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SENATE BILL

54TH LEGISLATURE - STATE OF NEW MEXICO - FIRST SESSION, 2019

INTRODUCED BY

DISCUSSION DRAFT

AN ACT

RELATING TO CRIMINAL JUSTICE REFORM; REMOVING CERTAIN
REQUIREMENTS FOR ELIGIBILITY FOR PREPROSECUTION DIVERSION.

BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF NEW MEXICO:

SECTION 1. Section 31-16A-4 NMSA 1978 (being Laws 1981,
Chapter 33, Section 4) is amended to read:

"31-16A-4. ELIGIBILITY.--

A. A defendant ~~[must]~~ shall meet the following
minimum criteria to be eligible for a preprosecution diversion
program:

(1) the defendant ~~[must]~~ shall have no prior
felony convictions for a violent crime ~~[and no prior felony
convictions for any crime for the previous ten years];~~

(2) the crime alleged to have been committed
by the defendant is nonviolent in nature, with the exception of

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1 domestic disputes not involving a minor;

2 ~~[(3) if the defendant was on probation~~
3 ~~previously, his probation must not have been revoked or~~
4 ~~unsatisfactorily discharged;~~

5 ~~(4) the defendant has not been admitted into a~~
6 ~~similar program for the previous ten years;~~

7 ~~(5)]~~ (3) the defendant is willing to
8 participate in the program and submit to all program
9 requirements;

10 ~~[(6) the crime alleged to have been committed~~
11 ~~by the defendant does not involve substantial sale or~~
12 ~~possession of controlled substances; and~~

13 ~~(7) a person meeting all of the above criteria~~
14 ~~and any additional criteria established by the district~~
15 ~~attorney may be entered into the preprosecution diversion~~
16 ~~program. The district attorney may elect to not divert a~~
17 ~~person to the preprosecution diversion program even though that~~
18 ~~person meets the minimum criteria herein set forth. A decision~~
19 ~~by the district attorney to not divert to the preprosecution~~
20 ~~diversion program is not subject to appeal and may not be~~
21 ~~raised as a defense to any prosecution or habitual offender~~
22 ~~proceeding] and~~

23 (4) additional criteria set by the district
24 attorney.

25 B. A ~~[district attorney may set additional~~

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1 ~~eriteria]~~ person who meets all of the criteria pursuant to
2 Subsection A of this section may be entered into the
3 preprosecution diversion program; provided that the district
4 attorney may elect not to divert a person to the preprosecution
5 diversion program even though that person meets the minimum
6 criteria set forth in this section.

7 C. A decision by the district attorney not to
8 divert a person to the preprosecution diversion program is not
9 subject to appeal and shall not be raised as a defense to any
10 prosecution or habitual offender proceeding."

11 SECTION 2. Section 31-16A-7 NMSA 1978 (being Laws 1981,
12 Chapter 33, Section 7, as amended) is amended to read:

13 "31-16A-7. PROGRAM PARTICIPATION--COSTS--TERMINATION.--

14 A. A defendant may be diverted to a preprosecution
15 diversion program for no less than six months and no longer
16 than two years. A district attorney may extend the diversion
17 period for a defendant as a disciplinary measure or to allow
18 adequate time for restitution, provided that the extension
19 coupled with the original period does not exceed two years.

20 B. A district attorney may require as a program
21 requirement that a defendant agree to such reasonable
22 conditions as the district attorney deems necessary to ensure
23 that the defendant will observe the laws of the United States
24 and the various states and the ordinances of any municipality.

25 [~~and shall~~]

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1 C. The district attorney may require the defendant
2 to pay to ~~[his]~~ the district attorney's office the costs
3 related to ~~[his]~~ the defendant's participation in the program
4 not exceeding one thousand twenty dollars (\$1,020) annually to
5 be paid in monthly installments of not less than fifteen
6 dollars (\$15.00) and not more than eighty-five dollars
7 (\$85.00), subject to modification by the district attorney on
8 the basis of changed financial circumstances. All costs
9 collected by a district attorney pursuant to this subsection
10 shall be transmitted to the administrative office of the
11 district attorneys for credit to the district attorney fund.

12 ~~[B.]~~ D. If a defendant does not comply with the
13 terms, conditions and requirements of a preprosecution
14 diversion program, ~~[his]~~ the defendant's participation in the
15 program ~~[shall]~~ may be terminated, and the district attorney
16 may proceed with the suspended criminal prosecution of the
17 defendant.

18 ~~[G.]~~ E. If the participation of a defendant in a
19 preprosecution diversion program is terminated, the district
20 attorney shall state in writing the specific reasons for the
21 termination, which reasons shall be available for review by the
22 defendant and ~~[his]~~ the defendant's counsel."