

HOUSE JUDICIARY COMMITTEE SUBSTITUTE FOR
HOUSE BILL 342

54TH LEGISLATURE - STATE OF NEW MEXICO - FIRST SESSION, 2019

Pursuant to House Rule 24-1, this document incorporates amendments that have been adopted prior to consideration of this measure by the House. It is a tool to show the amendments in context and is not to be used for the purpose of amendments.

AN ACT

RELATING TO CRIMINAL JUSTICE REFORM; PROVIDING FOR ASSISTANCE TO OFFENDERS WITH BEHAVIORAL HEALTH DIAGNOSES; REVISING PROCEDURES RELATED TO A PERSON INCARCERATED IN A COUNTY JAIL; REVISING PROTECTIONS FOR PERSONS INVOLVED WITH AN ALCOHOL- OR DRUG-RELATED OVERDOSE; PROVIDING PROCEDURES FOR POST-CONVICTION PETITIONS; REVISING REQUIREMENTS FOR PREPROSECUTION DIVERSION PROGRAMS; REVISING PAROLE AUTHORITY; REVISING REQUIREMENTS FOR CRIME VICTIMS' REPARATIONS; SPAC→**ESTABLISHING THE RIGHT OF CRIME VICTIMS TO RECEIVE NOTICE; AMENDING CERTAIN PROCEDURES IN THE CRIME VICTIMS REPARATION ACT;**←SPAC ENACTING THE ACCURATE

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EYEWITNESS IDENTIFICATION ACT; REVISING DUTIES OF THE NEW MEXICO SENTENCING COMMISSION; REQUIRING EYEWITNESS IDENTIFICATION POLICIES AND TRAINING.

BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF NEW MEXICO:

SECTION 1. Section 9-8-7.1 NMSA 1978 (being Laws 2007, Chapter 325, Section 4) is amended to read:

"9-8-7.1. BEHAVIORAL HEALTH SERVICES DIVISION--POWERS AND DUTIES OF THE HUMAN SERVICES DEPARTMENT.--Subject to appropriation, the department shall:

A. contract for behavioral health treatment and support services, including mental health, alcoholism and other substance abuse services;

B. establish standards for the delivery of behavioral health services, including quality management and improvement, performance measures, accessibility and availability of services, utilization management, credentialing and recredentialing, rights and responsibilities of providers, preventive behavioral health services, clinical treatment and evaluation and the documentation and confidentiality of client records;

C. ensure that all behavioral health services, including mental health and substance abuse services, that are provided, contracted for or approved are in compliance with the requirements of Section 9-7-6.4 NMSA 1978;

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D. assume responsibility for and implement adult mental health and substance abuse services in the state in coordination with the children, youth and families department;

E. create, implement and continually evaluate the effectiveness of a framework for targeted, individualized interventions for adult and juvenile offenders with behavioral health diagnoses who are incarcerated in a state, county or municipal correctional facility, which framework shall address those persons' behavioral health needs while they are incarcerated and connect them to resources and services immediately upon release that reduce the likelihood of recidivism, detention and incarceration, such as supportive housing, public assistance, medical assistance, behavioral health treatment and employment training;

[E.] F. establish criteria for determining individual eligibility for behavioral health services; and

[F.] G. maintain a management information system in accordance with standards for reporting clinical and fiscal information."

SECTION 2. A new section of the Human Services Department Act is enacted to read:

"[NEW MATERIAL] INCARCERATED INDIVIDUALS--BEHAVIORAL HEALTH SERVICES--COUNTY FUNDING PROGRAM.--To carry out the provisions of Subsection E of Section 9-8-7.1 NMSA 1978 and to provide behavioral health services to individuals who are incarcerated in a county correctional facility:

A. the secretary shall adopt and promulgate rules:

(1) pursuant to which a county may apply for

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and be awarded funding through the department; and

(2) to establish priorities and guidelines for the award of funding to counties; and

B. the department shall distribute funds, as funding permits, to the county health care assistance funds of those counties:

(1) that apply for behavioral health services funding in accordance with department rules; and

(2) that have proposed utilization of funding pursuant to this section that meets the priorities and guidelines for the awarding of behavioral health services funding established in department rules."

SECTION 3. Section 30-31-27.1 NMSA 1978 (being Laws 2007, Chapter 260, Section 1) is amended to read:

"30-31-27.1. OVERDOSE PREVENTION--LIMITED IMMUNITY.--

A. A person who, in good faith, seeks medical assistance for someone experiencing [a] an alcohol- or drug-related overdose shall not be arrested, charged [or], prosecuted or otherwise penalized, nor shall the property of the person be subject to civil forfeiture, for [~~possession of a controlled substance pursuant to~~] violating any of the following if the evidence for the alleged violation was obtained as a result of the need for seeking medical assistance:

(1) the provisions of Section 30-31-23 NMSA

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1978 or Subsection A of Section 30-31-25.1 NMSA 1978 [~~if the evidence for the charge of possession of a controlled substance was gained as a result of the seeking of medical assistance~~];

(2) a restraining order; or

(3) the conditions of probation or parole.

B. A person who experiences [a] an alcohol- or drug-related overdose and is in need of medical assistance shall not be arrested, charged [~~or~~], prosecuted or otherwise penalized, nor shall the property of the person be subject to civil forfeiture, for [~~possession of a controlled substance pursuant to~~] violating any of the following if the evidence for the alleged violation was obtained as a result of the overdose and the need for seeking medical assistance:

(1) the provisions of Section 30-31-23 NMSA 1978 or Subsection A of Section 30-31-25.1 NMSA 1978 [~~if the evidence for the charge of possession of a controlled substance was gained as a result of the overdose and the need for medical assistance~~];

(2) a restraining order; or

(3) the conditions of probation or parole.

C. The act of seeking medical assistance for someone who is experiencing [a] an alcohol- or drug-related overdose may be used as a mitigating factor in a criminal prosecution pursuant to the Controlled Substances Act for which immunity is not provided pursuant to this section.

D. For the purposes of this section, "seeking medical assistance" means:

(1) reporting an alcohol- or drug-related

overdose or other medical emergency to law enforcement, the 911 system or another emergency dispatch system, a poison control center or a health care provider; or

(2) assisting an individual who is reporting an alcohol- or drug-related overdose or providing care to an individual who is experiencing an alcohol- or drug-related overdose or other medical emergency while awaiting the arrival of a health care provider."

SECTION 4. Section 31-1A-2 NMSA 1978 (being Laws 2003, Chapter 27, Section 1) is amended to read:

"31-1A-2. PROCEDURES FOR POST-CONVICTION CONSIDERATION OF DNA EVIDENCE--REQUIREMENTS.--

A. A person convicted of a felony, who claims that DNA evidence will establish ~~[his]~~ the person's innocence, may petition the district court of the judicial district in which ~~[he]~~ the person was convicted to order the disclosure, preservation, production and testing of evidence that can be subjected to DNA testing. A copy of the petition shall be served on the district attorney for the judicial district in which the district court is located. A petitioner shall be granted full, fair and prompt proceedings upon filing a petition.

B. As a condition to the district court's acceptance of ~~[his]~~ the person's petition, the petitioner shall:

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(1) submit to DNA testing ordered by the district court; and

(2) authorize the district attorney's use of the DNA test results to investigate all aspects of the case that the petitioner is seeking to reopen.

C. DNA samples obtained pursuant to Subsection B of this section shall be submitted for DNA testing according to the procedures in the DNA Identification Act, and the DNA record shall be entered into the federal bureau of investigation's national DNA index system for storage and exchange of DNA records submitted by forensic DNA laboratories.

[G.] D. The petitioner shall show, by a preponderance of the evidence, that:

(1) [~~he~~] the petitioner was convicted of a felony;

(2) evidence exists that can be subjected to DNA testing;

(3) the evidence to be subjected to DNA testing:

(a) has not previously been subjected to DNA testing;

(b) has not previously been subjected to the type of DNA testing that is now being requested; or

(c) was previously subjected to DNA testing, but was tested incorrectly or interpreted incorrectly;

(4) the DNA testing [~~he~~] the petitioner is requesting will be likely to produce admissible evidence; and

(5) identity was an issue in [~~his~~] the

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petitioner's case or that if the DNA testing [~~he~~] the
petitioner is requesting had been performed prior to [~~his~~] the
petitioner's conviction and the results had been exculpatory,
there is a reasonable probability that the petitioner would not
have pled guilty or been found guilty.

[~~D.~~] E. If the petitioner satisfies the
requirements set forth in Subsection [~~E~~] D of this section, the
district court shall appoint counsel for the petitioner, unless
the petitioner waives counsel or retains [~~his~~] the petitioner's
own counsel.

[~~E.~~] F. After reviewing a petition, the district
court may dismiss the petition, order a response by the
district attorney or issue an order for DNA testing.

[~~F.~~] G. The district court shall order all evidence
secured that is related to the petitioner's case and that could
be subjected to DNA testing. The evidence shall be preserved
during the pendency of the proceeding. The district court may
impose appropriate sanctions, including dismissal of the
petitioner's conviction or criminal contempt, if the court
determines that evidence was intentionally destroyed after
issuance of the court's order to secure evidence.

[~~G.~~] H. The district court shall order DNA testing
if the petitioner satisfies the requirements set forth in
Subsections B and [~~E~~] D of this section.

[~~H.~~] I. If the results of the DNA testing are

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exculpatory, the district court may set aside the petitioner's judgment and sentence, may dismiss the charges against the petitioner with prejudice, may grant the petitioner a new trial or may order other appropriate relief.

[I.] J. The cost of DNA testing ordered pursuant to this section shall be borne by the state or the petitioner, as the district court may order in the interest of justice. Provided, that a petitioner shall not be denied DNA testing because of [~~his~~] the petitioner's inability to pay for the cost of DNA testing. Testing under this provision shall only be performed by a laboratory that meets the minimum standards of the national DNA index system.

[J.] K. The provisions of this section shall not be interpreted to limit:

(1) other circumstances under which a person may obtain DNA testing; or

(2) post-conviction relief a petitioner may seek pursuant to other provisions of law.

[K.] L. The petitioner shall have the right to appeal a district court's denial of the requested DNA testing, a district court's final order on a petition or a district court's decision regarding relief for the petitioner. The state shall have the right to appeal any final order issued by the district court. An appeal shall be filed by a party within thirty days to the court of appeals.

[L.] M. The state shall preserve all evidence that is secured in relation to an investigation or prosecution of a crime and that could be subjected to DNA testing, for not less

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than the period of time that a person remains subject to incarceration or [~~supervision~~] on probation or parole in connection with the investigation or prosecution.

[M.] N. The state may dispose of evidence before the expiration of the time period set forth in Subsection [K] M of this section if:

(1) no other law, regulation or court order requires that the evidence be preserved;

(2) the evidence must be returned to its rightful owner;

(3) preservation of the evidence is impractical due to the size, bulk or physical characteristics of the evidence; and

(4) the state takes reasonable measures to remove and preserve portions of the evidence sufficient to permit future DNA testing.

O. In proceedings under this section, the Rules of Evidence and the Rules of Civil Procedure for the District Courts shall apply.

[N.] P. As used in this section, "DNA" means deoxyribonucleic acid."

SECTION 5. Section 31-16A-4 NMSA 1978 (being Laws 1981, Chapter 33, Section 4) is amended to read:

"31-16A-4. ELIGIBILITY.--

A. A defendant [~~must~~] shall meet the following

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minimum criteria to be eligible for a preprosecution diversion program:

(1) the defendant [~~must~~] shall have no prior felony convictions for a violent crime; [~~and no prior felony convictions for any crime for the previous ten years;~~

~~(2) the crime alleged to have been committed by the defendant is nonviolent in nature with the exception of domestic disputes not involving a minor;~~

~~(3) if the defendant was on probation previously, his probation must not have been revoked or unsatisfactorily discharged;~~

~~(4) the defendant has not been admitted into a similar program for the previous ten years;~~

(5)] (2) the defendant is willing to participate in the program and submit to all program requirements;

~~[(6) the crime alleged to have been committed by the defendant does not involve substantial sale or possession of controlled substances; and~~

~~(7) a person meeting all of the above criteria and any additional criteria established by the district attorney may be entered into the preprosecution diversion program. The district attorney may elect to not divert a person to the preprosecution diversion program even though that person meets the minimum criteria herein set forth. A decision by the district attorney to not divert to the preprosecution diversion program is not subject to appeal and may not be raised as a defense to any prosecution or habitual offender~~

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proceeding] and

(3) any additional criteria set by the district attorney.

B. A [~~district attorney may set additional criteria~~] person who meets all of the criteria pursuant to Subsection A of this section may be entered into the preprosecution diversion program; provided that the district attorney may elect not to divert a person to the preprosecution diversion program even though that person meets the minimum criteria set forth in this section.

C. A decision by the district attorney not to divert a person to the preprosecution diversion program is not subject to appeal and shall not be raised as a defense to any prosecution or habitual offender proceeding."

SECTION 6. Section 31-16A-7 NMSA 1978 (being Laws 1981, Chapter 33, Section 7, as amended) is amended to read:

"31-16A-7. PROGRAM PARTICIPATION--~~[COSTS]~~ REASONABLE CONDITIONS--TERMINATION.--

A. A defendant may be diverted to a preprosecution diversion program for no less than six months and no longer than two years. A district attorney may extend the diversion period for a defendant as a disciplinary measure or to allow adequate time for restitution; provided that the extension coupled with the original period does not exceed two years.

B. A district attorney may require as a program

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requirement that a defendant agree to such reasonable conditions as the district attorney deems necessary to ensure that the defendant will observe the laws of the United States and the various states and the ordinances of any municipality. ~~[and shall require the defendant to pay to his office the costs related to his participation in the program not exceeding one thousand twenty dollars (\$1,020) annually to be paid in monthly installments of not less than fifteen dollars (\$15.00) and not more than eighty-five dollars (\$85.00), subject to modification by the district attorney on the basis of changed financial circumstances. All costs collected by a district attorney pursuant to this subsection shall be transmitted to the administrative office of the district attorneys for credit to the district attorney fund.]~~

B.] C. If a defendant does not comply with the terms, conditions and requirements of a preprosecution diversion program, ~~[his]~~ the defendant's participation in the program ~~[shall]~~ may be terminated, and the district attorney may proceed with the suspended criminal prosecution of the defendant.

~~[E.]~~ D. If the participation of a defendant in a preprosecution diversion program is terminated, the district attorney shall state in writing the specific reasons for the termination, which reasons shall be available for review by the defendant and ~~[his]~~ the defendant's counsel."

SECTION 7. Section 31-18-15 NMSA 1978 (being Laws 1977, Chapter 216, Section 4, as amended) is amended to read:

"31-18-15. SENTENCING AUTHORITY--NONCAPITAL FELONIES--

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BASIC SENTENCES AND FINES--PAROLE AUTHORITY--MERITORIOUS
DEDUCTIONS.--

A. If a person is convicted of a noncapital felony,
the basic sentence of imprisonment is as follows:

(1) for a first degree felony resulting in the
death of a child, life imprisonment;

(2) for a first degree felony for aggravated
criminal sexual penetration, life imprisonment;

(3) for a first degree felony, eighteen years
imprisonment;

(4) for a second degree felony resulting in
the death of a human being, fifteen years imprisonment;

(5) for a second degree felony for a sexual
offense against a child, fifteen years imprisonment;

(6) for a second degree felony for sexual
exploitation of children, twelve years imprisonment;

(7) for a second degree felony, nine years
imprisonment;

(8) for a third degree felony resulting in the
death of a human being, six years imprisonment;

(9) for a third degree felony for a sexual
offense against a child, six years imprisonment;

(10) for a third degree felony for sexual
exploitation of children, eleven years imprisonment;

(11) for a third degree felony, three years

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imprisonment;

(12) for a fourth degree felony for sexual exploitation of children, ten years imprisonment; or

(13) for a fourth degree felony, eighteen months imprisonment.

B. The appropriate basic sentence of imprisonment shall be imposed upon a person convicted and sentenced pursuant to Subsection A of this section, unless the court alters the sentence pursuant to the provisions of the Criminal Sentencing Act.

C. A period of parole shall be imposed only for felony convictions wherein a person is sentenced to imprisonment of more than one year, unless the parties to a proceeding agree that a period of parole should be imposed. If a period of parole is imposed, the court shall include in the judgment and sentence of each person convicted and sentenced to imprisonment in a corrections facility designated by the corrections department authority for a period of parole to be served in accordance with the provisions of Section 31-21-10 NMSA 1978 after the completion of any actual time of imprisonment and authority to require, as a condition of parole, the payment of the costs of parole services and reimbursement to a law enforcement agency or local crime stopper program in accordance with the provisions of that section. If imposed, the period of parole shall be deemed to be part of the sentence of the convicted person in addition to the basic sentence imposed pursuant to Subsection A of this section together with alterations, if any, pursuant to the

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provisions of the Criminal Sentencing Act.

D. When a court imposes a sentence of imprisonment pursuant to the provisions of Section 31-18-15.1, 31-18-16 or 31-18-17 NMSA 1978 and suspends or defers the basic sentence of imprisonment provided pursuant to the provisions of Subsection A of this section, the period of parole shall be served in accordance with the provisions of Section 31-21-10 NMSA 1978 for the degree of felony for the basic sentence for which the inmate was convicted. For the purpose of designating a period of parole, a court shall not consider that the basic sentence of imprisonment was suspended or deferred and that the inmate served a period of imprisonment pursuant to the provisions of the Criminal Sentencing Act.

E. The court may, in addition to the imposition of a basic sentence of imprisonment, impose a fine not to exceed:

(1) for a first degree felony resulting in the death of a child, seventeen thousand five hundred dollars (\$17,500);

(2) for a first degree felony for aggravated criminal sexual penetration, seventeen thousand five hundred dollars (\$17,500);

(3) for a first degree felony, fifteen thousand dollars (\$15,000);

(4) for a second degree felony resulting in the death of a human being, twelve thousand five hundred

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dollars (\$12,500);

(5) for a second degree felony for a sexual offense against a child, twelve thousand five hundred dollars (\$12,500);

(6) for a second degree felony for sexual exploitation of children, five thousand dollars (\$5,000);

(7) for a second degree felony, ten thousand dollars (\$10,000);

(8) for a third degree felony resulting in the death of a human being, five thousand dollars (\$5,000);

(9) for a third degree felony for a sexual offense against a child, five thousand dollars (\$5,000);

(10) for a third degree felony for sexual exploitation of children, five thousand dollars (\$5,000);

(11) for a third or fourth degree felony, five thousand dollars (\$5,000); or

(12) for a fourth degree felony for sexual exploitation of children, five thousand dollars (\$5,000).

F. When the court imposes a sentence of imprisonment for a felony offense, the court shall indicate whether or not the offense is a serious violent offense, as defined in Section 33-2-34 NMSA 1978. The court shall inform an offender that the offender's sentence of imprisonment is subject to the provisions of Sections 33-2-34, 33-2-36, 33-2-37 and 33-2-38 NMSA 1978. If the court fails to inform an offender that the offender's sentence is subject to those provisions or if the court provides the offender with erroneous information regarding those provisions, the failure to inform

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or the error shall not provide a basis for a writ of habeas corpus.

G. No later than October 31 of each year, the New Mexico sentencing commission shall provide a written report to the secretary of corrections, all New Mexico criminal court judges, the administrative office of the district attorneys and the chief public defender. The report shall specify the average reduction in the sentence of imprisonment for serious violent offenses and nonviolent offenses, as defined in Section 33-2-34 NMSA 1978, due to meritorious deductions earned by prisoners during the previous fiscal year pursuant to the provisions of Sections 33-2-34, 33-2-36, 33-2-37 and 33-2-38 NMSA 1978. The corrections department shall allow the commission access to documents used by the department to determine earned meritorious deductions for prisoners."

SECTION 8. Section 31-22-7 NMSA 1978 (being Laws 1981, Chapter 325, Section 7, as amended) is amended to read:

"31-22-7. ELIGIBILITY FOR REPARATION.--

A. ~~[In the event any]~~ If a person is injured or killed by ~~[any]~~ an act or omission of ~~[any other]~~ another person coming within the criminal jurisdiction of the state after ~~[the effective date of the Crime Victims Reparation Act]~~ July 1, 1981, which act or omission includes a crime enumerated in Section 31-22-8 NMSA 1978, and upon application for reparation, the commission may award reparation in accordance

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with the Crime Victims Reparation Act:

(1) to the victim;

(2) in the case of the victim's death, to or for the benefit of any one or more of the deceased victim's dependents; or

(3) to any individual who voluntarily assumes funeral or medical expenses of the victim.

B. For the purpose of the Crime Victims Reparation Act, a person shall be deemed to have intentionally committed an act or omission constituting a crime, notwithstanding that by reason of age, insanity, drunkenness or otherwise ~~he~~ the person was legally incapable of forming a criminal intent.

C. In determining whether to make an order under this section, the commission may consider any circumstances it determines to be relevant. The commission shall consider the behavior of the victim and whether, because of provocation or otherwise, the victim bears responsibility for the act or omission constituting a crime that caused ~~his~~ the victim's injury or death and shall reduce the amount of reparation in accordance with its assessment of the degree of responsibility attributable to the victim.

D. An order may be made under this section whether or not any person is prosecuted for or convicted of a crime enumerated in Section 31-22-8 NMSA 1978; provided an arrest has been made or the act or omission constituting ~~such~~ a crime has been reported to the police in a reasonable time or the act or omission constituting a crime has been reported to a SPAC→licensed←SPAC medical SPAC→, or←SPAC mental health

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SPAC→~~care or counseling~~←SPAC provider SPAC→~~, victim counselor~~
~~or other counseling~~ or tribal health←SPAC provider. No order
may be made under this section unless the commission finds
that:

- (1) the act or omission constituting a crime
did occur;
- (2) the injury or death of the victim resulted
from the act or omission constituting a crime; and
- (3) the claimant or victim fully cooperated
with the appropriate law enforcement agencies or the commission
finds that the claimant or victim acted reasonably under the
circumstances.

E. Upon application from the district attorney of
the appropriate district, the commission may suspend
proceedings under the Crime Victims Reparation Act for such
period as it deems desirable on the [~~ground~~] grounds that a
prosecution for the act or omission constituting a crime has
commenced or is imminent."

SPAC→SECTION 9. Section 31-22-14 NMSA 1978 (being Laws
1981, Chapter 325, Section 14, as amended) is amended to read:

**"31-22-14. LIMITATIONS ON AWARD--COLLATERAL RECOVERY--
PRELIMINARY AWARD.--**

**A. No order for the payment of reparation shall be
made unless application has been made within two years after
the date of the injury or death and the injury or death was the**

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result of a crime enumerated in Section 31-22-8 NMSA 1978 [~~that had been reported to the police within thirty days after its occurrence unless a longer period is allowed pursuant to Subsection F of this section~~]. An application for reparation shall be made within two years after the injury or death, except for minors who are victims of criminal activity under the provisions of Section 30-6-1 NMSA 1978, regarding abandonment or abuse of a child, Section 30-9-11 NMSA 1978, regarding criminal sexual penetration, or Section 30-9-13 NMSA 1978, regarding criminal sexual contact of a minor. [~~The date of incident for minors who are victims of these types of eriminal activity shall be the date the victim attains the age of eighteen years or the date that the criminal activity is reported to a law enforcement agency, whichever occurs first. The commission may extend the time for filing an application for good cause shown by a claimant or a victim.~~]

B. No award of reparation shall be in excess of twenty thousand dollars (\$20,000) per victim, except that the commission may award up to an additional thirty thousand dollars (\$30,000) for extraordinary pecuniary losses, if the personal injury to a victim is catastrophic and results in a permanent total disability. The extraordinary losses compensated may include:

- (1) loss of wages;
- (2) the cost of home health care;
- (3) the cost of making a home or automobile accessible;
- (4) the cost of training in the use of special

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application; or

(5) job training.

C. Except as provided by Subsection E of this section, the commission shall deduct from any reparation awarded any payments received from a collateral source or from the United States or the state or any of its political subdivisions for injury or death subject to reparation under the Crime Victims Reparation Act. If the claimant receives an award of reparation from the commission and also receives payment as set forth in the preceding sentence for which no deduction was made, the claimant shall refund to the state the lesser of the amount of reparation paid or the sums not so deducted.

D. If the claimant receives an award of reparation from the commission and also receives an award pursuant to a civil judgment arising from a criminal occurrence for which a reparation award was paid, the claimant shall refund to the state the amount of the reparation paid to the claimant. The commission may negotiate a reasonable settlement regarding repayment of the reparation award if special circumstances exist.

E. If it appears that a final award of reparation will be made by the commission, a preliminary award may be authorized by the director of the commission or the commission's designee when the commission chair concurs. The

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amount of the preliminary award shall be deducted from any final award made by the commission.

~~[F. The commission may grant a waiver to the requirement in Subsection A of this section that a crime be reported to the police within thirty days of its occurrence for:~~

~~(1) a victim of domestic violence or sexual assault if reported to the police within one hundred eighty days of the occurrence; or~~

~~(2) a crime against a child that was reported within thirty days of its occurrence to the children, youth and families department, a domestic violence or sexual assault service provider, a teacher or a health care provider; provided that a police report shall be filed before the commission approves payment.]~~

SECTION 10. Section 31-26-4 NMSA 1978 (being Laws 1994, Chapter 144, Section 4, as amended) is amended to read:

"31-26-4. VICTIM'S RIGHTS.--A victim shall have the right to:

A. be treated with fairness and respect for the victim's dignity and privacy throughout the criminal justice process;

B. timely disposition of the case;

C. be reasonably protected from the accused throughout the criminal justice process;

D. notification of court proceedings;

E. attend all public court proceedings the accused has the right to attend;

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F. confer with the prosecution;

G. make a statement to the court at sentencing and at any post-sentencing hearings for the accused;

H. restitution from the person convicted of the criminal offense that caused the victim's loss or injury;

I. information about the conviction, sentencing, imprisonment, escape or release of the accused;

J. have the prosecuting attorney notify the victim's employer, if requested by the victim, of the necessity of the victim's cooperation and testimony in a court proceeding that may necessitate the absence of the victim from work for good cause;

K. promptly receive any property belonging to the victim that is being held for evidentiary purposes by a law enforcement agency or the prosecuting attorney, unless there are compelling evidentiary reasons for retention of the victim's property; [and]

L. be informed by the court at a sentencing proceeding that the offender is eligible to earn meritorious deductions from the offender's sentence and the amount of meritorious deductions that may be earned by the offender; and

M. be notified by the district attorney of the availability of and procedures to apply for crime victims reparation."←SPAC

SECTION SPAC→9. 11.←SPAC A new section of Chapter 60,

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Article 7B NMSA 1978 is enacted to read:

"[NEW MATERIAL] SUBSTANCE-RELATED POISONING PREVENTION--
LIMITED IMMUNITY.--

A. A person who, in good faith, seeks medical assistance for someone experiencing an alcohol- or drug-related overdose shall not be arrested, charged, prosecuted or otherwise penalized, nor shall the property of the person be subject to civil forfeiture, for violating any of the following if the evidence for the alleged violation was obtained as a result of the need for seeking medical assistance:

- (1) the provisions of Section 60-7B-1 or 60-7B-9 NMSA 1978;
- (2) a restraining order; or
- (3) the conditions of probation or parole.

B. A person who experiences an alcohol- or drug-related overdose and is in need of medical assistance shall not be arrested, charged, prosecuted or otherwise penalized, nor shall the property of the person be subject to civil forfeiture, for violating any of the following if the evidence for the alleged violation was obtained as a result of the overdose and the need for seeking medical assistance:

- (1) the provisions of Section 60-7B-1 or 60-7B-9 NMSA 1978;
- (2) a restraining order; or
- (3) the conditions of probation or parole.

C. The act of seeking medical assistance for someone who is experiencing an alcohol- or drug-related overdose may be used as a mitigating factor in a criminal

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prosecution pursuant to the Liquor Control Act for which immunity is not provided pursuant to this section.

D. For the purposes of this section, "seeking medical assistance" means:

(1) reporting an alcohol- or drug-related overdose or other medical emergency to law enforcement, the 911 system or another emergency dispatch system, a poison control center or to a health care provider; or

(2) assisting an individual who is reporting an alcohol- or drug-related overdose or providing care to an individual who is experiencing an alcohol- or drug-related overdose or other medical emergency while awaiting the arrival of a health care provider."

SECTION SPAC→10. 12.←SPAC [NEW MATERIAL] SHORT TITLE.-- Sections SPAC→10 through 13 12 through 15←SPAC of this act may be cited as the "Accurate Eyewitness Identification Act".

SECTION SPAC→11. 13.←SPAC [NEW MATERIAL] DEFINITIONS.--As used in the Accurate Eyewitness Identification Act:

- A. "administrator" means a person conducting a photo lineup or live lineup;
- B. "blind" means the administrator does not know the identity of the suspect;
- C. "blinded" means the administrator may know who the suspect is but does not know which lineup member is being

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viewed by the eyewitness;

D. "eyewitness" means a person who observes another person at or near the scene of an offense;

E. "filler" means either a person or a photograph of a person who is not suspected of an offense and is included in an identification procedure;

F. "live lineup" means an identification procedure in which a group of persons, including the suspected perpetrator of an offense and other persons not suspected of the offense, is displayed to an eyewitness for the purpose of determining whether the eyewitness identifies the suspect as the perpetrator;

G. "photo lineup" means an identification procedure in which an array of photographs, including a photograph of the suspected perpetrator of an offense and additional photographs of other persons not suspected of the offense, is displayed to an eyewitness either in hard copy form or via computer for the purpose of determining whether the eyewitness identifies the suspect as the perpetrator;

H. "showup" means an identification procedure in which an eyewitness is presented with a single suspect for the purpose of determining whether the eyewitness identifies this individual as the perpetrator; and

I. "suspect" means a person believed by law enforcement to be the possible perpetrator of the crime.

SECTION SPAC→12. 14.←SPAC [NEW MATERIAL] EYEWITNESS IDENTIFICATION PROCEDURES.--

A. Not later than January 1, 2020, a criminal

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justice entity conducting eyewitness identification procedures shall adopt and comply with written policies for using an eyewitness to make a decision about whether a suspect is the perpetrator of a crime upon viewing the suspect in person in a live lineup or showup or upon viewing a representation of the suspect in a photo lineup.

B. Each governmental entity in New Mexico that administers eyewitness identification procedures shall provide a copy of its written policies to the secretary of public safety no later than February 1, 2020 and the secretary shall make those policies available to the public.

C. A law enforcement agency shall biennially review policies adopted pursuant to this section to incorporate new scientifically supported protocols.

D. In developing and revising policies pursuant to this section, a law enforcement agency shall adopt those practices shown by reliable evidence to enhance the accuracy of identification procedures. Each governmental entity in New Mexico that administers eyewitness identification procedures shall submit its updated written policies to the secretary of public safety no later than February 1 of each odd-numbered year.

E. A law enforcement agency shall include in policies adopted pursuant to this section practices to enhance the objectivity and reliability of eyewitness identifications

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and to minimize the possibility of mistaken identifications, including the following:

(1) having a blind administrator or blinded administrator perform the live lineup or photo lineup;

(2) documenting a description of the suspect provided by the eyewitness, including a description of the circumstances under which the suspect was seen by the eyewitness, the time of day, the length of time the suspect was seen, the perceived or actual distance from the eyewitness to the suspect and the lighting conditions;

(3) providing the eyewitness with instructions that minimize the likelihood of an inaccurate identification, including that the perpetrator may or may not be in the identification procedure and that the investigation will continue regardless of whether an identification is made;

(4) composing the lineup so that the fillers generally resemble the eyewitness's description of the perpetrator so that the suspect does not unduly stand out from the fillers;

(5) using at least four fillers in a live lineup and at least five fillers in a photo lineup;

(6) ensuring, when practicable, that a photograph of the suspect used in a photo lineup is contemporary and resembles the suspect's appearance at the time of the offense;

(7) presenting separate photo lineups and live lineups when there are multiple eyewitnesses, ensuring that the same suspect is placed in a different position for each

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identification procedure;

(8) having the administrator seek and document a clear statement from the eyewitness, at the time of the identification and in the eyewitness's own words, as to the eyewitness's confidence level that the person identified is the person who committed the crime;

(9) minimizing factors at any point in time that influence an eyewitness to identify a suspect or affect the eyewitness's confidence level in identifying a suspect, including verbal or nonverbal statements by or reactions from the administrator;

(10) presenting lineup members one at a time;

(11) adopting relevant practices shown to enhance the reliability of an eyewitness participating in a showup procedure, such as:

(a) identifying the circumstances under which a showup is warranted;

(b) transporting the eyewitness to a neutral, non-law enforcement location where the detained suspect is being held;

(c) removing the suspect from the law enforcement squad car;

(d) removing restraints from the suspect when the suspect is being observed by the eyewitness; and

(e) administering the showup procedure

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close in time to the commission of the crime;

(12) video recording the entirety of the photo lineup and live lineup and, where practicable, the showup procedure, unless the recording equipment is not reasonably available or the recording equipment fails and obtaining replacement equipment is not feasible; and

(13) preserving photographic documentation of all live lineup and photo lineup members and showup suspects, as well as all descriptions provided by the eyewitness of the perpetrator.

F. All written departmental eyewitness identification policies shall be made available to the public upon request.

SECTION SPAC→13. 15.←SPAC [NEW MATERIAL] TRAINING OF LAW ENFORCEMENT OFFICERS.--The secretary of public safety shall create, administer and conduct training programs for law enforcement officers and recruits on the methods and technical aspects of the eyewitness identification practices and procedures shown by reliable evidence to enhance the accuracy of eyewitness evidence referenced in the Accurate Eyewitness Identification Act.

SECTION SPAC→14. 16.←SPAC [NEW MATERIAL] LEGISLATION TO INCREASE, DECREASE OR CREATE PERIODS OF IMPRISONMENT--FISCAL IMPACT STATEMENTS--PROCEDURE.--

A. The New Mexico sentencing commission shall prepare a fiscal impact statement as provided in this section for a bill that:

(1) creates a new crime or repeals an existing

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crime for which imprisonment is authorized;

(2) increases or decreases the period of imprisonment authorized for an existing crime;

(3) imposes or removes mandatory minimum terms of imprisonment; or

(4) modifies the law governing release of inmates in such a way that the time served in prison will increase or decrease.

B. A fiscal impact statement shall reflect the estimated change in annual operating costs for the corrections department attributable to the bill if it becomes law. The estimated change in annual operating costs shall reflect the largest annual change from the projected change for the six fiscal years following the effective date of the law and shall be calculated in current dollars. The fiscal impact statement shall include details concerning any increase or decrease in the inmate population.

C. If the New Mexico sentencing commission does not have sufficient information to project the fiscal impact, the fiscal impact statement shall state that there is insufficient information to estimate the fiscal impact.

D. The corrections department shall annually provide the New Mexico sentencing commission with:

(1) the average operating costs per inmate and the number of inmates in adult correctional facilities; and

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(2) admissions and release data for all inmates in adult correctional facilities.

E. The judiciary shall annually provide the New Mexico sentencing commission with requested data necessary to prepare fiscal impact statements.

F. As used in this section, "operating costs" means all costs other than capital outlay costs for state-operated adult correctional facilities and privately operated adult correctional facilities.

SECTION SPAC→15. 17.←SPAC EFFECTIVE DATE.--The effective date of the provisions of this act is July 1, 2019.

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