

**Law Offices of the Public Defender**

**PROPOSED SUBSTANTIVE CRIMES LEGISLATION**

**30-4-1 Kidnapping – 2015 session, HB 393**

Cleans up language in the difference between kidnapping and false imprisonment

Clarifies if lesser included offense to another greater offense not double punishment as prohibited by the double jeopardy clause

Realigns the burden on the prosecution to make the offense a 1<sup>st</sup> degree felony

Require GBI as the injury to make a 1<sup>st</sup> degree felony

**30-31-20 Trafficking Controlled Substances – have bill draft**

Require length of sentences and enhancements based on the quantity of product rather than number of convictions

Address what proof is required to establish possession with intent – officer opinion “consistent with” when also consistent with personal use

**30-36-5 Worthless Checks – have bill draft**

Create tiers on penalties based on value (rather than check-by-check)

**30-6-1 Child Abuse – 2015 session, HB 361**

Separate abandonment, negligent abuse and intentional abuse narrowly defining and clearly delineating distinct offenses (codifying case law and clarifying issues faced in actual cases)

Tie punishment with culpability including resulting harm

**Various provisions**

30-31-6 Remove marijuana from Schedule I

30-31-23 Possession of Controlled Substances, reduce penalties

30-31-25.1 Possession of Paraphernalia, reduce penalties or decriminalize entirely (always charged alongside possession of drugs – it is the drugs we should be concerned with, not the paraphernalia)

30-6-3            Contributing to the Delinquency of a Minor (define more narrowly, currently applicable to surprisingly broad types of conduct, including taking a teenager for a piercing, see State v. Webb, 2013-NMCA-027, 296 P.3d 1247)

30-1-13            Accessory (require specific intent that the crime be committed – Courts have rejected that this intent is currently required, permitting conviction for *unintentionally* aiding a criminal)

### **Decriminalize traffic code provisions**

Put criminal provisions in the criminal code and make regulatory violations only civil and monetary consequences

### **DWI Reform**

- 66-9-102(F) through (J) – all references to “upon X conviction,” insert “within 10 years” for internal penalty enhancements; (Parallels the habitual offender statute and better addresses true recidivism)
- Increase resources for rehabilitative alternatives to incarceration, especially in the rural communities;
- Especially in rural areas, develop public transportation systems and incentives to avoid driving home after drinking;
  - Affordable on-call ride services;
  - Subsidize taxi fees charged by the mile; (Santa Fe – Saturdays \$5)
  - Provide a driver to follow with the owner’s car;
  - Parking ticket forgiveness for leaving a car in a metered spot if retrieved by 10 a.m. the following morning;
- Do not criminalize permitting use of a vehicle by someone whose license is suspended or revoked for DWI; civil penalties suffice

## **PROBATION & PAROLE**

### **31-20-5 Probation - have bill draft**

Not to exceed the duration of the possible exposure of custody but not to exceed 5 years

### **Other Probation/parole Provisions:**

Establish standards of supervision for parolees and probationers based upon the particular location of residence and specialized needs of the defendant

Eliminate the requirement that a person otherwise eligible for parole will not be released because he doesn’t have a residence

### **31-21-10.1    Sex offender parole (2015 session, SB 151)**

Parole board must release after 5 years unless clear and convincing evidence to keep them on parole longer with an opportunity to confront the nature of that evidence and to be heard

Allow private counsel to represent if the parolee can afford to hire attorney (SB 151)

**31-21-25(D)** develop criteria for evaluating whether to grant, deny or discharge a parolee

## SENTENCING

### **33-2-34 Earned Meritorious Deductions Act (good and work time credits)**

Increase discretion to the DOC – “carrot” to manage population

Add comparable structure to local jail sentences, house arrest or GPS/similar device

### **31-18-17 Habitual Offender Enhancements**

Limit enhancements for prior violent felonies only on current violent felony convictions

Establish a range of enhancements based on the number of times of imposing the enhancement

ALTERNATIVELY: prior felony only as discretionary aggravating factor of the current conviction and eliminating the provisions for “enhancements”

### **31-18-15 Increase the number of felony grades with smaller jumps between degrees**

Reclassify felonies lower when non-violent felonies, reserving the higher grades for violent felonies

## ARREST, JAIL, & PRISONS

**31-18-15** Prohibit housing misdemeanants in state prison

### **Pre-arrest/detention considerations**

31-1-5, -6, 31-3-2

Permit citations/summons to appear over formal arrest for non-violent offenses

Require and fund early mental health assessment and treatment of arrested persons

### **Pre-prosecution/charging: § 31-16A-4**

drug offenders should be allowed (not excluded)

Mandate drug court programs in all courts state-wide

Increase the type of diversion programs (DV, bad checks, DWI, etc.)

Provide incentives to successful completion of program: dismissal without conviction unless for example DWI can be used for enhancement purposes nonetheless

Create a mechanism for civil compromise

Swift and certain accelerated for status violations without excluding from the program

Consistent drug court programs state-wide with minimum standards

#### **Guidelines for Law Enforcement contact**

Establish stringent Eyewitness ID accuracy procedures

Mandate police reports and complaints be lodged with the jail for any arrests otherwise prohibit booking into jail and issue citation or summons to appear in court

Develop timelines and procedures for which physical evidence will be logged, stored and reported to all interested parties (prosecuting agency, the defendant or counsel for defendant) *including dash and body camera recordings*

Mandate police reports and other law enforcement generated discovery to the indigent defendant shall be at no cost to the defendant or counsel for the defendant

#### **Prohibit “debtor’s prison”**

Eliminate incarceration for failure to pay fines, fees or other costs

Establish the right to be heard on ability to pay and grant court the discretion to waive some or all fines, fees or other costs before violate probation

When find ability to pay all or some of fines, fees or other costs establish a realistic payment plan without a finding of violation of probation

#### **Work furlough programs:**

**Jail Capacity** an acceptable cap not to exceed 80% of maximum; allow local detention centers to grant early release for misdemeanors, non-violent and low grade felonies, grant authority to unilaterally establish supervised release

Limit ability to detain people solely in the county/jurisdiction for which the defendant is being prosecuted or convicted

### **JUVENILE JUSTICE**

Establish that amenability will be on the qualities of the children rather than the “availability of a facility”

Establish a presumption of amenability for treatment in the juvenile system

Establish that preference that mental health and educational needs are paramount to a detention in custody setting

Delegate to the NM Sentencing Commission Juvenile Justice Subcommittee to establish factors for determining amenability to establish state-wide uniformity and fairness

Once the defendant is convicted in adult court establish a system whereby the court may return the minor to Children’s court to be treated as a minor

All juvenile matters (traffic or criminal) shall be confidential and not open to anyone unless the minor has been found unamenable **and** to preserve the integrity of the juvenile justice system’s purpose in rehabilitation prohibit booking information and photos from being released to the general public and not subject to IPRA disclosure

### **Detention procedures**

Establish sole reason to detain a minor in custody for non-violent cases is due to lack of adequate accommodations with a suitable parent or guardian – transfer to the Child Protective Services division of CYFD

Expand upon educational and mental health treatment programs for juveniles

Expand upon diversionary programs

Establish the JDAI program state-wide

Mandate teen courts in junior and senior high schools for infractions and low-level misdemeanors