

<b>LFC Requester:</b>	
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**AGENCY BILL ANALYSIS  
2018 REGULAR SESSION**

**WITHIN 24 HOURS OF BILL POSTING, EMAIL ANALYSIS TO:**

**[LFC@NMLEGIS.GOV](mailto:LFC@NMLEGIS.GOV)**

*and*

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*{Include the bill no. in the email subject line, e.g., HB2, and only attach one bill analysis and related documentation per email message}*

**SECTION I: GENERAL INFORMATION**

*{Indicate if analysis is on an original bill, amendment, substitute or a correction of a previous bill}*

Check all that apply:  
**Original**     **Amendment**      
**Correction**     **Substitute**   

**Date** Jan. 18, 2018  
**Bill No:** HB116

**Sponsor:** Maestas & Youngblood  
**Short**    Preprosecution Diversion  
**Title:**    Program Eligibility

**Agency Code:** 264  
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**SECTION II: FISCAL IMPACT**

**APPROPRIATION (dollars in thousands)**

Appropriation		Recurring or Nonrecurring	Fund Affected
FY18	FY19		
0	0	n/a	n/a

(Parenthesis ( ) Indicate Expenditure Decreases)

**REVENUE (dollars in thousands)**

Estimated Revenue			Recurring or Nonrecurring	Fund Affected
FY18	FY19	FY20		
0	0	0	n/a	n/a

(Parenthesis ( ) Indicate Expenditure Decreases)

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

	<b>FY18</b>	<b>FY19</b>	<b>FY20</b>	<b>3 Year Total Cost</b>	<b>Recurring or Nonrecurring</b>	<b>Fund Affected</b>
<b>Total</b>	0	minimal	minimal	minimal	recurring	general

(Parenthesis ( ) Indicate Expenditure Decreases)

Duplicates/Conflicts with/Companion to/Relates to:  
Duplicates/Relates to Appropriation in the General Appropriation Act

### **SECTION III: NARRATIVE**

HB116 amends NMSA 1978, Section 31-16A-1 through 31-16A-8, the Preprosecution Diversion Act, to change the eligibility requirements for preprosecution diversion programs. Under HB116, eligibility will center on whether the defendant is charged with, or has previously been convicted of, a “serious violent offense.”

HB116 sets the following eligibility requirements:

- the crime the defendant is alleged to have committed cannot be a “serious violent offense” as defined in NMSA 1978, Section 33-2-34;
- the defendant cannot have a prior felony conviction for a “serious violent offense;”
- the defendant must be willing to participate in the program and adhere to all program requirements; and
- 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**

Note: major assumptions underlying fiscal impact should be documented.

Note: if additional operating budget impact is estimated, assumptions and calculations should be reported in this section.

### **SIGNIFICANT ISSUES**

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.

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").

## **PERFORMANCE IMPLICATIONS**

The statute's eligibility requirements set a minimum that a defendant must meet in order to participate in a preprosecution diversion program. The district attorney may choose not to admit a defendant even if the defendant meets the statutory minimum.

HB116 changes the focus of the minimum requirements to whether the defendant is charged with or has previously been convicted of a "serious violent offense," and provides a definition of that term. This will make it easier for the district attorney to determine if a defendant meets the statutory minimum.

HB116 removes from eligibility defendants charged with violent offenses arising in domestic disputes. Under the existing statute, such defendants may be admitted to the program even if their offense was violent, so long as a minor was not involved.

## **ADMINISTRATIVE IMPLICATIONS**

HB116 provides clearer eligibility requirements than the existing statute.

## **CONFLICT, DUPLICATION, COMPANIONSHIP, RELATIONSHIP**

None found.

## **TECHNICAL ISSUES**

None found.

## **OTHER SUBSTANTIVE ISSUES**

None noted.

## **ALTERNATIVES**

None noted.

## **WHAT WILL BE THE CONSEQUENCES OF NOT ENACTING THIS BILL**

The eligibility requirements set out in the Preprosecution Diversion Act will apply.

## **AMENDMENTS**

None proposed.