

## N.M. Stat. Ann. § 31-16A-1

Current with all 2020 legislation, including the 54th Legislature's 2nd Regular and 1st Special sessions

***Michie's™ Annotated Statutes of New Mexico > Chapter 31 Criminal Procedure (Arts. 1 — 28) > Article 16A Preprosecution Diversion (§§ 31-16A-1 — 31-16A-8)***

### **31-16A-1. Short title.**

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This act [31-16A-1 to 31-16A-8 NMSA 1978] may be cited as the “Preprosecution Diversion Act.”

### **History**

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Laws 1981, ch. 33, § 1.

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## N.M. Stat. Ann. § 31-16A-2

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### **31-16A-2. Purpose.**

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The purposes of the Preprosecution Diversion Act [31-16A-1 NMSA 1978] are to remove those persons from the criminal justice system who are most amenable to rehabilitation and least likely to commit future offenses, to provide those persons with services designed to assist them in avoiding future criminal activity, to conserve community and criminal justice resources, to provide standard guidelines and to evaluate preprosecution programs.

### **History**

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Laws 1981, ch. 33, § 2.

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## N.M. Stat. Ann. § 31-16A-3

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### 31-16A-3. Program establishment.

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Each district attorney shall establish a preprosecution diversion program in his judicial district in accordance with the provisions of the Preprosecution Diversion Act [31-16A-1 NMSA 1978] to the extent public or private funds permit.

### History

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Laws 1981, ch. 33, § 3.

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## N.M. Stat. Ann. § 31-16A-4

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### 31-16A-4. Eligibility.

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**A.**A defendant shall meet the following minimum criteria to be eligible for a preprosecution diversion program:

- (1)the defendant shall have no prior felony convictions for a violent crime;
- (2)the defendant is willing to participate in the program and submit to all program requirements; and
- (3)any additional criteria set by the district attorney.

**B.**A person who meets all of the criteria pursuant to Subsection A of this section may be entered into the preprosecution diversion program; provided that the district attorney may elect not to divert a person to the preprosecution diversion program even though that person meets the minimum criteria set forth in this section.

**C.**A decision by the district attorney not to divert a person to the preprosecution diversion program is not subject to appeal and shall not be raised as a defense to any prosecution or habitual offender proceeding.

### History

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Laws 1981, ch. 33, § 4; 2019, ch. 211, § 5, effective July 1, 2019.

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## N.M. Stat. Ann. § 31-16A-5

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### 31-16A-5. Program functions and responsibilities.

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The preprosecution diversion program in each judicial district shall include:

- A. individual counseling and guidance for all participants;
- B. required victim restitution where applicable to the extent practical. In addition to monetary restitution, a program may require public service restitution; and
- C. referral resources where clients may be sent for treatment and rehabilitation.

### History

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Laws 1981, ch. 33, § 5.

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## N.M. Stat. Ann. § 31-16A-6

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### 31-16A-6. Waivers; suspension of criminal proceedings.

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**A.**A defendant must secure or be appointed defense counsel to be present at a preprosecution diversion screening interview prior to applying for acceptance into a preprosecution diversion program, and, upon applying, the defendant shall waive his constitutional right to a preliminary hearing as set forth in Rule 15(d) of the Rules of Criminal Procedure for the Magistrate Courts [Rule 6-202D NMRA].

**B.**If a defendant is certified eligible by the district attorney and by the preprosecution diversion program, the defendant shall also waive his constitutional right to a speedy trial and any rights as provided by Rule 37(b) of the Rules of Criminal Procedure for the District Court [Courts] [Rule 5-604B NMRA]. Upon entry of this waiver, the district attorney shall divert the defendant into the preprosecution diversion program and criminal proceedings against the defendant shall be suspended. Participating defendants shall also waive any confidentiality provided by the Arrest Record Information Act [29-10-1 NMSA 1978] to permit scrutiny of records; provided that the publication of the personal information, except the name of the defendant, gathered while a defendant is participating in a program shall not be a public record.

### History

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Laws 1981, ch. 33, § 6.

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## N.M. Stat. Ann. § 31-16A-7

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### **31-16A-7. Program participation; reasonable conditions; termination.**

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**A.**A defendant may be diverted to a preprosecution diversion program for no less than six months and no longer than two years. A district attorney may extend the diversion period for a defendant as a disciplinary measure or to allow adequate time for restitution; provided that the extension coupled with the original period does not exceed two years.

**B.**A district attorney may require as a program requirement that a defendant agree to such reasonable conditions as the district attorney deems necessary to ensure that the defendant will observe the laws of the United States and the various states and the ordinances of any municipality.

**C.**If a defendant does not comply with the terms, conditions and requirements of a preprosecution diversion program, the defendant's participation in the program may be terminated, and the district attorney may proceed with the suspended criminal prosecution of the defendant.

**D.**If the participation of a defendant in a preprosecution diversion program is terminated, the district attorney shall state in writing the specific reasons for the termination, which reasons shall be available for review by the defendant and the defendant's counsel.

### **History**

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Laws 1981, ch. 33, § 7; 1984, ch. 110, § 5; 2019, ch. 211, § 6, effective July 1, 2019.

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## N.M. Stat. Ann. § 31-16A-8

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### 31-16A-8. Record keeping.

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**A.**Each district attorney shall maintain an accurate record of each individual accepted into a preprosecution diversion program for the purpose of complying with the requirements of Paragraph (4) of Subsection A of Section 4 [31-16A-4A(4) NMSA 1978] of the Preprosecution Diversion Act.

**B.**Each district attorney shall be required to forward to the state police accurate records of acceptance, successful termination or unsuccessful termination of each individual accepted into the program. The state police shall be required to maintain accurate records of all information forwarded to them by each respective district attorney concerning acceptance, successful termination or unsuccessful termination of all preprosecution diversion programs.

### History

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Laws 1981, ch. 33, § 8.

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