

**Bill Analysis 2019 Regular Session**

**SPONSORS:** Representative Antonio “Moe” Maestas, Gail Chasey, Sander Rue, & Richard Martinez   **SHORT TITLE:** Criminal Justice Reforms

**SYNOPSIS OF BILL:** Comprehensive reform bill focusing on accountability and treatment to both prevent crime and successfully reintegrate criminal actors back into society. Creates a behavioral health framework to assist incarcerated juveniles and adults with the transition back into the community; prohibits the arrest of anyone receiving treatment for a drug or alcohol overdose; and extends the Good Samaritan law to those who report overdoses. Allows for post-conviction DNA testing for claims of actual innocence; broadens access to the pre-prosecution diversion program; focuses probation on actively assisting offenders with reintegration into law-abiding society; and reducing recidivism. Establishes a medical and geriatric parole; establishes a statewide minimum requirement for agencies conducting eyewitness identifications and training for officers to reduce false identifications; and requires the Sentencing Commission to submit a fiscal impact statement for all new legislation that creates or changes periods of imprisonment.

**STRENGTHS:** This reform measure recognizes that drug and alcohol addiction is a community health issue and focuses on obtaining treatment for addicts before and after they enter the criminal justice system to reduce their risk of incarceration and enhance their success rate of successfully integrating into the community after incarceration. While District Attorneys retain discretion in whether to allow someone to participate in this program this change in the law greatly broadens access to the program which allows a person to be held accountable and receive services without attaching the felon label to them. It further implements an incentives and sanctions system to guide responses to negative and positive behavior by parolees under supervision by the department. Such systems should eliminate the numerous situations where too often violators are incarcerated for the remainder of their time solely over technical violations thus reducing overcrowding and addressing behavioral and mental health needs outside the prison system. The bill contemplates the aging population the Department of Corrections is facing. The prison system is not equipped to handle this population nor do they have the funding to provide the proper healthcare an older population requires. The Eyewitness ID Act sets up procedures for eyewitness identification. Eyewitness identification is frequently inaccurate and is a one of the main causes of wrongful convictions. This would aid in the reduction of suggestive eyewitness identification procedures and aid in establishing scientific standards.

**CONCERNS:** The pre-prosecution program language is extremely broad and could limit the number of persons admitted into the program. Additionally, a person’s constitutional right to remain silent should be protected as many times such requirements to enter the program require the person to admit to the crime prior to becoming eligible. The implementation of an assessment of risk and needs should be continually evaluated by the Department to ensure that they increase accuracy and don’t worsen disparities. Assessments administered without safeguards against implicit bias, thus potentially increasing disproportionate minority confinement. Although the bill protects those who report overdoses, an educational campaign will be needed to make the public aware they are safe to make such reports. Section 7 is a step in the right direction, however, the fact remains that offenders are faced with dual supervision of probation and parole which sets up a system for systemic failure. Section 13(B) identifies training for officers, but should specifically include behavioral health training as the Department of Corrections is in dire need of such services. Lastly, the bill allows parolees hearings for technical violations. However, it does not guarantee the right to an attorney nor does it contemplate some due process procedural rights. The lack of basic rights almost ensures that the parolee will lose at hearing.

<b><u>S</u>afer</b>	<b><u>A</u>political</b>	<b><u>F</u>iscally-Responsible</b>	<b><u>E</u>vidence Based</b>	<b>Grade</b>
As New Mexico attempts to move away from increased incarceration as a way to tackle public safety, the reforms in this legislation seek to address underlying and systemwide deficiencies in the criminal justice system as a whole. Reforms aimed at addressing behavior health, aiding addiction, and tackling reentry can provide safer communities instead of allowing generational, core issues to continue in perpetuity.	This legislation is the result of a bipartisan interim subcommittee to identify those past criminal justice reform measures that prove most promising to positively reform the system.	According to the New Mexico Dept. of Corrections the average cost to incarcerate a male inmate is \$45,250 per year in a state-owned and operated prison. <sup>2</sup> The measures proposed in this bill are fiscally-responsible in that they are focused on preventing incarceration and assisting those who have been incarcerated from reoffending greatly reducing the cost to the State of New Mexico associated with housing persons in prison.	According to Bureau of Justice Statistics, people with mental health needs make up a significant portion of the United States incarcerated population, including 56% of state prisoners, 45% of federal prisoners, and 64% of jail inmates. Proven strategies for reducing recidivism and incarceration for people with mental health needs include: A) Diversionary mechanisms, routing mentally ill offenders to community-based mental health treatment programs instead of prison or jail; B) Community-based reentry programs providing coordinated services and case management for mentally ill offenders transitioning into the community; and C) Policies that provide mentally ill offenders with increased access to medical and mental health care. <sup>1</sup>	<b>A</b>

1 See "The Processing and Treatment of Mentally Ill Persons in the Criminal Justice System," Urban Institute, March 2015

2 New Mexico Department of Corrections, Cost of Incarceration (February 2016), retrieved at <http://newmexicocorrectionsdepartment.blogspot.com/2016/02/cost-of-incarceration.html>

3 The Innocence Project, Court Finding of Ineffective Assistance of Counsel Claims in Post-Conviction Appeals Among the First 255 DNA Exoneration Cases, (Sept. 2010), retrieved at [https://www.innocenceproject.org/wp-content/uploads/2016/05/Innocence\\_Project\\_IAC\\_Report.pdf](https://www.innocenceproject.org/wp-content/uploads/2016/05/Innocence_Project_IAC_Report.pdf)