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## FISCAL IMPACT REPORT

<b>SPONSOR</b> <u>Cates/Hochman-Vigil</u>	<b>LAST UPDATED</b> _____
	<b>ORIGINAL DATE</b> <u>2/13/23</u>
	<b>BILL</b>
<b>SHORT TITLE</b> <u>Sentencing Commission Data Collection</u>	<b>NUMBER</b> <u>House Bill 289</u>
	<b>ANALYST</b> <u>Torres, J.</u>

### ESTIMATED ADDITIONAL OPERATING BUDGET IMPACT\*

(dollars in thousands)

	FY23	FY24	FY25	3 Year Total Cost	Recurring or Nonrecurring	Fund Affected
	No fiscal impact	Indeterminate but minimal	Indeterminate but minimal			General Fund

Parentheses ( ) indicate expenditure decreases.  
 \*Amounts reflect most recent version of this legislation.

### Sources of Information

LFC Files

#### Responses Received From

New Mexico Sentencing Commission (NMSC)  
 Corrections Department (NMCD)

## SUMMARY

### Synopsis of House Bill 289

House Bill amends Section 9-3-10.1, NMSA 1978 in order to allow NMSC to review: “juvenile records, behavioral health information and information that is contained on the statewide criminal justice data-sharing network.”

Records, data, and information received or obtained by NMSC may be used for analytical reports on the criminal and juvenile justice systems, provided that the public reports relying on confidential information use only de-identified data. This helps safeguard against the matching of publicly disclosed confidential information to the person it pertains to.

NMCD states:

If passed House Bill 289 would revise the rules of data collection relating to the New Mexico Sentencing Commission. They would be allowed to review juvenile records, behavioral health information and information that is contained in the statewide criminal justice data-sharing network. Records and data will be used for reports and analysis on the criminal and juvenile justice system. NMSC would not be allowed access to records or data that is privileged under the rules of evidence, compromises privileged records or consists of information or internal documents or details communications made to a prosecutor or defense attorney in connection with an investigation, prosecution or defense of a criminal case.

This bill does not contain an effective date and, as a result, would go into effect June 16, 2023, (90 days after the Legislature adjourns) if signed into law.

## **FISCAL IMPLICATIONS**

Neither agency reported a fiscal impact, though NMSC may experience additional administrative and staffing costs associated with the bill's passage, due to expanded data research and reporting.

## **SIGNIFICANT ISSUES**

NMSC states:

HB289 is a bill proposed by the New Mexico Sentencing Commission. The existing statute under which the Sentencing Commission is authorized to collect data is broad. It says, quite simply, that the Commission "is authorized to inspect, copy, receive and review all records, data and information in the possession of state, county and local government agencies," with some limited exceptions (which are retained in HB289).

In practice, however, as the Commission's responsibilities for collecting data on and studying New Mexico's criminal justice system have expanded, there has been some resistance to the Commission getting data, particularly in the areas of behavioral health data and juvenile justice. The Commission feels that updating the present statute, which has not been substantively amended since it came into law in 1994, would help to clarify that the Commission is entitled to receive all of the data that is necessary for it to accomplish its statutory missions, which include working with and analyzing both behavioral health data and juvenile justice data (see, for instance, subparagraphs 5, 6, 15, and 15 of Section 9-3-10(D)). The language surrounding the statewide criminal justice data-sharing network was included for completeness, because that is a relatively new initiative in the state, dating from 2019.

Importantly, the confidentiality provisions in the present statute around information are maintained. Subsection B of the bill states, "All records, data and information received or obtained by the New Mexico sentencing commission shall have the same status with regard to access or release as when the records, data or information was in the possession of the entity from which the commission received it." This language is in the existing law, but has been placed in its own subsection for clarity.

Additionally, however, the Commission felt it important to add additional protections into the law, and thus came up with the language in Subsection C: "Records, data and information received or obtained by the New Mexico sentencing commission under this section may be used for reports on and analysis of the criminal and juvenile justice system. Public reports that rely on confidential information shall only use de-identified data so that the information in the report cannot be used to match a person with confidential information regarding that person."

Subsections B and C together ensure that data that comes into the Commission shall remain confidential, presuming it was confidential at its source, and that any information used by the Commission to write reports assessing some facet of the state criminal justice system will not be able to be traced back to an individual. This double-lock of protection

ensures both that people’s information will be protected, and that no one can use the Commission as a back door around IPRA or other laws to obtain information that would otherwise be protected.

NMSC concludes:

It is important that the Commission be able to collect all data pertaining to the criminal justice system to fully analyze the impact of the many programs and initiatives being launched in the state in the criminal justice arena. As is now fully understood, issues surrounding juveniles and issues surrounding behavioral health have a tremendous impact on whether someone ends up in the adult system. The Commission needs to be able to access this data in order for it to fulfill its mission to analyze all aspects of the state’s criminal justice system.

The “double-lock” incorporated into the bill appears adequate to prevent accidental disclosure of private confidential identifying information. This is important in order to avoid a potential “chilling effect” as to the assimilation and compilation of juvenile and behavioral health information.

JT/al/ne