
Bill Analysis 2018 Regular Session

SPONSOR: Representatives Monica Youngblood and Moe Maestas

SHORT TITLE: Pre-Prosecution Diversion Program Eligibility

SYNOPSIS OF BILL: HB 116 expands eligibility for pre-prosecution diversion programs. Under existing law, an individual with a felony conviction in the last ten years, or who had ever had a probation revoked or unsatisfactorily discharged, was ineligible for this program. Under HB 116, individuals previously convicted or currently charged with a “serious violent offense” would be ineligible for pre-prosecution diversion. District Attorneys retain discretion in whether to allow someone to participate in this program.

STRENGTHS: Pre-Prosecution Diversion (PPD) and Law Enforcement Assisted Diversion are different and distinct alternatives, where LEAD grants discretion to law enforcement officers and PPD grants additional discretion to district attorneys. District Attorneys exercise discretion in ways that directly affect the number of people in jails and prisons in New Mexico. We need additional mechanisms that encourage and allow prosecutors to approach public safety holistically. PPD allows prosecutors to divert a case away from prosecution and towards other alternatives, such as counseling, therapy, or treatment programs. An individual still must comply with the terms of the agreement made with the prosecution, but if PPD is successfully completed it allows an individual to avoid a felony conviction on their record for that offense. By avoiding prosecution and trials for low level offenses, PPD frees up prosecutors and the courts to focus on more serious crimes. HB 116 provides an additional tool in the toolkit for prosecutors to exercise discretion and think of justice in more holistic terms.

ADDITIONAL INFO: Unlike the Law Enforcement Assisted Diversion (LEAD) program, pre-prosecution diversion still creates a publicly available criminal arrest record. Arrests records are available through the courts and commercial criminal background checks may report arrest records for up to seven years.¹ Because New Mexico is one of only a handful of states where expungement is unavailable, even a mere arrest can cause significant hurdles in obtaining employment, safe housing, education, and a number of other “collateral consequences.”² In order to fully reap the benefits of pre-prosecution diversion, HB 116 would allow for expungement or sealing of the criminal record upon completion of the diversion program.

<u>S</u>afer	<u>A</u>political	<u>F</u>iscally-Responsible	<u>E</u>vidence Based	Grade
Creating true alternatives to incarceration makes communities safer by keeping families and communities intact. Proven strategies for addressing root causes of crime, such as substance abuse or access to behavioral health, lead to better public safety outcomes than incarceration.	N/A	Incarceration is costly and often ineffective. HB 116 gives prosecutors an additional tool in the toolkit to avoid jail and prison sentences. PPD also frees up the courts and prosecutors to focus on more serious offenses.	According to the National Institute of Justice: <ol style="list-style-type: none"> 1) Pre-prosecution diversion produced significant investment cost savings; 2) Pretrial diversion programs produced a considerable decrease in the percentage of cases ending in conviction (and, therefore, in exposure to the collateral consequences of conviction) 3) Pretrial diversion programs were also effective in reducing the use of a jail sentence. 4) Reduced the prevalence of two-year re-arrest and, for those re-arrested, delayed the time to re-arrest, when comparing diversion and comparison group defendants.³ 	A-

1 Consideration of Arrest and Conviction Records in Employment Decisions Under Title VII of the Civil Rights Act of 1964, Equal Employment Opportunity Commission. April 2012. Retrieved at: https://www.eeoc.gov/laws/guidance/arrest_conviction.cfm

2 National Inventory of the Collateral Consequences of Conviction, The Council of State Governments. Retrieved at: <https://niccc.csgjusticecenter.org/>

3 National Institute of Justice’s Multisite Evaluation of Prosecutor-Led Diversion Programs. October 2017. Retrieved at: https://www.courtinnovation.org/sites/default/files/media/document/2017/Pretrial_Diversion_Overview_ProvRel.pdf