

**LFC Requester:**

**AGENCY BILL ANALYSIS  
2019 REGULAR SESSION**

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**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. 23, 2019  
**Bill No:** HB342s

**Sponsor:** House Judiciary Committee  
Substitute  
**Short Title:** Criminal Justice Reforms

**Agency Name and Code** Administrative Office of the District Attorneys (AODA) 364  
**Number:**  
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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)**

	<b>FY19</b>	<b>FY20</b>	<b>FY21</b>	<b>3 Year Total Cost</b>	<b>Recurring or Nonrecurring</b>	<b>Fund Affected</b>
<b>Total</b>						

(Parenthesis ( ) Indicate Expenditure Decreases)

Duplicates/Conflicts with/Companion to/Relates to: 207s; HB533; HB356  
Duplicates/Relates to Appropriation in the General Appropriation Act: none found

**SECTION III: NARRATIVE**

**BILL SUMMARY**

Synopsis:

HB342s 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. HB342s 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.” HB342s 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. HB342s 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. HB342s 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 pre-prosecution diversion program. HB342s 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.” HB342s 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 pre-prosecution 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 31-22-7 NMSA 1978, Eligibility for Reparation, clarifying that reparations are available if a person is injured or killed by an intentionally committed act or omission “constituting a crime.” It changes the reporting requirements for victims to include reports to a medical or mental health care provider, victim counselor or other counseling provider (and not just to law enforcement). In addition, it alters the requirement that the claimant or victim fully cooperate with the appropriate law enforcement agencies, allowing reparations “if the commission finds that the claimant or victim acted reasonably under the circumstances.”

Section 9 enacts a new section of the criminal code titled, “Substance-Related Poisoning Prevention – Limited Immunity,” 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 10-12 enact the “Accurate Eyewitness Identification Act,” requiring criminal justice entities to adopt and comply with written policies for lineups and showups. HB342s sets out provisions that must be included in those policies:

- Having a blind administrator or blinded administrator perform the live lineup or photo lineup;
- Documenting a description of the suspect provided by the eyewitness, including a description of the circumstances under which the suspect was seen by the eyewitness, the time of day, the length of time the suspect was seen, the perceived or actual distance from the eyewitness to the suspect and the lighting conditions;
- Providing the eyewitness with instructions that minimize the likelihood of an inaccurate identification, including that the perpetrator may or may not be in the identification procedure and that the investigation will continue regardless of whether an identification is made;
- Composing the lineup so that the fillers generally resemble the eyewitness’s description of the perpetrator;
- Using at least 4 fillers in a live lineup and 5 fillers in a photo lineup;
- Ensuring, where practicable that a photo of the suspect used in a photo lineup is contemporary and resembles the suspect’s appearance at the time of the offense;
- Presenting separate photo lineups and live lineups when there are multiple eyewitnesses, ensuring that the same suspect is placed in a different position for each identification procedure;

- Having the administrator document a clear statement from the eyewitness, at the time of the identification and in the eyewitness's own words, as to the eyewitness's confidence level that the person identified is the person who committed the crime;
- Minimizing factors that may influence an eyewitness, including verbal or nonverbal statements by or reactions from the administrator;
- Presenting lineup members one at a time;
- Adopting relevant practices shown to enhance the reliability of an eyewitness, such as identifying the circumstances under which a showup is warranted; transporting the eyewitness to a neutral, non-law enforcement location where the detained suspect is being held; removing the suspect from the law enforcement squad car; removing restraint from the suspect; and administering the showup procedure close in time to the commission of the crime;
- Video recording the entirety of the photo lineup and live lineup and, where practicable, the showup procedure;
- Preserving photographic documentation of all lineup and photo lineup members and showup suspects, as well as all descriptions provided by the eyewitness of the perpetrator.

Section 13 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 14 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. HB342s 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.

## **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 HB342s is the loss of funds collected from persons in the pre-prosecution 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 pre-prosecution diversion programs.

## **SIGNIFICANT ISSUES**

HB342s makes significant changes on the following issues:

Mental Health. HB342s 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. HB342s expands limited immunity, making it more likely that victims will seek help, and that others will seek help for them.

Pre-prosecution Diversion. HB342s expands eligibility for pre-prosecution 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, HB342s gives the prosecutor increased discretion to deny eligibility.

Reparations. HB342s expands eligibility for reparations, recognizing reports to a medical or mental health care provider, victim counselor or other counseling provider, and to victims or claimants who did not fully cooperate with law enforcement but, in the judgment of the commission, acted reasonably under the circumstances.

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, HB342s gives them greater discretion in the use of pre-prosecution diversion programs.

## **ADMINISTRATIVE IMPLICATIONS**

Most of the administrative burden of HB342s falls on entities other than the district attorneys.

## **CONFLICT, DUPLICATION, COMPANIONSHIP, RELATIONSHIP**

HB207s, 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 pre-prosecution diversion programs.

HB533 Notice of Crime Victim Reparation & Procedure also affects reparations.

HB356 repeals Section 30-31-25.1 NMSA 1978, which sets out crimes associated with drug paraphernalia. (HB342s refers to that statute in Section 3, relating to overdose prevention).

## **TECHNICAL ISSUES**

Paragraph D of Section 8, 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 10-12 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.