

HOUSE JUDICIARY COMMITTEE SUBSTITUTE FOR  
HOUSE BILL 342

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

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; ENACTING THE ACCURATE 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:

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underscored material = new  
[bracketed material] = delete

1 "9-8-7.1. BEHAVIORAL HEALTH SERVICES DIVISION--POWERS AND  
2 DUTIES OF THE HUMAN SERVICES DEPARTMENT.--Subject to  
3 appropriation, the department shall:

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

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

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

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

22 E. create, implement and continually evaluate the  
23 effectiveness of a framework for targeted, individualized  
24 interventions for adult and juvenile offenders with behavioral  
25 health diagnoses who are incarcerated in a state, county or

1 municipal correctional facility, which framework shall address  
 2 those persons' behavioral health needs while they are  
 3 incarcerated and connect them to resources and services  
 4 immediately upon release that reduce the likelihood of  
 5 recidivism, detention and incarceration, such as supportive  
 6 housing, public assistance, medical assistance, behavioral  
 7 health treatment and employment training;

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

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

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

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

20 A. the secretary shall adopt and promulgate rules:

21 (1) pursuant to which a county may apply for  
 22 and be awarded funding through the department; and

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

25 B. the department shall distribute funds, as

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1 funding permits, to the county health care assistance funds of  
2 those counties:

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

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

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

11 "30-31-27.1. OVERDOSE PREVENTION--LIMITED IMMUNITY.--

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

21 (1) the provisions of Section 30-31-23 NMSA  
22 1978 or Subsection A of Section 30-31-25.1 NMSA 1978 [~~if the~~  
23 evidence for the charge of possession of a controlled substance  
24 was gained as a result of the seeking of medical assistance];

25 (2) a restraining order; or

1                   (3) the conditions of probation or parole.

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

10                   (1) the provisions of Section 30-31-23 NMSA  
 11 1978 or Subsection A of Section 30-31-25.1 NMSA 1978 [if the  
 12 evidence for the charge of possession of a controlled substance  
 13 was gained as a result of the overdose and the need for medical  
 14 assistance];

15                   (2) a restraining order; or

16                   (3) the conditions of probation or parole.

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

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

24                   (1) reporting an alcohol- or drug-related  
 25 overdose or other medical emergency to law enforcement, the 911

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1 system or another emergency dispatch system, a poison control  
2 center or a health care provider; or

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

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

10 "31-1A-2. PROCEDURES FOR POST-CONVICTION CONSIDERATION OF  
11 DNA EVIDENCE--REQUIREMENTS.--

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

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

25 (1) submit to DNA testing ordered by the

1 district court; and

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

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

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

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

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

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

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

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

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

25 (4) the DNA testing [~~he~~] the petitioner is

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1 requesting will be likely to produce admissible evidence; and

2 (5) identity was an issue in [~~his~~] the  
3 petitioner's case or that if the DNA testing [~~he~~] the  
4 petitioner is requesting had been performed prior to [~~his~~] the  
5 petitioner's conviction and the results had been exculpatory,  
6 there is a reasonable probability that the petitioner would not  
7 have pled guilty or been found guilty.

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

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

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

24 [~~G.~~] H. The district court shall order DNA testing  
25 if the petitioner satisfies the requirements set forth in



1 Subsections B and ~~[C]~~ D of this section.

2 ~~[H.]~~ I. If the results of the DNA testing are  
3 exculpatory, the district court may set aside the petitioner's  
4 judgment and sentence, may dismiss the charges against the  
5 petitioner with prejudice, may grant the petitioner a new trial  
6 or may order other appropriate relief.

7 ~~[I.]~~ J. The cost of DNA testing ordered pursuant to  
8 this section shall be borne by the state or the petitioner, as  
9 the district court may order in the interest of justice.

10 Provided, that a petitioner shall not be denied DNA testing  
11 because of ~~[his]~~ the petitioner's inability to pay for the cost  
12 of DNA testing. Testing under this provision shall only be  
13 performed by a laboratory that meets the minimum standards of  
14 the national DNA index system.

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

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

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

21 ~~[K.]~~ L. The petitioner shall have the right to  
22 appeal a district court's denial of the requested DNA testing,  
23 a district court's final order on a petition or a district  
24 court's decision regarding relief for the petitioner. The  
25 state shall have the right to appeal any final order issued by

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1 the district court. An appeal shall be filed by a party within  
2 thirty days to the court of appeals.

3 ~~[L.]~~ M. The state shall preserve all evidence that  
4 is secured in relation to an investigation or prosecution of a  
5 crime and that could be subjected to DNA testing, for not less  
6 than the period of time that a person remains subject to  
7 incarceration or ~~[supervision]~~ on probation or parole in  
8 connection with the investigation or prosecution.

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

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

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

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

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

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

25 ~~[N.]~~ P. As used in this section, "DNA" means

1 deoxyribonucleic acid."

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

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

5 A. A defendant [~~must~~] shall meet the following  
6 minimum criteria to be eligible for a preprosecution diversion  
7 program:

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

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

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

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

19 ~~(5)]~~ (2) the defendant is willing to  
20 participate in the program and submit to all program  
21 requirements;

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

25 ~~(7) a person meeting all of the above criteria~~

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1 ~~and any additional criteria established by the district~~  
2 ~~attorney may be entered into the preprosecution diversion~~  
3 ~~program. The district attorney may elect to not divert a~~  
4 ~~person to the preprosecution diversion program even though that~~  
5 ~~person meets the minimum criteria herein set forth. A decision~~  
6 ~~by the district attorney to not divert to the preprosecution~~  
7 ~~diversion program is not subject to appeal and may not be~~  
8 ~~raised as a defense to any prosecution or habitual offender~~  
9 ~~proceeding] and~~

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

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

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

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

25 "31-16A-7. PROGRAM PARTICIPATION--~~[COSTS]~~ REASONABLE

1 CONDITIONS--TERMINATION.--

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

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

23           ~~B.]~~ C. If a defendant does not comply with the  
24 terms, conditions and requirements of a preprosecution  
25 diversion program, ~~[his]~~ the defendant's participation in the

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1 program [~~shall~~] may be terminated, and the district attorney  
2 may proceed with the suspended criminal prosecution of the  
3 defendant.

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

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

11 "31-18-15. SENTENCING AUTHORITY--NONCAPITAL FELONIES--  
12 BASIC SENTENCES AND FINES--PAROLE AUTHORITY--MERITORIOUS  
13 DEDUCTIONS.--

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

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

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

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

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

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

- 1 (6) for a second degree felony for sexual  
2 exploitation of children, twelve years imprisonment;
- 3 (7) for a second degree felony, nine years  
4 imprisonment;
- 5 (8) for a third degree felony resulting in the  
6 death of a human being, six years imprisonment;
- 7 (9) for a third degree felony for a sexual  
8 offense against a child, six years imprisonment;
- 9 (10) for a third degree felony for sexual  
10 exploitation of children, eleven years imprisonment;
- 11 (11) for a third degree felony, three years  
12 imprisonment;
- 13 (12) for a fourth degree felony for sexual  
14 exploitation of children, ten years imprisonment; or
- 15 (13) for a fourth degree felony, eighteen  
16 months imprisonment.

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

22 C. A period of parole shall be imposed only for  
23 felony convictions wherein a person is sentenced to  
24 imprisonment of more than one year, unless the parties to a  
25 proceeding agree that a period of parole should be imposed. If

1 a period of parole is imposed, the court shall include in the  
2 judgment and sentence of each person convicted and sentenced to  
3 imprisonment in a corrections facility designated by the  
4 corrections department authority for a period of parole to be  
5 served in accordance with the provisions of Section 31-21-10  
6 NMSA 1978 after the completion of any actual time of  
7 imprisonment and authority to require, as a condition of  
8 parole, the payment of the costs of parole services and  
9 reimbursement to a law enforcement agency or local crime  
10 stopper program in accordance with the provisions of that  
11 section. If imposed, the period of parole shall be deemed to  
12 be part of the sentence of the convicted person in addition to  
13 the basic sentence imposed pursuant to Subsection A of this  
14 section together with alterations, if any, pursuant to the  
15 provisions of the Criminal Sentencing Act.

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

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1 served a period of imprisonment pursuant to the provisions of  
2 the Criminal Sentencing Act.

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

5 (1) for a first degree felony resulting in the  
6 death of a child, seventeen thousand five hundred dollars  
7 (\$17,500);

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

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

13 (4) for a second degree felony resulting in  
14 the death of a human being, twelve thousand five hundred  
15 dollars (\$12,500);

16 (5) for a second degree felony for a sexual  
17 offense against a child, twelve thousand five hundred dollars  
18 (\$12,500);

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

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

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

25 (9) for a third degree felony for a sexual

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1 offense against a child, five thousand dollars (\$5,000);

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

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

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

8 F. When the court imposes a sentence of  
9 imprisonment for a felony offense, the court shall indicate  
10 whether or not the offense is a serious violent offense, as  
11 defined in Section 33-2-34 NMSA 1978. The court shall inform  
12 an offender that the offender's sentence of imprisonment is  
13 subject to the provisions of Sections 33-2-34, 33-2-36, 33-2-37  
14 and 33-2-38 NMSA 1978. If the court fails to inform an  
15 offender that the offender's sentence is subject to those  
16 provisions or if the court provides the offender with erroneous  
17 information regarding those provisions, the failure to inform  
18 or the error shall not provide a basis for a writ of habeas  
19 corpus.

20 G. No later than October 31 of each year, the  
21 New Mexico sentencing commission shall provide a written report  
22 to the secretary of corrections, all New Mexico criminal court  
23 judges, the administrative office of the district attorneys and  
24 the chief public defender. The report shall specify the  
25 average reduction in the sentence of imprisonment for serious

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1 violent offenses and nonviolent offenses, as defined in Section  
 2 33-2-34 NMSA 1978, due to meritorious deductions earned by  
 3 prisoners during the previous fiscal year pursuant to the  
 4 provisions of Sections 33-2-34, 33-2-36, 33-2-37 and 33-2-38  
 5 NMSA 1978. The corrections department shall allow the  
 6 commission access to documents used by the department to  
 7 determine earned meritorious deductions for prisoners."

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

10 "31-22-7. ELIGIBILITY FOR REPARATION.--

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

19 (1) to the victim;

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

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

25 B. For the purpose of the Crime Victims Reparation

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1 Act, a person shall be deemed to have intentionally committed  
2 an act or omission constituting a crime, notwithstanding that  
3 by reason of age, insanity, drunkenness or otherwise [~~he~~] the  
4 person was legally incapable of forming a criminal intent.

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

14 D. An order may be made under this section whether  
15 or not any person is prosecuted for or convicted of a crime  
16 enumerated in Section 31-22-8 NMSA 1978; provided an arrest has  
17 been made or the act or omission constituting [~~such~~] a crime  
18 has been reported to the police in a reasonable time or the act  
19 or omission constituting a crime has been reported to a medical  
20 or mental health care provider, victim counselor or other  
21 counseling provider. No order may be made under this section  
22 unless the commission finds that:

23 (1) the act or omission constituting a crime  
24 did occur;

25 (2) the injury or death of the victim resulted

1 from the act or omission constituting a crime; and

2 (3) the claimant or victim fully cooperated  
3 with the appropriate law enforcement agencies or the commission  
4 finds that the claimant or victim acted reasonably under the  
5 circumstances.

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

12 SECTION 9. A new section of Chapter 60, Article 7B NMSA  
13 1978 is enacted to read:

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

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

23 (1) the provisions of Section 60-7B-1 or  
24 60-7B-9 NMSA 1978;

25 (2) a restraining order; or

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1 (3) the conditions of probation or parole.

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

9 (1) the provisions of Section 60-7B-1 or  
10 60-7B-9 NMSA 1978;

11 (2) a restraining order; or

12 (3) the conditions of probation or parole.

13 C. The act of seeking medical assistance for  
14 someone who is experiencing an alcohol- or drug-related  
15 overdose may be used as a mitigating factor in a criminal  
16 prosecution pursuant to the Liquor Control Act for which  
17 immunity is not provided pursuant to this section.

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

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

24 (2) assisting an individual who is reporting  
25 an alcohol- or drug-related overdose or providing care to an

1 individual who is experiencing an alcohol- or drug-related  
2 overdose or other medical emergency while awaiting the arrival  
3 of a health care provider."

4 SECTION 10. [NEW MATERIAL] SHORT TITLE.--Sections 10  
5 through 13 of this act may be cited as the "Accurate Eyewitness  
6 Identification Act".

7 SECTION 11. [NEW MATERIAL] DEFINITIONS.--As used in the  
8 Accurate Eyewitness Identification Act:

9 A. "administrator" means a person conducting a  
10 photo lineup or live lineup;

11 B. "blind" means the administrator does not know  
12 the identity of the suspect;

13 C. "blinded" means the administrator may know who  
14 the suspect is but does not know which lineup member is being  
15 viewed by the eyewitness;

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

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

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

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1 the perpetrator;

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

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

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

15 SECTION 12. [NEW MATERIAL] EYEWITNESS IDENTIFICATION  
16 PROCEDURES.--

17 A. Not later than January 1, 2020, a criminal  
18 justice entity conducting eyewitness identification procedures  
19 shall adopt and comply with written policies for using an  
20 eyewitness to make a decision about whether a suspect is the  
21 perpetrator of a crime upon viewing the suspect in person in a  
22 live lineup or showup or upon viewing a representation of the  
23 suspect in a photo lineup.

24 B. Each governmental entity in New Mexico that  
25 administers eyewitness identification procedures shall provide

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1 a copy of its written policies to the secretary of public  
2 safety no later than February 1, 2020 and the secretary shall  
3 make those policies available to the public.

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

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

15 E. A law enforcement agency shall include in  
16 policies adopted pursuant to this section practices to enhance  
17 the objectivity and reliability of eyewitness identifications  
18 and to minimize the possibility of mistaken identifications,  
19 including the following:

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

22 (2) documenting a description of the suspect  
23 provided by the eyewitness, including a description of the  
24 circumstances under which the suspect was seen by the  
25 eyewitness, the time of day, the length of time the suspect was

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1 seen, the perceived or actual distance from the eyewitness to  
2 the suspect and the lighting conditions;

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

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

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

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

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

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

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1 person who committed the crime;

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

7 (10) presenting lineup members one at a time;

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

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

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

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

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

20 (e) administering the showup procedure  
21 close in time to the commission of the crime;

22 (12) video recording the entirety of the photo  
23 lineup and live lineup and, where practicable, the showup  
24 procedure, unless the recording equipment is not reasonably  
25 available or the recording equipment fails and obtaining

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1 replacement equipment is not feasible; and

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

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

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

17 SECTION 14. [NEW MATERIAL] LEGISLATION TO INCREASE,  
18 DECREASE OR CREATE PERIODS OF IMPRISONMENT--FISCAL IMPACT  
19 STATEMENTS--PROCEDURE.--

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

23 (1) creates a new crime or repeals an existing  
24 crime for which imprisonment is authorized;

25 (2) increases or decreases the period of

1 imprisonment authorized for an existing crime;

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

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

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

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

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

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

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

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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 15. EFFECTIVE DATE.**--The effective date of the provisions of this act is July 1, 2019.

underscoring material = new  
[bracketed material] = delete