

Duplicates/Conflicts with/Companion to/Relates to:

Relates to SB2 & SB3

Duplicates/Relates to Appropriation in the General Appropriation Act

SECTION III: NARRATIVE

BILL SUMMARY

SB54 is a wide-ranging bill with 20 sections that propose many changes to the intersection of behavioral health and criminal justice.

Corrections Department – An additional duty is given to the NMCD Secretary to have incentive and stipend programs for academy and specialty trainers (Section 1.B.4), and SB54 broadens the department’s responsibilities from “citizens” to “residents” of the state (Section 1.3.6). SB54 changes the authority to adopt “regulations” to adoption of “rules” (Sections 1.B.1; 1.E), adds the requirement to train county detention officers (Section 1.B.7), and requires the NMCD to enforce health care authority orders and rules pertaining to behavioral health services in corrections (Section 1.F).

For the Medication-Assisted Treatment (MAT) for the Incarcerated Program Fund, SB54 requires NMCD to do the following: by 12-31-2026 establish a MAT program for all incarcerated persons with a prescription; by the end of fiscal year 2027, offer MAT to all incarcerated people who need MAT; by 12-31-2025 for state correctional facilities and 12-31-2026 for county detention facilities, publish a policy that describes MAT; by 12-31-2025 for state correctional facilities and 12-31-2026 for county detention facilities, provide all medications approved by the FDA for the treatment of a substance use disorder and withdrawal management to provide the most effective treatments; and by 12-31-2026 ensure a continuum of behavioral health care between county detention facilities and the NMCD including continuation of MAT (Sections 7D(4) – (8)). Track and report specified data (Section 7.E). Report to interim courts, corrections and justice committee any facility not in compliance with MAT requirements (Section 7.F).

For required risk and needs assessments, the NMCD shall conduct “periodic” validation studies “in accordance with the time line established by the developer of the tool” and shall establish quality assurance procedures and training for persons administering the tool (Section 19.D).

The Probation and Parole Board in consultation with NMCD may impose a special condition necessary to the successful rehabilitation of the person as a result of the validated risk and needs assessment procedure (Section 23.B).

New Mexico Sentencing Commission – Membership is changed by replacing “Human Services Department” with “Behavioral Services Division” (Section 2.B). NMSC is given new responsibilities to address reentry issues and standards, and shall create a public crime data dashboard with the department of public safety hosted on the NMSC website (Sections 2.B.11; 2.B.14 – 18). Also the requirement for NMSC to report regarding grants is extended from 2027 to 2030 (Section 25).

Department of Health – SB54 imposes requirements to use crime mapping data, partner with the crime victims reparation commission and comply with reporting requirements as DOH administers a Violence Intervention Program (Section 24.F – H).

Department of Public Safety – DPS shall create and administer the nonreverting forensic laboratory bureau fund to expand operations, increase efficiency and reduce delays in evidence processing (Section 3).

SB54 also requires DPS to provide data collected and stored in the central repository to the NMSC for a publicly accessible statewide data dashboard (Section 10); adds to the Law Enforcement Training Act a definition of "county detention officer" as an employee of a local jail with inmate custodial responsibilities (Section 11.F) and requires training of county detention officers (Section 12). For law enforcement training, SB54 changes “interaction with persons with mental impairments training” to “interaction with persons in crisis training” and adds autism spectrum disorder, substance use disorder, youth in crisis and traumatic brain injury or a co-occurring disorder to definitions (Section 13).

DPS shall establish training consistent with new provisions for law enforcement encounter of a person in crisis (Section 16.D).

Higher Education Department – SB54 adds to priorities for monetary awards for health professional education loans to include practices that provide behavioral health services to people who are incarcerated, returned from incarceration or supervised by NMCD; add priority consideration for awards for work for a public defender's office or district attorney's office; and increase maximum award from \$7,200 to \$12,000 per year (Sections B.4; 5.D(1)(e); 6.B).

Health Care Authority – SB54 amends the Medication-Assisted Treatment for the Incarcerated Program Fund to refer to HCA instead of Human Services Department (Section 7). Regarding the definition of “health professional” in the administration of the Health Service Corps, adds a licensed clinical social worker or counselor (Section 8).

A temporary provision requires the HCA to establish a community-based crisis treatment system including several required elements by 6-30-2026, and requires HCA to submit the plan to the interim legislative health and human services committee and legislative finance committee (Section 29).

Aging and Long-Term Services Department – In administering the New Mexico Telehealth Act, SB54 adds “crisis triage center” to the definition of “originating site” (Section 9.B(15)).

Courts

Criminal Procedures Act – SB54 amends definitions to define mental illness, substance use disorder, person in crisis, behavioral health crisis, law enforcement deflection program, treatment, mental health professional, and validated risk and needs assessment (Section 14M – T); establishes requirements for a law enforcement deflection program including data reporting (Section 15); establishes definitions for an encounter of a person in crisis by a law enforcement officer or qualified mental health professional finding an individual is experiencing a behavioral health crisis and requires nonmedical intervention and requires DPS to provide training (Section

16). SB54 also amends provisions for preprosecution diversion to permit participation by a person with prior felony convictions for a violent crime and establishes seven factors the district attorney shall consider in determining eligibility for preprosecution diversion (Section 17A and B).

SB54 amends the Criminal Procedures Act to add treatment court diversion “in accordance with the administrative office of the courts and the provisions of this section” and stating each district court shall establish its own eligibility criteria and guidelines for the program (Section 18.A). Provides various criteria for treatment court participation and outcomes (Section 18.B – D).

Probation – SB54 adds four mandatory conditions the court shall impose when a defendant is assigned to probation supervision (Section 19.B) and authorizes the court to impose special conditions based on the results of a validated risk and needs assessment administered and scored by a person “trained in the tool that the corrections department uses to establish level of supervision and individual case plans.” The court is required (“shall”) to impose any special conditions required by the defendant’s probation officer based on the risk and needs assessment (Section 19.C). NMCD shall conduct “periodic” validation studies “in accordance with the time line established by the developer of the tool” and shall establish quality assurance procedures and training for a person administering the tool (Section 19.D). Also, in addition to any other condition the court imposes in an order for a deferred or suspended sentence, the court may require the defendant to complete an alternative program, treatment or activity deemed appropriate by the court, including a treatment court program (Section 20.F).

SB54 includes a new provision allowing the court to discharge a DWI conviction upon completion of a conditional discharge if at least five years have passed since the date of the conviction (Section 21.C). Also, the court may order NMCD to prepare a presentence or prerelease report containing the results of a validated risk and needs assessment used by NMCD to make decisions regarding treatment, program eligibility, facility placement or level of supervision (Section 22.D).

Court Education Services Division- CEI shall add continuing education on substance use disorders, mental health conditions and co-occurring disorders for court personnel “upon assuming office or employment” and “quadrennially thereafter” (Section 26).

Treatment Court Diversion – SB54 provides a new section that authorizes treatment courts, to include “a drug court, mental health court or other treatment-based court diversion program, in accordance with the administrative office of the courts and the provisions of this section. Each district court operating a treatment court program shall establish its own eligibility criteria and guidelines for the program” (Section 18.A). SB54 then addresses the process and outcomes for pre-adjudication and post-adjudication participation in treatment courts.

FISCAL IMPLICATIONS

The title to SB54 includes “making appropriations” but the bill includes no appropriations. SB54 creates the nonreverting “Jail Reentry Fund” to be administered by the Health Care Authority and the nonreverting “Clinical Services Fund” to be administered by Regulation and Licensing (Sections 27; 28).

SIGNIFICANT ISSUES

The proposals in SB54 to accelerate the use of a valid Risk and Needs Assessment (RNA) by NMDC in various corrections settings would significantly impact the courts. As a sentencing and presentencing resource, Section 19C may require courts to adopt special conditions identified by NMCD based on the RNA NMDC is required to adopt. This paragraph first states the court “may” impose a special condition identified by NMCD’s RNA, but later states the court “shall” impose any special condition identified by NMCD’s RNA. The conditions identified by a court ordering a defendant to supervision on probation are within the court’s broad discretion. *See e.g. State v. Leon*, 2013-NMCA-011, para. 27. Mandating a court impose conditions required by NMCD’s reading of its RNA may conflict with the court’s broad discretion to set probation conditions in sentencing a defendant.

This conflict may also be implicated by the SB54 mandate for the court impose in every probation order a set of four conditions. The existing statute recognizes that the Parole Board of NMCD “shall adopt general regulations concerning the conditions of probation which apply in the absence of specific conditions imposed by the court. All probationers are subject to supervision of the board unless otherwise specifically ordered by the court in the particular case. *Nothing in the Probation and Parole Act limits the authority of the court to impose or modify any general or specific condition of probation.* The board may recommend and *by order the court may impose and modify any conditions of probation.*” *NMSA 1978, section 31-21-21*. The proposed changes in Section 23A of SB54 do not change the statute’s recognition of the court’s role in setting or modifying any release condition, but SB54 then provides in Section 23B that NMCD may mandate any special condition NMCD derives from its RNA. The New Mexico Supreme Court has held that the Legislature may enact laws concerning rules and practice in the courts unless the laws conflict with an existing court rule, the constitution, or the essential functions of the Supreme Court. *Albuquerque Rape Crisis Ctr. v. Blackmer*, 2005-NMSC-032, ¶ 5, [138 N.M. 398](#), [120 P.3d 820](#). A number of court rules address probations conditions and their violation (*see e.g.* Rules 5-805, 6-802).

Various provisions of SB54 require that NMCD adopt and courts take into consideration the outcome of RNA and that any instrument adopted by NMCD be “validated” without defining that term. The AOC has engaged the Institute for Social Research at UNM to conduct a re-validation study of the Public Safety Assessment (PSA) which is the pretrial risk assessment approved by the Supreme Court for use by courts. The original validation study by ISR published in 2021 can be found at <https://isr.unm.edu/reports/2021/bernalillo-county-public-safety-assessment-validation-study.pdf>. AOC may have experience relevant to NMCD as it undertakes the required validation of the RNA that NMCD is required to adopt.

The Public Safety Risk Assessment Clearinghouse of BJA published National Guidelines for Post-Conviction Risk and Needs Assessment. The Guidelines are meant to address the problem of misuse or misunderstanding of RNA; “There are valid and growing concerns about accuracy, fairness, transparency, and communication in the use of risk and needs assessment. Risk and needs assessment results are not used enough to inform case decisions and management. Criminal justice agencies have not been given the guidance they need to communicate the strengths and limitations of risk and needs assessment. Furthermore, people who are being assessed rarely receive information about these assessments, how they work, and what they will be used to determine” (found at https://bja.ojp.gov/program/psrac/guidelines-post-conviction-rna?utm_campaign=reports_2022&utm_content=guidelines_postconviction_rna&utm_source=n

[ewsfrombjaclearinghouse.org/](https://bjaclearinghouse.org/)). The BJA Clearinghouse also includes a specific tool for selecting an RNA tool (found at <https://bjaclearinghouse.org/program/psrac/selection>).

The provisions of SB54 requiring DOH and HCA to establish and manage Medication-Assisted Treatment (MAT), while not in conflict with the existing court-managed Assisted Outpatient Treatment (AOT) programs, may benefit from consideration of AOT programs in the Second and Third Judicial Districts (Albuquerque and Las Cruces). AOT is a form of civil outpatient commitment that authorizes the courts to mandate eligible individuals with severe mental illness to intervention and treatment focusing on those who have demonstrated difficulty engaging with treatment on a voluntary basis.

SB54, Section 18 would codify practices relating to treatment courts. Courts already have robust treatment court programs overseen by the Administrative Office of the Courts Therapeutic Justice Program. Under courts' existing authority, treatment courts serve as alternatives to incarceration, focusing on the successful rehabilitation of participants through early, continuous, and intense judicial oversight, treatment, mandatory periodic drug testing, and use of appropriate sanctions, incentives, and other community-based rehabilitation services. Treatment courts include four types of drug courts (Adult, Juvenile, Family Dependency, and DWI) along with Mental Health courts. They operate under the guidance of the AOC and within published standards adopted by the Supreme Court.

SB54, Section 18.A states that "Each district court operating a treatment court program shall establish its own eligibility criteria and guidelines for the program." This would be inconsistent with Supreme Court approved practice in existing treatment courts and would create a risk of widely different practices in treatment courts statewide. Eligibility criteria should be based on objective criteria, using validated evidence-based screening and assessments to determine the individual's risk and need level. These criteria have been defined within the New Mexico Treatment Court standards approved by the Supreme Court. Failure to require programs to follow these practices can threaten harm to program participants and use of resources ineffectively. AOC sets the standards, guidelines and policies to ensure programs are following best practices as set forth in the Treatment Standards.

SB54 also appears to include conflicting language regarding treatment court outcomes. SB54 states that if a defendant is entered into a treatment court program prior to adjudication "and the defendant abides by the conditions of the program: (1) the court shall dismiss the case; or (2) the defendant may be terminated from the program. If the defendant is terminated, the participant shall have the case placed on the calendar in the judicial district from which the case originated and the statute of limitations shall be tolled the entire period the defendant was participating in the program" (Section 18.C(1) and (2)). A statute should not provide that abiding by a treatment court's conditions may result in termination and prosecution.

The proposal in SB54 to eliminate the current statutory prohibition on participation in a treatment court by a person with a prior violent felony conviction (Section 17.A) is consistent with recent evidence-based research.

PERFORMANCE IMPLICATION ADMINISTRATIVE IMPLICATIONS

Some provisions of SB54 will require the Supreme Court to adopt or amend rules to include provisions mandated by the bill regarding treatment court diversion, orders of probation,

deferred or suspended sentences, and RNA evaluations for sentencing and presentencing assessments. Courts will be required to adjust practices or adopt new practices consistent with any Supreme Court action on these rules.

CONFLICT, DUPLICATION, COMPANIONSHIP, RELATIONSHIP

SB3 requires ‘Behavioral Health Stakeholders’ to develop regional plans for the continuation and expansion of behavioral health services. The “Law Enforcement Deflection Program” in SB54 would likely be a part of the regional plans and system mapping contemplated in SB3.

TECHNICAL ISSUES

OTHER SUBSTANTIVE ISSUES

ALTERNATIVES

WHAT WILL BE THE CONSEQUENCES OF NOT ENACTING THIS BILL

Courts will continue to work with state agencies and the NMSC to improve criminal justice without the mandates in SB54. Numerous entities will not be statutorily empowered to achieve various behavioral health and criminal justice objectives of the bill.

AMENDMENTS

Consider removing mandates to the courts to incorporate probation terms and conditions identified by an RNA the NMCD adopts.

The legislative website shows the short title as “Criminal Justice Changers” which probably should be Criminal Justice Changes.