

Fiscal impact reports (FIRs) are prepared by the Legislative Finance Committee (LFC) for standing finance committees of the NM Legislature. The LFC does not assume responsibility for the accuracy of these reports if they are used for other purposes.

Current and previously issued FIRs are available on the NM Legislative Website ([www.nmlegis.gov](http://www.nmlegis.gov)) and may also be obtained from the LFC in Suite 101 of the State Capitol Building North.

## FISCAL IMPACT REPORT

ORIGINAL DATE 2/5/2018

SPONSOR Maestas/Youngblood LAST UPDATED \_\_\_\_\_ HB 116

SHORT TITLE Preprosecution Diversion Pgm Eligibility SB \_\_\_\_\_

ANALYST Edwards

### ESTIMATED ADDITIONAL OPERATING BUDGET IMPACT (dollars in thousands)

	FY18	FY19	FY20	3 Year Total Cost	Recurring or Nonrecurring	Fund Affected
<b>Total</b>		See Fiscal Implications	See Fiscal Implications			

(Parenthesis ( ) Indicate Expenditure Decreases)

### SOURCES OF INFORMATION

LFC Files

#### Responses Received From

Administrative Office of the Courts (AOC)

Administrative Office of the District Attorney (AODA)

### SUMMARY

#### Synopsis of Bill

HB 116 clarifies language in the Preprosecution Diversion Act (“Act”), specifically proposing amendments to enhance the eligibility criteria for preprosecution diversion as follows:

- The defendant has no prior felony convictions for an offense defined as a “serious violent offense” in Section 33-2-34 NMSA 1978;
- The crime alleged to have been committed by the defendant is not an offense defined as a “serious violent offense” in Section 33-2-34 NMSA 1978;
- The defendant is willing to participate in the program and adhere to all program requirements;
- Any additional criteria established by the district attorney.

The requirements under the current statute are as follows:

- The crime alleged to have been committed by the defendant is nonviolent in nature, with the exception of domestic disputes not involving a minor;
- The defendant has no prior felony convictions for a violent crime and no prior felony convictions for any crime for the previous ten years;
- If the defendant was on probation previously, his probation must not have been revoked

or unsatisfactorily discharged;

- The defendant has not been admitted into a similar program for the previous ten years;
- The defendant is willing to participate in the program and submit to all program requirements; the crime alleged to have been committed by the defendant does not involve substantial sale or possession of controlled substances;
- Any additional criteria established by the district attorney.

## **FISCAL IMPLICATIONS**

The AOC explains “if the statutory minimum requirements for a criminal defendant’s participation are lowered, many more defendants will be diverted to preprosecution diversion programs. As a result, more New Mexico residents are likely to avoid a criminal conviction, and more judicial resources can be focused on major felony cases.”

The AOC also states that, as a result of the bill, “preprosecution diversion programs may experience significant expansion with defendants who have been charged with controlled substances crimes, since defendants charged with these crimes have not heretofore been eligible. Increased funding for counseling and treatment for people with substance abuse problems may be required by the offices of the district attorney.”

The AODA explained there is no increase in costs as a result of this bill. HB 116 enlarges the population who could be eligible from preprosecution diversion programs but is not mandating that the programs grow larger at this point. The bill still allows for judicial discretion on who is referred to the programs.

## **SIGNIFICANT ISSUES**

31-16A-7 NMSA 1978 sets program participation costs for defendants:

“a district attorney may require as a program requirement that a defendant agree to such reasonable conditions as the district attorney deems necessary to ensure that the defendant will observe the laws of the United States and the various states and the ordinances of any municipality and shall require the defendant to pay to his office the costs related to his participation in the program not exceeding one thousand twenty dollars (\$1,020) annually to be paid in monthly installments of not less than fifteen dollars (\$15.00) and not more than eighty-five dollars (\$85.00), subject to modification by the district attorney on the basis of changed financial circumstances. All costs collected by a district attorney pursuant to this subsection shall be transmitted to the administrative office of the district attorneys for credit to the district attorney fund.”

The AOC explains “preprosecution diversion, also known as pre-trial diversion (PTD), is an alternative to prosecution which seeks to divert certain offenders from traditional criminal justice processing into a program of supervision and services administered by the District Attorney. Participants who successfully complete the program will not be charged or, if charged, will have the charges against them dismissed; unsuccessful PTD participants are returned for prosecution.”

The major goals of pretrial diversion are:

- To remove those persons from the criminal justice system who are most amenable to rehabilitation by diverting them from traditional processing into community supervision and services;
- To provide those persons with services designed to assist them in preventing future criminal activity;
- To conserve community and criminal justice resources; and
- To provide standard guidelines and to evaluate preprosecution programs.

The AODA states “the purpose of the Act is to remove persons from the criminal justice system who are most amenable to rehabilitation and least likely to commit future offenses. These persons may be diverted to a program for no less than six months and no more than two years. They will be offered counseling and guidance, may receive referral services, and may be required to make victim restitution. Criminal proceedings are suspended during the program. If the participant doesn’t comply, the prosecutor may proceed with the criminal prosecution. If the participant completes the program successfully, prosecution is barred. *State v. Trammel, 1983-NMCA-139.*”

The AODA goes on to explain:

HB116 amends the eligibility requirements for the program to focus on admitting defendants who are not charged with, and have not previously been convicted of, a “serious violent offense” as defined in NMSA 1978, Section 33-2-34. That section sets out a long list serious violent offenses, including offenses arising out of domestic disputes.

In contrast, the existing statute contains an assortment of requirements. Although some of the existing requirements look to violence (the defendant may not be charged with or have a conviction for a violent crime) the statute provides no definition for what constitutes a violent crime, and expressly allows participants charged with a violent crime in a domestic dispute, unless the dispute involved a minor. The existing statute also excludes defendants alleged to have committed a crime involving a “substantial sale or possession of controlled substances,” an offense that may be non-violent in nature. Further, the existing statute considers the defendant’s history, automatically excluding defendants who have a prior felony conviction for any crime in the previous ten years, who have been admitted to a similar program in the past ten years, or who have not successfully completed a previous probation. HB116 does not make prior history an absolute bar to participation (unless that prior history includes a conviction for a “serious violent offense”).

## TECHNICAL ISSUES

The AOC analysis included proposed amendments:

- 1) The following amendment to Section 2, NMSA 31-16A-4(A)(1) would ensure that individuals who have been convicted of an alternate serious violent offense are excluded from preprosecution diversion eligibility:
  - a. the defendant has no prior felony convictions for an offense defined as a “serious violent offense” in Section 33-2-34 NMSA 1978 and has no convictions for a

crime when the nature of the offense and the resulting harm are such that the court judges the crime to be a serious violent offense for any of the following offenses set forth in Section 33-2-34(o) NMSA 1978.

- 2) The following amendment to Section 2, NMSA 31-16A-4(A)(4) would ensure that the District Attorney's additional criteria of preprosecution diversion eligibility is consistent with the purposes of the Act:
  - a. any additional criteria established by the district attorney that is consistent with the purposes of the Preprosecution Diversion Act.

TRE/al/jle