AN ACT

RELATING TO CRIMINAL JUSTICE REFORM; REQUIRING THE NEW MEXICO
SENTENCING COMMISSION TO CREATE A DATA-SHARING NETWORK FOR
CRIMINAL JUSTICE DATA; ADDING THREE MEMBERS TO THE NEW MEXICO
SENTENCING COMMISSION; AMENDING A SECTION OF THE MENTAL
HEALTH AND DEVELOPMENTAL DISABILITIES CODE; SPECIFYING THAT
PHOTOGRAPHS, FINGERPRINTS AND PALM PRINTS ARE BIOMETRIC
IDENTIFYING INFORMATION OF AN ARRESTED PERSON; PROVIDING
REQUIREMENTS FOR THE CONTENT AND DISPOSITION OF ARREST
RECORDS; REQUIRING THE DEPARTMENT OF PUBLIC SAFETY TO SHARE
DATA WITH THE NEW MEXICO SENTENCING COMMISSION; ENACTING THE
CRIME REDUCTION GRANT ACT; CREATING CRIMINAL JUSTICE
COORDINATING COUNCILS IN EACH JUDICIAL DISTRICT; REQUIRING
CERTAIN STATE AGENCIES TO ISSUE RULES AND REPORT ANNUALLY.

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

SECTION 1. Section 9-3-10 NMSA 1978 (being Laws 1977,
Chapter 257, Section 11, as amended) is amended to read:

"9-3-10. NEW MEXICO SENTENCING COMMISSION--CREATION--
MEMBERSHIP--DUTIES.--

A. There is created the "New Mexico sentencing
commission".

B. The New Mexico sentencing commission shall be
composed of twenty-seven members. Appointed members shall
serve at the pleasure of the appointing authority. The
commission shall reflect reasonable geographical and urban-rural balances and regard for the incidence of crime and the
distribution and concentration of law enforcement services in
the state. The commission shall consist of the following
individuals or their designees:

(1) the attorney general;

(2) a district attorney appointed by the New Mexico district attorney's association or its successor agency;

(3) the chief public defender;

(4) two district court judges, one of whom shall be a children's court judge, appointed by the district and metropolitan judges association or its successor agency;

(5) a magistrate judge appointed by the chief justice of the supreme court;

(6) the dean of the university of New Mexico school of law;

(7) the secretary of corrections;

(8) the secretary of public safety;

(9) the secretary of children, youth and families;

(10) the secretary of public education;

(11) a representative from the behavioral health services division of the human services department;

(12) a county sheriff appointed by the
executive director of New Mexico counties;

(13) two public members appointed by the
governor, one of whom shall be designated as chair of the New
Mexico sentencing commission by the governor;

(14) three public members appointed by the
president pro tempore of the senate;

(15) one public member appointed by the
minority floor leader of the senate;

(16) three public members appointed by the
speaker of the house of representatives;

(17) one public member appointed by the
minority floor leader of the house of representatives;

(18) two public members appointed by the
chief justice of the supreme court;

(19) one public member who is Native
American and a practicing attorney, appointed by the
president of the state bar association; and

(20) one public member appointed by the
governor who is a representative of a New Mexico victims'
organization.

C. A majority of the members of the New Mexico
sentencing commission constitutes a quorum for the
transaction of commission business.

D. The New Mexico sentencing commission shall:

(1) hold meetings at times and for periods
as the commission deems necessary;

(2) hire staff as needed to assist the commission in the performance of its duties;

(3) prepare an annual budget;

(4) establish policies for the operation of the commission and supervision of the activities of commission staff;

(5) advise the executive, judicial and legislative branches of government on policy matters relating to criminal and juvenile justice;

(6) make recommendations to the legislature concerning proposed changes to laws relating to the criminal and juvenile justice systems that the commission determines would improve those systems;

(7) annually assess, monitor and report to the legislature on the impact of any enacted sentencing standards and guidelines on state and local correctional resources and programs and the need for further sentencing reform;

(8) when developing proposed sentencing reform:

(a) study sentencing models in other jurisdictions;

(b) study the Criminal Sentencing Act, the Criminal Code and all other New Mexico statutes relating
to criminal law, criminal sentencing, criminal procedure and
probation and parole;

(c) review past studies or reports
regarding proposed changes to the Children's Code, the
Criminal Code, the Criminal Sentencing Act or other New
Mexico statutes relating to criminal law, criminal
sentencing, criminal procedure or probation and parole;

(d) study past and current criminal
sentencing and release practices and create a statistical
database for simulating the impact of various sentencing
policies;

(e) study the full range of prison,
nonprison and intermediate sanctions;

(f) determine the principal purpose for
criminal sanctions;

(g) rank criminal offenses by degree of
seriousness;

(h) determine the role of criminal
history in making criminal sentencing decisions;

(i) define dispositional policy that
determines when adult felony offenders are confined in state
prisons and county jails or sentenced to nonprison and
intermediate sanctions;

(j) establish the length of criminal
sentences;
(k) establish the appropriate use of community service and fines;

(l) structure proposed sentencing guidelines to ensure consistency in all aspects of criminal sentencing policy;

(m) assess the impact of commission recommendations to modify criminal sentencing policy on the availability of and need for correctional resources and programs;

(n) use the expertise of a national or state organization with experience in sentencing reform; and

(o) present proposed legislation or recommendations regarding sentencing reform to the appropriate legislative interim committee;

(9) monitor any enacted sentencing guidelines with respect to uniformity and proportionality;

(10) conduct research relating to the use and effectiveness of any enacted guidelines, prosecution standards, offense charging, plea bargaining, sentencing practices, probation and parole practices and any other matters relating to the criminal justice system;

(11) serve as a clearinghouse for the systematic collection, analysis and dissemination of information relating to felony offense charges, plea agreements, convictions, sentences imposed, incarceration
time actually served and actual and projected inmate
population in the state correctional system;

(12) review all proposed legislation that
creates a new criminal offense, changes the classification of
an offense or changes the range of punishments for an offense
and make recommendations to the legislature as to whether
proposed changes would improve the criminal and juvenile
justice system;

(13) contingent upon the availability of
funding, provide impact estimates, incorporating prison
population projections, on all proposed legislation that has
the potential to affect correctional resources;

(14) create and maintain a data-sharing
network to receive, store, analyze and disseminate criminal
justice data for and between participating criminal justice
and behavioral health agencies for the purpose of evaluating
local and statewide criminal justice systems and programs and
supporting, encouraging and accomplishing information sharing
among criminal justice agencies and criminal justice
coordinating councils;

(15) provide data analysis as requested by
criminal justice agencies and criminal justice coordinating
councils; and

(16) promulgate rules governing the data-
sharing network and data analysis pursuant to Paragraphs (14)
and (15) of this subsection. The rules shall include procedures to:

(a) fulfill any requirements related to data privacy, security and protection so that information access and sharing is permitted for authorized purposes, as defined by law, court order or for business practices that are a necessary component of the requesting agency's duties and functions and is compatible with the purpose and expectations of use under which the information was collected;

(b) guide participating agencies to ensure accuracy, completeness, currency and reliability of information reported to the data-sharing network;

(c) allow data querying and reporting tools for those authorized users who want to perform statistical analysis of some of the data collected and retained;

(d) provide safeguards to actively monitor and record: 1) access and use of the network's services and systems; and 2) the nature of information exchanges using the network; and

(e) identify and recognize authorized users who access the network.

E. The members of the New Mexico sentencing commission shall be paid pursuant to the Per Diem and Mileage
Act and shall receive no other perquisite, compensation or allowance.

F. The New Mexico sentencing commission is administratively attached to the office of the governor."

SECTION 2. Section 29-3-8 NMSA 1978 (being Laws 1978, Chapter 87, Section 1, as amended) is amended to read:

"29-3-8. BIOMETRIC IDENTIFYING INFORMATION OF PERSONS ARRESTED--STATE ARREST RECORDS--DISPOSITION.--

A. A booking facility shall electronically collect biometric identifying information from a person arrested for the following crimes prior to the person's release:

(1) the commission of a criminal offense amounting to a felony;

(2) the commission of a criminal offense not amounting to a felony but punishable by imprisonment for more than six months under the laws of the state or a political subdivision of the state; or

(3) the violation of a provision of Section 66-8-102 NMSA 1978 or the violation of a municipal or county ordinance prescribing criminal penalties for driving while under the influence of intoxicating liquor or drugs.

B. Biometric identifying information shall be obtained each time a person is arrested.

C. At the time biometric identifying information is collected, the booking facility shall create an arrest
record with a state arrest tracking number provided by the department. The arrest record shall include:

(1) the date of arrest;

(2) the state arrest tracking number assigned to the arrest record;

(3) the state personal identification number assigned to the arrestee by the department;

(4) the arrestee's biometric identifying information; and

(5) a completed description with charge code of each offense charged.

D. The department shall promulgate rules addressing:

(1) collection of biometric identifying information;

(2) submission of biometric identifying information;

(3) creation of a state personal identification number system to identify a person arrested and charged with a crime and ensure that the same state personal identification number is assigned to the person regardless of the number of times the person is arrested or the location of the arrest within the state; and

(4) creation of a state arrest tracking number system for each arrest record.
E. At booking, the booking facility shall immediately forward the arrest record and any other information required by department rule to the department.

F. The department shall immediately provide the:

   (1) biometric identifying information to the federal bureau of investigation in Washington, D.C.;

   (2) state personal identification number to agencies at all levels of government that are engaged in the apprehension, prosecution or defense, adjudication, incarceration or rehabilitation of criminal offenders; and

   (3) arrest record to the administrative office of the district attorneys for submission to the appropriate prosecuting authority.

G. Biometric identifying information shall be collected from an inmate who is charged with a felony or misdemeanor offense while incarcerated, and the jail or corrections facility shall forward the offender's biometric identifying information to the department.

H. The administrative office of the courts shall provide to the department the disposition of all criminal cases assigned a state arrest tracking number. The disposition shall be provided in electronic format, promptly upon the conclusion of the case.

I. The administrative office of the district attorneys shall provide to the department the disposition of
all criminal cases assigned a state arrest tracking number
when the district attorney decides not to file charges in the
case. The disposition shall be provided in electronic format
promptly upon a district attorney's decision not to file
charges in the case.

J. The department shall forward the disposition of
all criminal cases to the federal bureau of investigation and
the national crime information center within five business
days of receipt.

K. Law enforcement agencies, the administrative
office of the courts and the administrative office of the
district attorneys shall allow the department access to their
records for the purpose of auditing those records to ensure
compliance with the provisions of this section.

L. As used in this section:

(1) "biometric identifying information"
means physical characteristics used in verifying the identity
of an individual, including photographs, fingerprint
impressions and palm print impressions;

(2) "booking facility" means a jail, police
station, sheriff's office or other place of detention;

(3) "charge code" means the unique code
assigned to the crime from the master charge code table
distributed by the New Mexico justice information sharing
council;
(4) "state arrest tracking number" means an incident-based unique number assigned to the arrest; and
(5) "state personal identification number" means a unique number assigned to the arrestee based on the arrestee's biometric identifying information."

SECTION 3. Section 29-3-11 NMSA 1978 (being Laws 2007, Chapter 37, Section 1) is amended to read:

"29-3-11. UNIFORM CRIME REPORTING SYSTEM ESTABLISHED--DUTIES OF DEPARTMENT.--

A. The department of public safety shall develop, operate and maintain a uniform crime reporting system and shall be the central repository for the collection, storage, retrieval and analysis of crime incident and arrest reports generated by all law enforcement agencies in this state. The system shall be operational as of January 1, 2008.

B. The department shall:

(1) compile statistical data and forward such data as required to the federal bureau of investigation or the appropriate department of justice agency in accordance with standards and procedures of the national system;
(2) provide forms, standards and procedures and related training to state and local law enforcement agencies as necessary for the agencies to report incident and arrest activity for inclusion in the statewide system;
(3) in conjunction with the New Mexico
sentencing commission, annually publish a report on the
nature and extent of crime in New Mexico and submit the
report to the governor and to the legislature;

(4) maintain the privacy and security of
information in accordance with applicable state and federal
laws;

(5) provide the New Mexico sentencing
commission access to the data collected and maintained by the
department; and

(6) establish rules as necessary to
implement the provisions of this section.

C. Every law enforcement agency in the state
shall:

(1) submit crime incident reports to the
department of public safety on forms or in the format
prescribed by the department;

(2) submit any other crime incident
information as may be required by the department of public
safety; and

(3) use the unique code assigned to the
crime from the master charge code table distributed by the
New Mexico justice information sharing council for the
automated fingerprint identification system and use uniform
crime incident reporting as provided by the department for
all incidents and arrests.
D. The annual report and other statistical data reports generated by the department shall be made available to state and local law enforcement agencies, the administrative office of the courts and the general public."

SECTION 4. Section 43-1-19 NMSA 1978 (being Laws 1977, Chapter 279, Section 18, as amended) is amended to read:

"43-1-19. DISCLOSURE OF INFORMATION.--

A. Except as otherwise provided in the code, no person shall, without the authorization of the client, disclose or transmit any confidential information from which a person well acquainted with the client might recognize the client as the described person, or any code, number or other means that can be used to match the client with confidential information regarding the client.

B. Authorization from the client shall not be required for the disclosure or transmission of confidential information in the following circumstances:

(1) when the request is from a mental health or developmental disabilities professional or from an employee or trainee working with a person with a mental disability or developmental disability, to the extent that the practice, employment or training on behalf of the client requires access to such information is necessary;

(2) when such disclosure is necessary to protect against a clear and substantial risk of imminent
serious physical injury or death inflicted by the client on
the client's self or another;

(3) when the disclosure is made pursuant to
the provisions of the Assisted Outpatient Treatment Act,
using reasonable efforts to limit protected health
information to that which is minimally necessary to
accomplish the intended purpose of the use, disclosure or
request;

(4) when the disclosure of such information
is to the primary caregiver of the client and the disclosure
is only of information necessary for the continuity of the
client's treatment in the judgment of the treating physician
or certified psychologist who discloses the information;

(5) when such disclosure is to an insurer
contractually obligated to pay part or all of the expenses
relating to the treatment of the client at the residential
facility. The information disclosed shall be limited to data
identifying the client, facility and treating or supervising
physician and the dates and duration of the residential
treatment. It shall not be a defense to an insurer's
obligation to pay that the information relating to the
residential treatment of the client, apart from information
disclosed pursuant to this section, has not been disclosed to
the insurer;

(6) when the request is from a physician, a
licensed psychologist or a qualified mental health professional licensed for independent practice and responsible for the continuity of care of inmates with a mental or developmental disability who are in a jail or corrections facility, and the disclosure is only of information necessary for the continuity of the client's treatment in the judgment of an equally qualified treating professional who discloses the information;

(7) when such disclosure is by a physician, a licensed psychologist or a qualified mental health professional licensed for independent practice and responsible for the treatment of inmates in a jail or corrections facility to another equally qualified treating professional responsible for the continuation of care of the inmate upon the inmate's release from a jail or corrections facility, and the disclosure is only of information necessary for the continuity of the client's treatment in the judgment of the treating professional who discloses the information; or

(8) when the disclosure is made to a governmental agency, its agent or a state educational institution, a duly organized state or county association of licensed physicians or dentists, a licensed health facility or staff committees of such a facility for the purpose of research, subject to the provisions of Section 14-6-1 NMSA...
1978 and subject to the review of an institutional review board in compliance with the federal Health Insurance Portability and Accountability Act of 1996 or any succeeding legislation.

C. No authorization given for the transmission or disclosure of confidential information shall be effective unless it:

1. is in writing and signed; and
2. contains a statement of the client's right to examine and copy the information to be disclosed, the name or title of the proposed recipient of the information and a description of the use that may be made of the information.

D. The client has a right of access to confidential information and has the right to make copies of any information and to submit clarifying or correcting statements and other documentation of reasonable length for inclusion with the confidential information. The statements and other documentation shall be kept with the relevant confidential information, shall accompany it in the event of disclosure and shall be governed by the provisions of this section to the extent they contain confidential information. Nothing in this subsection shall prohibit the denial of access to such records when a physician or other mental health or developmental disabilities professional believes...
and notes in the client's medical records that such
disclosure would not be in the best interests of the client.
In any such case, the client has the right to petition the
court for an order granting such access.

E. Where there exists evidence that the client
whose consent to disclosure of confidential information is
sought is incapable of giving or withholding valid consent
and the client does not have a guardian or treatment guardian
appointed by a court, the person seeking such authorization
shall petition the court for the appointment of a treatment
guardian to make a substitute decision for the client, except
that if the client is less than fourteen years of age, the
client's parent or guardian is authorized to consent to
disclosure on behalf of the client.

F. Information concerning a client disclosed under
this section shall not be released to any other person,
agency or governmental entity or placed in files or
computerized data banks accessible to any persons not
otherwise authorized to obtain information under this
section.

G. Nothing in the code shall limit the
confidentiality rights afforded by federal statute or
regulation.

H. A person appointed as a treatment guardian in
accordance with the Mental Health and Developmental
Disabilities Code may act as the client's personal representative pursuant to the federal Health Insurance Portability and Accountability Act of 1996, Sections 1171-1179 of the Social Security Act, 42 U.S.C. Section 1320d, as amended, and applicable federal regulations to obtain access to the client's protected health information, including mental health information and relevant physical health information, and may communicate with the client's health care providers in furtherance of such treatment."

SECTION 5. SHORT TITLE.--Sections 5 through 10 of this act may be cited as the "Crime Reduction Grant Act".

SECTION 6. DEFINITIONS.--As used in the Crime Reduction Grant Act:

A. "commission" means the New Mexico sentencing commission; and

B. "grant administration agency" means a state agency that receives appropriations for grants to criminal justice coordinating council members for the purposes specified in the Crime Reduction Grant Act.

SECTION 7. CRIMINAL JUSTICE COORDINATING COUNCILS CREATED--COMPOSITION--DUTIES.--

A. A criminal justice coordinating council is created for each judicial district and may include representation from within the district for:

(1) each court in the district;
(2) the district attorney;  
(3) the district public defender office;  
(4) law enforcement agencies;  
(5) jails;  
(6) correctional facilities;  
(7) behavioral health programs; or  
(8) other agencies and entities agreed upon by the council.

B. Each criminal justice coordinating council shall be convened by the chief judge of the district court in the judicial district.

C. Each criminal justice coordinating council shall select a chair at its first meeting. The first meeting of each council shall take place by August 1, 2019, and the council shall subsequently meet at the call of the chair, but not less than ten months per year.

D. Each criminal justice coordinating council shall organize itself and adopt rules in a manner appropriate to accomplish its duties pursuant to the Crime Reduction Grant Act.

E. A criminal justice coordinating council shall, to the extent possible, develop a strategic plan to meet the requirements of this section and shall:

(1) review the criminal justice system in the judicial district, including judicial processes, law
enforcement, community corrections alternatives and
sufficiency of jail and detention facilities;

(2) identify criminal justice system
problems in the judicial district;

(3) develop data-driven policies and
evidence-based best practices designed to improve public
safety outcomes, cost-effective responses to crime and fair
and efficient adjudication processes;

(4) apply as necessary to grant
administration agencies for crime reduction grants pursuant
to the Crime Reduction Grant Act;

(5) facilitate sharing of criminal justice
information between agencies as permitted by law; and

(6) in consultation with the commission,
develop data-sharing agreements and methods of data sharing
to allow system-wide analysis of criminal justice operations
within the judicial district and throughout the state.

F. Executive agencies and the administrative
office of the courts shall provide prompt responses to
criminal justice coordinating council requests for
information.

SECTION 8. APPLICATIONS FOR GRANTS--
PURPOSES--CONDITIONS.--

A. A member of a criminal justice coordinating
council with the consent of the council may apply to a grant
administration agency for a grant to accomplish any of the
enumerated purposes provided in Subsection B of this section.

B. Crime reduction grants may be made to:
   (1) develop, expand and improve evidence-based treatment and supervision alternatives to
       incarceration;
   (2) reduce barriers to participation by criminal offenders in preprosecution diversion or specialty
       court programs;
   (3) develop or improve pretrial service programs; and
   (4) purchase equipment or provide training to support any of the purposes provided in this section.

C. Crime reduction grants shall be conditioned on the criminal justice coordinating council and the recipient
member complying with the following:
   (1) using not more than five percent of a grant for administrative costs of the recipient;
   (2) in consultation with the commission, developing data-sharing agreements and methods of data
       sharing among criminal justice agencies and with the commission to allow system-wide analysis of criminal justice
       operations within the judicial district and statewide;
   (3) using or developing evidence-based best practices for any programs operated with crime reduction
grants;

(4) developing performance measures in consultation with the commission and the grant administration agency relevant to the grantee's application;

(5) collecting data to evaluate the effectiveness of programs operated with crime reduction grants;

(6) evaluating quarterly the process, outputs, outcomes and other performance measures of programs funded with grants for compliance with all provisions of the Crime Reduction Grant Act;

(7) providing a quarterly report to the commission for review and comparison with other programs receiving grants for similar purposes; and

(8) providing an annual report to the grant administration agency by October 1 of each year regarding program outcomes from use of the grant.

D. The commission shall assist with the implementation of data-sharing agreements to ensure compliance with crime reduction grants.

E. Each grant administration agency shall identify and require the use or development of evidence-based best practices for programs operated with crime reduction grants distributed by that grant administration agency.

F. A grant administration agency may consider any
outcome reported to it by a grant recipient from a previous year in making a determination of whether to make subsequent grants or the amount of a subsequent grant.

SECTION 9. RULES.--The New Mexico sentencing commission, in consultation with each grant administration agency, shall promulgate uniform procedural rules necessary to administer the provisions of the Crime Reduction Grant Act. Each grant administration agency shall adopt the uniform procedures along with other grant award criteria unique to the grant administration agency.

SECTION 10. REPORTS.--

A. Each grant administration agency shall report to the commission annually by November 1 of each year regarding the:

   (1) applications for grants made during the previous fiscal year by each criminal justice coordinating council;

   (2) purpose and amount of each grant approved by the grant administration agency for each member for the previous fiscal year; and

   (3) processes, outputs and outcomes resulting from the use of the grant.

B. The commission shall report to the legislature annually by December 1 of each year regarding the data-sharing network, including data derived from crime reduction
grant data-sharing agreements.

SECTION 11. EFFECTIVE DATE.--The effective date of the provisions of this act is July 1, 2019.