

LFC Requester:	Connor Jorgensen
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**AGENCY BILL ANALYSIS
2015 REGULAR SESSION**

WITHIN 24 HOURS OF BILL POSTING, EMAIL ANALYSIS TO:

LFC@NMLEGIS.GOV

and

DFA@STATE.NM.US

{Include the bill no. in the email subject line, e.g., HB2, and only attach one bill analysis and related documentation per email message}

SECTION I: GENERAL INFORMATION

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

Check all that apply:

Original <input checked="" type="checkbox"/>	Amendment <input type="checkbox"/>	Date <u>January 29, 2015</u>
Correction <input type="checkbox"/>	Substitute <input type="checkbox"/>	Bill No: <u>SB 321</u>

Sponsor: <u>Sens. Ryan and Maestas</u>	Agency Code: <u>Attorney General’s Office</u>
Short Title: <u>Indigent Defense Act & Public Defender Act</u>	Person Writing: <u>Margaret McLean, AAG</u>
	Phone: <u>827-6929</u> Email: <u>mmclean@nmag.gov</u>

SECTION II: FISCAL IMPACT

APPROPRIATION (dollars in thousands)

Appropriation		Recurring or Nonrecurring	Fund Affected
FY15	FY16		

(Parenthesis () Indicate Expenditure Decreases)

REVENUE (dollars in thousands)

Estimated Revenue			Recurring or Nonrecurring	Fund Affected
FY15	FY16	FY17		

(Parenthesis () Indicate Expenditure Decreases)

ESTIMATED ADDITIONAL OPERATING BUDGET IMPACT (dollars in thousands)

	FY15	FY16	FY17	3 Year Total Cost	Recurring or Nonrecurring	Fund Affected
Total						

(Parenthesis () Indicate Expenditure Decreases)

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

SECTION III: NARRATIVE

This analysis is neither a formal Attorney General’s Opinion nor an Attorney General’s Advisory Letter. This is a staff analysis in response to an agency’s, committee’s, or legislator’s request.

BILL SUMMARY

Synopsis:

SB 321 proposes changes to the Public Defender and Indigent Defense Acts to coordinate and clarify those legal services required for indigent defendants in criminal proceedings. The New Mexico Constitution, United States Constitution and Gideon v. Wainwright, 372 U.S. 335 (1963), recognize the right to legal representation for indigent defendants. Minor edits and technical changes are part of the proposed bill.

SB 321 includes:

Amending Section 31-15-7(B)(3) regarding the duties and powers of the chief public defender. Recovering costs from non-indigent clients is one duty. The costs would revert to the specific fund for the law offices of the public defender, not the general fund. The proposal deletes the ability of a non-indigent person to hire the law offices of the public defender.

Amending Section 31-15-12 for the application fee and waiver. The application fee is \$10.00 and may be waived in the discretion of the law office of the public defender. The proposal deletes the written waiver of services by an indigent defendant.

Acknowledging that any attorney assigned or contracted by the law offices of the public defender shall not be liable in any civil action regarding the performance of duties under the contract for services.

Amending Section 31-16-2 to define a “serious crime” for legal representation; incarceration is the triggering event.

Clarifying and mandating that discovery shall be provided free of charge to the indigent defendant and/or attorney.

Requiring the determination of indigency shall be made by the law office of the public defender and not a court. A judicial hearing would be available for any challenge regarding the finding of non-indigency.

Allowing a court to enter an order after a hearing about the ability to reimburse the law office

of the public defender and terminating any authority of the district attorney to seek reimbursement. A civil judgment would be entered and any reimbursement would be paid to the law office of the public defender's client reimbursement fund.

FISCAL IMPLICATIONS

No fiscal implications are noted.

SIGNIFICANT ISSUES

Liability. One reading of "counsel not subject to liability" (Section 3 and Section 9) is that the liability in a civil action is limited to monetary damages and no other liability. Liability in a civil action with respect to performance or nonperformance of services may also include a claim and finding of ineffective assistance of counsel. This finding may be made in a quasi-civil proceeding in the form of a state habeas corpus or federal habeas corpus action. Does the proposal contemplate complete immunity from any and all claims including a claim of ineffective assistance of counsel? Is an indigent defendant who receives services foreclosed from seeking civil relief in both monetary and other damages? For example, 28 U.S.C. § 2254(i), the ineffectiveness or incompetence of counsel during federal or state collateral post-conviction proceedings is not a ground for relief in a civil action brought in federal court pursuant to 28 U.S.C. § 2254.

Waiver. A written waiver of services clarifies legal representation and the understanding of an indigent defendant. This document would be useful if there is a later challenge about the lack of representation by the law office of the public defender.

PERFORMANCE IMPLICATIONS

No performance implications are noted.

ADMINISTRATIVE IMPLICATIONS

No administrative implications are noted.

CONFLICT, DUPLICATION, COMPANIONSHIP, RELATIONSHIP

None.

TECHNICAL ISSUES

None.

OTHER SUBSTANTIVE ISSUES

None.

ALTERNATIVES

None suggested.

WHAT WILL BE THE CONSEQUENCES OF NOT ENACTING THIS BILL

Status quo.

AMENDMENTS

None suggested.

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