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**AGENCY BILL ANALYSIS - 2026 REGULAR SESSION**

**WITHIN 24 HOURS OF BILL POSTING, UPLOAD ANALYSIS TO**

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**SECTION I: GENERAL INFORMATION**

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

**Date Prepared:** 2/2/26 *Check all that apply:*  
**Bill Number:** HB 292 Original  Correction   
 Amendment  Substitute

**Sponsor:** Rep. Dayan Hochman-Vigil **Agency Name and Code:** AOC  
**Short Title:** NM Prison Rape Elimination Act **Number:** 218  
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**SECTION II: FISCAL IMPACT**

**APPROPRIATION (dollars in thousands)**

Appropriation		Recurring or Nonrecurring	Fund Affected
FY26	FY27		
None	None	Rec.	General

(Parenthesis ( ) indicate expenditure decreases)

**REVENUE (dollars in thousands)**

Estimated Revenue			Recurring or Nonrecurring	Fund Affected
FY26	FY27	FY28		
Unknown	Unknown	Unknown	Rec.	General

(Parenthesis ( ) indicate revenue decreases)

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

	FY26	FY27	FY28	3 Year Total Cost	Recurring or Nonrecurring	Fund Affected
<b>Total</b>	Unknown	Unknown	Unknown	Unknown	Rec.	General

(Parenthesis ( ) Indicate Expenditure Decreases)

Duplicates/Conflicts with/Companion to/Relates to: None.

Duplicates/Relates to Appropriation in the General Appropriation Act: None.

### **SECTION III: NARRATIVE**

#### **BILL SUMMARY**

Synopsis: HB 292 enacts the New Mexico Prison Rape Elimination Act (NMPREA), prohibiting an agency from hiring or promoting a person who may have contact with inmates and from enlisting the services of a contractor who may have had contact with inmates who has:

(1) engaged in sexual abuse in a prison, jail, lockup, community confinement facility, juvenile facility or other institution;

(2) been convicted of engaging or attempting to engage in sexual activity in the community facilitated by force, overt or implied threats of force or coercion or if the victim did not consent or was unable to consent or refuse; or

(3) been civilly or administratively adjudicated to have engaged in any activity described in Paragraph (2) of this subsection. (Section 9(A))

Section 9(B), requires an agency to consider any incidents of sexual harassment in determining whether to hire or promote a person or to enlist the services of a contractor who may have contact with inmates. Subsection C requires an agency, before hiring a new employee who may have contact with inmates, to:

(1) perform a criminal background records check; and

(2) make the agency's best efforts to contact all prior institutional employers for information on substantiate allegations of sexual abuse or any resignation during a pending investigation of an allegation of sexual abuse.

Subsection D requires an agency to perform a criminal background records check before enlisting the services of a contractor who may have contact with inmates. Subsection E requires an agency to conduct criminal records checks at least every 5 years of current employees and contractors who may have contact with inmates or have in place a system for otherwise capturing such information for current employees. Subsection F requires an agency to ask all applicants and employees who may have had contact with inmates directly about previous misconduct described in Subsection A in written applications or interviews for hiring or promotions and in interviews or written self-evaluations conducted as part of reviews of current employees, and requires an agency to impose upon employees a continuing affirmative duty to disclose any such misconduct. Subsection G provides that material omissions regarding sexual misconduct or the provision of materially false information shall be grounds for termination. Subsection H requires an agency to provide information on substantiated allegations of sexual abuse or sexual harassment involving a former employee upon receiving a request from an employer for whom the employee has applied to work.

HB 292 defines "agency" to mean the unit of a state, local, corporate or nonprofit authority with direct responsibility for the operation of a facility that confines inmates, detainees or residents, including the implementation of policy as set by the governing, corporate or nonprofit authority.

Additionally, HB 292 does the following:

**Section 3** (governing sexual abuse and sexual harassment and the NMPREA coordinator): requires an agency to have a written policy mandating zero tolerance toward all forms of sexual abuse and sexual harassment and employing or designating a coordinator. Specifies what “sexual abuse” and “sexual harassment” include.

**Section 4** (governing contracts for confinement of inmates): provides that new contracts or contract renewal shall include the entity’s obligation to comply with the NMPREA.

**Section 5** (governing supervision and monitoring of facilities): requires an agency to ensure that each facility the agency operates shall develop, document and make the facility’s best efforts to comply with a staffing plan that provides for adequate levels of staffing and, where applicable, video monitoring to protect inmates against sexual abuse.

**Section 6** (governing youthful inmates): prohibits a youthful inmate from being placed in a housing unit in which the youthful inmate will have sight, sound or physical contact with an adult inmate through use of a shared dayroom or other common space, shower area or sleeping quarters.

**Section 7** (governing cross-gender viewing and searches): prohibits a facility from conducting cross-gender strip searches or visual body cavity searches, except in exigent circumstances or when performed by a medical practitioner.

**Section 8** (governing inmates with disabilities and those who are limited in English proficiency): requires an agency to take appropriate steps to ensure that inmates with disabilities and those who are limited in English proficiency, have an equal opportunity to participate in or benefit from all aspects of the agency’s efforts to prevent, detect and respond to sexual abuse and sexual harassment.

**Section 10** (governing upgrades to facilities and technology): requires an agency to consider the effect of the design, acquisition, expansion or modification of an existing facility, and when designing or acquiring a new facility, upon the agency’s ability to protect inmates from sexual abuse.

**Section 11** (governing evidence protocol for forensic medical examinations): requires an agency to follow a uniform evidence protocol that maximizes the potential for obtaining usable physical evidence for administrative proceedings and criminal prosecutions when investigating allegations of sexual abuse.

**Section 12** (governing referrals of allegations for investigation): requires an agency to ensure that an administrative or criminal investigation is completed for all allegations of sexual abuse and sexual harassment.

**Section 13** (governing employee training and volunteer training): requires that an agency train an employee who may have contact with inmates, and that an agency ensure that all volunteers and contractors who have contact with inmates have been trained on volunteers’ and contractors’ responsibilities under the agency’s sexual abuse and sexual harassment prevention, detection and response policies and procedures.

**Section 14** (governing inmate education): requires an inmate to receive information explaining the agency’s zero-tolerance policy regarding sexual abuse and sexual harassment and how to report incidents or suspicions of sexual abuse or sexual harassment.

**Section 15** (governing specialized training for investigations): requires an agency to ensure that, to the extent the agency conducts sexual abuse investigations, the investigators receive training in conducting the investigations in confinement settings.

**Section 16** (governing medical and mental health specialized training): requires an agency to ensure that all full- and part-time medical practitioners and mental health practitioners who work regularly in the agency’s facilities have been trained in specified areas.

**Section 17** (governing inmate screening for risk of victimization and abusiveness): requires inmates to be assessed during an intake screening and upon transfer to another facility for the

inmates' risk of being sexually abused by other inmates or sexually abusive toward other inmates.

**Section 18** (governing use of screening information): requires an agency to use information from the risk screening required by Section 17 to inform housing, bed, work, education and program assignments with the goal of keeping separate those inmates at high risk of being sexually victimized from those at high risk of being sexually abusive.

**Section 19** (governing protective custody): requires that an inmate at high risk for sexual victimization not be placed in restricted housing unless an assessment of all available alternatives has been made and a determination has been made that there is no available alternative means of separation from likely abusers.

**Section 20** (governing inmate reporting): requires an agency to provide multiple internal ways for inmates to privately report sexual abuse and sexual harassment, retaliation by other inmates or staff for reporting sexual abuse and sexual harassment and staff neglect or violation of responsibilities that may have contributed to such incidents.

**Section 21** (governing exhaustion of administrative remedies): prohibits an agency from imposing a time limit on when an inmate may submit a grievance regarding an allegation of sexual abuse. Specifies the process which must be followed in filing requests for administrative remedies relating to allegations of sexual abuse. Provides that nothing in this section shall restrict an agency's ability to defend against an inmate lawsuit on the ground that the applicable statute of limitations has expired.

**Section 22** (governing inmate access to outside support services): requires a facility to provide inmates with access to outside victim advocates for emotional support services.

**Section 23** (governing employee and agency reporting duties): requires an agency to require the agency's employees to report any knowledge, suspicion or information regarding an incident of sexual abuse or sexual harassment.

**Section 24** (governing reporting to other confinement facilities): requires the head of a facility, upon receiving an allegation that an inmate was sexually abused while confined at another facility, to notify the head of the facility or appropriate office of the agency where the alleged abuse occurred.

**Section 25** (governing employee first responder duties): details the procedures the first security employee to respond to a report that an inmate was sexually abused is required to undertake.

**Section 26** (governing collective bargaining agreements and the preservation of ability to protect inmates from contact with abusers and retaliation): prohibits an agency or a governmental entity responsible for collective bargaining on the agency's or governmental entity's behalf from entering into or renewing any collective bargaining agreement or other agreement that limits the agency's or governmental entity's ability to remove alleged staff sexual abusers from contact with inmates pending the outcome of an investigation or of a determination of whether and to what extent discipline is warranted.

**Section 27** (governing criminal and investigative investigations): provides that if an agency conducts its own investigations into allegations of sexual abuse and sexual harassment, the agency shall do so promptly, thoroughly and objectively for all allegations, including third-party and anonymous reports.

**Section 28** (governing reporting to inmates): requires an agency, following an investigation into an inmate's allegation that the inmate suffered sexual abuse in an agency's facility, to inform the inmate as to whether the allegations has been determined to be substantiated, unsubstantiated or unfounded.

**Section 29** (governing employee discipline and corrective actions for contractors and volunteers): requires an employee of an agency to be subject to disciplinary sanctions up to and including termination for violating the agency's sexual abuse or sexual harassment

policies.

**Section 30** (governing disciplinary sanctions for inmates): requires an inmate to be subject to disciplinary sanctions pursuant to a formal disciplinary process following an administrative finding that the inmate engaged in inmate-on-inmate sexual abuse or following a criminal finding of guilt for inmate-on-inmate sexual abuse.

**Section 31** (governing access to emergency medical and mental health services and ongoing services): provides that an inmate victim of sexual abuse shall receive timely, unimpeded access to emergency medical treatment and crisis intervention services.

**Section 32** (governing sexual abuse incident review): provides that a facility shall conduct a sexual abuse incident review at the conclusion of every sexual abuse investigation. The review is to occur within 30 days of the conclusion of the investigation.

**Section 33** (governing data collection): requires an agency to collect accurate, uniform data for every allegation of sexual abuse at facilities under the agency's direct control using a standardized instrument and set of definitions.

**Section 34** (governing data review for corrective action): requires an agency to review data collected and aggregated pursuant to Section 33 in order to assess and improve the effectiveness of the agency's sexual abuse prevention, detection and response policies, practices and training.

HB 292 defines "agency head", "community confinement facility", "contractor", "detainee", "direct staff supervision", "employee", "exigent circumstances", "facility", "facility head", "gender nonconforming", "inmate", "Intersex", "jail", "juvenile", "juvenile facility", "law enforcement staff", "lockup", "medical practitioner", "mental health practitioner", "pat-down search", "prison", "qualified medical practitioner", "qualified mental health practitioner", "resident", "security staff", "strip search", "substantiated", "transgender", "unfounded", "unsubstantiated", "volunteer", "youthful inmate" and "youthful detainee".

## FISCAL IMPLICATIONS

There will be a minimal administrative cost for statewide update, distribution and documentation of statutory changes. Any additional fiscal impact on the judiciary would be proportional to the enforcement of this law and commenced reviews of final agency decisions, including disciplinary sanctions and termination, and well as appeals of the same. New laws, amendments to existing laws and new hearings have the potential to increase caseloads in the courts, thus requiring additional resources to handle the increase.

## SIGNIFICANT ISSUES

1) In 2003, the [\*Prison Rape Elimination Act\*](#) was passed, 34 U.S. Code Subtitle II, Chapter 303.

The Prison Rape Elimination Act (PREA) was passed unanimously by both parties in Congress in 2003. The purpose of the act is to "provide for the analysis of the incidence and effects of prison rape in federal, state, and local institutions and to provide information, resources, recommendations and funding to protect individuals from prison rape." (Prison Rape Elimination Act, 2003.) In addition to creating a mandate for significant research from the Bureau of Justice Statistics and the National Institute of Justice, PREA funding through the Bureau of Justice Assistance and the National Institute of Corrections has supported major efforts in many state correctional, juvenile detention, community corrections, lockups, and jail systems.

The act also created the National Prison Rape Elimination Commission and charged it with drafting standards for eliminating prison rape. Those standards were published in

June 2009 and turned over to the Department of Justice for review and passage as a final rule. The Department of Justice published the final PREA Standards in the Federal Register on June 20, 2012, and they became effective August 20, 2012.

In 2010, the Bureau of Justice Assistance funded the National PREA Resource Center to continue to provide information, guidance, and resources to PREA auditors and key stakeholders to support PREA audits and facilitate compliance with the PREA Standards.

See [Prison Rape Elimination Act](#), National PREA Resource Center.

Within the Act, Congress made findings, among them that

...experts have conservatively estimated that at least 13 percent of the inmates in the United States have been sexually assaulted in prison. Many inmates have suffered repeated assaults. Under this estimate, nearly 200,000 inmates now incarcerated have been or will be the victims of prison rape. The total number of inmates who have been sexually assaulted in the past 20 years likely exceeds 1,000,000.

[Prison Rape Elimination Act](#), 34 U.S. Code Subtitle II, Chapter 303

2) HB 292 does not provide any penalties for an agency that violates a provision of the NMPREA. Additionally, HB 292 does not provide a specific statutory reference to Section 39-3-1.1 NMSA 1978, providing for appeal of final decisions by agencies to District Court. In New Mexico, when no reference is made to Section 39-3-1.1 NMSA 1978, an appeal of a final administrative action is made to the District Court by filing a petition within 30 days of the final decision.

#### **PERFORMANCE IMPLICATIONS**

The courts are participating in performance-based budgeting. This bill may have an impact on the measures of the district courts in the following areas:

- Cases disposed of as a percent of cases filed
- Percent change in case filings by case type

#### **ADMINISTRATIVE IMPLICATIONS**

See “Fiscal Implications,” above.

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

None.

#### **TECHNICAL ISSUES**

#### **OTHER SUBSTANTIVE ISSUES**

#### **ALTERNATIVES**

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

## AMENDMENTS