

LFC Requester:	Scott Sanchez
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AGENCY BILL ANALYSIS – 2026 SESSION

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(Analysis must be uploaded as a PDF)

SECTION I: GENERAL INFORMATION

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

Date Prepared: 2/2/2026 *Check all that apply:*
Bill Number: HB292 Original X Correction
 Amendment Substitute

Sponsor: Dayan Hochman-Vigil **Agency Name and Code Number:** 790 – Department of Public Safety
Person Writing Sheila McDonald

Short Title: New Prison Rape Elimination Act **Phone:** (505)469-5813 **Email:** Sheila.mcdonald@dps.nm.us

SECTION II: FISCAL IMPACT

APPROPRIATION (dollars in thousands)

Appropriation		Recurring or Nonrecurring	Fund Affected
FY26	FY27		
NFI	NFI	N/A	N/A
NFI	NFI	N/A	N/A

(Parenthesis () indicate expenditure decreases)

REVENUE (dollars in thousands)

Estimated Revenue			Recurring or Nonrecurring	Fund Affected
FY26	FY27	FY28		
NFI	NFI	NFI	N/A	N/A
NFI	NFI	NFI	N/A	N/A

(Parenthesis () indicate revenue decreases)

ESTIMATED ADDITIONAL OPERATING BUDGET IMPACT (dollars in thousands)

	FY26	FY27	FY28	3 Year Total Cost	Recurring or Nonrecurring	Fund Affected
Total	NFI	NFI	NFI	NFI	N/A	N/A

(Parenthesis () Indicate Expenditure Decreases)

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

SECTION III: NARRATIVE

BILL SUMMARY

House Bill 292 enacts the New Mexico Prison Rape Elimination Act, codifying into state law comprehensive requirements for the prevention, detection, investigation, and response to sexual abuse and sexual harassment in all state and local confinement facilities, including prisons, jails, lockups, juvenile facilities, and community confinement facilities. The bill's 34 sections establish definitions of sexual abuse and sexual harassment; require zero-tolerance policies and designated PREA coordinators; mandate staffing plans and video monitoring; regulate cross-gender searches; protect youthful inmates, transgender and intersex inmates, and inmates with disabilities; set hiring and promotion standards; require employee and volunteer training; establish inmate screening, reporting, and grievance procedures; require forensic medical examinations and victim services; create investigation and evidence protocols; mandate data collection and public reporting; and require sexual abuse incident reviews. The bill substantially parallels the federal PREA standards at 28 C.F.R. Part 115.

FISCAL IMPLICATIONS

The bill does not contain an appropriation. Any fiscal impact to the Department of Public Safety (DPS) would be associated with potential increases in administrative workload related to its role as the State Administering Agency (SAA) for PREA-related grant funding, including technical assistance, coordination, and oversight of subrecipients. Enactment of HB 292 may facilitate the Governor's annual PREA certification by establishing a state statutory framework parallel to the federal standards. However, the bill's unfunded mandates on county jails and local lockups—including staffing plan development, video monitoring upgrades, specialized training, forensic examination access, and data collection systems—could impose significant costs on local governments. These costs are not quantified in the bill.

SIGNIFICANT ISSUES

Implementation of statewide PREA requirements may result in increased administrative workload for DPS in its role as the State Administering Agency for PREA-related grant funding, particularly with respect to technical assistance and coordination with affected agencies.

1. Federal-State Regulatory Overlap. HB 292 codifies into New Mexico statutory law provisions substantially parallel to the federal PREA standards promulgated by DOJ at 28 C.F.R. Part 115. While this creates an independent state enforcement baseline, the bill does not address the relationship between state compliance under this Act and federal compliance under 34 U.S.C. § 30307(e)(2)(A), which governs the Governor's annual PREA certification. Agencies subject to both regimes could face dual compliance obligations where the state and federal standards diverge, particularly regarding definitions of "sexual abuse," investigation timelines, and reporting obligations.

2. Absence of Enforcement Mechanism. The bill contains no penalty provisions, no private right of action, and no designated enforcement authority for non-compliance. Without an enforcement mechanism, the Act's mandatory directives ("shall" language throughout) may lack practical enforceability.

3. Unfunded Mandate Concerns. The bill imposes extensive operational requirements on state, county, and local confinement facilities—including staffing plans (Section 5), video monitoring upgrades (Section 10), specialized training (Sections 13–16), forensic examination access (Section 11), and comprehensive data collection (Sections 33–34)—without any appropriation. Smaller county jails and lockups may lack the resources to achieve compliance, raising unfunded mandate concerns under Art. X, § 8 of the New Mexico Constitution.

PERFORMANCE IMPLICATIONS

DPS may need to incorporate HB 292 compliance indicators into PREA subgrant performance measures, including training completion rates, the operational status of reporting systems, data-collection fidelity, and the timely completion of sexual abuse incident reviews. If DPS receives criminal investigation referrals under Section 12, it would need to track case intake, investigation timelines, and disposition outcomes as additional performance metrics.

ADMINISTRATIVE IMPLICATIONS

HB 292 does not directly modify DPS's statutory authority. However, as the State Administering Agency (SAA) for federal PREA grant funding, DPS may experience increased administrative demands in several areas. First, enactment of a state PREA statute parallel to the federal standards may require DPS to revise subgrant agreements, performance measures, and monitoring protocols to ensure consistency between state and federal compliance frameworks. Second, Section 12 requires agencies to refer allegations of sexual abuse for criminal investigation to entities with "the legal authority to conduct criminal investigations." To the extent DPS or its component agencies (e.g., New Mexico State Police) receive such referrals, this could increase investigative caseloads. Third, the Act's extensive data-collection and annual-reporting mandates (Sections 33–34) may require DPS to update its grant administration systems to capture new compliance metrics from subrecipients. These impacts are anticipated to be manageable within existing resources, absent significant expansion of DPS's coordination role.

CONFLICT, DUPLICATION, COMPANIONSHIP, RELATIONSHIP

HB 292 substantially duplicates the federal PREA standards at 28 C.F.R. Part 115 (Subparts A through D), which already apply to all state and local confinement facilities. The bill also relates to the Restricted Housing Act, NMSA 1978, §§ 33-16-1 et seq., which governs use of restricted housing in state correctional facilities. Sections 18(F) and 19(F) of HB 292 contain express savings clauses preserving the Restricted Housing Act's provisions. Section 6(C) is a cross-reference/incorporation provision applying the Restricted Housing Act's restriction on placing youthful inmates in restricted housing. Additionally, the sexual abuse definitions in Section 3 cross-reference existing criminal sexual penetration and related offenses, which are at NMSA 1978, §§ 30-9-1 through 30-9-21.

TECHNICAL ISSUES

1. No Effective Date. The bill text does not include an effective date provision. Under N.M. Const. art. IV, § 23, absent a specified effective date (and absent an emergency clause or appropriations exception), an act takes effect ninety days after adjournment of the enacting session, which may provide insufficient time for agencies to develop the policies, training curricula, screening instruments, and staffing plans required by the Act.
2. Unidentified External Reporting Entity. Section 20(B) requires agencies to provide "at least one way for inmates to report abuse or harassment to a public or private entity or office that is not part of the agency," but neither identifies nor creates that entity, nor provides funding for it.
3. Cross-Reference to Restricted Housing Act. Sections 6(C), 18(F), and 19(F) reference the "Restricted Housing Act" (NMSA 1978, §§ 33-16-1 et seq.) without providing the statutory citation. This is a drafting deficiency that could create ambiguity, though courts would likely apply standard statutory construction to resolve it.
4. Definitional Variance with Federal Standards. Several definitions in Section 2 (e.g., "sexual abuse," "facility," "restricted housing") are similar but not identical to definitions in 28 C.F.R. § 115.5 and § 115.6, creating potential compliance confusion for agencies subject to both frameworks.

OTHER SUBSTANTIVE ISSUES

Section 26 restricts agencies from entering into collective bargaining agreements that limit the ability to remove alleged staff sexual abusers from inmate contact pending investigation. This provision intersects with existing public employee collective bargaining rights under the Public Employee Bargaining Act, NMSA 1978, §§ 10-7E-1 et seq., and may face resistance from labor organizations representing corrections officers. Additionally, Section 27(M) imposes a “preponderance of the evidence” standard as the maximum burden for substantiating sexual abuse or harassment allegations in administrative proceedings, which is consistent with the federal standard at 28 C.F.R. § 115.72, but may warrant attention in facilities accustomed to applying higher evidentiary thresholds.

ALTERNATIVES

The Legislature could consider a phased implementation approach with defined compliance deadlines (e.g., one year for state facilities, two years for county and local facilities) and an appropriation to support smaller agencies’ transition costs. Alternatively, the Legislature could strengthen existing agency policies through executive order or administrative rulemaking rather than enacting a comprehensive parallel statute, thereby avoiding potential federal-state compliance conflicts.

WHAT WILL BE THE CONSEQUENCES OF NOT ENACTING THIS BILL

Without enactment, New Mexico would continue to lack a state statutory framework governing prevention and response to sexual abuse and sexual harassment in confinement settings. Agencies would remain subject only to the federal PREA standards (28 C.F.R. Part 115), which are enforced primarily through the federal grant-reduction mechanism rather than direct state authority. Importantly, the Governor’s certification under 34 U.S.C. § 30307(e)(2)(A), does not extend to county and municipal facilities outside the state executive branch’s operational control. Absent this bill, those local facilities would face no state-level accountability framework for PREA compliance beyond existing federal audit requirements.

AMENDMENTS

There are no amendments for DPS.