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HOUSE BILL

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

INTRODUCED BY

DISCUSSION DRAFT

AN ACT

RELATING TO PUBLIC SAFETY; EXPANDING ELIGIBILITY FOR  
PREPROSECUTION DIVERSION PROGRAMS; PERMITTING DISTRICT  
ATTORNEYS TO WAIVE COSTS FOR PARTICIPATION IN THOSE PROGRAMS BY  
CERTAIN DEFENDANTS.

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 meet the following minimum  
criteria to be eligible for a preprosecution diversion program:

(1) the defendant must 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

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1 by the defendant is nonviolent in nature, with the exception of  
2 domestic disputes not involving a minor; and

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4 ~~previously, his probation must not have been revoked or~~  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

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

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

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

14 ~~(7)]~~ B. A person meeting all of the ~~[above]~~  
15 criteria in Paragraphs (1) through (3) of Subsection A of this  
16 section and any additional criteria established by the district  
17 attorney may be entered into the preprosecution diversion  
18 program. The district attorney may elect ~~[to]~~ not to divert a  
19 person to the preprosecution diversion program even though that  
20 person meets the minimum criteria ~~[herein]~~ set forth in  
21 Subsection A of this section. A decision by the district  
22 attorney ~~[to]~~ not to divert to the preprosecution diversion  
23 program is not subject to appeal and may not be raised as a  
24 defense to any prosecution or habitual offender proceeding.

25 ~~[B-]~~ C. A district attorney may set additional

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1 criteria."

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

4 "31-16A-7. PROGRAM PARTICIPATION--COSTS--TERMINATION.--

5 A. A defendant may be diverted to a preprosecution  
6 diversion program for no less than six months and no longer  
7 than two years. A district attorney may extend the diversion  
8 period for a defendant as a disciplinary measure or to allow  
9 adequate time for restitution, provided that the extension  
10 coupled with the original period does not exceed two years. A  
11 district attorney may require as a program requirement that a  
12 defendant agree to such reasonable conditions as the district  
13 attorney deems necessary to ensure that the defendant will  
14 observe the laws of the United States and the various states  
15 and the ordinances of any municipality [~~and~~].

16 B. Except as otherwise provided in Subsection C of  
17 this section, a district attorney shall require the defendant  
18 to pay to [his] the district attorney's office the costs  
19 related to [his] the defendant's participation in the program  
20 not exceeding one thousand twenty dollars (\$1,020) annually to  
21 be paid in monthly installments of not less than fifteen  
22 dollars (\$15.00) and not more than eighty-five dollars (\$85.00)  
23 [subject to modification by the district attorney on the basis  
24 of changed financial circumstances]. All costs collected by a  
25 district attorney pursuant to this subsection shall be

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1 transmitted to the administrative office of the district  
2 attorneys for credit to the district attorney fund.

3 C. A district attorney may waive costs for a  
4 defendant's participation in the program, based on the  
5 defendant's ability to pay.

6 ~~[B-]~~ D. If a defendant does not comply with the  
7 terms, conditions and requirements of a preprosecution  
8 diversion program, ~~[his]~~ the defendant's participation in the  
9 program shall be terminated, and the district attorney may  
10 proceed with the suspended criminal prosecution of the  
11 defendant.

12 ~~[G-]~~ E. If the participation of a defendant in a  
13 preprosecution diversion program is terminated, the district  
14 attorney shall state in writing the specific reasons for the  
15 termination, which reasons shall be available for review by the  
16 defendant and ~~[his]~~ the defendant's counsel."