

**MINUTES
of the
SECOND MEETING
of the
CRIMINAL JUSTICE REFORM SUBCOMMITTEE
of the
COURTS, CORRECTIONS AND JUSTICE COMMITTEE**

**September 27, 2017
Office of the Second Judicial District Attorney
520 Lomas Boulevard NW
Albuquerque**

The second meeting of the Criminal Justice Reform Subcommittee (CJRS) of the Courts, Corrections and Justice Committee was called to order by Representative Antonio Maestas, co-chair, on September 27, 2017 at 9:10 a.m. at the Office of the Second Judicial District Attorney in Albuquerque.

Present

Rep. Antonio Maestas, Co-Chair
Sen. Sander Rue, Co-Chair
Sen. Gregory A. Baca
Rep. Gail Chasey
Rep. Zachary J. Cook
Rep. Jim Dines
Sen. Richard C. Martinez
Sen. Cisco McSorley

Absent

Guest Legislators

Sen. Linda M. Lopez
Rep. Sarah Maestas Barnes

Staff

Monica Ewing, Staff Attorney, Legislative Council Service (LCS)
Diego Jimenez, Research Assistant, LCS
Celia Ludi, Staff Attorney, LCS

Guests

The guest list is in the meeting file.

Handouts

Handouts and other written materials are in the meeting file.

Wednesday, September 27

Welcome — Introductions

Raul Torrez, second judicial district attorney, welcomed the subcommittee and announced that the meeting would be broadcast over Facebook Live. Members of the subcommittee and staff introduced themselves.

District Attorney Reform Efforts, Challenges, Strategy and Resources

Mr. Torrez introduced his staff and co-presenters Rachel Eagle, deputy district attorney, and Adolfo Mendez, chief of policy and planning. Mr. Torrez acknowledged that while the subcommittee looks at statewide criminal justice reform, it is important to scrutinize Bernalillo County as a case study due to the high volume, nature and myriad types of crime, multiple institutions and urban, suburban and rural environments in the county. The Office of the Second Judicial District Attorney is the largest law office in the state and is exclusively funded at the state level. Mr. Torrez said that the Second Judicial District handles approximately 50% of the state's criminal cases but receives just 26% of the total prosecutorial budget. Individuals living in the metropolitan area should expect to see a 25% to 30% increase in their auto insurance costs due to the area's high car theft rates. With a staff of 97, the Office of the Second Judicial District Attorney screens approximately 25,000 cases per year and files charges in nearly 19,000 cases. He stressed the need to review current challenges before looking to future reforms.

Mr. Torrez discussed the following crime rates:

- between 2014 and 2016, auto thefts increased 117%;
- in 2016, more than 27 vehicles were stolen daily, giving the metropolitan area the highest per capita auto theft rate in the nation;
- beginning in 2014, auto theft, property and violent crime incidents per 100,000 people in the Second Judicial District were higher than state and nationwide rates;
- New Mexico's violent crime rate is consistently above the national rate;
- 61 homicides were committed in 2016 in the Second Judicial District, which is a 103% increase from 2014;
- through the first nine months of 2017, there were more than 57 homicides in the Second Judicial District, and 2017 is on track to see the highest number of homicides in a single year; and
- 47.9% of the state's violent crime, 50.4% of the state's homicides, 50.5% of property crime in the state and 69.6% of auto theft crimes in the state take place in the Second Judicial District.

Mr. Torrez discussed a recent survey from Research & Polling, Inc. that was featured in the *Albuquerque Journal* and that indicated that Albuquerque's high crime rate is the top issue for 70% of those polled.

Mr. Torrez described the current legal landscape in the Second Judicial District, including the case management order from the New Mexico Supreme Court (NMSC) and the pretrial detention environment following the 2016 constitutional amendment and related rules promulgated by the NMSC. He has taken a public stance on the case management order and on pretrial detention issues. He wants to convey the urgency of the issues and encourage conversation about revising the rules and court procedures.

Regarding the case management order, Mr. Torrez said that for several years prior to the order, criminal cases in the Second Judicial District were taking too long to resolve and the Bernalillo County Metropolitan Detention Center's (MDC's) inmate population reached an all-time high. After years of seeking solutions, the NMSC worked with a local coordinating council to create the order. As a result of the order, standard processes that take up to two years in the other districts in the state now must meet deadlines of six, nine and 12 months. The deadlines are strict, and mandatory sanctions are imposed by the court if the district attorney's office fails to comply. He believes that the order has had the effect of decreasing trial dockets and the population of the MDC, which is down 60%. He added that several unintentional and unforeseen issues have arisen and ought to be discussed. One of the new mandates relating to pretrial witness interviews has caused a notable increase in pretrial work hours, and his office is now required to interview every witness before going to trial. He said that his office has not been provided additional attorneys to help the office meet deadlines.

Mr. Torrez said that his office has seen an increase in defendants refusing or otherwise missing transport from the MDC to court for pretrial interviews, which has led to their cases being dismissed. Some have suggested that defense attorneys advise their clients to refuse transportation to get their cases dismissed.

Mr. Torrez stated that discussions on crime in the Albuquerque metropolitan area need to focus on court rules and resources. If resources to triple the size of his office and increase police presence were available, the criminal justice system in Albuquerque would function properly, he said. Before the case management order was put in place, prosecutors typically handled a caseload of 100 to 130 active cases. After the order's implementation, a district attorney caseload is between 30 and 50 cases to allow the district attorney to keep up with deadlines. Victim services advocates currently have between 500 and 600 cases per advocate. He noted that all of the mayoral candidates are calling for increased police presence on the streets, which will produce greater stresses on his office if his staff is not proportionately increased.

According to Mr. Torrez, inadequate resources have put a strain on the criminal justice system that causes it to perform inefficiently. His office is operating with 80 positions fewer than the number recommended by the Administrative Office of the District Attorneys. He noted that the Law Offices of the Public Defender receives about \$65,000 per full-time employee while the Second Judicial District receives less than \$57,000 per full-time employee. Ninety-two percent of his staff are paid hourly rates below the midpoint for their respective positions. As a result, the office has been unable to recruit and retain experienced prosecutors and support staff.

Additionally, high turnover has led to a staff that includes 65% of prosecutors with less than five years of experience, and employees who work a second job to make ends meet. In addition, his staff has no designated parking, so numerous staff members have to leave the building twice a day to move their cars to avoid parking tickets.

Mr. Torrez discussed the images on slide 36 of his presentation that show the most common structure for district attorneys' offices. Under that structure, once a person is arrested, that person's case goes through intake and is assigned by the type of crime involved, such as violent, property/narcotics, crimes against children, white collar and felony DWI. That structure is no longer used in his office. He recognized a need to reorganize the office to focus on criminals rather than types of crimes. His reorganization included physical relocations and new teams, structures and communication tools. The office now divides cases into major crimes and general crimes. Major crimes include rape and other violent or dangerous crimes.

Data and utilization of data are key to criminal justice reform, diversion efforts, incarceration and treatment options, Mr. Torrez said. Adequate and thorough measurements are critical to reform but there is a severe lack of criminal justice-related data collection and sharing in New Mexico. His office utilizes data to prioritize cases based upon an empirical assessment of defendants to allocate prosecutorial resources accordingly. He discussed how sending low-risk offenders to jail does not treat those with addictions or mental health issues and can actually expose them to more serious criminals and they then return to their communities with unresolved addiction or mental health issues and more criminal resources.

Mr. Torrez said that crimes on Albuquerque's West Side do not generally occur for the same reasons as crime in the Northeast Heights. His office assigns prosecution teams to specific geographic areas in Albuquerque, and each team is tasked with developing tailored crime reduction strategies for that team's area. He has vertically integrated his office to increase the personal responsibility each person takes for a case, from start to finish.

In response to a question, Mr. Torrez said that data-driven prosecution began in the New York Police Department in the 1990s. The department assigned officers to walk their beats where particular crimes were more common and ensured that area commanders were held responsible for their respective areas. The approach helped with collection and analysis of data and saved resources for the New York County District Attorney's Office. Mr. Torrez's office is currently working on a data analytics program utilizing a grant from the mayor's office and a data scientist.

Mr. Torrez discussed adult diversion programs and his justice reform program that will examine drivers of crime to leverage tools to mitigate social harms. He explained that the program will maximize resources such as specialty courts but will also create new alternative paths in and outside of the justice system.

Mr. Torrez will meet with Bernalillo County Commissioner Maggie Hart Stebbins and the Santa Fe Police Department to discuss the Law Enforcement Assisted Diversion (LEAD) Program.

Mr. Torrez said that the school-to-prison pipeline must be broken. He discussed the "make it right" program in San Francisco, which allows juvenile non-violent offenders to have direct contact with victims of their crimes and with their community members over a six-month process that leads to a resolution between the juvenile and community.

Mr. Torrez discussed the establishment of a crime strategies unit that will facilitate an intelligence-driven strategy to predict crime and that relies on geographic hot spots and dissemination of real-time criminal intelligence. He said that gun violence is scientifically regarded as an epidemic. Using a mapped network of more than 130,000 subjects to analyze the spread of violence, gun violence was measured using an epidemiological model that assumed that shootings were likely to spread among arrestees who have close social ties and engage in risky behavior together. The findings of that analysis include that 63% of the 11,123 total shootings in the network were part of a longer chain of gun victimization. The data showed that the closer an individual is to a victim, the higher the risk that the victim will be shot. Slide 52 of Mr. Torrez's presentation provides a visualization of the predictive tool.

Mr. Torrez discussed the need to establish an independent investigations bureau in Albuquerque and in similarly sized offices. The bureau would work only on officer-involved shootings and officer-involved conduct leading to death or great bodily harm. The bureau would be separate from day-to-day operations of his office, would not have contact with law enforcement and would instead have its own investigative support. He stressed the importance of the public understanding that the bureau would ensure an objective and fair process with no internal conflicts of interest. Within the bureau, Mr. Torrez intends to create the first conviction integrity unit in New Mexico to conduct reviews of post-conviction claims of innocence or claims of police or prosecutorial misconduct that resulted in a miscarriage of justice. The primary goal of the unit would be to identify structural deficiencies in the investigative or prosecutorial process and to correct issues by developing new policies and training.

The subcommittee noted that members of the CJRS are not members on budget-related committees. It also noted the advantages of identifying the problem geographic areas to dispel rumors that crime is surging in rural areas, which is contrary to statistics.

In response to a question, Mr. Torrez said that he had to decrease his attorney caseload to increase efficiency. He said that the district had 865 felony cases submitted for processing between January and August 2017, and he added that 50 to 60 additional attorneys in his office would be required to keep pace with crime in the city. His office is unable to more effectively track detention motions and follow crimes due to its reliance on an outdated case management system.

Ms. Eagle said that all attorneys in Mr. Torrez's office now screen incoming and inactive cases to determine whether they can be prosecuted under the terms of the case management order. Mr. Torrez said that outside of the Second Judicial District, charges are filed before screening and are not subject to the same time constraints. In response to a question, Mr. Mendez said that denied motions to detain have resulted in the release of more than 150 individuals. He opined that the case management order has also caused an increase in early plea deals that are favorable to offenders.

Nick Costales, deputy director, field services, Children, Youth and Families Department (CYFD), informed the subcommittee that representatives of the district attorney's office will visit CYFD facilities on Friday to discuss juvenile justice reforms and to meet with Council of State Governments (CSG) Justice Center representatives.

Mr. Torrez said he was unsure how Bernalillo County tax revenue for behavioral health is being allocated, but he has heard that some of the revenue could be used for a transitional center to assist recently released inmates with housing and transportation.

In response to a question, Mr. Torrez discussed his budget submitted to the Legislative Finance Committee and said that a one-time investment of \$9 million would allow his office to pilot an independent investigations bureau. Mr. Torrez stressed the importance of spending public dollars on efficient programming. He suggested the need for additional prosecutors and police officers and for extended judicial hours as efficient ways to address crime. Investments in the criminal justice system to decrease violent crime could help spur economic growth.

In response to a question, Mr. Torrez said that investment in data-driven tools would go toward personnel for analytics and not exclusively computers and software. He said that the data-based approach has been proven successful when used with ground-level intelligence. He referred to the program in New York City, and he noted that the city is one of the safest big cities in the world and gun, violent and property crimes there have decreased since implementing data-driven techniques. New York City notifies prosecutors via text messaging when a high-priority offender has reoffended. Every major city district attorney, regardless of political association, is moving toward data-driven decision making.

A member inquired about slide 15 and noted that the budget for district attorneys in New Mexico appears to be divided to reflect population rather than crime rates. In response, Mr. Torrez suggested that it would be more appropriate to divide resources to reflect problem areas in the state rather than to reflect an area's population. He would support a needs-based spending package. The lack of Albuquerque-based legislators on the state's finance committees was discussed along with the issue that criminal and finance policies are considered separately.

The subcommittee discussed generational drug abuse in some parts of the state and whether it is more efficient to treat drug-addicted offenders than to incarcerate them. Members

suggested that highly effective prosecution could focus on the few frequent offenders in a community-oriented deterrence approach.

The subcommittee discussed some unintended consequences of the case management order. Mr. Torrez explained that Arthur W. Pepin, director, Administrative Office of the Courts (AOC), chairs the case management order council that is composed of defense lawyers, district attorneys, representatives of the Albuquerque Police Department and the Bernalillo County Sheriff's Office and district court officials. He said that some members of the council do not agree that problems have arisen since the order was issued. Since the 1930s, the NMSC has had full authority to make court rules, while in the federal system, Congress is directly involved in determining court processes.

The subcommittee discussed potential work with the CSG to improve statistical analytics in New Mexico and the difficulty in taking low-risk offenders out of the criminal justice system without the appearance of a "soft on crime" approach. The subcommittee also discussed House Bill 428 from the 2017 regular session that reclassified many crimes as penalty assessment misdemeanors and that was vetoed.

Ms. Eagle said that preprosecution offers from the district attorney's office are being refused in some cases due to defendants' assumptions that their cases are likely to be dismissed. She agreed that there are a variety of reasons why missing transportation could arise and acknowledged that defense attorneys are performing their jobs in the best interest of their clients. She said the district attorney's office no longer has leverage in offering pleas, nor do defense attorneys have incentive to work with prosecutors if their clients' cases could be dismissed.

Bernalillo County Metropolitan Court Drug Court Program

Edward Benavidez, chief judge, Bernalillo County Metropolitan Court (BCMC), introduced his co-presenters, Judge Renée Torres, BCMC, and Martin Burkhart, administrator, Bernalillo County Metropolitan Drug Court. Judge Benavidez informed the subcommittee that the DWI/drug court program has been renamed the DWI Recovery Court upon recommendation of a successful client.

Judge Benavidez said that nationwide, drug court programs help increase community safety and save money and lives. Drug courts originated about 30 years ago in Dade County, Florida, with a focus on rehabilitation and recovery before incarceration. He referred to the National Association of Drug Court Programs for additional information on the success of the programs. Drug courts are a unique approach to criminal justice that have a cornerstone approach of reducing recidivism and breaking the cycle of substance abuse. He said that currently, New Mexico has 43 drug courts in operation, including about 10 DWI courts. Nationally, DWI and drug courts have recidivism rates less than 10%. Since taking over the program, he has seen only four participants out of 330 reoffend.

Judge Benavidez described the national drug court model used by his program. To be eligible for a program, a defendant must be a repeat offender and fully commit to the program or face imprisonment. The first 90 days of the program are focused on counseling. He said that alcohol abuse is most often associated with trauma, and it is essential to understand what is causing a person to abuse alcohol.

Participants in the program are required to:

- attend group and independent counseling, usually with First Nations Community HealthSource or the Evolution Group, which were contracted through a request for proposals process;
- attend Alcoholics Anonymous meetings;
- find a sponsor, typically within a month;
- have employment or perform community service 20 hours a week;
- regularly attend appointments with numerous entities, including the court;
- be regularly tested for alcohol use; and
- acquire points for successful completion of each item above to progress to the next phase of the program.

Judge Benavidez explained that the model keeps participants accountable for their own lives. Most participants report enjoying and appreciating the communal aspect of the program.

Judge Benavidez discussed the Urban Native American Healing to Wellness Court that typically serves about 130 participants. The court, which costs about \$21.00 per participant per day, is a significant cost saver for Bernalillo County and is primarily funded with federal dollars. The program saves the county nearly \$3 million per year. The alternative to the program, incarceration, does not allow offenders to get treatment for their addictions and increases the chances they will offend again. First Nations has a clinic to assist with medical, dental and vision care.

Mr. Burkhardt informed the subcommittee that since its inception, the DWI Recovery Court has graduated more than 3,000 of 5,000 total participants. He stressed that the program has immeasurable benefits, such as the prevention of future arrests and harm or death to self or others, and if those reciprocal benefits were measured, the program would be widely regarded as a success.

Mr. Burkhardt reported that several grants expire at the end of the week, including those from the U.S. Department of Justice and Substance Abuse and Mental Health Services Administration for mental health and recovery courts. He discussed other grants funded by the same entities for the Urban Native American Healing to Wellness Court and Community Veterans Court.

Mr. Burkhart also discussed the courts' efforts to provide trauma-informed care, reporting that a majority of clients have experienced trauma. Mr. Burkhart told the subcommittee that the purpose of the Urban Native American Healing to Wellness Court is for clients to achieve full wellness, not just to quit using alcohol. Case managers assist participants with identifying employment options.

Mr. Burkhart said that participants are separated into three groups: high risk/high need; low risk/low need; and high risk/low need. This allows for better outcomes. Every effort is made to ensure that Medicaid-eligible clients are qualified for the assistance. In the current fiscal year, only five participants were funded by the state.

Judge Torres recently assumed management of the Urban Native American Healing to Wellness Court pre-adjudication program, which is for people who self-identify as Native American, who have two or more DWI charges and who live within 45 miles of Albuquerque. Under her direction, participants now receive a medical needs assessment to ensure that all health and wellness needs are addressed. She stressed that the program seeks to focus clients on sobriety and wellness and includes Native American-specific healing practices. First Nations Community HealthSource provides traditional healing and treatment services, including meditation and Native American-centered therapy with a focus on the principles of family, harmony and accountability to community. She explained that many participants have never learned to take care of themselves in the manner that they are required to in the program. Nearly all of her clients have experienced trauma.

Judge Torres said that frequently, receiving praise from an authority figure suffices as an incentive for program participants because many of them have never had an authority figure empathize with or support them. Other incentives include gift cards funded by grants. She said that increased reporting, community service, sobriety devices and expected relapses are all part of the program that focuses on stability and sobriety. Jail is a last resort for participants in the program. She added that the cost per day to incarcerate is substantially higher than the cost for treatment, with an advantage of community-building that does not exist in jail.

Judge Torres said that a team of staff members — including the judge and representatives of defense counsel, prosecution, probation, treatment facilities, case managers and others — meets to discuss each participant's progress through the program. She always considers the opinion of the team but makes the final decisions on a course of action. The program now consists of five phases because staff found that participants who go through the program too quickly are more likely to offend again. She would rather have participants make a mistake during the program than to offend after the program, and she stressed that 90 days of sobriety are required for graduation.

Judge Benavidez said that approximately 20% of participants in drug court programs leave their marriages or partnerships during the program because those partners are unable or unwilling to also stop using alcohol. He said that with the incoming mayoral administration

DWI enforcement will likely increase. In recent years, the DWI caseload has been reduced to about one-half of what it once was. It will be more effective to increase the use of specialty courts to reduce recidivism and address increased DWI enforcement.

Judge Torres explained that the specialty courts average around an 80% graduation rate, and the other 20% of participants who do not complete the program face a jail sentence. She reminded the subcommittee that the courts discussed today are for individuals with one or two previous convictions, noting that first-time offenders are referred to the first-time offenders program.

The BCMC maintains jurisdiction over participants while they participate in specialty courts. Judge Benavidez said that the primary incentive to participate in specialty courts is to avoid jail time. Mr. Burkhardt said that in the past, drug court programs would require incarceration for drug court violations, but that did not work. Research has since shown that such sanctions are less effective. Judge Benavidez noted that there are addiction treatment programs at the MDC that are used for participants who are unable to comply with the terms of the program.

In response to a question, Mr. Burkhardt said that screening is the most important part of the specialty courts process. He assured members that the Level of Service/Case Management Inventory assessment funnels participants to the appropriate track.

In response to a question, Judge Torres said that the final phase of the Urban Native American Healing to Wellness Court is known as "aftercare" and focuses on a participant's needs after program completion that may include education, employment, health and Medicaid enrollment.

In response to a question, Mr. Burkhardt said that since the inception of his program, he has been tracking and sending recidivism rates, among other statistics, to the AOC. The retention rate for the program is now at 80%, which is an improvement from 60% before sanction changes were made.

Judge Benavidez said that when looking at the programs' recidivism rates, it is hard to argue against the DWI Recovery Court. He is a strong advocate of the programs and believes the recidivism rates would be even better if the program was available to first-time offenders. Mr. Burkhardt stated that the first-time offenders program is a far less stringent deferred sentence program that allows for the case to be dismissed after the program's completion. If an individual completes the first-time offenders program and is granted a dismissal, the charge is still counted as a first offense should another occur. The first-time offenders program includes screening, victim impact panels and DWI school.

The subcommittee discussed the revenue sent to the General Fund from fines and fees collected by the BCMC. In response to a question, Judge Benavidez said that he believes that

90% of DWI Recovery Court participants gain employment rather than lose it during the program. When first beginning the program, many participants are unemployable due to myriad issues.

Jason Greenlee, deputy attorney, Office of the Second Judicial District Attorney, explained that due to funding rules, participation in a drug court cannot be moved across county lines. There is discussion about changing the rules to allow funding to follow individuals if they need to change courts.

The subcommittee requested data on how many DWI second offenders do not enter specialty court programs.

In response to a question, Judge Torres said that she has been trying to get tribal court judges to place defendants in local drug court programs and said that she has shared jurisdiction with some tribal courts.

The subcommittee asked the judges about any legislative recommendations they had, and Judge Benavidez said he is interested in the possibility of a specialty court for repeat car thieves. He believes that the vast majority of those offenders are likely substance abusers who steal vehicles to use them as a safe haven for using drugs. He recommended that ignition interlock device installers should be allowed to install devices upon a person's request and not just following a DWI arrest. He will inquire with other BCMC judges for additional recommendations.

In response to a question, Judge Benavidez said that victim impact panels required for DWI-related specialty programs are very successful.

The subcommittee thanked the judges for their work and recommended keeping the subcommittee and the Legislative Finance Committee informed on how to replicate the specialty courts' success on a larger scale.

Judge Torres informed the subcommittee that the Urban Native American Healing to Wellness Court is the only one of its kind in the country and will be featured on the Center for Court Innovation's website (www.courtinnovation.org). The feature segment involved interviews with graduates and staff and filmed court sessions. She also provided the subcommittee with a story about a client who was so affected by the program that she invited her arresting officers to her graduation. She reminded the subcommittee that graduations start every Thursday at 8:00 a.m. and members are always welcome to attend.

Approval of Minutes

The minutes from the first meeting of the CJRS were approved without objection.

Public Comment

Paul Gessing, president, Rio Grande Foundation, expressed support of the pretrial release-related 2016 constitutional amendment. He stated that New Mexico is in an important shift following the amendment and associated rules. He reminded the subcommittee that the courts can order pretrial supervision and that more work and analysis need to be done, but results in other states with similar approaches are promising.

Mr. Greenlee noted the importance of using alternatives to imprisonment. Among other suggestions he discussed allowing individuals enrolled in drug court to drive vehicles to work without an ignition interlock.

Mr. Torrez closed the meeting by commending the subcommittee for its work, and he noted that he is always present as a resource for the subcommittee.

Adjournment

The co-chairs discussed the next CJRS meeting on October 10 at the BCMC. The subcommittee adjourned at 4:20 p.m.