

**MINUTES
of the
FOURTH MEETING
of the
COURTS, CORRECTIONS AND JUSTICE COMMITTEE**

**September 12-13, 2017
State Capitol, Room 322
Santa Fe**

The fourth meeting of the Courts, Corrections and Justice Committee (CCJ) was called to order by Representative Gail Chasey, co-chair, on September 12, 2017 at 9:46 a.m. in Room 322 of the State Capitol.

Present

Rep. Gail Chasey, Co-Chair
Sen. Richard C. Martinez, Co-Chair
Rep. Eliseo Lee Alcon
Sen. Gregory A. Baca
Sen. Jacob R. Candelaria
Rep. Jim Dines
Sen. Linda M. Lopez (9/13)
Rep. Antonio Maestas (9/13)
Rep. Sarah Maestas Barnes
Rep. Javier Martínez
Sen. Cisco McSorley
Rep. Angelica Rubio (9/12)
Sen. Sander Rue

Advisory Members

Sen. Bill B. O'Neill
Sen. Mimi Stewart (9/12)
Sen. Peter Wirth (9/12)

Absent

Rep. Zachary J. Cook
Rep. William "Bill" R. Rehm

Rep. Deborah A. Armstrong
Sen. William F. Burt
Rep. Brian Egolf
Rep. Doreen Y. Gallegos
Sen. Daniel A. Ivey-Soto
Sen. William H. Payne
Sen. John Pinto
Rep. Patricia Roybal Caballero
Rep. Christine Trujillo

(Attendance dates are noted for members not present for the entire meeting.)

Staff

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

Guests

The guest list is in the meeting file.

Handouts

Copies of all handouts and meeting materials are in the meeting file.

Tuesday, September 12**Call to Order**

Representative Chasey welcomed members of the committee, staff and guests to the meeting, and committee and staff members introduced themselves.

Public Defender Department Update and Legislative Priorities

Bennett Baur, chief public defender, Law Offices of the Public Defender (LOPD), introduced Shelley Espinoza, the LOPD's chief financial officer; Cydni Sanchez, administrative services director, LOPD; Judge Michael E. Vigil and Hugh Dangler, commissioners, Public Defender Commission; Philip Larragoite, deputy chief public defender, LOPD; and Henry Valdez, director, Administrative Office of the District Attorneys.

Mr. Baur noted that in 2012, voters amended the Constitution of New Mexico to create the independent Public Defender Department to provide representation to indigent criminal defendants and the Public Defender Commission to provide oversight and set performance standards for public defense. Before 2012, the public defender was an executive agency under the control of the governor. The constitution provides all persons the right to counsel in criminal cases to ensure equality before the law, and the LOPD's constitutional obligation is to provide representation at no charge to persons accused of crimes who cannot afford to pay a lawyer.

The LOPD is the largest law office in the state, with nearly 200 LOPD attorney employees and 150 contract attorneys in offices in eight of the 13 judicial districts. Altogether, the LOPD represents criminal defendants in 70,000 new cases each year. Due to the volume of cases, there is a significant shortage of attorneys and support staff, meaning the LOPD struggles to fulfill its constitutional obligation to provide effective assistance of counsel to its clients. Referring to his handouts, Mr. Baur described in detail the LOPD's systemic weaknesses and the fiscal year (FY) 2019 measures the LOPD is taking to address some of those issues.

Mr. Baur asserted that the LOPD needs either more money or fewer cases. He suggested that one way to reduce the number of cases the LOPD is obliged to take would be for a bill, such as House Bill (HB) 428 (2017), to be signed into law. That bill, which passed the house 64-1 and

passed the senate unanimously, but was vetoed by the governor, revised certain criminal penalties for misdemeanor offenses to administrative penalties for which the LOPD does not provide counsel because an offender would not face possible incarceration. Mr. Baur estimated that a law like HB 428 would reduce the LOPD's caseload by five percent to 10 percent and would have a positive impact on prosecutors' and judges' caseloads and budgets as well. District attorneys' offices are also not adequately funded and are facing staffing and resource shortages similar to the LOPD's, and courts are also overburdened. In Lea County, 80 percent to 85 percent of felony jury trials result in a not guilty verdict because the prosecutors' offices are overwhelmed and lack the resources to construct strong cases.

The LOPD's budget increased by 20.8 percent between FY 2013 and FY 2018, but the LOPD is still seriously underfunded. If adequately funded to provide constitutionally guaranteed assistance of counsel in all cases, the LOPD's budget would need to be doubled to allow the hiring of at least 116 additional attorneys and 68 additional support staff and to implement a payment structure to compensate contract attorneys fairly. Given the state's current financial situation, for FY 2019, the LOPD is requesting a budget increase of approximately 13 percent, which is a two percent increase to the base budget and a 10.5 percent expansion increase, totaling \$4,847,200. Mr. Baur emphasized that these resources are necessary to provide adequate representation to all LOPD clients, and he warned that failure to fund the LOPD adequately would likely result in future litigation.

Mr. Baur also requested legislation that would remove the prohibition on payment of hourly rates to contract criminal defense attorneys. He observed that the Risk Management Division of the General Services Department does not prohibit hourly rates for contract attorneys who defend against civil lawsuits and pays hourly rates in the hundreds of dollars per hour.

On questioning, the following topics were addressed.

Detention and bail. There was general discussion about the impact of the recent constitutional amendment relating to bail and pretrial detention and the related rules promulgated by the New Mexico Supreme Court. The committee discussed the New Mexico Supreme Court's case management order that governs the process of criminal cases in the Second Judicial District Court. It was alleged that the effective pretrial detention rate in Bernalillo County is one-half the average seen in state and federal courts in other parts of the state. Mr. Baur noted that it does seem to be lower than in other parts of the state, but it is not likely 50 percent lower, and he suggested that the low rate could be caused by prosecutors unsuccessfully seeking detention in more cases than necessary. He noted that release conditions usually include ankle monitors and drug or alcohol treatment. He commented that a more informative measure of the impact on public safety would be the number of people who have been released and who have committed new offenses unrelated to the conditions of their release.

Certified interpreters. The need for interpreters in many languages, and especially Spanish, is growing. The courts are required to provide certified interpreters for court

proceedings, but the LOPD also pays for interpreters to work with attorneys who represent non-English-speaking clients. There is a dearth of certified interpreters, and they are expensive. Anecdotal information is that a statutory exception to Section 38-10-3(B) NMSA 1978 to allow employment of non-certified interpreters if no certified interpreters are available is being used to justify employment of non-certified interpreters because the non-certified interpreters charge a lower hourly rate than certified interpreters.

Payment of public defenders. Contract public defenders are paid a flat rate of \$180 for defense of a misdemeanor, \$700 for defense of a first degree felony and \$5,400 for defense in a capital felony case. The number of hours required to provide an adequate defense at all levels, but especially for capital felony cases, far outstrips the compensation allowed per case. Flat rates per case result in contract public defenders either working without compensation to provide an adequate defense or not providing an adequate defense because of the lack of resources. The low pay rates also affect the LOPD's ability to attract contract public defenders.

Public defender caseload/workload. The LOPD is seeking matching funding for a workload study to be performed with an American Bar Association working group. The study would entail all public defenders keeping detailed time records for a couple of years to provide data to analyze. The study would hopefully lead to insights and recommendations to help the LOPD provide effective counsel at a reasonable cost. Anecdotal evidence shows that more and better representation early in a case produces the biggest cost savings for defenders, prosecutors and courts overall, but the problem for both prosecutors and defenders is that due to staffing and budgetary constraints, cases cannot be addressed sufficiently early in the process.

LOPD budget. Mr. Baur was asked to provide one-, three- and five-year budget projections for the LOPD.

Domestic, Intimate Partner and Gender-Based Violence in New Mexico

Kim Alaburda, executive director, New Mexico Coalition of Sexual Assault Programs (NMCSAP), referring to her handouts, "Addressing Sexual Violence in NM" and "The Costs of Sexual Violence", emphasized that sexual violence is not the same thing as domestic violence (DV). There may sometimes be overlap between the two areas, but they require different responses from law enforcement, health care providers and social service providers. Sexual violence costs New Mexico almost \$1 billion per year in tangible victim costs, such as medical care, mental health services and economic productivity loss; intangible victim costs, such as psychological pain and suffering and generalized fear of victimization; criminal justice costs; and offender productivity costs. A 2010 study estimated the cost of rape at \$151,423 per victim in tangible and intangible victim costs and criminal justice and offender productivity costs. In 2013, New Mexico law enforcement agencies reported 1,445 incidents of rape, and the number of unreported rapes is estimated to be approximately four times the number of reported rapes. The total costs associated with rape in New Mexico in 2013 were close to \$1 billion.

The NMCSAP suggests prioritizing underserved sexual violence survivors for supportive services. Underserved and unserved communities include people who are incarcerated; Native Americans; Spanish-speaking New Mexicans or immigrants; Asian Americans; African Americans; lesbian, gay, bisexual, transgender or queer individuals; and children. Particular focus should be on improving responses to child survivors of sexual violence because children aged 17 and under represent 53 percent of all criminal sexual penetration cases in New Mexico. Funding for trauma-informed training for law enforcement personnel, prosecuting and defense attorneys and health care providers is essential to prevent re-victimization.

Specific policy concerns include:

- support for the sexual exploitation of children statute, Section 30-6A-3 NMSA 1978, which was revised to exclude youth aged 14 to 18 who engage in consensual sexting so that adolescents who share explicit photos with each other do not face the unintended consequence of child pornography charges, prison sentences and a damaging criminal record; and
- unintended consequences of the sex offender registry.

Recommendations for actions to decrease the incidence of sexual violence include:

- expansion of services for survivors in correctional facilities and in underserved communities;
- training of sexual violence prevention specialists and criminal justice teams on the consequences of the trauma inflicted by child sexual assault;
- fully funding full-time, specially trained sexual violence prevention specialists and criminal justice professionals in each judicial district; and
- re-funding the University of New Mexico Prevention Research Center as the sexual violence prevention technical assistance provider for the state.

Betty Caponera, director of research, NMCSAP, referring to her handout, "New Mexico Interpersonal Violence Data Central Repository: A Program of the New Mexico Coalition of Sexual Assault Programs", explained the methodology for collecting and analyzing standardized data on the crimes of domestic violence, sexual assault and stalking. The NMCSAP received a \$200,000 grant from the Department of Health in 2005 for a victimization survey, making New Mexico one of only two states that collected and analyzed that data. She commented that sexual violence in general is vastly underreported, and stalking is the most overlooked and is similarly underreported, probably because it is hard to document and prove. Not all victims want to make reports to the police, and colleges and universities do not report rapes on campus that are handled by campus police. If a rape victim goes to an emergency room, the hospital does not report the crime unless the police are called. The best way to get an accurate picture of the incidence of sexual violence and stalking is to study victimization surveys instead of crime reports.

Adriann Barboa, field director, Strong Families New Mexico, referring to her handout, "A Path Forward: Ending Gender-Based Violence in New Mexico", explained that multiple strategies and approaches are needed to end gender-based violence, but at the core of antiviolence work is cultural competency and community participation. She stressed that the communities most affected by gender-based violence have the best insight in solving the issue and must be involved in decision making at all levels. Funding for services for survivors is essential.

Specific recommendations include:

- access to comprehensive sexuality education for young people;
- safe and supportive schools for all students;
- police training on mental health, deescalation, cultural awareness and anti-oppression policies that protect transgender and undocumented people;
- shifting focus away from criminalization and, instead, funding alternatives to incarceration;
- addressing needs specific to rural communities;
- access to shelters for a range of family formations;
- building partnerships with tribal governments and organizations;
- supporting statewide coalitions that provide technical assistance; and
- increased funding, especially in rural areas, for prevention services.

On questioning, the following topic was addressed.

Status of rape kit backlogs. The state's forensic laboratory is making progress on processing sexual assault examination kits, but the Albuquerque Police Department (APD) laboratory is not. Federal money to process the kits is available, but APD declined to participate in a grant application last year. This year, it did apply, but the application was incomplete and was rejected. The multidisciplinary working group on the issue is meeting regularly, but APD does not participate. Beginning in May 2018, the state's forensic laboratory will be able to assist APD in processing Albuquerque's backlog. Every month, 40 new cases are added to the backlog. An initial appropriation of \$400,000 for victim notification has been spent. Some of the money was spent on trauma-informed training for those who notify victims and to respond to calls from victims who saw media reports on the issue. Victims are not notified until a kit has been processed, and the rate of processing is relatively slow. In addition, 20 percent of the unprocessed kits are from children, and the protocol for notifying victims who are children or who were children at the time of the rape is different than for adults. The state's forensic laboratory has notified approximately 600 victims, and the Federal Bureau of Investigation has notified approximately 80 victims in Albuquerque.

DV Programs for Victims and Batterers — Legislative Finance Committee (LFC) Staff Report

Travis McIntyre, program evaluator, LFC, provided an overview of the LFC's report, referring to the executive summary.

Sarah Dinces, program evaluator, LFC, reviewed the report in more detail, emphasizing the following.

- Page 36: victim services are inconsistent throughout the state, and more services are needed for child survivors of DV. DV shelters and survivor services are essential because survivors often do not have a safe place to stay after a DV incident. Shelter care accounted for 65 percent of DV service provider expenditures reported to the Children, Youth and Families Department (CYFD) in FY 2016. Shelters focus on the immediate safety and well-being of survivors because it is unknown how long they will be in the shelter or if they will continue a relationship with the perpetrator. Most shelters are operating at capacity level, which allows them to serve those who need shelter. However, shelters in Albuquerque and Gallup have a significantly higher percentage of unmet shelter nights.
- Page 37: safety plans are critical for survivors' safety upon leaving the shelter, but the CYFD lacks uniform criteria for what the plans should include. Safety plans are developed to keep victims safe while they are in the shelter or at intake. These plans focus on the safety of the survivor and any children. Currently, there is no written information providing instructions for creating an effective safety plan, but the CYFD is developing a plan to address the issue. The current performance measure of safety planning is not valid because it is based on a survey given to survivors that asks if they know how to plan for their safety rather than if there is a documented safety plan in place. The CYFD is working to change the way it is collecting this performance measure.
- Page 37: mental health services received in shelters use a mix of evidence-based and non-evidence-based programs to address the needs of survivors. Survivors of DV are more likely to have posttraumatic stress disorder, depression and anxiety, precipitating the need for mental health services. Seven of the 23 approaches mentioned in the survey were evidence-based, with the most frequently used evidence-based approach being solution-focused therapy, which is goal-directed therapy focusing on solutions rather than the problem that brought the client into therapy. Based upon a survey of DV service providers, most use trauma-informed, strength-based, client-centered, solution-focused approaches. Adult DV survivors had an average of nine counseling sessions in FY 2016.
- Page 39: chart 16 shows the various services that providers may include. Services vary by provider but mainly include shelter, peer support, social services and legal assistance.
- Page 40: children are present in one-third of DV incidents that occur in New Mexico, underscoring the need for services to address child trauma. Children who witness DV have an increased risk of abuse and neglect, as well as increased mental health disorders; therefore, services should be provided to children to decrease this risk. Substantiated cases of DV involving children may lead to children being removed from the care of their non-perpetrating parent for failure to protect the child from DV. Also, children may be in a shelter with their survivor parent, leading to the

involvement of the CYFD's Protective Services Division. Currently, Protective Services Division staff members do not receive DV training, potentially leading to miscommunication between them and DV service providers. The CYFD has engaged a consultant to assess communication and collaboration challenges between the Protective Services Division and DV service providers and to work with both groups to address barriers to effective collaboration.

- Page 40: increased coordination between the Protective Services Division and DV therapeutic service providers is needed to create collaborative safety plans for child survivors of DV. Collaboration between the Protective Services Division and DV service providers may be difficult due to confidentiality laws that restrict what information can be shared. Families may need to sign two releases, and some information may still not be shared because of confidentiality restrictions under the federal Violence Against Women Act of 1994. Since safety plans are made by both the Protective Services Division and DV service providers, representatives of both groups of service providers should be present during safety planning to ensure consistency and that the family is able to follow the plan.
- Page 41: all DV service providers should use evidence-based programs or rigorously evaluated home-grown programs to address child survivor needs. Involvement in a DV incident causes trauma, and as explained in the LFC's "Children's Behavioral Health" Report, the most costly mental health problems facing children in New Mexico are related to trauma.
- Page 46: the amount of outreach and training by New Mexico's DV service providers varies greatly, but data are limited for what providers bill to the CYFD.

Ms. Dinces reviewed the key recommendations on page 4 of the LFC Report, suggesting that the legislature should consider:

- contingent on improved collection of fees into the Domestic Violence Offender Treatment or Intervention Fund, authorizing a pilot project involving the implementation and evaluation of a formalized coordinated community response involving various stakeholders, including the local DV service provider and the CYFD. The pilot site should be selected jointly by the CYFD and the New Mexico Coalition Against Domestic Violence through a request for proposals process and should have the goals of increasing the number of batterers who attend and complete a batterer intervention program (BIP), connecting victims and children to the services they need and evaluating program outcomes;
- enacting legislation to include misdemeanor DV offenders convicted under the Crimes Against Household Members Act among those required to undergo misdemeanor compliance monitoring and requiring BIPs to include misdemeanor compliance officers among those to whom the programs are required to submit monthly reports on offender enrollment and progress; and

- replacing the existing statutory requirement for BIPs to be at least 52 weeks long with a requirement that they be a minimum of 26 weeks long, with the authority for courts to lengthen treatment based on offender risk.

The CYFD should:

- work with LFC and Department of Finance and Administration (DFA) staff to establish new performance measures for DV offenders, including the percentage of court-ordered offenders who successfully complete a BIP in the court-mandated time frame, and a performance measure on the percentage of participants who successfully complete BIPs rearrested for a new DV offense within two years;
- work with the Administrative Office of the Courts and the DFA to develop a strategy to maximize collection of fees for the Domestic Violence Offender Treatment or Intervention Fund;
- create standardized, written safety plan instructions to ensure consistency across the state and adjust the performance measures to require documented safety plans; and
- stipulate in DV service provider contracts that outreach activities include primary prevention services and that some funds should be allocated to provide secondary prevention services to child survivors.

The CYFD and DV service providers should:

- work with the Human Services Department to leverage Medicaid funds for all appropriate mental health, screening and assessment services provided to offenders and adult and child DV survivors by ensuring that providers of eligible services are Medicaid-certified and can bill Medicaid while taking appropriate precautions to ensure the privacy and confidentiality of survivors' personal information;
- ensure that services provided to both child and adult survivors are evidence-based programs shown to decrease the effects of trauma; and increase evaluations of current non-evidence-based practices used in the state; and
- work together to increase coordination with the Protective Services Division through collaborative safety planning for children involved with the division and a DV service provider.

On questioning, the following topics were addressed.

BIPs. Colorado classifies offenders by risk level, not by how much time they take to complete a BIP. Ms. Dinces will provide more information regarding the cost of the Colorado program. Annamarie Luna, program deputy director, Protective Services Division, CYFD, noted that the CYFD wants to allow providers to choose among different evidence-based models rather than requiring all providers to follow the same model. A recommended statutory change is to amend Section 31-12-12(D)(8) NMSA 1978 to replace the requirement that BIPs be at least 52 weeks with a requirement that they be a minimum of 26 weeks, with the authority for courts to

lengthen treatment based on offender risk. There is no evidence that a 52-week program is effective, and completion rates are low, but there is evidence that a 26-week program is effective and less expensive.

Recommendations. Mr. McIntyre emphasized that the focus of the recommendations is to encourage and support communication among the various DV "silos" illustrated in Figure 3 on page 17. The LFC analysis found that in every community, there is at least one entity that addresses a piece of the overall puzzle. Better coordination and communication will make all entities more effective and efficient. Ms. Luna affirmed that the CYFD is in agreement with the recommendations and has started working on them, and she noted that the CYFD is not the only government agency involved. Jon Courtney, program evaluator manager, LFC, explained that, keeping in mind the state's fiscal situation, the LFC's recommendations are as actionable as possible. Since they primarily have to do with improving communication among the various entities, there is little expected additional cost. There may be some costs in the future associated with improving data collection and analysis.

Own Risk and Solvency Assessment — Office of Superintendent of Insurance (OSI)

Vicente Vargas, general counsel, OSI, introduced John Franchini, superintendent of insurance, and Margaret Moqui, chief staff counsel, OSI. Referring to his handout, "Own Risk and Solvency Assessment (ORSA)", Mr. Vargas said that Senate Bill (SB) 105 (2017) providing for the ORSA did not pass in the 2017 session. He explained that the bill is based on a model act promulgated by the National Association of Insurance Commissioners (NAIC). New Mexico is currently accredited by the NAIC, but it is the only state that has not enacted the ORSA legislation. Loss of accreditation because of failure to enact the ORSA legislation would require insurers that write insurance in other states to undergo costly and disruptive examinations by the insurance departments of each state in which they write, resulting in insurers leaving New Mexico to domicile in other states.

The ORSA bill is consumer protection legislation resulting from the 2008 insurance crash; if it had been in place then, the crash would have been prevented. It establishes consistent risk management and reporting requirements for certain large or financially troubled insurers by requiring the insurers to submit confidential risk assessment summary reports and future business plans to the OSI. The summary reports are shared only with the NAIC; state, federal and international financial regulatory agencies; and third-party consultants designated by the OSI. Confidentiality is important because the information shared on the summary reports is considered protected "trade secrets" pursuant to Rule 11 of the federal Rules of Civil Procedure and the Uniform Trade Secrets Act and should be protected from disclosure pursuant to the Inspection of Public Records Act or subpoenas.

Any legislation that does not provide confidentiality of the summary reports will result in loss of accreditation by the NAIC. SB 105 was substantially amended in the Senate Judiciary Committee, resulting in a committee substitute. Some of the amendments are harmless to accreditation, but the confidentiality provisions were amended such that the NAIC would not

consider that the legislation meets its requirements. In particular, on page 9, line 15, the language indicating that information provided pursuant to ORSA "shall constitute trade secrets" was changed to "may constitute trade secrets". The bill passed the senate unanimously, but because of that amendment, the OSI requested that the bill not be heard in the subsequent committee. Superintendent Franchini commented that because all other states provide confidentiality for the summary reports, if New Mexico does not, OSI requests for information from other states will not be responded to because confidentiality will be lost if the information is provided to New Mexico, and the OSI will lose control of reviews of companies doing business in New Mexico.

Approval of Minutes

The committee approved the minutes of its July 31-August 1, 2017 meeting with no amendments.

Recess

The committee recessed at 4:15 p.m.

Wednesday, September 13

Reconvene

Representative Chasey reconvened the meeting at 9:43 a.m.

New Mexico Sentencing Commission (NMSC) Prison Population Forecast

Linda Freeman, executive director, NMSC, introduced Douglas Carver, deputy director, NMSC. Ms. Freeman explained that the Corrections Department (CD) contracts with the NMSC to develop an annual prison population forecast based on historical prison population data to assist the CD in assessing immediate and future inmate populations. The report includes national and state prison population trends and factors that influence prison populations, such as arrest rates, number of criminal cases filed in district courts, conviction rates, availability of diversion programs, sentence lengths, admission and release rates, earned meritorious deductions and parole readiness.

Nationally, total prison populations have decreased for three years in a row, with female prison populations decreasing by 1.4 percent overall. In New Mexico, however, total prison populations rose steadily until FY 2017, when the female prison population decreased by 3.4 percent and the male prison population decreased by 1.3 percent. New Mexico jails are seeing similar increases. New Mexico has historically had similar population numbers in county jails and state prisons, but currently, there are fewer inmates in jails than in prisons because of the decline in the number of inmates at the Bernalillo County Metropolitan Detention Center.

The most notable trend in New Mexico is the significant increase in the female inmate population over the past five years, driven largely by increases in lengths of stay rather than by new admissions. Long-term trends indicate that incarceration of females for violent crimes, and

for drug trafficking as opposed to drug possession, has increased. There are also more returns or new admissions for new offenses compared to returns or new admissions for probation/parole violations. Currently, female inmates are housed at the Western New Mexico Correctional Facility (Western) in Grants and at the Springer Correctional Facility (Springer).

Operational capacity for men is close to the maximum and exceeds the capacity for women. At the end of June 2017, there were 7,101 beds for males, with a projected high count of 6,853 in FY 2018 and 6,950 in FY 2019. There were 781 beds for women, with a projected high count of 810 in FY 2018 and 833 in FY 2019.

Long-term forecasts are based on current sentencing statutes and current CD policies and practices, which may change.

On questioning, the following topics were addressed.

Capacity issues in prisons and jails. The state's women's facilities are currently almost at capacity. National prison capacity recommendations suggest a three percent vacancy rate, which is not occurring in New Mexico's facilities. Springer has a lot of vacant land but no existing unused buildings, so expansion would require constructing additional buildings. The male facilities are not as close to capacity as the women's facilities, but they are close to 90 percent capacity. The female population is increasing while the male population is decreasing.

There may be some increase in the Tarrant County jail population from the closing of the federal prison in Moriarty, but it is expected to be minimal.

Inmates with non-firearm-related offenses who are within 12 months of eligibility for release may be paroled into community-based settings, but the lack of halfway houses and transitional housing affects both male and female prison populations. As a result, inmates are being held longer than necessary because there is no place for them to go when they are released on parole. Also, some inmates prefer to serve their entire sentence in a facility to avoid supervised release.

Another factor is paroled inmates who are re-incarcerated for parole violations.

Programs for inmates in the women's facilities. Springer offers more program options than Western. Springer houses lower-level offenders than Western, and because of its physical setting, Springer is able to provide a less-confining environment that is amenable to more varied programming, including an equine therapy program, with horses stabled on site. In general, female offenders are less violent than male offenders, and much of the increase in incarcerated women is for nonviolent drug-related offenses. Accordingly, there is substance abuse recovery programming in both of the women's facilities.

Parole Board (PB) — Parole Hearings and Revocation Hearings — Parole Eligibility

Joann Martinez, executive director, PB, noted that she had only been in her position for two months. She reviewed the year-end statistics for FY 2017 in her handout, "Adult Parole Board Presentation Packet", explaining that revocation hearings are conducted by a three-member panel, and hearings for inmates with 30-year-to-life sentences are conducted by a panel of three voting PB members.

Sandy Dietz, chair, PB, said the state does not have the facilities and resources to address issues affecting successful parole, such as substance abuse services, mental health services and housing, so the PB has limited effectiveness because the necessary services are sparsely distributed and are not within the PB's control. Many smaller communities do not have services available that help parolees meet the conditions of their parole, resulting in revocation of parole for violations of those conditions. Alternatively, some parolees go to Albuquerque even though they do not have a supportive social network there because most of the halfway houses are located there. Another problem inmates encounter is that they get transferred from one facility to another during the time they are incarcerated and are unable to complete prison programming, such as education and substance abuse treatment. This makes successful parole more difficult as well.

Ms. Dietz noted that the PB is an all-volunteer, 15-member board whose members are appointed to seven-year terms by the governor with the consent of the senate. Members are paid per diem and mileage for attendance at hearings but receive no other compensation. Participation requires hundreds of unpaid hours spent preparing for hearings. The PB hears approximately twice as many parole applications as revocation requests. The board's policy is not to revoke parole for the first or second violation, unless the violation is the commission of a new felony offense. The third violation triggers a hearing, which may result in revocation with the promise to reconsider the inmate for release with a new parole plan addressing the board's concerns. The goal is to release inmates with good parole plans. She observed that the majority of parolees have drug problems that need to be addressed if parole is to be successful.

Abram Anaya, board member, PB, who is a retired law enforcement officer (LEO), remarked that the difference between law enforcement and the PB is that LEOs are only concerned with the immediate offense, but the PB looks at an offender's whole history, with the goal of developing a plan for successful reintegration into the community.

On questioning, the following topics were addressed.

Parole hearings. Parole applications by sex offenders are heard by three-member panels. Hearings are conducted by video unless it is unavailable. Victims may participate telephonically. Offenders do not have the right to counsel at the parole hearing. The same standard applies to parole hearings as to preliminary hearings, i.e., whether the offender is able to understand the proceedings. Each inmate is assigned a CD case manager to develop a parole plan to present at

the parole hearing, but after release, supervision and assistance in implementing the parole plan are provided by a parole officer.

"30-year lifer" applications. There was extensive discussion about the very rare instance of parole being granted to offenders who have completed serving 30 years of a 30-year-to-life sentence. Just three out of 23 applications were granted. Concern was expressed by committee members about the demands on the prisons and the expense of caring for geriatric prisoners. Under the previous statute, "30-year lifers" were sentenced under a statute that had two choices: death, or life with the possibility of parole. Since repeal of the death penalty, the sentencing choices are 30 years with the possibility of parole or 30 years without the possibility of parole. Section 31-21-25 NMSA 1978 gives victims the right to make a statement at a parole hearing. The Constitution of New Mexico gives victims the right to make a statement at a court hearing but does not mention parole hearings. Section 31-21-10 NMSA 1978 lists the information the PB shall consider in making parole decisions, but it does not require the PB to take into account the victim's statement or to make the decision requested by the victim.

Important factors in successful parole. Ideally, every inmate would be released to supported transitional housing for six to nine months and provided education, medical and mental health treatment, parenting education and support and job training. More extensive and varied education and training opportunities in prison would give inmates a head start. In particular, access on release to medical and mental health care, including substance abuse treatment, can be very difficult, with long waiting times for appointments. Some mental health service providers do not accept parolees.

Circumstances of parole violations. Many parole violations do not involve committing new offenses but, rather, an inability to comply with parole conditions. Various committee members have received complaints that some imposed conditions are difficult to meet; for instance, requiring in-person meetings with parolees who live in rural areas without public transportation when the distance the parolee has to travel for the meeting is more than is reasonable to do on foot.

Public Comment

A member of the public said that she is related to a victim of the murders committed at a Hollywood Video location in Albuquerque. The offenders in that case received life sentences and are now eligible for parole. She wants a voice in whether parole is granted and thinks the PB should focus on releasing less-violent offenders. She noted that one of the perpetrators, Shane Harrison, was on parole when he committed the crimes at Hollywood Video.

Louis Trujillo, who is related to a murder victim, commented that the pain of a victim's loved ones never goes away. He opposes any bill or policy that would allow release before the entire sentence is served, especially for violent offenders.

Don Johnston informed the committee that Titus Health Ministries is a faith-based program for sex offenders. He said that there is one halfway house in the state for sex offenders, and housing is a huge problem for them. The CD and PB do not allow sex offenders to parole to a private residence because of statutory restrictions on where a sex offender can live.

Another member of the public expressed support for victims having a voice in parole decisions but believes that the victim's wishes should not be the deciding factor in whether parole is granted.

Adjournment

There being no further business before the committee, the fourth meeting of the CCJ for the 2017 interim adjourned at 1:36 p.m.