incentives and sanctions system for addressing technical violations.

Section 17 sets out a new section of the Probation and Parole Act entitled “Technical Violation Hearings” setting out a process for conducting hearings on technical violations.

Section 18 amends Section 31-22-7 NMSA 1978 to expand eligibility for reparation. HB342 allows for orders when the act or omission constituting a crime has been reported to a medical or mental health care provider, victim counselor or other counseling provider (and not just to law enforcement). HB342 provides that no order may be issued unless the commission finds that the claimant fully cooperated or “acted reasonably under the circumstances.”

Section 19 enacts a new section relating to substance-related poisoning prevention, setting out limited immunity similar to the limited immunity set out in Section 30-31-27.1 regarding overdoses. It protects a person seeking help for himself or another from liability under the provisions of Section 60-7B-1 or 60-7B-9, a restraining order, or the conditions of probation or parole.

Sections 20-22 enact the “accurate Eyewitness Identification Act,” requiring criminal justice entities to adopt and comply with written policies for lineups and showups. HB342 sets out provisions that must be included in those policies.

Section 23 enacts a new section titled “Training of Law Enforcement Officers,” requiring the secretary of public safety to create training programs for officers and recruits on the practices and procedures referenced in the Accurate Eyewitness Identification Act.

Section 24 enacts a new section titled “Legislation to Increase, Decrease or Create Periods of Imprisonment – Fiscal Impact Statements – Procedure.” It requires the New Mexico sentencing commission to prepare fiscal impact statements for bills that create a new crime or repeal an existing crime for which imprisonment is authorized, increase or decrease the period of imprisonment, impose or remove mandatory minimum terms, or modify the law governing release of inmates in such a way that the time serviced in prison will increase or decrease. HB342 sets out what must be included in the fiscal impact statements. The corrections department and the judiciary are required to provide the sentencing commission with requested data necessary to prepare the statements.

Section 25 repeals Section 31-21-25.1 NMSA 1978, the existing statute regarding establishment of a “medical and geriatric parole program.”

Section 26, the applicability section, provides that Section 12 of the act apply to a person serving a term of incarceration on July 1, 2019 and to a person whose term of incarceration commences on or after July 1, 2019. Section 16 of this act applies to a person who is serving a term of parole on July 1, 2019 and to a person whose parole term commences on or after July 1, 2019.

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 most direct fiscal impact on the district attorneys from HB342 is the loss of funds collected from persons in the preprosecution diversion programs. HB267, also titled “Criminal Justice Reform”) would appropriate \$260,000 to the administrative office of the district attorneys to replace the loss of fees from preprosecution diversion programs.

SIGNIFICANT ISSUES

HB342 makes significant changes on the following issues:

Mental Health. HB342 requires the human services department to create a framework of interventions for incarcerated adult and juvenile offenders with behavioral health diagnoses to address them both while the offender is incarcerated, and to connect them to resources immediately upon release.

Limited Immunity in Overdose and Substance-Related Poisoning Situations. HB342 expands limited immunity, making it more likely that victims will seek help, and that others will seek help for them.

Preprosecution Diversion. HB342 expands eligibility for preprosecution diversion, and makes participation free for the participant. This will expand use of the program, and make it more available to low-income individuals. While removing many of the requirements for eligibility, HB342 gives the prosecutor increased discretion to deny eligibility.

Parole/Probation. HB342 makes the following changes:

- No parole is required for offenders serving a one-year sentence;
- Risk and needs assessments must be used to decide conditions of release;
- Transition requirements should be addressed, and the focus is on the initial period of release;
- A person serving a life sentence shall be paroled at 30 years unless the board finds that the inmate is unable or unwilling to fulfill the obligations of a law-abiding citizen;
- A “non-technical violation” means absconding or arrest for a new felony or misdemeanor, and the violator may be subject to detention for a fixed term up to ninety days (in addition to possible revocation of parole);
- “Technical violations” are addressed under an incentives and sanctions system;
- A new system for medical and geriatric parole shall be established.

Reparations. HB342 expands eligibility for reparations, recognizing reports to a medical or

mental health care provider, victim counselor or other counseling provider.

Lineups and Showups. HB342 requires law enforcement to develop policies regarding lineups and showups, and sets minimum standards for those policies.

PERFORMANCE IMPLICATIONS

For the district attorneys, HB342 gives them greater discretion in the use of preprosecution diversion programs.

ADMINISTRATIVE IMPLICATIONS

Most of the administrative burden of HB342 falls on entities other than the district attorneys.

CONFLICT, DUPLICATION, COMPANIONSHIP, RELATIONSHIP

HB267, also titled Criminal Justice Reforms, for the most part addresses different issues. However, it would appropriate \$260,000 to the administrative office of the district attorneys to replace the loss of fees from preprosecution diversion programs.

TECHNICAL ISSUES

Paragraph D of Section 18, regarding reparations, recognizes reporting of an act or omission constituting a crime to a medical or mental health care provider, victim counselor or other counseling provider. It does not require that the reporting be done “in a reasonable time.” The existing statute requires reports to police be done “in a reasonable time.”

Sections 20-22 create the “Accurate Eyewitness Identification Act” setting out minimum requirements for showups and lineups. It does not describe the consequences for failing to meet those standards. Presumably, it will be up to the courts to determine if a defendant’s constitutional rights have been violated by the failure.

OTHER SUBSTANTIVE ISSUES

None noted.

ALTERNATIVES

None noted.

WHAT WILL BE THE CONSEQUENCES OF NOT ENACTING THIS BILL

Status quo.

AMENDMENTS

None proposed.