

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:** 3/9/2025

*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

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### 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
<b>Total</b>						

(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 of Original Bill:

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.

Synopsis of House Judiciary Committee Amendments:

The House Judiciary Committee amendments to HB 428 would add “internal security procedures” as an exception to the requirements under the Administrative Procedures Act, and would include internal security procedures related to inmate escape, hostage and riot response, crisis negotiation response teams, correctional emergency response teams, emergency preparedness management units, facility design, perimeter security, and management of the correctional facilities’ schedules, transport details, command center, master control or housing unit controls. Additionally, the HJC amendments to Section 3 would alter the 45-day public comment period to 30 days.

## **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**

- On the Original Bill: (addressed by the HJC amendments) 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**

- On the original bill: 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.