

LFC Requester:

Scott Sanchez

AGENCY BILL ANALYSIS - 2025 REGULAR SESSION

SECTION I: GENERAL INFORMATION

{Indicate if analysis is on an original bill, amendment, substitute or a correction of a previous bill}

Date Prepared: 2/19/2025

Check all that apply:

Bill Number: HB 428

Original Correction
Amendment Substitute

Sponsor: Rep. Michaela Lara Cadena

Agency Name and Code Number: 305 – New Mexico Department of Justice

Person Writing Analysis: Assistant Solicitor General Taylor Bui

Short Title: Rules Definitions for Corrections

Phone: 505-537-7676

Email: legisfir@nmag.gov

SECTION II: FISCAL IMPACT

APPROPRIATION (dollars in thousands)

Appropriation		Recurring or Nonrecurring	Fund Affected
FY25	FY26		

(Parenthesis () indicate expenditure decreases)

REVENUE (dollars in thousands)

Estimated Revenue			Recurring or Nonrecurring	Fund Affected
FY25	FY26	FY27		

(Parenthesis () indicate revenue decreases)

ESTIMATED ADDITIONAL OPERATING BUDGET IMPACT (dollars in thousands)

	FY25	FY26	FY27	3 Year Total Cost	Recurring or Nonrecurring	Fund Affected
Total						

(Parenthesis () Indicate Expenditure Decreases)

Duplicates/Conflicts with/Companion to/Relates to:
 Duplicates/Relates to Appropriation in the General Appropriation Act

SECTION III: NARRATIVE

This analysis is neither a formal Opinion nor an Advisory Letter issued by the New Mexico Department of Justice. This is a staff analysis in response to a committee or legislator’s request. The analysis does not represent any official policy or legal position of the NM Department of Justice.

BILL SUMMARY

Synopsis:

This bill amends the state Administrative Procedures Act and the State Rules Act to require rules promulgated by the corrections department to comply with the Administrative Procedures Act and State Rules Act.

Section 1 amends the definition of “Rule” in NMSA 1978, Section 12-8-2 (the Administrative Procedures Act) to remove “penal” and “correctional” from the list of types of rules NOT currently included in the definition. In short, the amendment removes rules related to state penal or correction facilities from the exceptions to Section 33-2-1. Section 1 also makes technical edits.

Section 2 similarly amends the definition of “Rule” in NMSA 1978, Section 14-4-2 (the State Rules Act) to remove “inmates of any penal or” and adds “a person housed at any” from the list of types of rules NOT currently included in the definition. In short, the amendment removes rules related to state penal facilities from the exceptions to Section 14-4-2.

Section 3 amends NMSA 1978, Section 33-2-1 related to correctional institution’s adoption of rules to expand the application of the section to all rules related to “New Mexico inmates, probationers and parolees under the supervision of the corrections department.” Section 3 also imposes a 45-day public comment period and requires published notice, prior to the adoption, amendment or repeal of any rule.

FISCAL IMPLICATIONS

N/A

SIGNIFICANT ISSUES

None.

PERFORMANCE IMPLICATIONS

N/A

ADMINISTRATIVE IMPLICATIONS

N/A

CONFLICT, DUPLICATION, COMPANIONSHIP, RELATIONSHIP

- HB 360 is related to HB 428 as it would amend the State Rules Act to require any agency to provide LCS a “custodian of rulemaking records.”
- HB 425 is related to HB 428 as it would amend the State Rules Act to require any rule-making agency to respond in writing to public comments received.
- SB 423 is related to HB 428 as it would amend the Administrative Procedures Act to require the LFC to conduct a “rule impact analysis” of certain “major rules.”

TECHNICAL ISSUES

- Currently, HB 428 requires a 45-day period of public comment but does not otherwise provide a time frame for when the notice must be published. Based on the amendments in Section 1 and 2, Section 12-8-4(A) would impose a 30-day notice period. Similarly, Section 14-4-5.2 requires a 30-day notice period.

OTHER SUBSTANTIVE ISSUES

- NMSA 1978, Section 31-21-25 empowers the Parole Board to “adopt such rules and regulations as may be necessary for the effectual discharge of the duties of the board[,]” which may conflict with HB 428 permitting the department of corrections to promulgate rules “concerning New Mexico inmates, probationers and *parolees*[. . .]” (emphasis added). While Section 31-21-25 focuses on the Parole Board and HB 428 focuses on parolees under the supervision of the department, based on the wording of both, there could be conflicting rules promulgated concerning parolees.

ALTERNATIVES

None.

WHAT WILL BE THE CONSEQUENCES OF NOT ENACTING THIS BILL

- Status quo.

AMENDMENTS

None.