

1 AN ACT

2 RELATING TO CRIMINAL JUSTICE REFORM; PROVIDING FOR ASSISTANCE
3 TO OFFENDERS WITH BEHAVIORAL HEALTH DIAGNOSES; REVISING
4 PROCEDURES RELATED TO A PERSON INCARCERATED IN A COUNTY JAIL;
5 REVISING PROTECTIONS FOR PERSONS INVOLVED WITH AN ALCOHOL- OR
6 DRUG-RELATED OVERDOSE; PROVIDING PROCEDURES FOR POST-
7 CONVICTION PETITIONS; REVISING REQUIREMENTS FOR
8 PREPROSECUTION DIVERSION PROGRAMS; REVISING PAROLE AUTHORITY;
9 REVISING REQUIREMENTS FOR CRIME VICTIMS' REPARATIONS;
10 ESTABLISHING THE RIGHT OF CRIME VICTIMS TO RECEIVE NOTICE;
11 AMENDING CERTAIN PROCEDURES IN THE CRIME VICTIMS REPARATION
12 ACT; ENACTING THE ACCURATE EYEWITNESS IDENTIFICATION ACT;
13 REVISING DUTIES OF THE NEW MEXICO SENTENCING COMMISSION;
14 REQUIRING EYEWITNESS IDENTIFICATION POLICIES AND TRAINING.

15
16 BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF NEW MEXICO:

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

19 "9-8-7.1. BEHAVIORAL HEALTH SERVICES DIVISION--POWERS
20 AND DUTIES OF THE HUMAN SERVICES DEPARTMENT.--Subject to
21 appropriation, the department shall:

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

25 B. establish standards for the delivery of

1 behavioral health services, including quality management and
2 improvement, performance measures, accessibility and
3 availability of services, utilization management,
4 credentialing and recredentialing, rights and
5 responsibilities of providers, preventive behavioral health
6 services, clinical treatment and evaluation and the
7 documentation and confidentiality of client records;

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

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

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

1 behavioral health treatment and employment training;

2 F. establish criteria for determining individual
3 eligibility for behavioral health services; and

4 G. maintain a management information system in
5 accordance with standards for reporting clinical and fiscal
6 information."

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

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

14 A. the secretary shall adopt and promulgate rules:

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

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

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

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

24 (2) that have proposed utilization of
25 funding pursuant to this section that meets the priorities

1 and guidelines for the awarding of behavioral health services
2 funding established in department rules."

3 SECTION 3. Section 30-31-27.1 NMSA 1978 (being Laws
4 2007, Chapter 260, Section 1) is amended to read:

5 "30-31-27.1. OVERDOSE PREVENTION--LIMITED IMMUNITY.--

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

14 (1) the provisions of Section 30-31-23 NMSA
15 1978 or Subsection A of Section 30-31-25.1 NMSA 1978;

16 (2) a restraining order; or

17 (3) the conditions of probation or parole.

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

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

1 1978 or Subsection A of Section 30-31-25.1 NMSA 1978;

2 (2) a restraining order; or

3 (3) the conditions of probation or parole.

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

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

11 (1) reporting an alcohol- or drug-related
12 overdose or other medical emergency to law enforcement, the
13 911 system or another emergency dispatch system, a poison
14 control center or a health care provider; or

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

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

22 "31-1A-2. PROCEDURES FOR POST-CONVICTION CONSIDERATION
23 OF DNA EVIDENCE--REQUIREMENTS.--

24 A. A person convicted of a felony, who claims that
25 DNA evidence will establish the person's innocence, may

1 petition the district court of the judicial district in which
2 the person was convicted to order the disclosure,
3 preservation, production and testing of evidence that can be
4 subjected to DNA testing. A copy of the petition shall be
5 served on the district attorney for the judicial district in
6 which the district court is located. A petitioner shall be
7 granted full, fair and prompt proceedings upon filing a
8 petition.

9 B. As a condition to the district court's
10 acceptance of the person's petition, the petitioner shall:

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

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

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

23 D. The petitioner shall show, by a preponderance
24 of the evidence, that:

25 (1) the petitioner was convicted of a

1 felony;

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

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

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

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

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

13 (4) the DNA testing the petitioner is
14 requesting will be likely to produce admissible evidence; and

15 (5) identity was an issue in the
16 petitioner's case or that if the DNA testing the petitioner
17 is requesting had been performed prior to the petitioner's
18 conviction and the results had been exculpatory, there is a
19 reasonable probability that the petitioner would not have
20 pled guilty or been found guilty.

21 E. If the petitioner satisfies the requirements
22 set forth in Subsection D of this section, the district court
23 shall appoint counsel for the petitioner, unless the
24 petitioner waives counsel or retains the petitioner's own
25 counsel.

1 F. After reviewing a petition, the district court
2 may dismiss the petition, order a response by the district
3 attorney or issue an order for DNA testing.

4 G. The district court shall order all evidence
5 secured that is related to the petitioner's case and that
6 could be subjected to DNA testing. The evidence shall be
7 preserved during the pendency of the proceeding. The
8 district court may impose appropriate sanctions, including
9 dismissal of the petitioner's conviction or criminal
10 contempt, if the court determines that evidence was
11 intentionally destroyed after issuance of the court's order
12 to secure evidence.

13 H. The district court shall order DNA testing if
14 the petitioner satisfies the requirements set forth in
15 Subsections B and D of this section.

16 I. If the results of the DNA testing are
17 exculpatory, the district court may set aside the
18 petitioner's judgment and sentence, may dismiss the charges
19 against the petitioner with prejudice, may grant the
20 petitioner a new trial or may order other appropriate relief.

21 J. The cost of DNA testing ordered pursuant to
22 this section shall be borne by the state or the petitioner,
23 as the district court may order in the interest of justice.
24 Provided, that a petitioner shall not be denied DNA testing
25 because of the petitioner's inability to pay for the cost of

1 DNA testing. Testing under this provision shall only be
2 performed by a laboratory that meets the minimum standards of
3 the national DNA index system.

4 K. The provisions of this section shall not be
5 interpreted to limit:

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

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

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

17 M. The state shall preserve all evidence that is
18 secured in relation to an investigation or prosecution of a
19 crime and that could be subjected to DNA testing, for not
20 less than the period of time that a person remains subject to
21 incarceration or on probation or parole in connection with
22 the investigation or prosecution.

23 N. The state may dispose of evidence before the
24 expiration of the time period set forth in Subsection M of
25 this section if:

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

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

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

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

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

14 P. As used in this section, "DNA" means
15 deoxyribonucleic acid."

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

18 "31-16A-4. ELIGIBILITY.--

19 A. A defendant shall meet the following minimum
20 criteria to be eligible for a preprosecution diversion
21 program:

22 (1) the defendant shall have no prior felony
23 convictions for a violent crime;

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

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

3 B. A person who meets all of the criteria pursuant
4 to Subsection A of this section may be entered into the
5 preprosecution diversion program; provided that the district
6 attorney may elect not to divert a person to the
7 preprosecution diversion program even though that person
8 meets the minimum criteria set forth in this section.

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

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

15 "31-16A-7. PROGRAM PARTICIPATION--REASONABLE
16 CONDITIONS--TERMINATION.--

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

23 B. A district attorney may require as a program
24 requirement that a defendant agree to such reasonable
25 conditions as the district attorney deems necessary to ensure

1 that the defendant will observe the laws of the United States
2 and the various states and the ordinances of any
3 municipality.

4 C. If a defendant does not comply with the terms,
5 conditions and requirements of a preprosecution diversion
6 program, the defendant's participation in the program may be
7 terminated, and the district attorney may proceed with the
8 suspended criminal prosecution of the defendant.

9 D. If the participation of a defendant in a
10 preprosecution diversion program is terminated, the district
11 attorney shall state in writing the specific reasons for the
12 termination, which reasons shall be available for review by
13 the defendant and the defendant's counsel."

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

16 "31-18-15. SENTENCING AUTHORITY--NONCAPITAL FELONIES--
17 BASIC SENTENCES AND FINES--PAROLE AUTHORITY--MERITORIOUS
18 DEDUCTIONS.--

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

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

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

25 (3) for a first degree felony, eighteen

1 years imprisonment;

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

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

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

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

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

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

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

16 (11) for a third degree felony, three years
17 imprisonment;

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

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

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

1 Criminal Sentencing Act.

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

21 D. When a court imposes a sentence of imprisonment
22 pursuant to the provisions of Section 31-18-15.1, 31-18-16 or
23 31-18-17 NMSA 1978 and suspends or defers the basic sentence
24 of imprisonment provided pursuant to the provisions of
25 Subsection A of this section, the period of parole shall be

1 served in accordance with the provisions of Section 31-21-10
2 NMSA 1978 for the degree of felony for the basic sentence for
3 which the inmate was convicted. For the purpose of
4 designating a period of parole, a court shall not consider
5 that the basic sentence of imprisonment was suspended or
6 deferred and that the inmate served a period of imprisonment
7 pursuant to the provisions of the Criminal Sentencing Act.

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

11 (1) for a first degree felony resulting in
12 the death of a child, seventeen thousand five hundred dollars
13 (\$17,500);

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

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

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

22 (5) for a second degree felony for a sexual
23 offense against a child, twelve thousand five hundred dollars
24 (\$12,500);

25 (6) for a second degree felony for sexual

1 exploitation of children, five thousand dollars (\$5,000);

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

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

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

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

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

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

14 F. When the court imposes a sentence of
15 imprisonment for a felony offense, the court shall indicate
16 whether or not the offense is a serious violent offense, as
17 defined in Section 33-2-34 NMSA 1978. The court shall inform
18 an offender that the offender's sentence of imprisonment is
19 subject to the provisions of Sections 33-2-34, 33-2-36,
20 33-2-37 and 33-2-38 NMSA 1978. If the court fails to inform
21 an offender that the offender's sentence is subject to those
22 provisions or if the court provides the offender with
23 erroneous information regarding those provisions, the failure
24 to inform or the error shall not provide a basis for a writ
25 of habeas corpus.

1 G. No later than October 31 of each year, the
2 New Mexico sentencing commission shall provide a written
3 report to the secretary of corrections, all New Mexico
4 criminal court judges, the administrative office of the
5 district attorneys and the chief public defender. The report
6 shall specify the average reduction in the sentence of
7 imprisonment for serious violent offenses and nonviolent
8 offenses, as defined in Section 33-2-34 NMSA 1978, due to
9 meritorious deductions earned by prisoners during the
10 previous fiscal year pursuant to the provisions of Sections
11 33-2-34, 33-2-36, 33-2-37 and 33-2-38 NMSA 1978. The
12 corrections department shall allow the commission access to
13 documents used by the department to determine earned
14 meritorious deductions for prisoners."

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

17 "31-22-7. ELIGIBILITY FOR REPARATION.--

18 A. If a person is injured or killed by an act or
19 omission of another person coming within the criminal
20 jurisdiction of the state after July 1, 1981, which act or
21 omission includes a crime enumerated in Section 31-22-8 NMSA
22 1978, and upon application for reparation, the commission may
23 award reparation in accordance with the Crime Victims
24 Reparation Act:

25 (1) to the victim;

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

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

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

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

20 D. An order may be made under this section whether
21 or not any person is prosecuted for or convicted of a crime
22 enumerated in Section 31-22-8 NMSA 1978; provided an arrest
23 has been made or the act or omission constituting a crime has
24 been reported to the police in a reasonable time or the act
25 or omission constituting a crime has been reported to a

1 licensed medical, mental health or counseling provider, or
2 tribal health provider. No order may be made under this
3 section unless the commission finds that:

4 (1) the act or omission constituting a crime
5 did occur;

6 (2) the injury or death of the victim
7 resulted from the act or omission constituting a crime; and

8 (3) the claimant or victim fully cooperated
9 with the appropriate law enforcement agencies or the
10 commission finds that the claimant or victim acted reasonably
11 under the circumstances.

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

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

20 "31-22-14. LIMITATIONS ON AWARD--COLLATERAL RECOVERY--
21 PRELIMINARY AWARD.--

22 A. No order for the payment of reparation shall be
23 made unless application has been made within two years after
24 the date of the injury or death and the injury or death was
25 the result of a crime enumerated in Section 31-22-8 NMSA

1 1978. An application for reparation shall be made within two
2 years after the injury or death, except for minors who are
3 victims of criminal activity under the provisions of Section
4 30-6-1 NMSA 1978, regarding abandonment or abuse of a child,
5 Section 30-9-11 NMSA 1978, regarding criminal sexual
6 penetration, or Section 30-9-13 NMSA 1978, regarding criminal
7 sexual contact of a minor.

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

- 15 (1) loss of wages;
- 16 (2) the cost of home health care;
- 17 (3) the cost of making a home or automobile
18 accessible;
- 19 (4) the cost of training in the use of
20 special application; or
- 21 (5) job training.

22 C. Except as provided by Subsection E of this
23 section, the commission shall deduct from any reparation
24 awarded any payments received from a collateral source or
25 from the United States or the state or any of its political

1 subdivisions for injury or death subject to reparation under
2 the Crime Victims Reparation Act. If the claimant receives
3 an award of reparation from the commission and also receives
4 payment as set forth in the preceding sentence for which no
5 deduction was made, the claimant shall refund to the state
6 the lesser of the amount of reparation paid or the sums not
7 so deducted.

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

16 E. If it appears that a final award of reparation
17 will be made by the commission, a preliminary award may be
18 authorized by the director of the commission or the
19 commission's designee when the commission chair concurs. The
20 amount of the preliminary award shall be deducted from any
21 final award made by the commission."

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

24 "31-26-4. VICTIM'S RIGHTS.--A victim shall have the
25 right to:

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

4 B. timely disposition of the case;

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

7 D. notification of court proceedings;

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

10 F. confer with the prosecution;

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

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

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

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

22 K. promptly receive any property belonging to the
23 victim that is being held for evidentiary purposes by a law
24 enforcement agency or the prosecuting attorney, unless there
25 are compelling evidentiary reasons for retention of the

1 victim's property;

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

7 M. be notified by the district attorney of the
8 availability of and procedures to apply for crime victims
9 reparation."

10 SECTION 11. A new section of Chapter 60, Article 7B
11 NMSA 1978 is enacted to read:

12 "SUBSTANCE-RELATED POISONING PREVENTION--LIMITED
13 IMMUNITY.--

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

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

24 (2) a restraining order; or

25 (3) the conditions of probation or parole.

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

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

10 (2) a restraining order; or

11 (3) the conditions of probation or parole.

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

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

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

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

1 overdose or other medical emergency while awaiting the
2 arrival of a health care provider."

3 SECTION 12. SHORT TITLE.--Sections 12 through 15 of
4 this act may be cited as the "Accurate Eyewitness
5 Identification Act".

6 SECTION 13. DEFINITIONS.--As used in the Accurate
7 Eyewitness Identification Act:

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

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

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

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

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

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

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

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

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

14 **SECTION 14. EYEWITNESS IDENTIFICATION PROCEDURES.--**

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

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

1 secretary shall make those policies available to the public.

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

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

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

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

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

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

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

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

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

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

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

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

6 (10) presenting lineup members one at a
7 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
19 suspect when the suspect is being observed by the eyewitness;
20 and

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

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

1 reasonably available or the recording equipment fails and
2 obtaining replacement equipment is not feasible; and

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

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

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

18 SECTION 16. LEGISLATION TO INCREASE, DECREASE OR CREATE
19 PERIODS OF IMPRISONMENT--FISCAL IMPACT STATEMENTS--
20 PROCEDURE.--

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

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

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

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

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

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

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

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

23 (1) the average operating costs per inmate
24 and the number of inmates in adult correctional facilities;
25 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 17. EFFECTIVE DATE.--The effective date of the provisions of this act is July 1, 2019. _____