HOUSE BILL

58TH LEGISLATURE - STATE OF NEW MEXICO - FIRST SESSION, 2027

INTRODUCED BY

DISCUSSION DRAFT

AN ACT

RELATING TO PUBLIC SAFETY; ALLOWING THE STATE, A COUNTY OR A MUNICIPALITY TO AUTHORIZE THE USE OF DEFLECTION IN LIEU OF CITATION OR ARREST FOR CERTAIN MISDEMEANOR OFFENSES AND PETTY MISDEMEANOR OFFENSES; CREATING THE CRIMINAL JUSTICE DEFLECTION PROJECT AS A FOUR-YEAR PILOT PROJECT OF THE NEW MEXICO SENTENCING COMMISSION; PROVIDING FOR PROJECT REQUIREMENTS; AUTHORIZING FINANCIAL ASSISTANCE FOR PARTICIPANTS; ASSIGNING DUTIES; CREATING THE CRIMINAL JUSTICE DEFLECTION PROJECT FUND; MAKING APPROPRIATIONS.

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

SECTION 1. A new section of the Criminal Procedure Act, Section 31-1-6.1 NMSA 1978, is enacted to read:

"31-1-6.1. [NEW MATERIAL] DEFLECTION IN LIEU OF CITATION OR ARREST WITHOUT WARRANT.--

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A. As used in this section:

(1) "deflection" means a law enforcement practice through which a first responder and a person subject to prosecution enter an agreement that includes the:

(a) person's acceptance of or participation in social services offered by the first responder;

(b) first responder's declination to arrest the person and file charges or pursue the filing of charges in consideration of the person's acceptance of or participation in the social services offered; and

(c) first responder's ability to initiate prosecution within a specific period of time upon the person's failure to comply with the agreement;

(2) "first responder" means a law enforcement officer or other person employed by the state, a county or a municipality who has the duty and authority to respond to a crime or an emergency situation;

(3) "misdemeanor offense" includes only misdemeanor offenses that do not involve great bodily harm, the threat of great bodily harm, a deadly weapon, driving or boating under the influence of intoxicating liquor or drugs or damage to property;

(4) "petty misdemeanor offense" does not include driving under the influence of intoxicating liquor,

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driving under the influence of any drug or aggravated driving under the influence of intoxicating liquor or drugs as provided in Section 66-8-102 NMSA 1978 or operating a motorboat while under the influence of intoxicating liquor or drugs or aggravated boating while under the influence of intoxicating liquor or drugs as provided in Section 66-13-3 NMSA 1978; and

(5) "social services" means voluntary treatment, programming, resources or other supports that prevent criminal behavior or are believed to prevent the future criminal behavior of a particular person.

B. By executive order or by ordinance, the state, a county or a municipality may authorize first responders to use deflection in lieu of arresting without a warrant or issuing a citation to a person when there is probable cause to believe the person committed a petty misdemeanor offense or misdemeanor offense; provided that the order or ordinance:

(1) specifies the:

(a) petty misdemeanor offenses or misdemeanor offenses for which deflection may be used;

(b) first responders who may use deflection;

(c) continuum of social services to be offered through deflection;

(d) form of a deflection agreement and manner in which an agreement shall be executed; and

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(e) consequences for a person's compliance with or breach of a deflection agreement;

(2) designates the officers, employees or contractors who will monitor the implementation of an agreement and a person's compliance with an agreement;

(3) requires that first responders successfully complete approved training before using deflection; and

(4) provides for data collection and reporting on the use and outcomes of deflection.

C. A first responder shall not be held criminally or civilly liable for using or refusing to use authorized deflection so long as the actions or omissions of the first responder were in good faith and without malice."

SECTION 2. [NEW MATERIAL] CRIMINAL JUSTICE DEFLECTION PROJECT CREATED.--

A. As used in this section:

(1) "commission" means the New Mexico sentencing commission;

(2) "deflection" means a law enforcement practice authorized pursuant to Section 31-1-6.1 NMSA 1978;

(3) "first responder" means a law enforcement officer or other person employed by the state, a county or a municipality who has the duty and authority to respond to a crime or an emergency situation;

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(4) "participant" means an agency of the state or a political subdivision of the state selected to participate in the project;

(5) "project" means the criminal justice deflection project; and

(6) "social services" means voluntary treatment, programming, resources or other supports that prevent criminal behavior or are believed to prevent the future criminal behavior of a particular person.

B. The "criminal justice deflection project" is created as a four-year pilot project administered by the commission to demonstrate that supporting local communities by establishing and providing social services and empowering first responders to use deflection in lieu of arrest and prosecution will reduce crime, homelessness and recidivism and will provide for more efficient allocations of public resources throughout the criminal justice system.

C. The project shall be located in at least five counties in different judicial districts, including at least one class A county, one class B county with an assessed intermediate valuation and one class B county with an assessed high valuation.

D. A participant shall design and implement a deflection program for persons in or at risk of entering the criminal justice system that includes the following:

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(1) the issuance or passage of an executive order or ordinance in accordance with Section 31-1-6.1 NMSA 1978 that authorizes the use of deflection in lieu of arrest and prosecution for petty misdemeanor offenses or misdemeanor offenses;

(2) if the participant is a county or municipality, an authorization for first responders to use deflection in lieu of arrest and prosecution for violations of municipal ordinances;

(3) a corps of trained case managers to serve as the designated employees or contractors who will monitor the implementation of and compliance with deflection agreements; provided that a corps of trained case managers shall be of a size that is proportionate to a participant's population; and

(4) uniform policies and procedures that provide for the first responder or other designated professional to assist a person with complying with a deflection agreement, including assistance with transportation.

E. In accordance with commission rules and subject to the availability of funding, a participant shall receive a grant award to pay for the following qualified expenses:

(1) personnel or contractors who shall provide direct case management services for persons subject to a deflection agreement;

(2) direct transportation services for persons

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subject to a deflection agreement; provided that such transportation shall be reasonably necessary to assist a person in complying with a deflection agreement and not otherwise covered by programs established pursuant to the Public Assistance Act or similar programs;

(3) the direct costs for the development and provision of training for first responders and case managers;

(4) the direct costs of data collection; and

(5) other administrative services that are approved by the commission as reasonably necessary to implement a deflection program.

F. Participants shall collect and analyze data regarding the implementation of the participants' deflection programs and expenditures of the grant award, and the commission shall independently evaluate those data to determine if the deflection programs reduced crime, homelessness and recidivism and provided for more efficient allocations of public resources throughout the criminal justice system.

G. The commission shall:

(1) establish a budget for the project that leverages all available funding and prioritizes the expenditure of federal medicaid funding for components of the deflection programs covered by the medical assistance division of the health care authority and submit that budget to the legislative finance committee on or before September 1, 2027;

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(2) begin accepting applications from prospective participants on or before December 31, 2027;

(3) select participants on or before April 1, 2028;

(4) periodically submit reports regarding the implementation of the project to the legislative health and human services committee and the interim legislative committee concerned with courts, corrections and justice; and

(5) submit a final report to the governor and the legislature by November 1, 2031 that shall identify successful programs and include recommendations for expanding those programs statewide.

H. The "criminal justice deflection project fund" is created in the state treasury as a nonreverting fund for the duration of the project. The fund consists of appropriations, gifts, grants, donations and income generated from investment of the fund. Money in the fund is appropriated to the commission to administer the project and provide financial assistance to participants. Expenditures from the fund shall be by warrant of the secretary of finance and administration pursuant to vouchers signed by the executive director of the commission or the executive director's authorized representative. Any unexpended balance remaining in the fund at the end of fiscal year 2031 shall revert to the general fund.

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SECTION 3. APPROPRIATION.--Five million dollars ($5,000,000) is appropriated from the general fund to the criminal justice deflection project fund for expenditure in fiscal years 2028 through 2031. Any unexpended balance remaining at the end of fiscal year 2031 shall revert to the general fund.

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