

<b>LFC Requester:</b>	<b>Theresa Edwards</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*

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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:*

<b>Original</b> <input type="checkbox"/>	<b>Amendment</b> <input type="checkbox"/>	<b>Date</b> <u>February 22, 2019</u>
<b>Correction</b> <input type="checkbox"/>	<b>Substitute</b> <input checked="" type="checkbox"/>	<b>Bill No:</b> <u>HB 342 s -305</u>
Reps. Antonio Maestas & Gail Chasey		
Sens. Sander Rue & Richard		
<b>Sponsor:</b> <u>Martinez</u>	<b>Agency Code:</b> <u>305–Office of the Attorney General</u>	
<b>Short</b> <u>Criminal Justice Reforms</u>	<b>Person Writing</b> <u>M. Anne Kelly, AAG</u>	
<b>Title:</b> _____	<b>Phone:</b> <u>505-717-3505</u>	<b>Email</b> <u>akelly@nmag.gov</u>

**SECTION II: FISCAL IMPACT**

**APPROPRIATION (dollars in thousands)**

Appropriation		Recurring or Nonrecurring	Fund Affected
FY19	FY20		

(Parenthesis ( ) Indicate Expenditure Decreases)

**REVENUE (dollars in thousands)**

Estimated Revenue			Recurring or Nonrecurring	Fund Affected
FY19	FY20	FY21		

(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:  
 Duplicates/Relates to Appropriation in the General Appropriation Act

**SECTION III: NARRATIVE**

*This analysis is neither a formal Attorney General Opinion nor an Attorney General Advisory Letter. This is a staff analysis in response to a committee or legislator’s request. The analysis does not represent any official policy or legal position of the Office of the Attorney General.*

**BILL SUMMARY**

Synopsis:

This bill contains numerous amendments to existing criminal statutes and proposes new material in other areas, primarily in the Probation and Parole Act.

Section 1 amends Section 9-8-7.1 – entitled “Behavioral Health Services Division – Powers and Duties of the Human Services Department – to include a responsibility for the department to “create, implement and continually evaluate the effectiveness of a framework” for targeted and individualized interventions for adult and juvenile offenders who have behavioral health diagnoses and who are incarcerated. This framework is to address their behavioral health needs while incarcerated and connect them to resources upon release.

Section 2 adds a new section to the Human Services Department Act to carry out the provisions in Section 1. The section requires the secretary to adopt and promulgate rules to allow a county to get funding through the department and to distribute those funds.

Section 3 amends and enlarges Section 30-31-27.1 – entitled “Overdose Prevention – Limited Immunity” – to include alcohol (rather than just drug) related overdoses to the immunity protection, to add that a person acting in good faith to seek medical assistance will also not be arrested or penalized in any way for seeking assistance, and that such a person will not be charged, arrested, or prosecuted for possession of controlled substances or drug paraphernalia, a restraining order, or conditions of probation or parole. The section also defines what reporting a drug or alcohol related overdose means.

Section 4 amends Section 31-1A-2 – entitled “Post-Conviction Consideration of DNA Evidence – Requirements” – to provide a petitioner under this section “full, fair and prompt proceedings.” It also adds a section to provide that DNA samples taken under the section shall be submitted for testing according to the procedures in the DNA Identification Act and entered into the national DNA Index System. It also specifies that the Rules of Evidence and the Rules of Civil (rather than Criminal) Procedure will apply in these proceedings.

Section 5 amends Section 31-16A-4 – entitled “Eligibility” for preprosecution diversion – to

enlarge the eligibility of defendants by deleting certain criteria and retaining only that the defendant (1) shall have no prior felony convictions for a violent crime and (2) is willing to submit the program and all its requirements. The section also allows the district attorney to set additional criteria and retains the district attorney's discretion to not allow an otherwise qualifying defendant into the program.

Section 6 amends Section 31-16A-7 to delete "costs" in the title and replace it with "reasonable conditions." In the text, it deletes the requirement that a defendant pay costs for participation in the prosecution diversion program.

Section 7 amends Section 31-18-15 which governs felony sentencing. It amends subsection C to provide that a period of parole shall be imposed only for felony convictions where a person is sentenced to a term of imprisonment of more than one year unless the parties agree a parole term should be imposed. This term is also incorporated into Section 12 which amends Section 31-21-10.

Section 8 amends Section 31-20-5 which governs placing defendants on probation. It adds a section to state the legislative purpose of probation to "hold people accountable for their criminal conduct, promote their reintegration into law-abiding society and reduce the risks they will commit new offenses." It also requires the corrections department to complete a "validated risk and needs assessment" to provide to the court for consultation when the court considers what conditions of probation to impose. Finally, it incorporates Section 16 of the bill which provides for technical violations of parole and exempts that new category of violations from the requirement that a parole violation requires the defendant to go before the parole board.

Section 9 amends Section 31-21-4 – entitled "Construction and Purpose of [the Probation and Parole] Act – to require the corrections department to operate probation and parole based upon the application of a "valid risk and needs assessment and principles of effective intervention to reduce criminogenic risk and needs factors[.]" It further directs corrections to focus supervision resources on the initial period of release or placement on probation; address basic needs and transitional requirements; and apply a "consistent system of incentives and sanctions" to "promptly respond" to positive and negative behavior of probationers and parolees.

Section 10 amends Section 31-21-5 which is the definitional section for the Probation and Parole Act. It adds six new definitions for "absconding", "geriatric inmate", "technical violation", "non-technical violation", "permanently incapacitated inmate", and "terminally ill inmate."

Section 11 amends Section 31-21-9 which governs presentence and prerelease investigation for the Probation and Parole Act. It changes the requirement that the director prepare a prerelease report and only provides for a presentence report to include victim impact information, record of prior convictions and "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 entitled "Parole Authority and Procedure." It provides that an inmate sentenced to life imprisonment "shall be paroled" after thirty years unless the board finds he is "unable or unwilling" to be a law-abiding citizen. The existing term only

allows that an inmate serving a life term is eligible for parole after thirty years. The section also requires the parole board to “enter specific findings” on its decision. The section deletes the findings that focus on the circumstances of the crime and specifically states that the parole board “shall not deny parole to an inmate [sentenced to life] based solely on the offense for which the inmate was convicted.”

Section 13 amends Section 31-21-13.1 – entitled “Intensive Supervision Programs” – to delete that officers providing these services have a maximum case load of forty offenders and instead include a requirement that the corrections department provide these officers with sufficient training and resources. The section requires the corrections department to “review the results of the validated risk and needs assessment” in determining whether to impose the program. It also removes the judge’s discretion to impose the program regardless of the recommendations of probation and parole. Instead, inmates who are assessed as “high risk” on the risk and needs assessment are eligible for the program.

Section 14 amends Section 31-21-14 to change its title from “Return of Parole Violator” to “Non-Technical Parole Violations.” It provides the procedure for the return of a parolee to answer for a charge of a non-technical violation.

Section 15 amends Section 31-21-17.1 – “entitled Administration by Department” to “Medical or Geriatric Parole – Procedures – Duties of the Department.” This section requires the corrections department to promulgate rules to implement a “medical and geriatric parole program.” It provides for the director to identify those inmates are authorize their release if that release “is not incompatible with the welfare of society and who were not convicted of first degree murder.” The section further sets out the criteria for eligibility of this parole, and provides that this parole is in addition to any other parole to which the inmate may be entitled.

Section 16 adds a new section to the Probation and Parole Act entitled “Incentives – Sanctions for Technical Violations” and requires the corrections department to “create, maintain and fully implement an incentives and sanctions system to guide responses to negative and positive behavior by parolees under supervision by the department.” It requires the department, among other things, to provide training to probation and parole officers, judges and attorneys, law enforcement, and others; to review the system every five years; and to collect data on placement decision based on the system. It gives a probation or parole officer the discretion to determine an “appropriate response” to a non-technical violation which may include a “non-detention” sanction designed to gain the parolee’s compliance with the conditions of parole. It also provides for “graduated” sanctions which may include three or seven-day detentions in county jails.

Section 17 adds a new section to the Probation and Parole Act to provide for hearings for technical violations of parole. The section requires written notice to the parolee, a hearing officer designated by the corrections department to conduct the hearing with the assistance of a mental health professional; a showing by preponderance of the evidence that a technical violation was committed; and consultation with the “incentives and sanctions” system to determine an appropriate response.

Section 18 amends Section 31-22-7 – entitled “Eligibility for Reparation” – to include “act or omission” throughout the section. It also includes that an order may be made under this section or acts or omissions reported not only to police but also to “a medical or mental

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

Section 19 adds a new section to Chapter 60, Article 7B entitled “Substance-Related Poisoning Prevention – Limited Immunity.” It tracks the language included in Section 3 of the bill.

Section 20 adds a new act entitled “Accurate Eyewitness Identification Act.”

Section 21 adds a new section to include the definitions for the Accurate Eyewitness Identification Act.

Section 22 adds a new section entitled “Eyewitness Identification Procedures” and provides that no later than January 1, 2020 a “criminal justice entity conducting eyewitness identification procedures shall adopt and comply with written policies for using an eyewitness[.]” The section requires every governmental entity that administers eyewitness identification procedures to provide a copy of its written policies to the secretary of public safety. A law enforcement agency shall include policies to enhance the “objectivity and reliability of eyewitness identifications” and the section includes certain criteria for the use of lineups and photo lineups.

Section 23 adds a new section requiring the secretary of public safety to create and conduct training programs for officers on eyewitness identification.

Section 24 adds a new section requiring the New Mexico Sentencing Commission to prepare a fiscal impact statement for a bill that creates a new crime or repeals an existing crime; that increases or decreases the period of imprisonment for an existing crime; that imposes or removes mandatory terms of imprisonment; or that modifies the law governing release in such a way that will increase or decrease the time served in prison.

Section 25 repeals Section 31-21-25.1 which is entitled “Parole board; additional powers and duties; medical and geriatric parole program.”

Section 26 provides that the provisions of Section 12 apply to a person serving a term of incarceration on July 1, 2109 and to a person whose term of incarceration commences on or before July 1, 2019, and that the provisions of Section 16 apply to a person serving a term of parole on July 1, 2019 and to a person whose term of parole commences on July 1, 2019.

Section 27 sets the effective date of the provisions of this act as July 1, 2019.

### **Committee Substitute**

The committee substitute deleted Sections 8-17 of the original bill. Sections 18-24 of the original bill are therefore renumbered in the committee substitute as Sections 8-14. Sections 25 and 26 are also deleted and Section 27 – the section setting the applicable date of the provisions as July 1, 2019 – is now Section 15. The substitute otherwise makes no changes.

The deleted sections are contained in HB 564.

### **FISCAL IMPLICATIONS**

None to this office.

## **SIGNIFICANT ISSUES**

### **Original Analysis**

The bill requires the corrections department to promulgate and use a “valid risk and needs assessment” in making probation and parole determinations. The specific definition of this assessment does not appear to be included in the bill and will need to be determined as it is a centerpiece for many of the bill’s provisions.

The bill increases the corrections department’s duties to include more training for its officers, for judges and attorneys, and for law enforcement to deal with the new provisions of technical violations. It also requires corrections to work on intervention, especially during the period of initial release, to make sure probationers and parolees are adjusting and have the resources they need. Overall, the bill seeks to identify probationers and parolees in need of assistance and provide them the resources they need to deter recidivism which will require significant training for corrections’ employees.

### **Committee Substitute**

The deleted sections are contained in HB 564.

## **PERFORMANCE IMPLICATIONS**

None to this office.

## **ADMINISTRATIVE IMPLICATIONS**

None to this office.

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

Conflicts:

HB 43 – Behavioral Health Interventions – also amends Section 9-8-7.1

SB 282 – Immunity for Overdose Assistance – also amends Section 30-31-27.1

HB 533 – Notice of Crime Victim Reparation & Procedure – also amends Section 31-22-7

Relates:

SB 74 – Post-Conviction DNA Evidence Procedures – amends the same language to Section 31-1A-2

HB 267 also contains criminal justice reforms but the terms of the two bills do not appear to overlap.

Twenty-nine bills either amend or reference Section 31-18-15, which HB 342 amends. It should be ensured that conflicts with changes to this statute should be checked.

## **TECHNICAL ISSUES**

The bill replaces male pronouns with gender-neutral words.

## **OTHER SUBSTANTIVE ISSUES**

n/a

## **ALTERNATIVES**

n/a

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

Status quo.

**AMENDMENTS**

n/a