Bill Analysis 2019 Regular Session

SPONSOR: Representative Daymon Ely   **SHORT TITLE:** Criminal Justice Reforms

SYNOPSIS OF BILL: HB267 would codify the recommendations of the HJM19 Criminal Justice Task Force passed during the 2018 legislative session and chaired by former New Mexico Supreme Court Justice Ed Chavez. The bill has multiple components, including 1) requiring the New Mexico Sentencing Commission (NMSC) to create a data-sharing network for criminal justice data; 2) adds three new members to NMSC; 3) amends a section of the Mental Health and Developmental Disabilities Code to allow for information sharing; 4) defines biometric identifying information of an arrested person; 5) defines the content and disposition of arrest records, including creating unique statewide individual identification numbers for arrestees; 6) requires Department of Public Safety to share information and data with the NMSC; 7) enacts the Crime Reduction Grant Act and defines how grants may be used; 8) creates Criminal Justice Coordinating Councils in each judicial district; 9) requires certain agencies to issue rules and file reports annually; and 10) makes a total appropriation of $31.5 Million dollars.

STRENGTHS: It's important to acknowledge the need for better data collection and sharing within the criminal justice system, particularly in New Mexico. New Mexico SAFE frequently points out the need for better data collection and transparency on a variety of criminal justice issues (solitary confinement use, arrest demographics, and data on the efficacy of risk assessment instruments for example). By creating additional members and providing funding, the NMSC can continue to provide critical analysis of the criminal justice system. Creating a unique identifier for arrestees allows for better data collection and analysis across systems. Requiring DPS to share information with NMSC seems critical for analyzing trends around sentencing, recidivism, and other information points that are critical to understand for policy makers and advocates. The Crime Reduction Grant Act also gives local communities financial resources for projects such as developing treatment and supervision alternatives to incarceration.

CONCERNS: A current trend in policing around the country is to use the massive amounts of data generated in our lives every day to "place law enforcement resources where needed." This notion sounds reasonable but the implications of so-called "predictive policing" can present frightening prospects for civil liberties. Chief among these concerns is that predictive policing as currently deployed will harm rather than help communities of color. If there is one reliable prediction about our criminal justice system, it is that unwarranted racial disparities infect every stage of the criminal law process. Time and again, analysis of stops, frisks, searches, arrests, pretrial detentions, convictions, and sentencing reveal differential treatment of people of color. The effect these disparities will have on predictive policing is, in fact, the most predictable part of predictive policing. Racially biased discretionary decisions will result in data points that the police will feed into predictive tools, which will in turn result in predictions that will have nested within them those original racial disparities. As such, they will likely compound the crisis of unequal and unfair treatment of communities of color under the inveigling imprimatur of empiricism.

Safer	Apolitical	Fiscally-Responsible	Evidence Based	Grade
Whether this bill and the large appropriation that goes with it will actually make communities safer is complicated. Having additional data to analyze the effectiveness of the criminal justice system in New Mexico is critical; how that data is ultimately used may actually make matters worse for many communities. By funding law enforcement much more heavily than treatment alternatives, this bill fails to address root causes of crime that if addressed would truly make communities safer.	N/A	One third of the appropriation ($10.3 million) goes to retaining and recruiting correctional officers. An additional $3 million goes to recruiting law enforcement officers and another $3 million for creating the database. The smallest appropriations go to behavioral health treatment, social workers, triage centers, and pre-arrest diversion program. In order to address the quickly rising prison population and reduce New Mexico's reliance on the prison industrial complex as an economic driver, the money allocated in this bill prioritizes the wrong things.	By supporting the NMSC through additional staff and funding, and collecting data from law enforcement agencies across the state, policy makers and advocates will be better equipped to make evidence based decisions. Without the data to support, policymakers are often forced to rely on anecdotes or data from other states. This bill will help fill that gap.	C