



PUT TO THE TEST

NEW MEXICO SAFE 2017 LEGISLATIVE REPORT



ABOUT NM SAFE

New Mexico SAFE is made up of organizations from across the political spectrum and dedicated to creating a safe, fair, and prosperous New Mexico.

We are non-profits, community leaders, social workers, faith leaders, and concerned individuals representing a wide array of New Mexico communities and points of view. We are working together to refocus our state's correctional efforts on cost-effective, evidence based alternatives to incarceration that rehabilitate offenders, keep families intact, and make our communities safer.

NM SAFE PARTNER ORGANIZATIONS

Albuquerque Health Care for the Homeless
Native American Voters Alliance
American Civil Liberties Union of New Mexico
New Mexico Conference of Catholic Bishops
Crossroads for Women
New Mexico Conference of Churches
Disability Rights New Mexico
New Mexico Criminal Defense Lawyers Association
Drug Policy Alliance New Mexico
New Mexico Voices for Children
El Centro de Igualdad y Derechos
New Mexico Women's Justice Project
Enlace Comunitario
PB&J Family Services
Equality New Mexico
Prison Reform Ministry of Immaculate Conception Church
League of Women Voters New Mexico
Santa Fe Safe
Lutheran Advocacy
Somos Un Pueblo Unido
My Destiny
Southwest Women's Law Center
Albuquerque NAACP
Strong Families New Mexico
Santa Fe NAACP
Transgender Resource Center
National Association of Social Workers New Mexico
YWCA New Mexico
Fathers Building Futures

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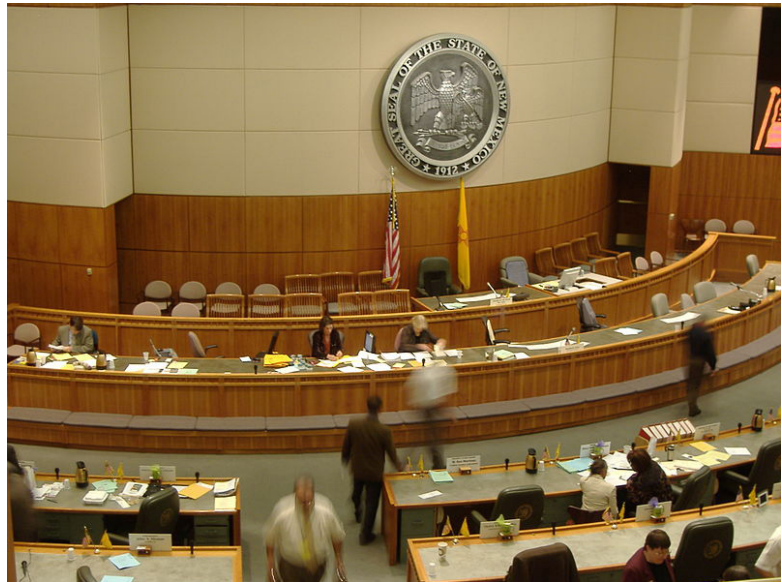
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SUMMARY

The hyper-punitive public safety policies of the past few decades have unfairly targeted poor people, people of color, and people living with disabilities. As we now know, these failed policies all too often create more problems than they solve.

New Mexico SAFE, a state-wide coalition of 29 organizations that launched in October 2016, seeks to move New Mexico toward a new model of criminal justice – one that is substantially smaller, smarter, and committed to the personal safety, health, equity, and dignity of every individual and all communities. To accomplish this, the public debate



around crime and its remedies must shift to a discussion fueled less by a desire for punishment and more by an understanding of the need to support our communities. Accordingly, a sharp and pragmatic plan for increasing public safety will address the social and economic factors that have caused our state to have one of the highest crime rates in the country.

Our fundamental assumption is that leaders and organizations in every corner of the state already recognize that, when it comes to criminal justice, something needs to change. New Mexico SAFE provides a platform for bringing these forces together in a powerful, broad-ranging coalition to accomplish that change.

Our First Round in the Roundhouse

The 2017 legislative session was a big success for New Mexico SAFE. During a time of uncertainty around the state budget, we moved the conversation about criminal justice away from draconian tough-on-crime policies toward a more realistic, evidence-based approach to public safety. To do this, the coalition embarked on an ambitious plan to grade high-profile legislation as it moved through the Roundhouse. While other organizations have graded bills in post-session reports, our coalition's goal was to have an immediate impact on legislation as it was introduced.

New Mexico SAFE created a litmus test to help assess the quality of legislative proposals related to public safety. The S.A.F.E. test analyzed whether a bill meets four simple criteria:

1. *Does it make New Mexico SAFER for children and families?*

Tougher penalties do not correlate with a decrease in crime. Serious legislation must prevent tragedies before they happen to make New Mexico safer for children and families.

2. *Is it **A**POLITICAL?*

Too many politicians in New Mexico use tough-on-crime proposals to prop up their political campaigns. Serious legislation must address the problem of crime and public safety, not advance a political agenda.

3. *Is it **F**ISCALLY-RESPONSIBLE?*

New Mexico is in the midst of one of the nation's most devastating budget crises. Any serious legislation must be fiscally responsible. If it doesn't actually make communities safer, it's not worth the money.

4. *Is it **E**VIDENCE-BASED?*

Finally, serious legislation must be supported by evidence that it actually works. We cannot afford to waste time on bills that have no proven track record of reducing crime or increasing public safety. Nor can we afford to waste our efforts on bills whose implementation has shown bias or inequitable treatment.

Does it make New Mexico **S** safer for children and families?

Is it **A**political?

Is it **F**iscally responsible?

Is it **E**vidence Based?

We assembled a team of experienced policy analysts that identified important criminal justice and public safety legislation when it was introduced, chose which bills to focus on, and then drafted report cards analyzing the selected bills through the lens of the S.A.F.E. test. These report cards were distributed to lawmakers, analysts, the public, and the media before votes were cast and then at subsequent committee hearings as legislation progressed. During the 2017 session, we graded 24 pieces of legislation on a wide variety of public safety and criminal justice measures. The bulk of this report is made up of the compiled report cards for each of these bills.

The New Mexico SAFE coalition didn't just grade bills: We actively engaged lawmakers, held press conferences, distributed copies of the report cards, and testified before committees. We estimate that our coalition testified at over sixty committee hearings on the twenty-four bills that we graded.

Early in the session, New Mexico SAFE applauded Senate and House leadership when they assigned many of the criminal justice bills to finance committees for a hearing. This was a crucial victory because it forced legislators to look at the fiscal implications of bills designed to increase sentences and ask hard questions about the best way to spend limited public dollars to increase public safety. Normally these pieces of legislation would not have been assigned to a committee focused on fiscal issues and would have only

received a cursory overview of their fiscal impact. This important procedural step shifted a debate once largely characterized by emotionally driven responses to high-profile crimes to one that focused on data, research, and the fiscal impacts of the criminal justice system.

Connecting the Dots

At a time of state budget woes, decreasing revenues, and soaring costs, discussions about our criminal justice system naturally centered on economic concerns. With New Mexico SAFE's help, legislators connected the dots between the costs associated with continual increases in criminal sentencing and the corresponding drain on resources for educational, healthcare, and economic programs that help increase public safety in a more sustainable manner than just placing more New Mexicans behind bars. Supporting families and fostering health, education, and employment does more to prevent crime than any degree of criminal enforcement ever could.

Our challenge for the future will be to take the conversation around crime and public safety to a deeper level. While the economics of criminal justice reform are important, the more meaningful discussion is the devastation and inequities inflicted on families and communities by a system of mass incarceration. Our coalition will continue to make the case for criminal justice reform because we fundamentally believe in a fair and just society, and we believe that the evidence shows that outdated punishment-oriented policies are both ineffective and unjust. At a basic level, New Mexico SAFE will continue to make the case for adequately funding our courts, public defenders, and prosecutors as well as programs that promote behavioral health, diversion, and substance abuse recovery programs. We will also push for societal acknowledgment that behavioral health and substance abuse are public health issues and should be treated as such.



That said, criminal justice reform efforts will only achieve limited success if they do not truly account for the problems posed by violence in our communities. In the coming months, New Mexico SAFE will strive to facilitate more nuanced and deliberative conversations around violence in our state. This dialogue must center the voices of survivors of violence, as well as individuals and families who have direct experience with the criminal justice system. We will try to ascertain root causes of violent behavior to identify ways to stop it before it happens. Above all, New Mexico SAFE will continue to lead the movement for smart criminal justice reform by providing unbiased, objective analyses and a platform for systemic change.

2017 Legislative Scorecards

HB 19: USE OF FIREARM SENTENCING ENHANCEMENTS (C)

SPONSOR: Rep. William “Bill” Rehm

SHORT TITLE: Use of Firearm Sentencing Enhancements

SYNOPSIS OF BILL: Increases the current one-year sentence enhancement for a crime in which a firearm was used to five years. For a second or subsequent offense involving a firearm, increases the enhancement from three years to seven.

STRENGTHS: Gun violence is a problem in our communities. With a goal of deterrence, HB 19 is intended to reduce gun violence.

WEAKNESSES: This bill quintuples the current first-time firearm enhancement and more than doubles the enhancement for a second-time offender. Moreover, many applicable cases involve multiple separate charges which are subject to the firearm enhancement where a firearm is present during a course of conduct. Each count is separately enhanced, quickly creating potential for 10 and 15-year enhancements, even for first time offenders. Firearm enhancements apply to all non-capital felonies, including lower-level third and fourth-degree felonies carrying three-year and eighteen-month sentences, respectively. HB 19 would more than quadruple a fourth-degree felony basic sentence and nearly triple a third-degree felony sentence. As noted, the enhancement can be applicable to multiple charges within a single case, adding ten, fifteen or twenty years to a single sentence. This is a drastic increase. Moreover, the enhancement time is mandatory; a judge does not have discretion to suspend that prison time in favor of probation, no matter the circumstances. Meanwhile, an offender need not even pull the trigger to receive a firearm enhancement; not a single bullet need be fired. This combination of factors means that HB 19 will significantly increase the incarceration rates in New Mexico’s prisons as an after-the-fact response to criminal conduct that does not narrowly address harmful acts of gun violence.

ADDITIONAL INFO: Rather than incarcerating after-the-fact, the only way to prevent gun violence is to make guns unavailable to high risk individuals. However, deterrence from penalties relies on offenders making deliberative choices. Unfortunately, far too many acts of gun violence result from intoxication, fear, or not the weighing the potential consequences. Still others are committed by individuals who simply are not deterred by prison sentences. Without requiring a gunshot or injury, this bill would increase the mandatory sentences in many cases by five-fold, ten-fold, or more for first-time gun offenders. In 2015, the average annual cost to incarcerate an inmate in a state-run prison in the United States was \$33,274 and in New Mexico it was \$36,832.¹ Any potential deterrent value is simply outweighed by the cost.

¹ Mai, Chris and Ram Subramanian. 2017. “The Price of Prisons: Examining State Spending Trends, 2010-2015.” Vera Institute of Justice. Retrieved: <https://www.vera.org/publications/price-of-prisons-2015-state-spending-trends>

Safer	Apolitical	Fiscally- Responsible	Evidence Based	Grade
<p>Notably, this bill does not aim to deter underlying criminal conduct, only the use of a firearm when committing that crime. Once criminal activity is undertaken, most individuals will not be deterred as to method merely by an increased sentence.</p>	<p>Extreme increases in penalties, such as this five-fold increase certainly send a message to voters. However, for public safety results, proactive, rather than reactive solutions are more effective.</p>	<p>The average annual cost per inmate in New Mexico of \$36,832 is already significant. HB 19 would multiply the existing one-year enhancement by five and could do so on multiple counts per case, a cost primarily borne by the Corrections budget. Such penalty increases also lead to more cases going to trial, meaning additional burdens on the judiciary, prosecutors, and public defenders.</p>	<p>Increased sentences can result in some deterrence, but not drastic reductions in crime. Moreover, for something like an enhancement, the increase does nothing to deter the underlying crime; at most it only alters the method of committing the crime. There is little to suggest that this significant increase in incarceration rates would make New Mexico tangibly safer.</p>	<p>C</p>

HB 53: ALLOW CURFEW ORDINANCES (D)

SPONSOR: Rep. Nate Gentry

SHORT TITLE: Allow Curfew Ordinances

SYNOPSIS OF BILL: Gives counties and municipalities authority to adopt a curfew ordinance between midnight and 5:00 a.m., and to regulate the actions of children during daytime hours on school days. The bill includes some exemptions. Although stating a violation will not itself be a crime, the bill contemplates police enforcement and allows for “protective custody” if police are unable to contact a guardian immediately upon a violation.

STRENGTHS: In theory, curfews are designed to protect children from dangers to themselves and to protect the community from children who misbehave when they lack supervision.

WEAKNESSES: Studies show little to no reduction in violent crime by youth from curfew laws. Limitations on freedom of movement – even for children – may be unconstitutional. “Freedom of movement is the very essence of our free society, setting us apart... Government restrictions that inhibit the fundamental rights of minors are valid only if the restrictions serve a ‘significant state interest ... that is not present in the case of an adult.’” *ACLU of NM v. City of Albuquerque*, 1999-NMSC-044, ¶ 33, 128 N.M. 315. The bill does not account for parental permission and preempts parents’ freedom to decide when their children may be allowed to travel freely. Providing grounds for law enforcement to stop, question, and search our kids is guaranteed to overwhelm our already strained juvenile justice system, especially New Mexico’s most vulnerable youth. Although New Mexico ranks 46th in the nation for homeless youth, HB 53 contains no exemption for homelessness.¹ There is also serious concern that curfew ordinances would be disproportionately enforced against children of color, who already represent a disproportionate number of incarcerated youth.

ADDITIONAL INFO: Youth of color comprise 38% of the youth population in the U.S. yet comprise nearly 70% of those who are confined.² In 2011, black youth were 269 percent more likely to be arrested for violating curfew laws than white youth.³ At risk children need social services, education, and opportunities, not citations for curfew violations and “protective custody.” There is no evidence that curfews prevent violent crime. HB 53 thus demands time and resources from both law enforcement and CYFD for an unnecessary and potentially discriminatory policy.

¹ Bassuk E. L., DeCandia C. J., Beach C. A., Berman F. 2014. “America’s youngest outcasts: A report card on child homelessness.” Waltham, MA: The National Center on Family Homelessness at American Institutes for Research. Retrieved: <http://www.air.org/sites/default/files/downloads/report/Americas-Youngest-Outcasts-Child-Homelessness-Nov2014.pdf>

² The W. Haywood Burns Institute for Juvenile Justice, Fairness and Equity. “Fact Sheet.” Retrieved: <http://www.burnsinstitute.org/what-is-red/fact-sheet/>

³ Rovner, Joshua. 2014. “Disproportionate Minority Contact in the Juvenile Justice System.” Washington D.C.: The Sentencing Project. Retrieved: <http://sentencingproject.org/wp-content/uploads/2015/11/Disproportionate-Minority-Contact-in-the-Juvenile-Justice-System.pdf>

Safer	Apolitical	Fiscally- Responsible	Evidence Based	Grade
<p>If children are in danger, the police and CYFD already have authority to intervene. The Brookings Institute reports that violent crime actually increases when the “good” kids aren’t there to witness and deter misbehavior, or to call 911. Only minor property crimes are reduced by curfews.</p>	<p>Testimony taken on the 2016 version of HB 53 suggested the bill was motivated by an isolated incident of violent crime committed by a group of teenagers late at night. HB 53 thus reacts to a single high-profile incident, not an established or pervasive problem.</p>	<p>The Fiscal Impact Report for 2015’s identical HB 29 anticipated constitutional litigation impacting the judiciary budget, increased abuse and neglect caseloads, and resources from numerous agencies to care for children until they are returned to their guardians’ care. A fiscal impact on courts, prosecutors, CYFD, and the Public Defender is also likely due to increased delinquency proceedings where charges result.</p>	<p>The research in this area suggests no reduction of violent crime. Instead, curfew laws promise costly constitutional litigation and a disproportionate impact on homeless and minority youth.</p>	<p>D</p>

HB 72: REINSTATE DEATH PENALTY (F)

SPONSOR: Rep. Monica Youngblood

SHORT TITLE: Reinstate Death Penalty

SYNOPSIS OF BILL: Reinstates death penalty for capital felonies; provides for separate sentencing hearing for trier of fact to consider aggravation and mitigation; aggravating circumstances include death of peace officers, victims under 18, and correctional employees/contractors; sentence of death automatically reviewed by supreme court; death administered through lethal injection.

WEAKNESSES: HB72 fails every element of the SAFE test and is the ultimate misguided public safety proposal. The legislature would better spend its energy on more thoughtful proposals designed to truly reduce crime in our communities.

- Support for the death penalty has plummeted nationally over the last two decades, largely because of a deepening understanding among policy makers and the general public that it is expensive and ineffective.
- Prior Fiscal Impact Reports for reinstating the death penalty estimated that the total three-year cost of this law would be over \$7 million. That money is better spent on other more rational public safety initiatives.
- The vast majority of law enforcement professionals believe that the death penalty does nothing to deter crime. A survey of police chiefs nationwide¹ ranked the death penalty lowest among competing approaches to increasing public safety - behind increasing the number of police officers, reducing drug abuse, and creating a better economy with more jobs.
- Reinstatement would waste resources that would be better spent helping New Mexican communities, lifting them out of poverty, and greatly lowering the prevalence of serious crime.

ADDITIONAL INFO: In 2009, after many years of legislative debate, New Mexico repealed the death penalty. In the late summer of 2016, less than three months before the general election, the governor announced she would push to reinstate the death penalty. In October 2016, she called a special legislative session, which was intended to address a crisis in the state’s budget, which most legislators in both parties sought to resolve. Instead, just weeks before the election, the governor generated a highly public effort in attempting to push through this proposal, to the detriment of bipartisan budget solutions. In her 2017 state of the state address, the governor linked death penalty reinstatement to recent high profile deaths of children and police officers.

¹ Death Penalty Information Center. 2008 poll of 500 police chiefs in the United States, conducted by R.T. Strategies of Washington, DC. Retrieved: <https://deathpenaltyinfo.org/law-enforcement-views-deterrence>

Safer	Apolitical	Fiscally- Responsible	Evidence Based	Grade
The majority of law enforcement professionals believe that the death penalty does nothing to deter crime.	In 2009, New Mexico repealed the death penalty. In the summer of 2016, less than three months before a general election, the governor announced that she would push to reinstate the death penalty.	The Fiscal Impact Report for HB7 estimated that the total three-year cost of this law would be over \$7 million.	Support for the death penalty has plummeted nationally over the last two decades, largely because of a deepening understanding among policy makers and the general public that it is expensive and ineffective.	F

HB 79: HATE CRIMES AGAINST LAW ENFORCEMENT (D)

SPONSOR: Rep. Nate Gentry

SHORT TITLE: Hate Crimes Against Law Enforcement

SYNOPSIS OF BILL: Adds law enforcement officers and on-duty firefighters or emergency medical technicians to the list of categories covered under New Mexico’s Hate Crimes Act.

STRENGTHS: New Mexico has witnessed multiple tragic and horrifying murders of police officers recently. Ensuring the safety of law enforcement personnel is the highest priority for everyone. This bill might provide some moral support for officers serving in the field.

WEAKNESSES: From a policy perspective, this legislation is a solution in search of a problem. New Mexico already provides stiff enhanced penalties for violent crimes committed against police officers. As the New Mexico Attorney General’s Office notes in the bill’s fiscal impact report, “increased sentences always increase the costs of incarceration,” as well as the overall burden on the criminal justice system, including costs to the courts, prosecutors, and public defenders. These additional costs would be better spent on hiring more police officers or protective gear for officers, and de-escalation training, rather than increased penalties that are simply irrelevant to a criminal’s motivation for harming an officer. Finally, no evidence seems to exist indicating that firefighters or emergency medical technicians are being targeted with violence based on hostility to these professions.

ADDITIONAL INFO: States began passing hate crimes laws in the 1980s. These laws have traditionally been confined to such immutable characteristics as race, ethnicity, religion or sexual orientation. Groups such as the Anti-Defamation League (ADL) have stated a concern that expanding hate-crime laws to cover professions such as police would dilute their original intent.

Safer	Apolitical	Fiscally- Responsible	Evidence Based	Grade
Like every other state in the country, New Mexico already provides enhanced penalties for violent crimes committed against police officers, rendering HB79 unnecessary.	Ensuring the safety of law enforcement personnel is the highest priority for everyone. However, this legislation is still a solution in search of a problem.	The fiscal impact report for HB79 did not estimate the specific additional funds such a law would require, but it did note that there would be additional costs. There are better ways to spend limited public dollars to protect officers.	There is no evidence that firefighters and EMTs are being targeted with violence. As previously noted, enhanced penalties in New Mexico for violent crimes committed against police officers already exist.	D

SB 78: PRIVATE EMPLOYER CONVICTION INQUIRIES (A)

SPONSOR: Sen. Bill O’Neill/Rep. Alonzo Baldonado

SHORT TITLE: Private Employer Conviction Inquiries

SYNOPSIS OF BILL: Prohibits private employers that use a written employment application from inquiring into the applicant’s conviction history on the initial job application; does not prohibit an employer from screening an applicant’s criminal history later in the application process.

STRENGTHS: Viewing a job applicant with a record as more than just a checked box is critical to leveling the playing field for the 70 million Americans with an arrest or conviction history. Studies show that approximately 1/3 of American adults have a criminal record of arrests or convictions.¹ Many qualified applicants are not considered for employment when they have to “check the box” on the initial employment application. This legislation would allow qualified applicants to be considered for employment despite that criminal record. The legislation in no way prohibits an employer from screening applicants’ criminal histories; it simply moves the screening to after the initial application. This legislation protects private employers from claims of discriminatory hiring practices based on an applicant’s criminal background.

ADDITIONAL INFO: Nearly two-thirds of the total U.S. population—over 206 million people—now live in a jurisdiction with a ban-the-box policy that requires public and sometimes private employers to delay record-related inquiries. As of year’s end, 24 states and over 150 cities and counties across the nation have adopted some form of ban-the-box or fair-chance policy. In just 2016, five new states were added to that tally—Louisiana, Missouri, Oklahoma, Tennessee, and Wisconsin and over twenty percent of the U.S. population now lives in a jurisdiction that has banned the box for private employers.

¹Rodriguez, Michelle Natividad & Anastasia Christman. 2015.” Fair Chance – Ban the Box Toolkit Opening Job Opportunities for People with Records”. National Employment Law Project. Retrieved: <http://www.nelp.org/content/uploads/NELP-Fair-Chance-Ban-the-Box-Toolkit.pdf>

Safer	Apolitical	Fiscally- Responsible	Evidence Based	Grade
By increasing access to employment for people who have a criminal background, this legislation will help reduce recidivism and provide a better quality of life for many New Mexico families. The bill does not make employers less safe because it still allows for criminal background screening.	N/A	The cost of implementing these changes for employers is negligible while the potential economic impact for families in need is huge.	The Annie E. Casey Foundation this year ranked New Mexico as one of the highest states in the country for rates of incarcerated or formerly incarcerated parents. In a state that is also ranked at the bottom for child welfare, this legislation increases access to jobs for parents and will have a direct positive impact on children.	A

SB 7: SEX ASSAULT EXAM KIT POLICE CRIME LAB (A)

SPONSOR: Sen. Cisco McSorley

SHORT TITLE: Sex Assault Exam Kit Police Crime Lab

SYNOPSIS OF BILL: Appropriates \$1.2 million to fund a laboratory to process sexual assault examination kits.

STRENGTHS: According to a special audit by the Office of the State Auditor, New Mexico has more untested rape kits per capita than any other state in the country.¹ This bill would help to address this important public safety issue by funding a municipal police department crime lab specifically to process untested rape kits. This bill also addresses public safety by restoring trust in the investigative process; victims are much more likely to cooperate with law enforcement if they actually believe that the difficult decision they are making will result in a thorough investigation. By simply testing the untested rape kits, New Mexico could potentially identify and prosecute dangerous criminals that have not previously faced charges.

ADDITIONAL INFO: The state auditor’s report on this issue found that there are 254 untested rape kits for every 100,000 residents in New Mexico. The state with the next worst record in processing kits is Michigan with 153 for every 100,000 residents. Appropriating these funds could lead to a sharp if temporary increase in the number of serious court cases filed, and this would increase the demand for resources from the courts, prosecutors and public defenders.

¹ Office of the State Auditor. 2016. “Special Audit of Untested Sexual Assault Evidence Kits in New Mexico.” Retrieved: https://www.saonm.org/media/uploads/SAEK_Audit_12-5-16.pdf

Safer	Apolitical	Fiscally- Responsible	Evidence Based	Grade
Increases public safety by identifying sexual abusers who could possibly still be offending. Also increases likelihood of cooperation between sexual abuse survivors and the police if there is a thorough and complete investigation.	This legislation is the result of justifiable community outrage.	Given the urgency of the problem, it’s crucial that these funds be spent to help fix it. At the same time, this legislation could temporarily increase workloads for courts, district attorneys, and public defenders.	By leaving rape kits untested, sexual assault perpetrators are potentially free in the community and possibly still offending. By simply testing the kits, law enforcement will be able to identify suspects. DNA rape kits have also been used to exonerate innocent people.	A

HB 54: ADDITIONAL FELONIES FOR SENTENCING (F)

SPONSOR: Rep. Nate Gentry

SHORT TITLE: Additional Felonies for Sentencing

SYNOPSIS OF BILL: HB 54 amends existing law by removing the “great bodily harm” requirement for a violent felony. HB 54 adds sixteen additional violent crimes to New Mexico’s existing “three strikes” law, dramatically increasing the number and type of qualifying felonies under which a person being must be given a mandatory life sentence after a third conviction for any combination of listed offenses.

WEAKNESSES: Most other states around the country learned that three strikes laws are antiquated, ineffective, and expensive.

- Three strikes laws are based on the mistaken notion that focusing on criminal offenses after they are committed will lead to a reduction in the crime rate. If we want to increase public safety, we must prevent these crimes from happening in the first place.
- There is no evidence that three strikes laws deter violent crime because most of these crimes are not premeditated.
- These laws tend to take a cookie-cutter, one-size-fits-all approach to crime, forcing judges to impose mandatory sentences regardless of the specific circumstances of each individual case. This is expensive and ineffective, clogging up our already overcrowded courts and prisons.
- The Fiscal Impact Report for HB54 states incarceration costs alone over the next 30 years could cause a general fund impact of \$55.3 million. This does not include significant additional costs for courts, district attorneys, and public defenders. There are better ways to spend this money if the goal is truly to increase public safety.

ADDITIONAL INFO: According to the LFC, roughly one-tenth of the state’s general fund spending is used for housing inmates and prison-related expenses, such as recidivism-reduction programming, inmate education, inmate health care, and maintenance.¹ Over the past five years, incarceration spending has hovered around \$300 million, with slightly more than 80 percent of that going to prison operations. New Mexico’s spending on inmate health care, which has increased almost 20 percent over the last decade, typically puts the state in the top 15 nationally.

¹ Legislative Finance Committee. 2015. “Finance Facts.” Retrieved: https://www.nmlegis.gov/Entity/LFC/Documents/Finance_Facts/finance%20facts%20corrections.pdf

Safer	Apolitical	Fiscally- Responsible	Evidence Based	Grade
<p>There is no evidence that three strikes laws deter violent crime because most of these crimes are not premeditated. This bill takes away judicial discretion in sentencing and requires the court to impose a sentence of life imprisonment.</p>	<p>In many ways, three strikes laws are the embodiment of a politically driven response to crime because they sound “tough on crime” and repeat offenders, but in fact do nothing to reduce crime. HB 54 would be incredibly expensive and ineffective, clogging up our already overcrowded courts and prisons.</p>	<p>The Fiscal Impact Report for HB54 states incarceration costs alone could cause a general fund impact of \$55.3 million, to say nothing of the costs to the courts, prosecutors, and public defenders. A significant percent of the corrections budget is spent on inmate health care. Increasing the number of inmates serving life sentences would exacerbate that problem as those inmates age.</p>	<p>There is no evidence that three strikes laws deter violent crime. There is evidence that three strikes laws dramatically increase costs and prison budgets.</p>	<p>F</p>

SB 263: SENTENCING LAW FISCAL IMPACT REPORTS FUND (A)

SPONSOR: Sen. Joseph Cervantes

SHORT TITLE: Sentencing Law Fiscal Impact Reports and Fund

SYNOPSIS OF BILL: Requires the New Mexico Sentencing Commission to generate fiscal impact statements for any legislative proposal that increases, decreases, or creates criminal penalties. Requires that an appropriation be made when such a law increases costs to the New Mexico Corrections Department. Creates a fund to finance laws that increase criminal penalties.

STRENGTHS: This is one of the smartest criminal justice reform proposals to be introduced during the 2017 legislative session. The legislative debate around crime is so politicized and emotional that clear-headed conversations around the fiscal impact of criminal sentencing bills is usually avoided or minimized. SB263 would cut through the political bluster by requiring policy makers to think through the best way to spend limited tax dollars on increasing public safety. If SB263 became law, it would foster a grounded conversation about the true impacts of new sentencing proposals, elevating the public dialogue around crime so that New Mexico policymakers can focus their full attention on finding effective, financially responsible ways to increase public safety in our communities. Dollars saved on over-politicized criminal sentencing bills could be redirected into programs that will actually make kids, families, police officers, and New Mexico communities in general safer.

WEAKNESSES: Ideally, the fiscal impact statements required by SB263 would also analyze the fiscal impact of increased criminal penalties on the courts, prosecutors, and public defenders. However, it should be noted that the fund created by SB 263 would be accessible by those entities.

ADDITIONAL INFO: The New Mexico Sentencing Commission could have additional expenses and human resources needs related to generating the fiscal impact statements in the first place. One improvement to the bill might be to allow the Criminal Justice Special Fund that the bill would create to fund these additional costs.

Safer	Apolitical	Fiscally- Responsible	Evidence Based	Grade
Increased penalties and incarceration have not had the intended effect of decreasing crime. SB263 will encourage legislators to fund evidence-based alternatives to incarceration that actually make New Mexicans safer.	SB263 would cut through the political bluster by requiring legislators to think through the best way to spend limited tax dollars on increasing public safety.	The New Mexico Sentencing Commission would be required to generate fiscal impact statements for all bills that would increase, decrease or create criminal penalties.	By fostering an honest conversation around the true costs of our criminal justice system, SB263 will encourage policy makers to opt for solutions grounded in evidence.	A

SB 115: SAFE SCHOOLS FOR ALL STUDENTS ACT (A)

SPONSOR: Senator Bill Soules

SHORT TITLE: Safe Schools for All Students ACT

SYNOPSIS OF BILL: 115 repeals and replaces New Mexico’s current bullying prevention statute. The bill mandates new reporting and monitoring protocols for instances of bullying as well as procedures for “progressive discipline” to address student behavior. Bullying is defined as severe, pervasive or persistent conduct that targets a student physically, electronically or verbally based on actual or perceived race, religion, color, national origin, ancestry, sex, sexual orientation, gender identity, spousal affiliation, physical or mental handicap, or other distinguishing characteristics.

STRENGTHS: STRENGTHS: The 2015 New Mexico Youth Risk and Resiliency Survey (NM-YRRS)¹ revealed that nearly 26 percent of students in the state, grades 9 through 12, were in a physical fight within the past year; 8.5 percent were in a physical fight on school property. Also within the past year, nearly 14 percent of those surveyed were bullied electronically, while 18 percent were bullied on school property.² Within the past 30 days of taking the survey, nearly 8 percent did not go to school because of safety concerns. The American Psychological Association (APA)³ reports that children who are bullied have lower academic achievement, lower self-esteem, and have higher levels of anxiety, depression, and loneliness. Children who are bullied are more likely to avoid school, drop out, attempt suicide, or a combination of the three.

ADDITIONAL INFO: Local school boards will have until July 1, 2018 to adopt bullying prevention policies focused on preventing bullying, outlining consequences, creating safe and anonymous reporting and additional measures to protect targets of bullying. Progressive discipline is defined as disciplinary action other than suspension or expulsion from school that is designed to correct and address the basic causes of a student’s specific misbehavior such as meeting with the student and their parents, reflective activities, counseling, anger management, health or mental health counseling, skill building activities, community service, in-school detention.

¹ NMYRRS. “2015 Risk Behavior Comparisons, New Mexico and United States. High School (Grades 9-12)” Retrieved: <http://www.youthrisk.org/tables/#/2015>

² NMYRRS. 2016. “2015 NM-YRRS Results: Bullying Against Youth.” YRRS Connections. 3(7). Retrieved: http://www.youthrisk.org/pdf/YRRS_Connections_December_2016.pdf

³ American Psychological Association. “Bullying.” Retrieved: [http://www.youthrisk.org/2APA - http://www.apa.org/topics/bullying/index.aspx](http://www.youthrisk.org/2APA-http://www.apa.org/topics/bullying/index.aspx)

Safer	Apolitical	Fiscally- Responsible	Evidence Based	Grade
<p>Studies have shown that adolescents who are bullied miss more school, show signs of poor school achievement, and report greater levels of anxiety and depression than their non-victimized peers. Studies have linked bullying to suicidal ideation.⁴ (van der Wal, de Wit, & Hirasig, 2003) The Safe Schools Act would provide measures to increase safety of students in schools.</p>	<p>Bullying prevention is a bi-partisan issue as bullying takes place in every school district in the state.</p>	<p>There is no appropriation included for SB 115 and school districts may incur costs implementing policies and reporting procedures.</p>	<p>A qualitative study of a school district that implemented the Safe Schools for All Students Act showed that Progressive Discipline “provides students with the means to understand and correct their behavior rather than just punish them for it.” (Baird, Steven 2014).</p>	<p>A</p>

⁴Van der Wal MF, de Wit CA, Hirasig RA. 2003. “Psychosocial health among young victims and offenders of direct and indirect bullying.” Pediatrics 111(6 Pt 1): 1312-7.

HB 115: YOUTHFUL OFFENDER TRANSFERS TO ADULT SENTENCE (D)

SPONSOR: Rep. Monica Youngblood

SHORT TITLE: Youthful Offender Transfers to Adult Sentence

SYNOPSIS OF BILL: Creates “dual sentencing” for youthful offenders found amenable to a juvenile disposition, requiring judges to nevertheless assign an adult sentence, which could subsequently be invoked at any time during the child’s juvenile disposition if the State alleges they violated “any condition of the stayed sentence” or committed “a new offense.”

STRENGTHS: In theory, the threat of an adult sentence is meant to encourage the juvenile’s engagement with the rehabilitation process for juveniles found “amenable” to juvenile treatment.

WEAKNESSES: The grounds for invoking an adult sentence, such as “violating conditions” or “committing a new offense” are extremely broad. Standard conditions can be very restrictive and a new offense could include a misdemeanor; the violation need not be a new “youthful offender” offense nor represent an unwillingness to succeed. Increasing the number of children who receive adult sanctions is contrary to the wisdom of United States Supreme Court doctrine and the entire foundation of New Mexico’s Delinquency Act, both of which recognize the unique vulnerabilities of children requiring a protective, treatment-based system. See *State v. Jones*, 2010-NMSC-012, ¶ 10, 148 N.M. 1, 9 (“We interpret this legislative history as evidence of an evolving concern that children be treated as children so long as they can benefit from the treatment and rehabilitation provided for in the Delinquency Act”). Under HB 115, an adult sanction could be invoked for “typical” teenage misbehavior. Juveniles found amenable to treatment but struggling with the process need more rehabilitative intervention, not adult prison.

ADDITIONAL INFO: Studies show no reduction in juvenile crime by giving children adult sentences, and indeed, reveal an increase in juvenile recidivism among children who do receive adult sentences.^{1; 2; 3} This concern is compounded by a risk that the most at-risk children are the most likely to receive adult sanctions, including children of color, who already represent a disproportionate number of incarcerated youth. Youth of color comprise 38% of the youth population in the U.S., yet comprise nearly 70% of those who are confined.⁴

¹ Jeffrey Butts. 2012. “Transfer of Juveniles to Criminal Court is Not Correlated with Falling Youth Violence.” New York: John Jay College of Criminal Justice Research and Evaluation Center. Retrieved: http://johnjayresearch.org/wp-content/uploads/2012/03/databit2012_05.pdf

² Jason Ziedenberg. 2011. “You’re An Adult Now: Youth in Adult Criminal Justice Systems.” DOJ - National Institute of Corrections. Retrieved: <http://www.njcn.org/uploads/digital-library/You're-An-Adult-Now-Youth-In-Adult-Criminal-Justice-Systems-Jason-Zeidenberg-NIC-Dec2011.pdf>

³ Annie E. Casey Foundation. 2011. “No Place for Kids: The Case for Reducing Juvenile Incarceration.” Retrieved: <http://www.aecf.org/resources/no-place-for-kids-full-report/>

⁴ The W. Haywood Burns Institute for Juvenile Justice, Fairness and Equity. “Fact Sheet.” Retrieved: <http://www.burnsinstitute.org/what-is-red/fact-sheet/>

Safer	Apolitical	Fiscally- Responsible	Evidence Based	Grade
<p>In a system often employing tactics of a carrot and a stick, the studies show the threat of this “stick” does nothing to deter crime, and by increasing recidivism rates, may even increase it. Children sent to adult prison just learn how to be tough and less inclined to function in our communities.</p>	<p>Approximately 29% of youthful offenders are found not amenable to treatment, and thus already receive adult sanctions. See FIR (CYFD reported numbers). This is a solution in search of a problem.</p>	<p>As noted in the Fiscal Impact Report, invoking the adult sanction requires a hearing with representation by counsel. Moreover, while it is difficult to anticipate an actual number, the cost of housing juveniles in prison is likely more expensive to the Corrections Department than the current resources committed to youthful offenders receiving treatment services from CYFD</p>	<p>The research in this area suggests no reduction in juvenile crime and an increase in juvenile recidivism, as well as a disproportionate impact on minority and at-risk youth.</p>	<p>D</p>

HB 116/SB 270: NO LOCAL ENFORCEMENT OF FED IMMIGRATION LAW (A)

SPONSOR: Rep. Patricia Roybal Caballero, Rep. Angelica Rubio, Sen. Linda Lopez

SHORT TITLE: No Local Enforcement of Fed Immigration Law

SYNOPSIS OF BILL: Prohibits law enforcement agencies in New Mexico from using state funds, equipment, personnel or resources and from accepting or using federal funds, equipment, personnel or resources for enforcing federal immigration laws.

STRENGTHS: There are many problems that arise when state and local police take on the task of enforcing federal immigration laws. Such practices encourage racial profiling against Hispanics, Asian-Americans and others, because officers will often assume these individuals are undocumented based on having an accent or how they look. Enforcement of federal immigration laws by local police also discourages undocumented immigrants from contacting law enforcement when they are the victims of crime, a dynamic that potentially puts everyone in greater danger. It's worth noting that immigrants tend to commit crimes at a much lower rate than native-born citizens of the United States.¹ Finally, law enforcement agencies are already underfunded. Passing HB116/SB270 would help ensure that state and local police focus their energies on addressing violent, serious crimes rather than on identifying and apprehending undocumented families who typically pose no threat to anyone.

ADDITIONAL INFO: A 2016 study published last year by the University of Chicago Press¹ interviewed 750 police chiefs and sheriffs from across the country. It found that most state and local law enforcement leaders see the enforcement of federal immigration laws by their officers as problematic. A majority of the chiefs and sheriffs who were interviewed emphasized the importance of gaining trust in immigrant communities. They noted that involving local law enforcement in federal immigration law enforcement damages that trust. Another study from the University of Chicago Press² found that while undocumented immigrants in sanctuary cities are generally willing to interact with police, those living in cities that partner with Immigration and Customs Enforcement are reluctant to do so. This study documented one particularly striking incident in which an undocumented immigrant tried to disrupt a carjacking by yelling at the perpetrator, but then ran off when the victim called the police because he was afraid that if he gave a statement as a witness he would be deported.

¹ Butcher, Kristin F. and Anne Morrison Piehl. 2007. "Why are Immigrants' Incarceration Rates so Low?" National Bureau of Economic Research. Retrieved: <http://www.nber.org/papers/w13229>

² Provine, Dorris Marie, Monica W. Varsanyi, Paul G. Lewis, and Scott H. Decker. 2016. Policing Immigrants: Local Law Enforcement on the Front Lines. Chicago: The University of Chicago Press.

³ Garcia, Angela S. 2016. Legal Passing: Navigating Undocumented Life and Local Immigration Law. Chicago: University of Chicago Press.

Safer	Apolitical	Fiscally- Responsible	Evidence Based	Grade
This bill will ensure that law enforcement agencies in New Mexico focus more of their time and energy on capturing dangerous criminals.	An underlying premise of this proposal incorporates a rejection of popular, politicized, inaccurate views that correlate undocumented immigrants with high rates of crime.	State and local law enforcement should not be wasting resources on enforcing federal immigration laws when they should be concentrating on stopping serious violent crime.	There is no evidence that such a law will do anything to increase public safety in New Mexico. On the contrary, available evidence suggests it has the opposite effect by discouraging undocumented immigrants from reporting crimes to police.	A

SB 278/HB 89: CANNABIS REVENUE AND FREEDOM ACT (A)

SPONSOR: Sen. Ortiz y Pino, Sen. Mimi Stewart, Rep. Bill McCamley, Rep. Javier Martinez

SHORT TITLE: Cannabis Revenue and Freedom Act

SYNOPSIS OF BILL: Establishes a comprehensive regulatory framework for the production, processing and sale of marijuana, marijuana items and industrial hemp. Allows adults 21 years and older to legally possess, cultivate, manufacture, and sell marijuana to an adult who is at least 21 years of age. Prohibits marijuana use in public places. Uses tax proceeds to fund public schools, treatment programs, public defenders, and pre-booking diversion programs run through district attorneys' offices.

STRENGTHS: The criminalization of marijuana stopped making sense a long time ago. The experience of eight other states and the District of Columbia with legalization makes it clear that it's time to enact this sensible reform. These bills will increase public safety while providing enormous economic benefits to our state. In states that criminalize marijuana, adolescents consistently say that it's easier for them to acquire marijuana than alcohol. In Colorado, where marijuana was legalized in 2012, fewer young people now use marijuana than they did in 2009, and they do so at a rate that is lower than the national average.¹ SB278 and HB89 also would help fund pre-booking diversion programs. In Seattle, similar programs have reduced recidivism rates by 60 percent. These bills will help address drug abuse by funneling tax revenue from the sale of marijuana into underfunded substance abuse treatment programs. Legalization of marijuana could also help address the well-documented racial disparity in marijuana-related arrests.² From a fiscal perspective, projections for legal marijuana sales in the first year in New Mexico are more than \$400 million dollars. With a proposed excise tax of 15%, this would generate in excess of \$60 million dollars in tax revenue. At a time when New Mexico is wrestling with a budgetary crisis, these bills could help dramatically improve the fiscal health of our state.

ADDITIONAL INFO: For more information on the potential economic benefits of marijuana legalization in New Mexico see "Legalization of Cannabis for Social Use: New Mexico Market Analysis," O'Donnell Economics and Strategy (2016), as well as "New Mexico and Industrial Hemp: Economic Opportunity for Our Future," One New Mexico (2015).

¹ See Healthy Kids Colorado Survey reports and other resources. <https://www.colorado.gov/cdphe/hkcs/reports>

² American Civil Liberties Union. 2013. "The War on Marijuana in Black and White." Retrieved: <https://www.aclu.org/report/report-war-marijuana-black-and-white?redirect=criminal-law-reform/war-marijuana-black-and-white>

Safer	Apolitical	Fiscally- Responsible	Evidence Based	Grade
<p>The current marijuana scheme based on prohibition is completely unregulated with no proof of age required at purchase, and no health and safety regulations. Legalizing and regulating marijuana is the most effective way to keep New Mexicans safer.</p>	<p>Polling suggests support for legalization cuts across all ideologies and political parties. In 2007, New Mexico passed a pioneering medical marijuana law that regulates marijuana production and sales at the state level. The program is working well and provides a working model for legalization to follow.</p>	<p>Projections for legal marijuana sales in the first year are more than \$400 million dollars. With a proposed excise tax of 15% this would generate in excess of \$60 million dollars in tax revenue. Furthermore, under prohibition, New Mexico wastes public safety resources dealing with marijuana violations when the focus should be on violent, serious crime.</p>	<p>Eight states and the District of Columbia have legalized marijuana for adults to use socially. Colorado has so much tax revenue coming in they have been able to fully fund schools and bullying-prevention measures.</p>	<p>A</p>

HB 75: LIMIT SCHOOL USE OF RESTRAIN AND SECLUSION (A)

SPONSOR: Rep. Jim Smith and Rep. Debbie Armstrong

SHORT TITLE: Limit School Use of Restraint and Seclusion

SYNOPSIS OF BILL: Prohibits New Mexico public schools from physically restraining or secluding students, except in emergency situations where it is necessary to protect a person from imminent physical harm. The bill would prohibit in all circumstances restraint of students involving the infliction of pain or injury, or the use of medications. School districts and charter schools will be required to report on their use of physical restraint and seclusion on an annual basis.

STRENGTHS: This bill is designed to prohibit the use of extreme measures designed to subjugate students with special needs, something we see happen far too often in New Mexico. (See “additional info” below.) The bill benefits from bipartisan sponsorship, a recognition that policymakers across the political spectrum understand that protecting the safety of special needs students in our public schools is something everyone should support. The bill’s requirement that clear and sensible policies be implemented in every New Mexico school district to address this issue could help save money in costly litigation. The primary source of information about restraint and seclusion practices in New Mexico has come through a combination of litigation and some high profile media accounts. At the national level, a 2014 ProPublica investigation¹ found that student restraint and seclusion was used more than 267,000 times in 2012. The study found that three-quarters of these instances involved using restrain and seclusion on students with disabilities. In a broader sense, protecting educational access and safety for special needs students is crucial because of the strong correlation between low educational achievement and incarceration. The reporting requirement included in the bill should help us get a fuller understanding of restraint and seclusion, and how widespread these practices are in schools throughout New Mexico. This can help guide sensible policy making in the future.

ADDITIONAL INFO: Several instances of abuse of special needs students have occurred in recent years in New Mexico schools, resulting in numerous lawsuits. In 2010, a surveillance camera caught a teacher and educational assistant in Albuquerque slamming a student into a wall. In 2011, teachers handcuffed a 50-pound autistic second-grader to a chair. When the boy’s mother arrived at the school, he was still handcuffed to the chair, crying. This issue ties into a larger problem, sometimes called “the school-to-prison pipeline,” in which students are not just overdisciplined but are actually channeled into the criminal justice system for behavioral issues, many of which are quite minor. An example of this occurred in 2011, when an Albuquerque seventh-grader was arrested for belching in class.

¹ Vogell, Heather. 2014. “Violent and Legal: The Shocking Ways School Kids are Being Pinned Down, Isolated Against Their Will.” ProPublica and NPR. Retrieved: <https://www.propublica.org/article/schools-restraints-seclusions>

Safer	Apolitical	Fiscally- Responsible	Evidence Based	Grade
<p>This bill is designed to prohibit the use of extreme measures designed to subjugate students with special needs, something we see happen far too often in New Mexico.</p>	<p>The bill benefits from bipartisan sponsorship, a recognition that policymakers across the political spectrum understand that protecting the safety of special needs students in our public schools is something everyone should support.</p>	<p>The bill's requirement that clear and sensible policies be implemented in every New Mexico school district to address this issue could help save money in costly litigation.</p>	<p>Numerous stories of abuse of students with special needs by teachers have cropped up over the years in New Mexico. Studies show that it's a nationwide problem. The reporting requirement included in the bill should help us get a fuller understanding of restraint and seclusion, and how widespread these practices are in schools throughout New Mexico.</p>	<p>A</p>

SB 216: PAROLE BOARD PROCEDURES (A)

SPONSOR: Sen. Bill O’Neill

SHORT TITLE: Parole Board Procedures

SYNOPSIS OF BILL: This bill shifts the burden of proof in parole proceedings for inmates that have been sentenced to life imprisonment. Current law requires the parole board, after the inmate has served 30 years, to 1) hold a parole hearing; 2) consider certain information related to the crime for which they were convicted; and 3) before recommending parole, make a finding that parole is in the best interests of the inmate and society in general. SB 216 says that after 30 years, the inmate “shall be paroled” unless the inmate is unwilling or unable to fulfill the obligations of a law-abiding citizen. In making that determination, SB 216 clarifies that parole may not be denied solely on the fact that the inmate intentionally took the life of another person.

STRENGTHS: This bill seeks to address rapid growth in the prison population by potentially paroling more inmates that have already served 30 years or more of their life sentence. According to their 2016 legislative report, NMCD will experience growth of 1.2% in the male and 15.6% in the female population in FY17 over FY15 and NMCD will be at 98% capacity by July 2016.

This bill also seeks to address skyrocketing healthcare costs for aging inmates. According to the 2015 Legislative Finance Committee Report on Corrections, spending on inmate healthcare has increased almost 20 percent in the last decade, and New Mexico is typically in the top 15 nationally on inmate health care. By reducing the number of aging inmates, this legislation may bring down inmate health care costs.

This bill also would decrease corrections spending generally by paroling more inmates instead of continuing to incarcerate older inmates many of whom do not pose a danger to society anymore. LFC states that New Mexico spends approximately 10% of its budget on corrections. A prisoner serving time costs New Mexico \$100 per day while a parolee under the most stringent supervision costs \$20 per day.

Safer	Apolitical	Fiscally- Responsible	Evidence Based	Grade
This bill has the potential for dramatic savings to the State of New Mexico which should be redistributed to fund strategies proven to address crime long-term (i.e., early childhood education, substance abuse treatment, behavioral health services, etc.).	N/A	Healthcare costs for inmates are skyrocketing and New Mexico prisons are at or near capacity. This legislation may reduce the number of incarcerated inmates, particularly older inmates that have served 30 years of their sentence	Corrections and LFC data shows 1) New Mexico needs to reduce its prison population; 2) New Mexico needs to spend less on inmate health care; and 3) parole costs significantly less than incarceration. Studies also show that post-release arrests decrease as an individual ages, so after serving 30 years of a life imprisonment sentence, inmates should have the chance to be paroled because they will often pose little threat in returning to society.	A

HJM 2: NATIVE AMERICAN SENTENCING DISPARITY (B)

SPONSOR: Representative Debbie Rodella

SHORT TITLE: Native American Sentencing Disparity

SYNOPSIS OF BILL: Requests Congress to enact legislation addressing the disparity between federal and state court criminal sentences and the disparate effect on Native Americans and people of color.

STRENGTHS: One of the strengths of this legislation is that it seeks to change the conversation around criminal justice reform by addressing racial inequity in sentencing. Because federal courts often exercise jurisdiction over cases involving Native Americans on tribal lands, Native Americans are disproportionately represented in the federal criminal court system. Native American offenders account for a small but increasing portion of federal offenders, up by 18.2% over the last five years.¹ Federal courts often have longer sentences and stricter mandatory minimums than state courts, which suggests Native Americans may be disproportionately affected.

WEAKNESSES: Despite a widespread perception of sentencing disparity, data from federal courts does not show a disparity in sentencing within the federal court system. This legislation seeks a comparative analysis of federal sentencing to state sentencing. However, there is a need for better data collection within state courts, particularly for Native American defendants; therefore it is difficult to accurately compare federal and state court sentences for Native Americans. By seeking to standardize federal sentences with state sentences, there is also a danger that 1) states with sentencing guidelines harsher than the federal system may have the unintended effect of making all sentences harsher; and 2) using state sentences as a starting point may diminish tribal sovereignty by undermining the federal trust responsibility to Indian tribes.

ADDITIONAL INFO: In 2015, the U.S. Sentencing Commission created the Tribal Issues Advisory Group. One of the stated purposes of the TIAG was to determine: “whether there are disparities in the application of the federal sentencing guidelines to American Indian defendants, and, if so, how to address them; [and] the impact of the federal sentencing guidelines on offenses committed in Indian Country in comparison with analogous offenses prosecuted in state courts and tribal courts.” In its report to the U.S. Sentencing Commission, the Group acknowledged a widespread perception of disparity in sentencing, but concluded that sentencing data does not currently exist that would allow for a meaningful analysis of sentencing disparity. TIAG recommended “federal agencies and the states should capture more and better criminal sentencing data to enable comprehensive and meaningful comparisons between sentencing systems, and doing so would advance the federal government’s trust responsibility to Indian tribes and nations” (Report of the Tribal Issues Advisory Group, May 16, 2016 available below).

¹ United States Sentencing Commission. Tribal Advisory Group. 2015. “Consultation Materials.” Retrieved: http://www.ussc.gov/sites/default/files/pdf/advisory-groups/tribal-issues-advisory-group/20150707_Consultation_Materials.pdf

Safer	Apolitical	Fiscally-Responsible	Evidence Based	Grade
<p>If the effect of the requested legislation were to in fact reduce lengthy federal sentences and restore discretion to the courts by abolishing mandatory minimums, the savings cost could be reallocated to prevention strategies with proven results (i.e. education, healthcare, job training)</p>	<p>N/A</p>	<p>If the legislation proposed by this memorial were in fact to reduce lengthy sentences through diversion and other mechanisms at the federal level, this would have a positive fiscal impact on the federal court system.</p>	<p>Unfortunately the data is not strong enough to accurately analyze sentencing disparities in federal court versus state court for Native Americans. This points to a general need at the state and local level for better data collection within the criminal justice system. Absent the data to make this argument, reducing federal sentences and doing away with mandatory minimums would not address the root issues this memorial seeks to address.</p>	<p>B</p>

HB 306: INTERVENTIONS FOR SOME NON-VIOLENT OFFENDERS (A)

SPONSOR: Representatives Sheryl Williams Stapleton, Liz Thompson, Deborah Armstrong, and Christine Trujillo

SHORT TITLE: Interventions for Some Non-Violent Offenders

SYNOPSIS OF BILL: Requires the Behavioral Health Services Department to “create a framework of targeted, individualized interventions” for non-violent adult and juvenile offenders with behavioral health diagnoses. That framework should work to reduce recidivism, detention and incarceration through strategies such as supportive housing, public assistance, behavioral health therapy, medical assistance and employment training.

STRENGTHS: Arresting and incarcerating non-violent people with mental health needs is costly and highly ineffective. This legislation is a great example of a bill that acknowledges root causes of arrest and incarceration, such as lack of appropriate mental health and substance abuse treatment, and seeks to reduce recidivism through proven strategies addressing the underlying issues. According to Bureau of Justice Statistics,¹ people with mental health needs make up a significant portion of the United States incarcerated population, including 56% of state prisoners, 45% of federal prisoners, and 64% of jail inmates. Proven strategies for reducing recidivism and incarceration for people with mental health needs include:

- Diversionary mechanisms, such as mental health courts, that route mentally ill offenders to community-based mental health treatment programs instead of prison or jail;
- Community-based reentry programs providing coordinated services and case management for mentally ill offenders transitioning into the community; and
- Policies that provide mentally ill offenders with increased access to medical and mental health care.

See below for more information.²

Case studies of effective programs already in existence show that transitional planning of coordinated services for people with substance use and mental health treatment needs reduces recidivism and improves health outcomes.³

¹ U.S. Department of Justice. Office of Justice Programs. 2006. Bureau of Justice Statistics Special Report Retrieved: <https://www.bjs.gov/content/pub/pdf/mhppji.pdf>

² Kim, KiDeuk, Miriam Becker-Cohen, and Maria Serakos. 2015. “The Processing and Treatment of Mentally Ill Persons in the Criminal Justice System.” Urban Institute Retrieved: <http://www.urban.org/research/publication/processing-and-treatment-mentally-ill-persons-criminal-justice-system>

³ Cloud, David and Chelsea Davis. 2013. “Treatment Alternatives to Incarceration for People with Mental Health Needs in the Criminal Justice System: The Cost-Savings Implications.” Vera Institute for Justice. Retrieved: <https://www.vera.org/publications/treatment-alternatives-to-incarceration-for-people-with-mental-health-needs-in-the-criminal-justice-system-the-cost-savings-implications>

Safer	Apolitical	Fiscally- Responsible	Evidence Based	Grade
<p>A significant portion of our incarcerated population has mental health needs. Often people with untreated mental illness face a cycle of arrest, recidivism, and incarceration. This bill has the potential to significantly reduce crime over the long-term by investing in proven strategies for people with mental health needs.</p>	<p>N/A</p>	<p>The real issue is whether our state will invest in proven strategies such as behavioral health therapy, substance abuse treatment, supportive housing and employment training, or will we continue to try to solve deep societal issues through incarceration. Although such strategies require initial investment, over the long term they lower costs to society and reduce crime. Given the financial situation of the State, this program is unlikely to be fully funded without shifting resources away from another source.</p>	<p>Examples of successful, evidence-based programs for people with mental health needs exist throughout the country. New Mexico can choose from a variety of proven models for service delivery, but the choice requires thinking about the criminal justice system in a different way</p>	<p>A</p>

HB 175/SB 185: ISOLATED CONFINEMENT ACT (A)

SPONSOR: Rep. Antonio “Moe” Maestas, Rep. Patty Lundstrom, Rep. Elizabeth “Liz” Thomson, Sen. Mary Kay Papen

SHORT TITLE: Isolated Confinement Act

SYNOPSIS OF BILL: Defines solitary confinement as confining a prisoner in a cell for 22 or more hours per day or “with minimal meaningful interaction with another person and limited or no opportunities to participate in educational, vocational or rehabilitative programs.” Bans the use of solitary confinement on children, pregnant women and prisoners with a serious mental illness. Requires all detention facilities in New Mexico to report on their use of solitary confinement.

STRENGTHS: Decades of research have shown that confining prisoners in conditions of isolation generally has an extremely negative impact on their mental health.¹ According to one report, “[n]early every scientific inquiry into the effects of solitary confinement over the past 150 years has concluded that subjecting an individual to more than 10 days of involuntary segregation results in a distinct set of emotional, cognitive, social, and physical pathologies.”² Solitary confinement is also considerably more expensive than less restrictive housing and safe alternatives to this dangerous practice have been developed.³ Yet New Mexico continues to overuse and misuse solitary confinement on a regular basis. Our state seems to experience more high-profile instances of prisoners being placed in solitary confinement under horrendous conditions than other states, and the resulting litigation is costing us dearly. A particularly notorious example occurred when former prisoner Stephen Slevin was awarded \$22 million after being placed in solitary confinement in the Doña Ana County Detention Center for almost two years. He settled for \$15.5 million on appeal. This was one of the highest settlements in a prisoner rights case in the history of the United States. Unfortunately, this type of high-dollar solitary confinement settlement occurs regularly in New Mexico.

ADDITIONAL INFORMATION: A report released last year by the Marshall Project found that New Mexico has the fourth highest percentage of prisoners in solitary confinement of any state in the country. It’s worth noting that New Mexico is one of the few states in which the county jail population is often roughly equal to the state prison population. In addition, county jails often cater to a prison population with a very high incidence of mental illness. For this reason, perhaps, some of the most shocking examples of solitary confinement occur in jails.

¹ See, for example, Stuart Grassian. 2006. “Psychiatric Effects of Solitary Confinement.” *Washington University Journal of Law and Policy* 22(1) Pp 325-383. Retrieved: http://openscholarship.wustl.edu/cgi/viewcontent.cgi?article=1362&context=law_journal_law_policy

² Cloud David H., Ernest Drucker, Angela Browne, and Jim Parsons, “Public Health and Solitary Confinement in the United States.” *American Journal of Public Health* 105(1): 18–26. Retrieved: <https://www.ncbi.nlm.nih.gov/pmc/articles/PMC4265928/>

³ Shames, Alison, Jessica Wilcox, and Ram Subramanian. 2015. “Solitary Confinement: Common Misconceptions and Emerging Safe Alternatives,” Vera Institute for Justice. Retrieved: <https://www.vera.org/publications/solitary-confinement-common-misconceptions-and-emerging-safe-alternatives>

Safer	Apolitical	Fiscally- Responsible	Evidence Based	Grade
<p>Solitary confinement is regularly used as a short-term fix for prisoner management issues. In the long-term, it makes both our detention facilities and our communities less safe. HB175 is necessary to regulate the misuse and overuse of solitary confinement in New Mexico.</p>	<p>N/A</p>	<p>Solitary confinement is considerably more expensive than less restrictive housing. New Mexico also regularly pays out millions of dollars in legal settlements brought by former prisoners who were placed in solitary confinement.</p>	<p>Overwhelming research indicates that solitary confinement has a dramatically negative effect on prisoners’ mental health, especially on vulnerable prison populations. (See “Keeping Vulnerable Populations Safe Under PREA: Alternative Strategies to the Use of Segregation in Prisons and Jails,” Allison Hastings, Angela Browne, Kaitlin Kall, and Margaret DiZerega, National PREA Resource Center, 2015.) With upwards of 90 percent of New Mexico prisoners eventually being released back into our communities, it makes sense to place sensible restrictions on this dangerous practice.</p>	<p>A</p>

SB 292: UNIFORM COLLATERAL CONSEQUENCES OF CONVICTION (A)

SPONSOR: Senator Joseph Cervantes

SHORT TITLE: Uniform Collateral Consequences of Conviction

SYNOPSIS OF BILL: Adopts the basic scheme of the Uniform Collateral Consequences of Conviction Act (UCCCA); requires inventory of statutes imposing collateral consequences; requires a generalized notice to defendants in criminal cases of the concept of such consequences; regulates the effects of out-of-state convictions and extensions of relief; provides for an Order of Limited Relief that permits the sentencing court to issue an order mitigating sanctions relating to employment, education, housing, public benefits, and occupational licensure.

STRENGTHS: Millions of Americans are impacted by a complex web of literally thousands of statutes, rules, and regulations that govern many aspects of life for people with a criminal record. These rules often combine to create permanent barriers for people that have long ago paid their debt to society. It is next to impossible for any individual defense attorney or court, let alone defendant, to completely grasp the extent to which a person may be impacted by a criminal record in their life. By creating a system of barriers, collateral consequences have the effect of marginalizing and punishing entire families and communities through limited access to meaningful employment, adequate housing, occupational licenses, volunteer opportunities, and educational opportunities.

- Approximately 1 in 3 adults, or 65 million Americans, has a criminal record.¹
- New Mexico has the fourth highest rate of incarcerated or formerly incarcerated parents.²
- Collateral Consequences have become more pervasive and more problematic in the past 20 years for three reasons: they are more numerous and impactful, they affect more people, and they are harder to avoid or mitigate. As a result, millions of Americans are consigned to a kind of a permanent legal limbo because of a crime they committed in the past.³

ADDITIONAL INFO: In 2013, Senator Cervantes sponsored a version of the UCCCA (SB 158) which passed unanimously through the House and Senate. Governor Martinez vetoed the unanimous vote of the legislature, stating in her veto message “Senate Bill 158 is an attempt by trial attorneys to not only erode public safety and judicial precedent, but also to profit from increased court filings.”

¹ Natividad Rodriguez, Michelle and Maurice Emsellem. 2011. “265 Million Need Not Apply.” National Employment Law Project. Retrieved: http://nelp.3cdn.net/e9231d3aee1d058c9e_55im6wopc.pdf

²The Annie E. Casey Foundation. 2016. “A Shared Sentence: The Devastating Toll of Parental Incarceration on Kids, Families and Communities.” Retrieved: <http://www.aecf.org/resources/a-shared-sentence/>

³See National Inventory of the Collateral Consequences of Conviction, Council of State Governments, <https://niccc.csgjusticecenter.org/>.

Safer	Apolitical	Fiscally- Responsible	Evidence Based	Grade
<p>Reduced recidivism and increased access to housing, education, and employment opportunities make communities safer. Collateral consequences of a criminal record impact not only individuals, but also their entire families and communities.</p>	<p>The unintended consequences of decades of “tough on crime” policies have resulted in a complex web of rules and regulations that effectively create permanent barriers to employment, housing, and education for people with a criminal record. Entire families and communities are affected when people are branded with a permanent criminal record.</p>	<p>The costs of housing people in New Mexico’s prisons and jails are well documented. The societal costs of the impacts that result from having a criminal record are not as well documented or understood. By creating an inventory of collateral consequences, this bill will help us better understand the fiscal impacts of a criminal record on individuals, families, and communities.</p>	<p>New Mexico struggles with recidivism rates like many other states.¹ However, studies show that it is possible to reduce recidivism statewide, partly by addressing employment and education.² The Orders of Limited Relief proposed in this bill provide opportunities to work, study, and become licensed in certain occupations. This bill not only helps people understand the consequences of a criminal record, it has the potential to reduce recidivism through access to employment, housing and education.</p>	<p>A</p>

¹<http://nmsc.unm.edu/reports/2015/understanding-recidivism-definitions-and-return-to-prison-rates-for-individuals-released-from-newmexico-prisons-fy-2007fy-2011.pdf>.

²https://csgjusticecenter.org/wp-content/uploads/2014/06/ReducingRecidivism_StatesDeliverResults.pdf.

SB 116: MEDICAL OR GERIATRIC PAROLE (A)

SPONSOR: Senator Gerald Ortiz y Pino

SHORT TITLE: Medical or Geriatric Parole

SYNOPSIS OF BILL: Creates a streamlined parole process for geriatric, physically incapacitated and terminally ill prisoners; removes authority from the Adult Parole Board to administer parole for such inmates and places it in the New Mexico Corrections Department's Probation and Parole Division; sets forth criteria for determining eligibility.

STRENGTHS: New Mexico should not waste state resources on incarcerating prisoners who do not pose a significant threat to public safety in New Mexico. SB116 is designed to address this problem in the context of elderly, physically incapacitated and terminally ill patients who pose little threat to anyone yet cost much more than younger prisoners to incarcerate. The tough-on-crime policies so popular in the 1980s and 1990s – including mandatory sentencing and three strikes laws – have now led to a dramatic nationwide increase in elderly prisoners, and these prisoners are very expensive to maintain. In particular, corrections departments across the country indicate that the cost of providing health care to elderly prisoners is four to eight times what it costs for younger prisoners.¹ Research has conclusively shown that before age 50 most people have outlived the time period in which they are most likely to commit crimes. Elderly prisoners are rarely dangerous, and for this reason it makes sense to release prisoners who serve no or little threat to New Mexico communities.²

ADDITIONAL INFO: According to a 2016 analysis from the New Mexico Sentencing Commission, New Mexico prisons house 159 prisoners who are 65 years of age or older and 529 prisoners between the ages of 55 and 64. Data from the Legislative Finance Committee (LFC) suggests that releasing prisoners who are 65 years of age or older could save the New Mexico Corrections Department's budget \$7.1 million. That said, as the New Mexico Corrections Department notes in the Fiscal Impact Report for SB116, there would likely be some expenses accrued by the Department in administering the requirements of this bill should it become law.

¹ Michael Ollove. 2016. "Elderly Inmates Burden State Prisons." The Pew Charitable Trust. Retrieved:

<http://www.pewtrusts.org/en/research-and-analysis/blogs/stateline/2016/03/17/elderly-inmates-burden-state-prisons>

² Hirschi, Travis and Michael Gottfredson. 1993. "Age and the Explanation of Crime." American Journal of Sociology 89 (1): pp. 552-584. Retrieved: <http://troublesofyouth.pbworks.com/f/age+and+the+explanation+of+crime+-+Hirschi+and+Gott.pdf>

Safer	Apolitical	Fiscally- Responsible	Evidence Based	Grade
<p>New Mexico spends millions of dollars incarcerating elderly prisoners who likely pose little or no threat to our communities. That money would be better spent on behavioral health services, substance abuse programs, etc., that are more effective at reducing crime.</p>	<p>N/A</p>	<p>According to a 2016 report from the Pew Charitable Trusts, corrections departments across the country indicate that it costs them four to eight times more to provide health care to elderly prisoners than to younger prisoners. By paroling prisoners over age 64, up to \$7.1 million could be saved from the New Mexico Corrections Department’s budget. According to the LFC, New Mexico is among the top 15 states nationally in the amount it spends on prisoner healthcare, partly because of its aging inmate population to the LFC.</p>	<p>Research conclusively indicates that the likelihood of a person committing a crime decreases dramatically with age. Elderly prisoners are simply less likely to be dangerous should they be paroled.</p>	<p>A</p>

HB 505: EXPUNGEMENT OF CRIMINAL RECORDS (A)

SPONSOR: Representative Antonio Maestas

SHORT TITLE: Expungement of Criminal Records

SYNOPSIS OF BILL: Creates the Criminal Records Expungement Act which would allow a petitioner to have public access restricted to certain arrest records, including records involving identity theft or for wrongful arrest, indictment or charge. When a person has been released without conviction for an ordinance violation, misdemeanor, or felony charge, they may petition for expungement one year after dismissal. A person convicted of no more than one misdemeanor or ordinance violation may petition for expungement after five years if there are no other charges or proceedings, unless the conviction was for domestic violence or abuse (which requires ten years before expungement is allowed). HB 505 creates certain exceptions for crimes against children, sex offenses, and DUIs. If granted, expungement allows the petitioner to respond to an inquiry that “no record exists.”

STRENGTHS: Millions of Americans are impacted by a complex web of literally thousands of statutes, rules, and regulations that govern many aspects of life for people with a criminal record. These rules often combine to create permanent barriers for people that have long ago paid their debt to society. New Mexico is one of only a handful of states¹ that do not allow any real criminal records expungement for adults (there is a technical exception for a misdemeanor charge where no record of the disposition of the case may be found). Collateral consequences have the effect of marginalizing and punishing entire families and communities through limited access to meaningful employment, adequate housing, occupational licenses, volunteer opportunities, and educational opportunities.

- Approximately 1 in 3 adults, or 65 million Americans, have a criminal record.²
- New Mexico has the fourth highest rate of incarcerated or formerly incarcerated parents.³
- Collateral Consequences have become more pervasive and more problematic in the past 20 years for three reasons: they are more numerous and impactful, they affect more people, and they are harder to avoid or mitigate. As a result, millions of Americans are consigned to a kind of a permanent legal limbo because of a crime they committed in the past.⁴

Safer	Apolitical	Fiscally- Responsible	Evidence Based	Grade
Reduced recidivism and increased access to housing, education and employment opportunities make communities safer. Collateral consequences of a criminal record impact not only individuals, but their entire families and communities.	Three pieces of expungement legislation in the last ten years have passed both chambers with broad, bipartisan support. Each bill was vetoed by the Governor (Richardson vetoed SB 599 in 2007; Martinez vetoed SB2 in 2012, and SB294 in 2013). The legislation is apolitical; the veto response thus far from both governors has been politically driven to demonstrate a “tough on crime” mentality.	The FIR correctly points out that additional funding for the courts may be required due to an increase in hearings for people seeking expungement, although the office of the Public Defender would likely play no role in expungement hearings. The more relevant fiscal analysis should focus on the increased opportunity for employment, housing, and education that expungement would bring for many people and their families in New Mexico.	Employers routinely use criminal background checks as part of the hiring process. ⁵ Despite guidance from the EEOC ⁶ that blanket bans on hiring people with criminal records are per se discriminatory under Title VII of the Civil Rights Act, these bans by employers are commonplace. ² Studies show that providing individuals the opportunity for stable employment actually lowers crime recidivism rates and thus increases public safety. ²	A

¹ Love, Margaret. 2017. "State Comparison Judicial Expungement, Sealing, and Set-aside." NACDL Restoration of Rights Projects, Collateral Consequences Resource Center.

Retrieved: <http://ccresourcecenter.org/state-restoration-profiles/50-state-comparison-judicial-expungement-sealing-and-set-aside/>

² Natividad Rodriguez, Michelle and Maurice Emsellem. 2011. "65 Million Need Not Apply." National Employment Law Project. Retrieved: http://nelp.3cdn.net/e9231d3aee1d058c9e_55im6wopc.pdf

³ The Annie E. Casey Foundation. 2016. "A Shared Sentence: The Devastating Toll of Parental Incarceration on Kids, Families and Communities." Retrieved: <http://www.aecf.org/resources/a-shared-sentence/>

⁴ National Inventory of the Collateral Consequences of Conviction, Council of State Governments, <https://niccc.csgjusticecenter.org/>.

⁵ Society of Human Resources Management Background Checking. 2012. "The Use of Criminal Background Checks in Hiring Decisions." Retrieved: <https://www.shrm.org/hr-today/trends-and-forecasting/research-and-surveys/pages/criminalbackgroundcheck.aspx>

⁶ U.S. Equal Employment Opportunity Commission. 2012. "EEOC Enforcement Guidance." Retrieved: https://www.eeoc.gov/laws/guidance/arrest_conviction.cfm

SB 47: FURTHER OVERDOSE ASSISTANCE IMMUNITY (A)

SPONSOR: Senator Richard Martinez

SHORT TITLE: Further Overdose Assistance Immunity

SYNOPSIS OF BILL: This bill would protect people seeking medical assistance for a drug or alcohol overdose from suffering legal consequences, including potential violations of probation or parole or restraining orders. It also extends the law to protect people who report the alcohol or drug overdose of another person, or who are assisting an individual who is overdosing.

STRENGTHS: New Mexico has had the highest drug overdose rate in the nation for most of the last two decades. In 2014, New Mexico’s rate from overdoses was actually twice the national average. Approximately 70 percent of overdose deaths in New Mexico involve use of either opioid pain relievers or heroin.¹ This bill will help alleviate this crisis by ensuring that New Mexicans experiencing an overdose – or who are with someone experiencing an overdose – will be shielded from legal repercussions. This is important because the most common reason people give for not requesting help during a drug overdose is fear of law enforcement involvement.² Although New Mexico law already provides some immunity in such circumstances, this bill would expand on it, thereby encouraging people to request medical assistance when it is most needed.

ADDITIONAL INFO: New Mexico was the first state to pass a 911/Good Samaritan law in 2007. According to the National Conference of State Legislatures, 37 states and the District of Columbia have enacted some form of a “Good Samaritan” or 911 drug immunity law, designed to encourage people to seek emergency medical care for an overdose. The New Mexico Department of Health states that an average of almost 500 New Mexicans died from drug overdoses and almost 50 died from alcohol overdoses between 2011 and 2015. On a bright note, however, the Department also notes that drug overdose deaths in New Mexico declined in 2015 in two-thirds of the state’s 33 counties.

¹ Drug Policy Alliance. 2016. “New Mexico’s Drug Overdose Death Epidemic: Understanding the Problem and Finding a Way Out of the Crisis.” Retrieved: http://www.drugpolicy.org/sites/default/files/NM_OverdoseBrief_053116.pdf

² Davidson, Peter J., Kristen C. Ochoa, Judith A. Hahn, Jennifer L. Evans, and Andrew R. Moss. 2002. “Witnessing Heroin-related Overdoses: The Experiences of Young Injectors in San Francisco.” *Society for the Study of Addiction* 97(12): 1511–1516. Retrieved: http://lib.trinity.edu/research/citing/Chicago_Author_Date_16th_ed.pdf

Safer	Apolitical	Fiscally- Responsible	Evidence Based	Grade
<p>The drug overdose rate in New Mexico is a crisis that must be addressed. This bill would help confront this problem by assuring that those in need of help will request it without fear of legal repercussions.</p>	<p>SB47 recently passed the New Mexico Senate unanimously.</p>	<p>This bill would essentially cost the state of New Mexico no money, but could save hundreds of lives. In fact, there may be savings from not arresting people seeking medical assistance.</p>	<p>During a drug overdose, the most common reason people don't call for help is fear of law enforcement involvement. Initial results from an evaluation of Washington State's Good Samaritan law, adopted in 2010, found that 88 percent of people who use opioids said they would be more likely, and less afraid, to call 911 in the event of a future overdose after learning about the law. The provision protecting from violation of restraining order is in two state laws: GA and VT. The provision protecting from parole violations is in five state laws: NJ, VT, GA, MN, and PA.</p>	<p>A</p>

SB 258: DECREASING MARIJUANA PENALTIES (A)

SPONSOR: Sen. Joseph Cervantes

SHORT TITLE: Decreasing Marijuana Penalties

SYNOPSIS OF BILL: Decreases the penalties on possession of marijuana and possession of drug paraphernalia charges. For less than 1 ounce: \$50 penalty assessment; for 1 to 4 ounces: petty misdemeanor; for 4 to 8 ounces: misdemeanor; for over 8 ounces: fourth degree felony. Possession of drug paraphernalia: \$50 penalty assessment.

STRENGTHS: These charges will be more efficiently handled in the court system and will be more cost effective for the courts and the public defender's office. Penalty assessments require substantially less court time; a person can pay the fee and not have a court hearing. Public Defenders are not appointed to penalty assessment cases because there is no jail time attached to the charge and petty misdemeanors do not require an automatic jury trial; one must be demanded by the defendant.

ADDITIONAL INFO:

- New Mexicans want to see criminal justice resources spent more wisely. Our state spends more than \$5 million per year on marijuana possession arrests. This does not include costs associated with prosecution and incarceration. Fifty-seven percent of New Mexico's voters favor (37% oppose) reducing the penalty for adult possession of a small amount of marijuana for personal use from a misdemeanor crime to a civil penalty with smaller fines and no jail time. (Research and Polling, Inc., January 2013).
- New Mexico's current marijuana laws lead to unequal treatment depending on location. In 2012, there were 3,190 marijuana possession arrests. Marijuana possession arrest rates vary widely throughout the state, based in part on marijuana-use levels as well as local enforcement policies. Dona Ana, Chaves, Sandoval, San Juan and Bernalillo counties led the state in the number of arrests for marijuana possession, collectively representing 63% of New Mexico's total number of possession arrests (2,055). Dona Ana County alone represented 28% of the state's total (901 possession arrests). (Uniform Crime Reporting Program Data).
- Federal research has clearly established that teen usage does not increase where marijuana penalties are reduced. Studies show that states that have removed the possibility of jail time for marijuana possessions do not see an increase in teen marijuana use. (The Substance Abuse and Mental Health Services Administration)
- Reduced penalties are already in effect in a number of states. No state that has reduced penalties for minor possession has ever decided to return to increased penalties. As of today, over 120 million people, or one third of the U.S. population, live in jurisdictions where marijuana has been essentially decriminalized – meaning there is no jail time associated with possession. Nearly 60% of the U.S. population now lives in states that have legalized some form of marijuana use and sales, illustrating the rising acceptance of cannabis nationwide and highlighting the industry's immense potential for future growth. (Drug Policy Alliance)

Safer	Apolitical	Fiscally- Responsible	Evidence Based	Grade
<p>By decreasing penalties for Marijuana possession, the court system can focus on more severe crimes and those that take more time and resources.</p>	<p>N/A</p>	<p>This bill will reduce costs for the courts and the public defender's office.</p>	<p>According to the Administrative Office of the Courts, there were 2,100 possession of marijuana (one ounce or less) cases filed in the magistrate and metropolitan courts in 2016, which were not related to any DWI, domestic violence, or felony charges. There were 3,660 cases of use or possession of drug paraphernalia, which were not attached to DWI, domestic violence or felony charges. By treating these low level charges as penalty assessments, the courts, public defenders, and prosecutors will see significant savings in time and resources.</p>	<p>A</p>

HB 428: REVISE CERTAIN CRIMINAL PENALTIES (A)

SPONSOR: Rep. Antonio Maestas

SHORT TITLE: Revise Certain Criminal Penalties

SYNOPSIS OF BILL: Currently, the default penalty for a traffic misdemeanor is up to 90 days in jail. The Traffic Code also contains some provisions specifically punishable as either a petty misdemeanor (up to six months in jail) or full misdemeanor (up to 364 days). Such charges may also require appearances in court, even to accept responsibility. HB 428 would remove the possibility of incarceration for a range of Traffic Code infractions, including expired registration, not having one's driver's license in one's "immediate possession," displaying "specialty" license plates without qualification, jaywalking, proper use of sidewalks, and "coasting" on a downhill slope, among others. HB 428 reclassifies these as "special penalty misdemeanors" subject only to a monetary fine. The amount of the fine depends on the nature of the infraction. Meanwhile, HB 428 would remove failure to pay a penalty assessment as grounds for suspending one's driver's license.

STRENGTHS: This bill prioritizes courtroom and jail resources to violations of the Criminal Code over extremely minor traffic infractions. Currently, any charge carrying potential jail time qualifies individuals for Public Defender representation, if otherwise eligible. HB 428 thus refocuses the resources of the Judiciary, District Attorneys, and Public Defender to enforcing serious and/or violent crime. Additionally, because many traffic misdemeanors are "officer-prosecuted," giving citizens the option of paying a fine without ever going to court frees up countless law enforcement man-hours to keep our communities safer. Removing failure to pay a penalty assessment as grounds for suspending one's driver's license is critical to avoid unintended consequences for the poor.¹

HB 428 does not remove jail time from traffic violations directly impacting public safety, such as DWI, injury or homicide by vehicle, leaving the scene of an accident, or careless or reckless driving.²

¹See Quinton, Sophie. 2015. "After Ferguson, States Struggle To Crack Down On Court Debt." The Pew Charitable Trusts: Stateline. (Discussing downstream consequences of fines and fees as applied to the poor). Retrieved: <http://www.pewtrusts.org/en/research-and-analysis/blogs/stateline/2015/08/26/after-ferguson-states-struggle-to-crack-down-on-court-debt>

²See also NMSA 1978, § 66-8-116(B) ("The term 'penalty assessment misdemeanor' does not include a violation that has caused or contributed to the cause of an accident resulting in injury or death to a person.")

Safer	Apolitical	Fiscally- Responsible	Evidence Based	Grade
<p>The existing “penalty assessment misdemeanor” scheme in the Traffic Code recognizes that monetary consequences are sufficient to deter or correct most traffic infractions.</p>	<p>The bill does not change the status quo in any areas of traffic laws that are typically part of the political discourse, such as DWI, injury or homicide by vehicle, leaving the scene of an accident, or careless or reckless driving.</p>	<p>The Traffic Code contains many regulatory infractions that do not directly implicate public safety, but nevertheless carry the possibility of fairly lengthy incarceration. While decreasing the resource investment of multiple state government agencies, the ease of paying a fine rather than appearing in court could in fact prove a reliable source of income for New Mexico.</p>	<p>Minor penalties that involve “inconvenience and expense, especially when coupled with the increased risk of license suspension under point systems, may have a greater psychological effect on the driver than harsh penalties.” Roger C. Cramton, Driver Behavior and Legal Sanctions: A Study of Deterrence, at 423-33, CORNELL LAW FACULTY PUBLICATIONS, Paper 932 (1969), available at http://scholarship.law.cornell.edu/facpub/932.</p>	<p>A</p>

HB 471: CONFINEMENT DETENTION & TIME SERVED CREDIT (A)

SPONSOR: Reps. Antonio Maestas

SHORT TITLE: Confinement Detention & Time Served Credit

SYNOPSIS OF BILL: Broadens the qualifications for earning “presentence confinement credit” for time spent after arrest while awaiting trial, to be credited toward a defendant’s ultimate sentence if convicted. Currently, this credit only accrues for time spent in jail or limited forms of “official confinement,” such as involuntary treatment at the State Hospital in Las Vegas. HB 471 would additionally allow credit for certain “release” scenarios that involve restrictive conditions, including inpatient treatment or house arrest. While credit for “official confinement” is mandatory, whether to grant credit for treatment or house arrest alternatives would be at the judge’s discretion. HB 471 would also clarify that such credit applies to the sentence for any offense pending during the period of confinement. This is the subject of much litigation for defendants sitting in jail or on restrictive conditions of release for more than one case; parties have to argue to the court about whether credit for that confinement should apply to one, all, or only some of the pending cases.

STRENGTHS: This bill would provide consistency among the jurisdictions statewide and reduce litigation about when credits accrue and to which pending cases. It would also provide clarity as to what types of pretrial release conditions qualify for confinement credit; the case law in this area is very fact-specific and it is difficult to anticipate whether certain cases will qualify or not. By including treatment programs in those non-jail scenarios, the bill incentivizes defendants to voluntarily seek treatment pending resolution of their charges. Similarly, by including “house arrest,” the bill enables defendants to maintain the stability of home life and employment without losing credit toward a final sentence. Notably, such credit is not a reduction in the basic sentence, but recognizes that a portion of the sentence has already been served. Where such credit could reduce a final prison sentence as well, expanding such credit could facilitate favorable plea agreements while keeping families together.

ADDITIONAL INFO: As highlighted by the National Institute of Corrections, an Illinois study found that supervised release alternatives to incarceration that couple surveillance (GPS, curfews, etc.) with rehabilitative services like treatment and employment reduce recidivism.¹

¹ Reichert, Jessica, Caitlin DeLong, Risa Sacomani, and Sara Gonzales. 2016. “Fidelity to the intensive supervision probation with services model: An examination of Adult Redeploy Illinois programs.” Illinois Criminal Justice Information Authority. (Study based in probation, not pretrial release). Retrieved: <http://www.icjia.state.il.us/articles/intensive-supervision-probation-with-services>

Safer	Apolitical	Fiscally-Responsible	Evidence Based	Grade
<p>The longer people stay in jail pending a charge, the longer their final sentence, and the more likely they are to recidivate in the future. HB 471 would incentivize and facilitate flexible non-jail alternatives for people pending trial who still enjoy a presumption of innocence. Meanwhile, judges retain the discretion to keep dangerous defendants in jail for community safety.</p>	<p>The bill provides clarity to a murky and frequently litigated area of law.</p>	<p>The cost of incarcerating people in jail pretrial is a heavy burden on counties. Alternatives benefit the counties' budgets as much as they benefit defendants. Moreover, without actually reducing the sentence, expanding opportunities for presentence confinement credit reduces final prison sentences, benefiting the budget of our Corrections Department as well.</p>	<p>Defendants who are detained for the entire pretrial period are over four times more likely to be sentenced to jail and over three times more likely to be sentenced to prison than defendants who were released at some point pending trial. Moreover, low-risk defendants who are detained pretrial for more than 24 hours are more likely to commit new crimes not only while their cases are pending, but also years later. See</p> <p>Laura and John Arnold Foundation Pretrial Detention study: http://www.arnoldfoundation.org/wp-content/uploads/2014/02/LJAF-Pretrial-CJ-Research-brief_FNL.pdf</p>	<p>A</p>

FINAL BILL STATUS

Bill	Title	Primary Sponsor(s)	Grade	Bill Status	Notes
HB 19	Use of Firearm Sentencing Enhancements	Rep. Rehm	C	Died in HCPAC	1 st Committee
HB 53	Allow Curfew Ordinances	Rep. Gentry	D	Died in HLELC	1 st Committee
HB 72	Reinstate Death Penalty	Rep. Youngblood	F	Died in HCPAC	1 st Committee
HB 79	Hate Crimes Against Law Enforcement	Rep. Gentry	D	Died in HCPAC	1 st Committee
SB 78	Private Employer Conviction Inquiries	Sen. O'Neill	A	Vetoed by Governor	Passed S 34-2
SB 7	Sex Assault Exam Kit Police Crime Lab	Rep. Baldonado Sen. McSorley	A	Died in SFC	Passed H 49-15
HB 54	Additional Felonies for Sentencing	Rep. Gentry	F	Died in HJC	
SB 263	Sentencing Law Fiscal Impact Reports Fund	Sen. Cervantes	A	Died on House floor	Passed S 35-4
SB 115	Safe Schools for All Students Act	Sen. Soules	A	Died on House floor	Passed S 32-10
HB 115	Youthful Offenders Transfers to Adult Sentence	Rep. Youngblood	D	Died in HSIVC	
HB 116/SB 270	No Local Enforcement of Fed Immigration Law	Rep. Roybal Caballero	A	Both died without floor vote in either House or Senate	
SB 278/ HB 89	Cannabis Revenue and Freedom Act	Sen. Ortiz y Pino Rep. McCamley	A	SB 278 – No floor vote HB 89 – Died in HBIC	
HB 75	Limit School Use of Restraint and Seclusion	Rep. Smith Rep. Armstrong	A	Signed into law	Passed H 58-0 Passed S 30-4
SB 216	Parole Board Procedures	Sen. O'Neill	A	Died in HJC	Passed S 31-6

HJM 2	Native American Sentencing Disparity	Rep. Rodella	B	Died on Senate floor	Passed H 53-0
HB 306	Interventions for Some Non-violent Offenders	Rep. Stapleton	A	Vetoed by Governor	Passed H 62-0 Passed S 39-0
HB 175/SB 185 Bill	Isolated Confinement Act	Rep. Moe Maestas Sen. Papen	A	Vetoed by Governor (HB 175)	Passed H 38-22 Passed S 29-3
	Title	Primary Sponsor(s)	NM SAFE Grade	Bill Status	Notes
SB 292	Uniform Collateral Consequences of Conviction Act	Sen. Cervantes	A	Vetoed by Governor	Passed S 37-0 Passed H 65-1
SB 116	Medical or Geriatric Parole	Sen. Ortiz y Pino	A	Died in SJC	
HB 505	Expungement of Criminal Records	Rep. Moe Maestas	A	Died in HJC	1 st Committee
SB 47	Further Overdose Assistance Immunity	Sen. Martinez	A	Vetoed by Governor	Passed S 33-0 Passed H 58-5
SB258	Decreasing Marijuana Penalties	Sen. Cervantes	A	Died on House floor	Passed S 33-9
HB 471	Confinement Detention & Time Served Credit	Rep. Moe Maestas	A	Died in HJC	
HB 428	Revise Certain Criminal Penalties	Rep. Moe Maestas	A	Vetoed by Governor	Passed H 64-1 Passed S 39-0

Key:

H – House

HB – House Bill

HCPAC – House Consumer & Public Affairs Committee

HLELC – House Local Government, Elections, Land Grants & Cultural Affairs Committee

HSIVC – House State Government, Indian, and Veterans Affairs Committee

HBIC – House Business and Industry Committee

HJC – House Judiciary Committee

S – Senate

SB – Senate Bill

SFC – Senate Finance Committee

SJC – Senate Judiciary Committee

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