

<b>LFC Requester:</b>	
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**AGENCY BILL ANALYSIS  
2019 REGULAR SESSION**

**WITHIN 24 HOURS OF BILL POSTING, EMAIL ANALYSIS TO:**

[LFC@NMLEGIS.GOV](mailto:LFC@NMLEGIS.GOV)

*and*

[DFA@STATE.NM.US](mailto: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**     **Amendment**      
**Correction**     **Substitute**   

**Date** Feb. 1, 2019  
**Bill No:** HB405

**Sponsor:** Cadena and Maestas  
**Short**        Sex Offender Probation  
**Title:**        Review Notices

**Agency Code:** 264  
**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)**

	<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>	0	minimal	minimal	minimal	recurring	general

(Parenthesis ( ) Indicate Expenditure Decreases)

Duplicates/Conflicts with/Companion to/Relates to: none found

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

### **SECTION III: NARRATIVE**

HB405 amends Section 31-20-5.2 regarding probation for sex offenders to:

- Specifically provide that a sex offender shall have the right to counsel at all probation hearings;
- Clarify that all probation will be “supervised;”
- Clarify that the relevant factors to determine terms and conditions are the same, whether the hearing is for the initial placement or continuing probation;
- Clarify that the court need not conduct a review hearing during the initial five-year period;
- Change the state’s burden of proof at probation review hearings from “to a reasonable certainty” to “by clear and convincing evidence;”
- Require the corrections department to notify the district attorney and the offender’s counsel of record prior to the end of the initial five year period and at the end of each two and one-half year interval after the initial five-year period; and
- Require the district attorney to petition the district court for a review hearing to consider the necessity of extension of supervised probation at the end of the initial five-year period and at the end of every two and one-half year period thereafter, if the offender remains on probation.

### **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.

There are no significant fiscal implications for the district attorneys. Under HB405, the corrections department bears the burden of notifying the district attorney when a petition for continuing probation needs to be filed. HB405 lessens the burden the state must meet at such hearings.

### **SIGNIFICANT ISSUES**

The statute’s basic structure remains unchanged: if a sex offender receives a deferred or suspended sentence, the district court must impose an indeterminate period of supervised probation for a period of not less than five years and not in excess of twenty years. There shall be a review hearing at the end of the initial five-year period, and every two and one-half year period thereafter. For probation to continue, the state must prove that the offender should remain on

supervised probation. Many of the amendments in HB405 clarify existing provisions. The two main changes are:

Notification HB405 specifically places the burden of notification on the department of corrections. The department is to notify the district attorney and the offender's counsel of record at the end of the initial five-year period of probation, and every two and one-half year interval after that, so the parties can take appropriate steps to address whether probation should continue. HB405 also specifically puts the burden on the district attorney to petition for the review hearing.

Burden of proof HB405 lessens the burden of proof on the state. Currently, the state must prove "to a reasonable certainty" that the offender should remain on probation. HB405 changes the standard to "clear and convincing evidence," making it more likely that supervised probation will continue.

### **PERFORMANCE IMPLICATIONS**

District attorneys are to receive notice when an offender's probation is up for review. The burden of proof on the state will be reduced.

### **ADMINISTRATIVE IMPLICATIONS**

None noted.

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

None noted.

### **TECHNICAL ISSUES**

None noted.

### **OTHER SUBSTANTIVE ISSUES**

None noted.

### **ALTERNATIVES**

None noted.

### **WHAT WILL BE THE CONSEQUENCES OF NOT ENACTING THIS BILL**

Status quo. The state will need to prove "to a reasonable certainty" that a sex offender should remain on supervised probation.

### **AMENDMENTS**

None proposed.