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FISCAL IMPACT REPORT

SPONSOR HAFC ORIGINAL DATE 3/6/19 CS/CS/267/HJCS/
 LAST UPDATED _____ HB HAFC

SHORT TITLE Criminal Justice Reforms SB _____

ANALYST Edwards/Torres

ESTIMATED ADDITIONAL OPERATING BUDGET IMPACT (dollars in thousands)

	FY19	FY20	FY21	3 Year Total Cost	Recurring or Nonrecurring	Fund Affected
Total	NFI	At least \$1,000.0	At least \$1,00.0	At least \$2,000.0	Recurring	General Fund

(Parenthesis () Indicate Expenditure Decreases)

Conflicts with House Bill 173 and SB 202, also amending Section 43-1-19 NMSA 1978.
 Relates to House Bill 342.

SOURCES OF INFORMATION

LFC Files

Responses Received From

- New Mexico Sentencing Commission (NMSC)
- Administrative Office of the Courts (AOC)
- Law Office of the Public Defender (LOPD)
- New Mexico Attorney General (NMAG)
- Administrative Office of the District Attorney (AODA)
- New Mexico Corrections Department (NMCD)
- Department of Public Safety (DPS)
- Human Services Department (HSD)

Responses Not Received From

- Department of Finance and Administration (DFA)

SUMMARY

Synopsis of Bill

The House Appropriations and Finance Committee substitute for House Bill 267 creates the Crime Reduction Grant Act and amends existing statutes related to criminal justice issues.

Sentencing Commission. Section 1 of House Bill 267 amends Section 9-3-10 NMSA 1978 to change the make-up of the Sentencing Commission and to require the commission to create and

maintain a data-sharing network.

House Bill 267 replaces the member from the Court of Appeals with a magistrate judge to be appointed by the chief justice of the Supreme Court, and adds three new members, which will increase the size of the commission from 24 to 27. The new members are

- A representative from the behavioral health services division of the Human Services Department;
- One public member appointed by the minority floor leader of the Senate; and
- One public member appointed by the minority floor leader of the House of Representatives.

The data-sharing network to be implemented by NMSC is to receive, store, analyze, and disseminate criminal justice data for and among participating criminal justice and behavioral health agencies for the purpose of evaluating local and statewide criminal justice systems and programs and supporting information sharing. The Commission is also to provide data analysis as requested by criminal justice agencies and criminal justice coordinating councils.

Arrest Records. Section 2 of House Bill 267 amends Section 29-3-8 NMSA 1978 regarding arrest records. It clarifies and simplifies the provisions regarding the collection of fingerprint and palm print impressions and photographs, describing them all as “biometric identifying information.” It sets out the requirement for an arrest record, directs the department to promulgate rules addressing the collection and submission of biometric identifying information and the creation of a state personal identification number system to identify a person arrested and charged with a crime and the creation of a state arrest tracking number system for each arrest record. It requires the booking facility to forward the arrest record to the department, and the department shall provide the biometric identifying information to the federal bureau of investigation and the state personal identification number to agencies at all levels of government that are engaged in the apprehension, prosecution or defense, adjudication, incarceration or rehabilitation of criminal offenders, and send arrest records to the administrative office of the district attorneys for submission to the appropriate prosecuting authority. The department shall forward the disposition of all criminal cases to the federal bureau of investigation and the national crime information center within five business days of receipt.

Uniform Crime Reporting System. Section 3 of House Bill 267 amends Section 29-3-11 NMSA 1978 to require the Department of Public Safety to provide the New Mexico Sentencing Commission access to the data collected and maintained by the department, and to use the new code system required by House Bill 267. The department must make its annual report and other statistical data reports available to the Administrative Office of the Courts.

Release of Information Under the Mental Health and Developmental Disabilities Act. Section 4 of House Bill 267 amends Section 43-1-19 NMSA 1978 of the Mental Health and Developmental Disabilities Act to provide that authorization from the client is not required for the release of confidential information to assure continuity of care, or when the disclosure is made to a governmental agency, its agent or a state educational institution, a duly organized state or county association of licensed physicians or dentists, a licensed health facility or staff committees of such a facility for the purpose of research.

The Crime Reduction Grant Act. Sections 5-10 of House Bill 267 create the Crime Reduction

Grant Act.

Criminal Justice Coordinating Council. It creates a criminal justice coordinating council for each judicial district to be convened by the chief judge of the district court in the district. Membership may include representation from within the district for each court in the district, the district attorney, the district public defender office, law enforcement agencies, jails, correctional facilities, behavioral health programs or other agencies and entities agreed upon by the council. The council shall develop a strategic plan to review the criminal justice system in the judicial district to identify problems and develop data-driven policies and evidence-based best practices; apply as necessary for grants; facilitate the sharing of information; and, in consultation with the commission, develop data-sharing agreements.

Application for grants. House Bill 267 sets out the procedures for a council to apply for a grant on behalf of a member. House Bill 267 lists four criminal justice-related reasons for which a grant may be sought. The grants have four conditions attached, including that the council and the recipient member to use no more than five percent of a grant for administrative costs, develop data-sharing agreements and methods of data-sharing, develop best practices and performance measures, collect data to evaluate effectiveness, perform quarterly evaluations, and provide reports.

Reports. Each grant administration agency shall report to the commission annually regarding its grants. The commission shall report to the legislature annually.

FISCAL IMPLICATIONS

There are no appropriations contained in the bill. However, the bill allows for applications for grants to be made by criminal justice coordinating councils from grant administration agencies for the following purposes:

1. Develop, expand, and improve evidence-based treatment and supervision alternatives to incarceration;
2. Reduce barriers to participation by criminal offenders in preprosecution diversion or specialty court programs;
3. Develop or improve pretrial services programs; and,
4. Purchase equipment or provide training to support any of the purpose provided in the section (items 1-3, above).

The bill does not identify which agencies are grant administration agencies nor does it identify or provide funding for the identified grant purposes.

Agency Responses:

DPS stated:

Section 2 (J) requires DPS to report dispositions to the FBI with 5 days. This would require DPS to develop an electronic mechanism to receive the data electronically from the AOC and marry the data to appropriate arrest record in the Criminal Justice Information System (CJIS). There will need to be technical modifications to the existing CJIS database. There will also need to be a creation of a communication web service that will allow the AOC to send DPS

the disposition electronically and match the disposition to the accurate person and arrest record. The dispositions from the AOC and arrest records are two disparate databases and would require an analysis to determine the database field matching and the frequency of the matching. This system modification is estimated to cost approximately \$500 thousand.

Furthermore, the communication of the biometric and the assignment of the State Identification Number will be expedited and submitted more efficiently with the use of the LiveScan fingerprint/photo/palm prints to the Automated Fingerprint Identification System. If the biometrics are not submitted electronically the arresting agency or designate is required to submit them manually by mailing into the Criminal History Central Repository. This is an estimated amount of \$500 thousand, some of which DPS may be able to fund within their current base budget.

NMSC, at present, has a small staff of 4 FTE; only two of those positions are data analysts. House Bill 267 requires the commission to perform complex oversight, coordination, and analysis. NMSC, with a FY19 operating budget of \$602 thousand, may not be able to accomplish the tasks required by the bill.

The Law Office of the Public Defender (LOPD) believes there would be no negative fiscal impact to this bill's passage. While it would likely take time to recognize, the benefits of data sharing as proposed in the bill would make access to meaningful and useful data more widely available to LOPD, so that it could better represent its clients at sentencing and also in obtaining appropriate pretrial services. This would potentially reduce LOPD resource expenditure if this research and evidence regarding criminal justice is available. House Bill 267 is likely to ultimately reduce the workload for individual attorneys in LOPD. Thus, this bill should ultimately provide a net fiscal benefit to LOPD.

AOC states there will be a minimal administrative cost for statewide update, distribution, and documentation of statutory changes. Any additional fiscal impact on the judicial branch would be proportional to the enforcement of this law and the potential increase in state arrest tracking numbers for which AOC is required to provide to DPS the disposition of all criminal cases assigned a state arrest tracking number, as well as the expenditure of court resources to provide representation on a Criminal Justice Coordinating Council and for the convening of a council by a district judge in the district, and the provision of required prompt responses to council requests for information. New laws, amendments to existing laws and new hearings have the potential to increase caseloads in the courts, thus requiring additional resources to handle the increase.

Other Considerations:

Section 2 (A) of the bill requires local booking facilities to collect the biometric identifying information of offenders prior to their release. To comply with this, booking facilities would need fingerprinting machines that are able to interface with DPS' Automated Fingerprint Identification System (AFIS) repository. In fall 2018, the Department of Public Safety (DPS) explained to legislative staff that each machine costs almost \$19 thousand and that DPS has identified 10 jurisdictions that would need the machines:

- Hobbs PD
- Ruidoso PD
- Roswell PD (one scanner is deployed in the Chavez County Detention Center, but the PD

doesn't always transport all detainees to the detention center.)

- De Baca County Detention Center (the detention center services several arresting agencies and would be a good centralized location to house a live scan machine.)
- Artesia PD – (the PD is an hour away from the closest detention center with a live scan. This would be a location that would warrant a live scan.)
- Valencia County Detention Center (the detention center services several arresting agencies and would be a good centralized location to house a live scan machine)
- Santa Rosa PD – (the PD sends detainees to several different detention centers; therefore, they currently ink arrested individuals. This would be an ideal location to house a live scan.)
- Eunice PD or Jal PD (these locations do not have access to a live scan. Placement in Eunice would be sufficient for Jal to utilize.)
- Alamogordo PD
- Torrance County (no live scan has been deployed to the Torrance County Sheriff's Office nor do any of the PD's in Torrance county have a live scan or access to a live scan)

The Department of Public Safety may be able to help cover maintenance costs of these machines.

SIGNIFICANT ISSUES

NMSC provided the following analysis:

The proposals in House Bill 267 grew out of House Joint Memorial (HJM) 16 passed in the 2018 legislative session. HJM 16 established a criminal justice and public safety task force to identify the issues of primary concern with the state's criminal justice and public safety systems and to develop a strategic plan to ameliorate concerns with the various parts of those systems. The task force was chaired by former New Mexico Supreme Court Justice Edward L. Chavez, and included representative from across the criminal justice and public safety systems. The HJM 16 task force presented its 81-page [report](#) to the Legislature in October 2018.

Among the significant issues identified by the HJM 16 task force was the requirement for consistent employment of evidence-based data-driven best practices; the need for data collection, integration, sharing, and analytics; the need for a unique biometric identifier for each participant in the criminal justice system to allow for tracking of an individual through the system, from the time of arrest throughout the person's time in the system; the need for integration of behavioral health data with criminal justice data; and the importance of data-driven policing. The task force also identified that New Mexico's rural communities had significant staffing needs across systems. The task force also recommended the implementation of performance incentive grant programs to share costs by communities across the state in exchange for agreements to share data, use data-driven policing, and require best practices performance measures and real-time program evaluations.

House Bill 267's mandate that a state personal identification number be used across criminal justice systems would greatly facilitate both the tracking of individuals across the system, and the evaluation of programs used across systems. A state personal identification number is considered a key element in using data analytics to evaluate systems and programs. There were a few criminal justice reform initiatives in process since the 2018 Legislative Session

and in each one, experts who discussed analysis and evaluations of criminal justice systems and programs started with the need for a state personal identification number.

The changes to the present confidentiality restrictions concerning health information presently in statute, particularly those in the Mental Health and Disabilities Code, are also important. At present, Section 43-1-19 NMSA 1978 has been interpreted as requiring an individual to give consent to the use of his or her data before that data can be shared for research purposes. This has proven to be a barrier when evaluating programs to assist those with behavioral health issues who are in, or have been in contact with, the criminal justice system. The change to Section 43-1-19 NMSA 1978 in House Bill 267 will allow for research and evaluation while still protecting confidentiality of individuals.

DPS explains:

Section 2 (A) requires that the booking facility collect the biometric data identifying information prior to release. The most accurate and expeditious way of obtaining this information is by electronic LiveScan submission. The State Arrest Tracking number is previously known as State Tracking Number (STN). This number is electronically assigned by the LiveScan at the time of arrest. If the arrest is submitted manually a STN is adhered to the arrest card with a sticker that is put on the arrest card and criminal complaint.

Section 2 (C) requires certain data to be collected. One of these items is a state personal identifier. This number is already assigned by the Automated Identification System (AFIS) at the time the biometric data is accepted into the AFIS. If a person already possesses a previous state arrest record it will append the State Identification Number (SID). Creating another number will be redundant and not necessary.

NMAG points out, “[Section 1 (D)(14)] mandates the Sentencing Commission create and maintain a data-sharing network to receive, store, analyze, and disseminate criminal-justice data. However, the statute does not define ‘criminal justice data’. It would be helpful to know what specific data, or a non-exhaustive list of categories, the Sentencing Commission is required to include in the data-sharing network. Also, information about how the data will be collected and how long the data should be kept and maintained would be beneficial, or ensure such information is included in the state rules for record retention.”

AODA points out that criminal justice coordinating councils are established in each judicial district, so the entity examining issues and proposing solutions is local. This should help with finding local solutions to local problems.

AOC provided the following background on CJCCs:

In the 2013 Legislative Session, the Legislature in HB 608 created the Bernalillo County Criminal Justice Review Commission (the “BCCJRC”) to exist from July 1, 2013 to June 30, 2015. The legislation charged the BCCJRC, composed of stakeholders at all levels of the criminal justice system in Albuquerque, with “reviewing the criminal justice system in Bernalillo county,” to make written recommendations to revise or replace local and state laws, and to “improve the delivery of criminal justice in Bernalillo county.” After June 30, 2015, the Supreme Court by Order 15-8110, created the Bernalillo County Criminal Justice Review Committee to continue to work of the BCCJRC through June 30, 2016.

Accomplishments

- Implemented initiatives that lowered the population of the Metropolitan Detention Center (“MDC”) by over 30% each year from 2013 through 2015 and decreased average length of inmate stays
- Helped Bernalillo County save \$5 million by eradicating the need for out-of-county housing for MDC 2 inmates
- By October 2016, the MDC population fell from 2013 by 49.9%, well below the 1,950 maximum imposed by federal court, to an all-time low of 1,224.
- Initiatives include expansion of pretrial services funded by Bernalillo County, earlier scheduling of hearings for defendants arrested on failure-to-appear warrants, judges’ use of a risk assessment instrument for use in setting conditions of release, the Albuquerque Police Department agreeing to obtain cell phone contact information to improve accuracy of electronic court notices, county funding for an Assistant District Attorney to be present at all misdemeanor first appearances, encouraging the prosecution to charge by accusation and a preliminary hearing instead of by grand jury, and expansion of the early plea program.
- The BCCJRC has demonstrated the value of coordination among those in law enforcement, the judiciary, corrections, and local governing bodies to improve criminal justice. One result is that the Supreme Court issued Order 16-8500 (attached), “In the Matter of the Establishment of District Court Criminal Justice Coordinating Councils.” Order 16-8500 highlights the benefits of Criminal Justice Coordinating Councils, including:
 - Improved analysis of the problem;
 - Improved communication, cooperation, and coordination;
 - Clear goals, objectives, and priorities;
 - more effective allocation of resources;
 - Improved programs and services;
 - Improved capacity and quality of personnel; and
 - Increased public confidence in the justice system (U.S. Department of Justice National Institute of Corrections).

Additional information about the work of criminal justice coordinating councils nationwide can be found at the website for the National Network of Criminal Justice Coordinating Councils at <http://www.jmijustice.org/networkcoordination/national-network-criminal-justice-coordinating-councils/> hosted by the Justice Management Institute.

PERFORMANCE IMPLICATIONS

All agencies that administer grants will have to develop policies and procedures regarding how to receive, evaluate, and award grants to requesting council members. This will take some time, and staff assigned to thereafter sit on the evaluation committee or similar group will have to take time away from their normal duties.

CONFLICT, DUPLICATION, COMPANIONSHIP, RELATIONSHIP

Conflicts with House Bill 173 and SB202, also amending 43-1-19 NMSA 1978.

There are numerous bills this session that address the intersection of behavioral health and

criminal justice and that add significant requirements for BHSD (House Bill 343, 290, and 298, Senate Bills 250 and 334, and Senate Memorial 8). This creates concern on the part of HSD about the need for a strategic legislative approach to ensure agency administrative capacity and local provider capacity to fulfill legislative requirements.

OTHER SUBSTANTIVE ISSUES

NMAG states, “Many of the sections in House Bill 267 only apply to the district attorneys and not specifically to the New Mexico Attorney General (NMAG). For instance, the administrative office of the courts only has to provide DPS with the disposition of criminal cases when the district attorney decides not to file charges in the case, not when the NMAG decides not to file charges in a criminal case. Because the NMAG also prosecutes criminal matters, it should be included in the related mandates.”

NMAG also states: “It is unclear what the penalty or enforcement provisions are if the time requirements are not met regarding forwarding of information that is mandated by House Bill 267.”

HSD explains, “The data collection part of House Bill 267 brushes up against existing statutes regarding personal identifying information (PII) and protected health information (PHI). It would also likely be better to withhold submission of data to a database until a conviction.”

TE/gb/al/sb