



NEW MEXICO LEGISLATURE

COURTS, CORRECTIONS AND JUSTICE COMMITTEE

2015 INTERIM FINAL REPORT

LEGISLATIVE COUNCIL SERVICE
411 STATE CAPITOL
SANTA FE, NEW MEXICO 87501
(505) 986-4600
WWW.NMLEGIS.GOV

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INTERIM SUMMARY

Courts, Corrections and Justice Committee 2015 Interim Summary

The legislative interim Courts, Corrections and Justice Committee held six meetings during the 2015 interim. Two meetings were held at the State Capitol in Santa Fe. The remainder of the meetings were held in communities around the state in conjunction with visits to various state prisons. The committee had the opportunity to visit the Southern New Mexico Correctional Facility outside of Las Cruces, the Western New Mexico Correctional Facility in Grants and the Otero County Prison Facility in Chaparral. At each of these facilities, committee members had informative and enlightening discussions with facility administrators and staff and, most significantly, were able to interact with incarcerated individuals to hear firsthand of their experiences. Of particular interest was the tour of the Otero facility, where the committee learned about the innovative programming provided to sex offenders incarcerated there.

The committee had a full plate of issues on its agenda during the interim. Issues receiving particular focus were: criminal justice reform; the status of DNA evidence in the state, including issues surrounding the great number of unprocessed rape kits and other evidence kits; recidivism; and measures to modify the Constitution of New Mexico's provisions concerning the use of bail. Throughout the interim, a variety of tough-on-crime bills were presented to the committee. The committee also had two presentations that touched on the intersection of Indian law and the state's criminal justice system — one concerned peacemaking in the Navajo Nation, the other was an update on the work of the Southwest Indian Law Clinic at the University of New Mexico School of Law.

A committee meeting day in September was set aside for a discussion of matters related to criminal justice reform, a continuation of the work of the Criminal Justice Reform Subcommittee (CJRS), which ended its meetings after the 2014 interim. In conjunction with that meeting, the committee heard about three studies being conducted by the New Mexico Sentencing Commission on the recidivism rates from certain programs for those involved in the criminal justice system and learned how complex a concept recidivism is. The committee also had the opportunity to hear from individuals who participate in these programs, providing a welcome point of view from those who live the realities of these programs daily. The committee also heard presentations that had been made to the CJRS when it was operating, including on the many collateral consequences of a felony conviction.

On an additional meeting day in September, the committee held a joint meeting with the Legislative Health and Human Services Committee to focus on issues surrounding juvenile justice. The Juvenile Justice Summit was not the normal style of interim committee meeting. Rather than having panels of presenters discussing various topics, members of the Courts, Corrections and Justice Committee and the Legislative Health and Human Services Committee joined with experts in the field of juvenile justice, community activists and members of the community for a morning's worth of presentations on topics related to juvenile justice, and then spent an afternoon participating in roundtable discussions with the experts, activists and community members. The summit provided a hitherto unique way for legislators and interested parties from outside the legislature to interact on a topic of common concern.

The October meeting at New Mexico State University in Alamogordo saw a vigorous discussion of a proposed amendment to the Constitution of New Mexico's bail provisions. The merits of the proposal and the dynamics of the use of bail in the state were debated for a number of hours.

The committee had an update from the Public Defender Commission, as well as its annual updates from the Corrections Department and the Children, Youth and Families Department. The Corrections Department also made a presentation to the committee on the serious problems — from a financial as well as a safety perspective — posed by deferred maintenance in the state's prisons. The Department of Public Safety gave the committee a progress report on the reorganization of the state police subsequent to the passage of Senate Bill 95 in 2015 and discussed the rise in violent crime in the state reflected in the 2014 Uniform Crime Report. The committee also heard a presentation from the New Mexico Sentencing Commission regarding the latest *New Mexico Prison Population Forecast, FY 2016 - FY 2025*, and received an update from the New Mexico Association of Counties on the population of inmates in county jails. The committee also heard a presentation on the report *Prison Program Utilization and Recidivism Among Female Inmates in New Mexico*. Chief Justice Barbara J. Vigil of the New Mexico Supreme Court and Arthur W. Pepin, director of the Administrative Office of the Courts, presented the judiciary's unified budget and proposed legislation for the coming year.

The committee endorsed the following bills for the 2016 legislative session:

1. RELATING TO COURT ADMINISTRATION; CREATING THE LANGUAGE ACCESS FUND TO PROVIDE FOR LANGUAGE ACCESS SERVICES IN THE COURTS.
2. RELATING TO COURTS; CREATING THE JUDGE PRO TEMPORE FUND TO PAY THE COSTS OF JUDGES PRO TEMPORE; MAKING AN APPROPRIATION; DECLARING AN EMERGENCY.
3. RELATING TO COURTS; CREATING AN ADDITIONAL JUDGESHIP IN THE FIFTH JUDICIAL DISTRICT; MAKING AN APPROPRIATION.
4. RELATING TO THE CHILDREN, YOUTH AND FAMILIES DEPARTMENT; CREATING THE CRIMES OF ASSAULT AND BATTERY UPON A PUBLIC SERVICE WORKER OF THE CHILDREN, YOUTH AND FAMILIES DEPARTMENT; ESTABLISHING PENALTIES.
5. RELATING TO THE DELINQUENCY ACT; REPLACING TERMS REFERENCING PAROLE WITH THOSE REFERENCING SUPERVISED RELEASE; ALLOWING A CHILDREN'S COURT ATTORNEY TO FILE A PETITION ALLEGING THAT A CHILD HAS WILLFULLY ABSCONDED FROM SUPERVISED RELEASE; ALLOWING THE COURT TO EXTEND THE COMMITMENT OF A CHILD; ALLOWING FOR THE TOLLING OF THE SUPERVISED RELEASE PERIOD UPON THE ISSUANCE OF A WARRANT.
6. RELATING TO PAROLE; REQUIRING THE CORRECTIONS DEPARTMENT TO SUBMIT A LIST OF INMATES ELIGIBLE OR WHO MAY BECOME ELIGIBLE FOR MEDICAL OR GERIATRIC PAROLE TO THE PAROLE BOARD EACH QUARTER;

- REQUIRING THE PAROLE BOARD TO DETERMINE WHETHER INMATES LISTED ON QUARTERLY REPORTS ARE ELIGIBLE FOR PAROLE.
7. RELATING TO CORRECTIONS; REQUIRING THAT A PERSON ASSIGNED TO AN INTENSIVE SUPERVISION PROGRAM ALSO BE ENROLLED IN A BEHAVIORAL HEALTH PROGRAM; REQUIRING THAT EVIDENCE-BASED BEHAVIORAL HEALTH TREATMENT PROGRAMS BE INCORPORATED INTO COMMUNITY CORRECTIONS AND INTENSIVE SUPERVISION PROGRAMS; REQUIRING THE CORRECTIONS DEPARTMENT TO USE A VALIDATED RISK AND NEEDS ASSESSMENT FOR ALL INMATES AND IMPLEMENT EVIDENCE-BASED PRISON PROGRAMMING.
 8. RELATING TO CIVIL COMPROMISE; ALLOWING FOR A PERSON INJURED BY A CRIMINAL ACT FOR WHICH THERE IS A CIVIL REMEDY TO COMPROMISE THE CHARGE THROUGH SETTLEMENT PAID TO THE VICTIM OF THE CRIME; MAKING EXCEPTIONS.
 9. RELATING TO AGRICULTURE; ENACTING A NEW SECTION OF CHAPTER 76 NMSA 1978 TO PROVIDE AUTHORIZATION FOR THE NEW MEXICO DEPARTMENT OF AGRICULTURE TO ADOPT RULES FOR RESEARCH ON INDUSTRIAL HEMP; PROVIDING FOR THE ESTABLISHMENT OF THE NEW MEXICO INDUSTRIAL HEMP RESEARCH AND DEVELOPMENT FUND.
 10. RELATING TO CRIMINAL SENTENCING; PROVIDING ADDITIONAL VIOLENT FELONIES IN THE CRIMINAL SENTENCING ACT FOR THE PURPOSES OF MANDATORY LIFE IMPRISONMENT FOR THREE VIOLENT FELONY CONVICTIONS.
 11. RELATING TO LAW ENFORCEMENT; PROVIDING FOR A DISTRIBUTION FROM THE LAW ENFORCEMENT PROTECTION FUND TO CERTIFIED REGIONAL LAW ENFORCEMENT TRAINING FACILITIES AND THE NEW MEXICO LAW ENFORCEMENT ACADEMY FOR TRAINING; MAKING AN APPROPRIATION.
 12. RELATING TO CRIMINAL SENTENCING; PROVIDING ADDITIONAL VIOLENT FELONIES IN THE CRIMINAL SENTENCING ACT FOR THE PURPOSES OF MANDATORY LIFE IMPRISONMENT WITHOUT THE POSSIBILITY OF PAROLE FOR THREE VIOLENT FELONY CONVICTIONS; PROVIDING EXCEPTIONS THAT ALLOW FOR PAROLE IN CERTAIN CIRCUMSTANCES; PROVIDING THAT CERTAIN CONVICTIONS INCURRED BY A DEFENDANT BEFORE THE AGE OF EIGHTEEN SHALL CONSTITUTE VIOLENT FELONIES; PROVIDING PENALTIES.
 13. MAKING AN APPROPRIATION TO THE DEPARTMENT OF PUBLIC SAFETY FOR ANALYZING DNA EVIDENCE KITS.
 14. MAKING AN APPROPRIATION TO THE DEPARTMENT OF HEALTH TO PROVIDE SEXUAL ASSAULT AND RAPE CRISIS CENTER SERVICES.

WORK PLAN AND MEETING SCHEDULE

**2015 APPROVED
WORK PLAN AND MEETING SCHEDULE
for the
COURTS, CORRECTIONS AND JUSTICE COMMITTEE**

Members

Rep. Zachary J. Cook, Co-Chair	Rep. Georgene Louis
Sen. Richard C. Martinez, Co-Chair	Rep. Antonio Maestas
Rep. Eliseo Lee Alcon	Sen. Cisco McSorley
Sen. Joseph Cervantes	Rep. Andy Nunez
Rep. Gail Chasey	Rep. William "Bill" R. Rehm
Rep. Jim Dines	Sen. Sander Rue
Rep. Rick Little	Sen. Lisa Torracco
Sen. Linda M. Lopez	

Advisory Members

Sen. Craig W. Brandt	Sen. William H. Payne
Sen. Jacob R. Candelaria	Sen. John Pinto
Rep. Brian Egolf	Rep. Patricia Roybal Caballero
Rep. Doreen Y. Gallegos	Rep. Patricio Ruiloba
Sen. Daniel A. Ivey-Soto	Sen. Michael S. Sanchez
Rep. W. Ken Martinez	Sen. Mimi Stewart
Sen. Bill B. O'Neill	Rep. Christine Trujillo
Rep. Paul A. Pacheco	Sen. Peter Wirth

Work Plan

The Courts, Corrections and Justice Committee was created by the New Mexico Legislative Council on April 27, 2015. During the 2015 interim, and as time permits, the committee proposes to address the following and recommend appropriate legislation:

1. criminal justice reform issues — continue, in some fashion, work of the Criminal Justice Reform Subcommittee;
2. juvenile justice summit (joint meeting with the Legislative Health and Human Services Committee in Albuquerque);
3. campaigns and elections — a day devoted to election-related legislation;
4. use of county jails — why are so many prisoners in New Mexico held by counties rather than by state facilities?;
5. updated New Mexico prison population forecast;

6. report on "Prison Program Utilization and Recidivism Among Female Inmates in New Mexico" (Kristine Denman, New Mexico Statistical Analysis Center, University of New Mexico);
7. New Mexico Association of Counties report on clinically appropriate housing options for individuals with serious mental illness who are in custody in county detention facilities (requested pursuant to Senate Joint Memorial 4 (2015));
8. recidivism — how is it calculated? what are the numbers? — an overview;
9. reorganization and possible changes to the DWI statutes;
10. examination of the problem of drugged driving;
11. Department of Public Safety update on the process of reorganization;
12. training of officers at the New Mexico Law Enforcement Academy;
13. practices of policing, including racial profiling;
14. the Law Enforcement Officers Safety Act;
15. compliance with the federal REAL ID Act of 2005 and driver's licenses for undocumented immigrants;
16. examination of issues surrounding competency evaluations and the hearing/committal process;
17. reworking of child pornography laws after *State v. Olson*;
18. removing probation from Corrections Department jurisdiction and placing it under the courts;
19. the use of court fees and fines — balances and uses; are the fees and fines funding the programs for which they were intended?;
20. jury fees — examination of the amount and their use;
21. problems with court processes, including delays in processing cases, especially in Bernalillo County;
22. restorative justice programs;

23. use of teen courts;
24. deferred maintenance at the prisons;
25. nutrition in the state's jails and prisons;
26. eyewitnesses, problems with eyewitness identification and concerns about the use of DNA evidence;
27. processing of rape kits and other DNA evidence;
28. monitoring of violators of restraining orders with GPS in domestic violence cases;
29. Workers' Compensation Administration;
30. regulation of towing companies;
31. human trafficking;
32. issues concerning transgender inmates at the state jails and prisons;
33. compliance issues pertaining to the overdose prevention limited immunity statute (Section 30-31-27.1 NMSA 1978);
34. alternative sentencing, particularly for DWI (including the 24/7 program);
35. juvenile justice referrals made by schools — the school-to-prison pipeline;
36. issues surrounding repeat juvenile offenders, particularly in rural areas;
37. review of child custody laws;
38. examination of the child abuse and neglect system;
39. review of the Homeowner Association Act;
40. report on the progress of the Juvenile Justice Advisory Committee;
41. update from the Administrative Office of the Courts, including a presentation on the judiciary unified budget;
42. updates from the Public Defender Commission and the chief public defender;

43. New Mexico's "three strikes" law and the impact of *Johnson v. United States*;
44. New Mexico's expungement statutes — analysis of their use;
45. update from the Office of the Attorney General;
46. update from the Corrections Department;
47. update from the Children, Youth and Families Department;
48. update from the New Mexico Association of Counties; and
49. update from the University of New Mexico School of Law.

**Courts, Corrections and Justice Committee
2015 Approved Meeting Schedule**

<u>Date</u>	<u>Location</u>
June 12	State Capitol, Santa Fe
July 16-17	Las Cruces
August 11-12	Gallup
September 22-24	Albuquerque
October 28-30	Alamogordo
November 30- December 1	State Capitol, Santa Fe

AGENDAS AND MINUTES

Revised: June 6, 2015

**TENTATIVE AGENDA
for the
FIRST MEETING
of the
COURTS, CORRECTIONS AND JUSTICE COMMITTEE**

**June 12, 2015
Room 322, State Capitol
Santa Fe**

Friday, June 12

- 9:30 a.m. **Call to Order/Introductions**
- 9:45 a.m. **Overview from the 2015 Legislative Session and Review of the Work of
the Criminal Justice Reform Subcommittee**
—Douglas Carver, Legislative Council Service (LCS)
- 10:15 a.m. **2015 Interim Work Plan and Meeting Schedule Development**
—Douglas Carver, Staff Attorney, LCS

Working lunch

- 12:00 noon (1) **Perspectives on Criminal Justice Reform**
—KC Quirk, Executive Director, Crossroads for Women
—TBD
- 1:00 p.m. (2) **Child and Family Justice and Equity Initiatives at the University of
New Mexico School of Law (UNMSOL)**
—Barbara Bergman, Professor of Law, Pamela Minzner Chair in
Professionalism, UNMSOL
—Yael Cannon, Assistant Professor of Law, UNMSOL
—Beth Gillia, Director, Corinne Wolfe Children's Law Center, UNMSOL
—Andrew Hsi, M.D., Professor, Department of Pediatrics, University of
New Mexico Health Sciences Center
- 2:00 p.m. **Public Comment**
- 2:30 p.m. **Adjourn**

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

**June 12, 2015
Room 322, State Capitol
Santa Fe**

The first meeting of the Courts, Corrections and Justice Committee (CCJ) was called to order by Senator Richard C. Martinez, co-chair, on June 12, 2015 at 9:49 a.m. in Room 322 of the State Capitol.

Present

Rep. Zachary J. Cook, Co-Chair
Sen. Richard C. Martinez, Co-Chair
Rep. Eliseo Lee Alcon
Rep. Gail Chasey
Rep. Jim Dines
Rep. Rick Little
Sen. Cisco McSorley
Sen. Sander Rue

Absent

Sen. Joseph Cervantes
Sen. Linda M. Lopez
Rep. Georgene Louis
Rep. Antonio Maestas
Rep. Andy Nunez
Rep. William "Bill" R. Rehm
Sen. Lisa Torracco

Advisory Members

Rep. W. Ken Martinez
Sen. Bill B. O'Neill
Sen. John Pinto
Sen. Mimi Stewart
Sen. Peter Wirth

Sen. Craig W. Brandt
Sen. Jacob R. Candelaria
Rep. Brian Egolf
Rep. Doreen Y. Gallegos
Sen. Daniel A. Ivey-Soto
Rep. Paul A. Pacheco
Sen. William H. Payne
Rep. Patricia Roybal Caballero
Rep. Patricio Ruiloba
Sen. Michael S. Sanchez
Rep. Christine Trujillo

Staff

Douglas Carver, Staff Attorney, Legislative Council Service (LCS)
Monica Ewing, Staff Attorney, LCS
Rebecca Griego, Records Officer, LCS
David Jenkins, Law School Intern, LCS
Taylor Smith, Law School Intern, LCS

Guests

The guest list is in the meeting file.

Handouts

Handouts and other written testimony are in the meeting file.

Friday, June 12

Senator Martinez welcomed the committee members and meeting attendees, and the committee members introduced themselves.

Overview of the 2015 Legislative Session

Mr. Carver reviewed the outcome of 2015 legislation that was endorsed by the CCJ or by the Criminal Justice Reform Subcommittee (CJRS). He referred to a chart entitled "CCJ Bills from 2015 Legislative Session — Final Results" and noted that the legislature did not pass any of the bills endorsed by the CJRS. He added that while the New Mexico Legislative Council did not create the CJRS for the 2015 interim, the council said that it would consider adding days to the CCJ's schedule so that the CCJ could consider CJRS-related issues.

2015 Interim Work Plan and Meeting Schedule

Mr. Carver provided the committee with a handout entitled "Potential Work Plan Items for the Courts, Corrections and Justice Committee for 2015", and he reviewed the proposed meeting schedule. He said that the Legislative Health and Human Services Committee has proposed a joint meeting with the CCJ on September 23. The committee also agreed to reschedule its November 16-17 meeting to November 30 and December 1.

Mr. Carver reviewed the list of items proposed for inclusion on the committee's work plan. The committee discussed several items specifically, including the following.

- Use of county jails: A committee member suggested that this item be scheduled during a meeting held in a county jail facility. A member of the audience noted that a task force would like to present a report on this item and that report would be finalized by November 1, 2015.
- Recidivism: A committee member recalled that the CCJ previously requested that the Corrections Department and the Children, Youth and Families Department (CYFD) cooperate in developing a tracking method to help measure recidivism rates. The member noted that it is difficult to track juveniles who leave the custody of the CYFD and then enter Corrections Department custody. The committee agreed to send a letter requesting a report from the CYFD and Corrections Department on the development of a tracking method.

- Examination of the problem of drugged driving: A committee member requested that the committee receive testimony regarding studies by the National Transportation Safety Board that examine the effects of various drugs on driving. The committee member also requested that the committee examine the different effects of tetrahydrocannabinols when they are ingested versus inhaled. A member asked that the committee receive information on how the states of Washington and Colorado have addressed drugged driving. Another committee member requested that the CCJ consider recent case law and the role of "drug recognition experts" who are trained to investigate drugged driving cases.
- Training of officers at the New Mexico Law Enforcement Academy: A committee member requested a presentation from the attorney general on this topic and asked that police practices and racial profiling be included in the examination of this item. Another committee member recalled legislation that addressed employment of officers who were previously terminated. A committee member also requested a presentation on the federal oversight of the Albuquerque Police Department.
- Problems with court processes: A committee member asked that the committee consider issues involving both civil and criminal litigation. Another committee member agreed that the examination of civil litigation, including jury fees, should be part of the committee's work plan.
- Restorative justice programs: A committee member requested a presentation from the Peacemaker Program in Gallup during the committee's meeting there.
- Eyewitnesses and DNA evidence: A committee member requested that this topic be addressed at the CCJ's final meeting and asked that the secretary of public safety be invited to give a presentation on the topic. Another committee member asked that the processing of rape kits and related legislation be discussed in connection with this item.
- Consolidation of the state's many elections: A committee member asked that legislation previously introduced by Representative Paul C. Bandy and Senator Wirth be included in the discussion of this topic. Another committee member asked that the committee receive a presentation from the secretary of state and the county clerks' association on improving voter turnout, reducing delays at voting centers and examining the length of ballots. A member suggested that this topic be scheduled on one of the CCJ's additional days.
- Workers' Compensation Administration: A member asked that term employees and occupational disease be discussed in connection with this item and suggested that the Workers' Compensation Advisory Council be contacted about the topic.

- Review of child custody laws: A committee member requested that the committee receive a presentation from Pegasus Legal Services for Children.

Several committee members requested that additional items be included on the committee's work plan.

A member asked that homeowners' associations concerns be added to the work plan and said that realtors in the community would like to present on issues with and proposed revisions to the existing Homeowner Association Act. Particular concerns include document fees charged to buyers and enforcement of the act. The committee agreed to schedule this topic for its final meeting.

Presentation of a report from the Administrative Office of the Courts was added to the work plan.

A committee member requested a presentation by the Corrections Department and the Legislative Finance Committee (LFC) on evidence-based budgeting and the Pew-MacArthur Results First Initiative.

A committee member requested an update on the state's compliance with the federal REAL ID Act of 2005.

Mr. Carver informed the committee that the University of New Mexico School of Law (UNMSL) and the Juvenile Justice Advisory Committee would each like to make a presentation to the committee.

The committee received public comments on the proposed work plan topics.

Ellen Pinnes encouraged the committee to consider behavioral health and substance abuse concerns during the interim.

Jason Rael, in his capacity as a concerned citizen, said that he does not believe that the state's judicial system is authorized to refer juveniles to diversion programs during sentencing. He suggested that the committee schedule presentations from representatives of the district attorneys and the Public Defender Department regarding court delays for later in the interim to allow for recent court process changes to take effect.

Tony Ortiz, director of the New Mexico Sentencing Commission, said that the New Mexico Association of Counties and the CYFD signed a memorandum of understanding creating a team to work on juvenile justice issues, and the team would like to present a report to the committee.

Jennifer Burrill, a representative of the New Mexico Criminal Defense Lawyers Association, suggested that the committee consider issues related to technology, and she cited current concerns with juveniles exchanging photos through the use of technology.

The committee adopted the revised work plan without objection.

Perspectives on Criminal Justice Reform

KC Quirk, executive director of Crossroads for Women (CFW); Monique Asbury, policy intern, Young Women United (YWU), and a client of CFW; Linda Nastacio, policy intern, YWU, and a client of CFW; and Amanda Hamilton, a client of CFW, presented a report entitled "Co-occurring Disorders: Mental Health and Addiction" to the committee.

Ms. Quirk informed the committee that women who are involved in the criminal justice system often experienced incidents of victimization as children. Trauma, she said, often precedes mental health concerns and drug use. She emphasized that programs and services for women such as her clients are needed inside and outside prisons and jails.

Ms. Asbury told the committee that she is a recovering addict who has suffered from depression since she was 12 years old. As a client of CFW, she is learning how to cope with her addiction and depression without the use of medication. She said that her mother is an addict who uses substances to self-medicate.

Ms. Asbury told the committee about her cousin who served three years in Corrections Department facilities and who, since his release, has begun using substances. He and others in the criminal justice system need help and guidance on coping with mental health and addiction issues so they do not resort to self-medicating with illegal drugs.

Ms. Hamilton said that both of her parents were addicts, and she has struggled with addiction for most of her life. She became involved in the criminal justice system in 2009 and has experienced homelessness and mental health issues since that time. Each time she was released from jail, she would be delivered to downtown Albuquerque, and the cycle of addiction and homelessness in her life would begin again. She said that while she was incarcerated she made requests to see a nurse or psychiatrist, but the wait for an appointment was so long that she would be released before her scheduled appointment.

Ms. Hamilton informed the committee that just one person at the Bernalillo County Metropolitan Detention Center works on programming assistance for inmates, and she was fortunate to learn about Maya's Place from another incarcerated woman. She said that when she arrived at Maya's Place, she felt like she was finally given a chance to breathe and begin the process of examining the effects of her addiction. She enrolled in Medicaid and began counseling to address her mental health concerns. With the help she received through Maya's Place and CFW, she eventually moved into her own apartment and enrolled in school. She said

that the longer she is in recovery, the more stability she achieves with her mental health concerns.

Ms. Nastacio said that she also experienced early trauma growing up on a reservation and has abused substances, but she has been clean and sober for a year and five months. She began using alcohol at the age of nine as a form of self-medication for her trauma. Many rural and reservation areas in the state lack resources and services and even in Albuquerque, there is a great need for resources to help women with addictions. She said that, sometimes, being incarcerated was the only way to ensure that she would be safe, off the streets and fed. She learned through her incarceration and her work at Maya's Place that she is dealing with posttraumatic stress disorder, anger and depression. She learned how to eliminate stressors in her life that caused her to use substances.

Ms. Hamilton said that "co-occurring disorders" describes a situation when two or more mental health disorders exist in someone simultaneously. She said that more than 40 million Americans over the age of 18 have some kind of mental illness. Ms. Asbury and Ms. Hamilton stressed that approximately 65% of incarcerated women in the state are women of color, many of whom need resources to address addiction and mental health concerns.

Ms. Quirk said that women with co-occurring disorders need programming inside and outside of corrections facilities. She noted that often these women are not incarcerated long enough to qualify for necessary programming, while other women might spend years in a correctional facility and emerge without literacy skills. She said that more gender-specific services are needed. As an example, she said that many proposed solutions for homelessness will not work for homeless women, who face different safety concerns than homeless men. When programs are developed and evaluated, gender considerations should be made.

A committee member observed that people who are incarcerated might lose Medicaid benefits, which can interrupt health care.

Another committee member thanked Ms. Asbury for her work on Senate Bill 583 during the recent session.

In response to a committee member's question, Ms. Quirk said that her organization works with female veterans, and it has helped to connect veterans with veterans' associations supportive housing programs.

In response to another committee member's question, Ms. Quirk explained that CFW serves homeless and incarcerated women who have co-occurring disorders. The organization operates housing throughout Albuquerque and recently received a grant from Bernalillo County that will allow the addition of 24 more housing units. The organization provides "wrap-around services" for its clients and aims to support its clients in achieving self-sufficiency. The organization receives funding from the United States Department of Housing and Urban

Development (HUD), the City of Albuquerque, Bernalillo County, the United Way, the Albuquerque Community Foundation, the Corrections Department and other sources.

A committee member noted that there are limitations on the use of HUD funding and suggested that state funding could be used to provide services not provided for by HUD funding.

Child and Family Justice and Equity Initiatives at the UNMSL

Barbara Bergman, professor of law at the UNMSL, said that while the state's child well-being ranking is low, lawyers can help make a difference for children through preventative legal advocacy and the shaping of policies. She said that financial concerns prevent many lawyers from providing these services, but the W.K. Kellogg Foundation has awarded a grant to be used for planning a center to recruit and train a diverse group of attorneys and other professionals who serve children.

Beth Gillia, director of the Corinne Wolfe Children's Law Center at the UNMSL, said that the work of the planning group is directly related to the issues discussed by the previous panel of presenters. She said that the planning group has undertaken the following: research; coalition building; examination of data on children's health and economic status; meeting with stakeholders; and identification of the most significant needs in various geographical areas in the state. The group has met with representatives of children's courts, education, legal aid, university partners, health, architecture, the UNMSL, the CYFD and the legislature. She said that for every \$1.00 the state spends on public interest lawyering, it saves \$5.00.

Yael Cannon, assistant professor of law at the UNMSL, said that lawyers and other professionals can play an important role in achieving health justice and equity. She noted that reunification of families can present difficulties that could be eased by trained lawyers and other professionals. The planning group has partnered with the UNM Health Sciences Center to train students to accompany people who need assistance when visiting health clinics. The group would like to expand on that training and include educational opportunities for high school students and undergraduate students.

Andrew Hsi, professor at UNM's Department of Pediatrics, said that doctors often encounter families early in health crises, and he believes that if attorneys were made a part of early preventative services for families in crisis, the outcomes for those families could be improved.

Marie, a representative of the Children's Court in Bernalillo County, said that through her work, she sees how significant families' needs are, and she is encouraged to see that the judiciary could help to address those needs. With training, lawyers can help to improve the juvenile justice and child welfare systems and help ensure quicker resolutions to cases.

In response to a committee member's question, Ms. Bergman said that the planning group is working on a grant proposal to be completed by the end of September, and it has been working

with the UNM Health Sciences Center and the UNMSL, which are both interested in contributing to the effort. The W.K. Kellogg Foundation will provide initial funding, but the effort will ultimately have to be self-sustaining. She added that if the grant is awarded, the first cohort of six to eight students would begin in the fall of 2016.

Ms. Cannon said that the group's work will be a several-million-dollar initiative because of its plan to include post-graduate fellowships. Including the fellowships will help bring national fellowship money to the state.

A committee member suggested that the panel also present to the LFC, and the committee agreed to send a letter to the LFC making that recommendation.

Adjournment

There being no further business before the committee, the first meeting of the CCJ for the 2015 interim adjourned at 2:27 p.m.

Revised: July 13, 2015

**TENTATIVE AGENDA
for the
SECOND MEETING
of the
COURTS, CORRECTIONS AND JUSTICE COMMITTEE**

**July 16-17, 2015
Dona Ana Community College East Campus Branch
New Mexico State University
Las Cruces**

Thursday, July 16

- 9:00 a.m. **Call to Order/Introductions**
- 9:15 a.m. **Welcoming Remarks**
—Dr. Renay Scott, President, NMSU-Dona Ana Community College
- 9:30 a.m. (1) **Presentation of Children, Youth and Families Department (CYFD)
Strategic Plan**
—Monique Jacobson, Secretary, CYFD
- 10:45 a.m. (2) **New Mexico Criminal Defense Lawyers Association (NMCDLA)
Presentation on Drugged Driving Laws, Child Pornography Laws and
Solitary Confinement**
—Kim Chavez Cook, Attorney
—Matt Coyte, Attorney
—Margaret Strickland, Attorney
—Ben Baur, Attorney
—Rikki-Lee Chavez, Lobbyist
- Action Item: Approval of Minutes from June 2015 Meeting.*
- 12:00 noon **Lunch**
- 1:00 p.m. (3) **Update on the New Mexico DNA Identification System**
—John F. Krebsbach, M.S., Crime Laboratory Director, Scientific Evidence
Division, Albuquerque Police Department
- 2:00 p.m. (4) **Proposed Drugged Driving Bill**
—Representative William "Bill" R. Rehm
—TBD

3:00 p.m. (5) [Proposed Three Strikes Bill](#)
—Representative William "Bill" R. Rehm
—TBD

4:00 p.m. (6) [Proposed Modification to Statute of Limitations Bill](#)
—Representative William "Bill" R. Rehm
—TBD

5:00 p.m. **Public Comment**

Friday, July 17

9:00 a.m. **Tour of Southern New Mexico Correctional Facility**

11:30 a.m. **Adjourn**

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

**July 16-17, 2015
Doña Ana Community College East Campus Branch
New Mexico State University
Las Cruces**

The second meeting of the Courts, Corrections and Justice Committee (CCJ) was called to order by Representative Zachary J. Cook, co-chair, on July 16, 2015 at 9:39 a.m. at the Doña Ana Community College East Campus Branch in Las Cruces.

Present

Rep. Zachary J. Cook, Co-Chair (7/16)
Sen. Richard C. Martinez, Co-Chair
Rep. Eliseo Lee Alcon
Sen. Joseph Cervantes
Rep. Gail Chasey (7/16)
Rep. Rick Little
Sen. Linda M. Lopez (7/16)
Rep. Antonio Maestas (7/16)
Sen. Cisco McSorley (7/16)
Rep. Andy Nunez
Rep. William "Bill" R. Rehm (7/16)

Advisory Members

Rep. W. Ken Martinez (7/16)
Rep. Patricia Roybal Caballero (7/16)
Sen. Mimi Stewart (7/16)
Sen. Peter Wirth

Absent

Rep. Jim Dines
Rep. Georgene Louis
Sen. Sander Rue
Sen. Lisa Torracó

Sen. Craig W. Brandt
Sen. Jacob R. Candelaria
Rep. Brian Egolf
Rep. Doreen Y. Gallegos
Sen. Daniel A. Ivey-Soto
Sen. Bill B. O'Neill
Rep. Paul A. Pacheco
Sen. William H. Payne
Sen. John Pinto
Rep. Patricio Ruiloba
Sen. Michael S. Sanchez
Rep. Christine Trujillo

Guest Legislator

Rep. Debbie A. Rodella

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

Staff

Douglas Carver, Staff Attorney, Legislative Council Service (LCS)

Monica Ewing, Staff Attorney, LCS

Caela Baker, Staff Attorney, LCS

Guests

The guest list is in the meeting file.

Handouts

Handouts and other written testimony are in the meeting file.

Thursday, July 16

Representative Cook welcomed the committee members and meeting attendees, and the committee members introduced themselves.

Welcoming Remarks

Dr. Renay Scott, president, Doña Ana Community College (DACC), welcomed members of the committee and provided an update on programs and an overview of new initiatives at DACC. She told members of the committee that DACC has been engaged in an effort to re-obtain accreditation for its nursing program. In addition, DACC has been working to improve its work force initiatives by partnering with local employers to develop specialized training programs.

Members of the committee asked questions about and discussed:

- ▶ enrollment and transfer numbers;
- ▶ programs offered by DACC;
- ▶ availability of financial aid;
- ▶ student debt load; and
- ▶ transferability of credits to universities.

Presentation of Children, Youth and Families Department (CYFD) Strategic Plan

Monique Jacobson, secretary, CYFD, presented the CYFD strategic plan. Secretary Jacobson told committee members that the CYFD mission statement is to "improve the quality of life for our children". She explained that developing operating principles for the agency is critical. The strategic plan outlines the following operating principles:

- ▶ be kind, respectful and responsive;
- ▶ be child- and youth-centric;
- ▶ create a culture of accountability and support;
- ▶ simplify by doing fewer, bigger things that produce results;
- ▶ ensure that behavioral health and program support are strategically enveloped in all programs;
- ▶ own mistakes and learn from them; and
- ▶ understand that "it's all about the quality of our workers".

In discussing the operating principles, Secretary Jacobson explained that most of the complaints received by the CYFD were not about what the agency did, but *how* the agency did it. She stated that she has been meeting regularly with children who were in the CYFD system to learn how they were affected and what the agency can do to improve.

The CYFD strategic plan also contains five "strategic planks", which are: (1) shore up the core functions of the agency by going "back to basics"; (2) focus on prevention; (3) improve communication and relationships with law enforcement; (4) implement financial controls; and (5) ensure community engagement.

The "back to basics" plank has four primary focus areas: (1) protective services; (2) juvenile justice; (3) early childhood services; and (4) behavioral health. Concerning protective services, Secretary Jacobson explained that the agency needs to focus on having inspirational leaders who are able to hold people accountable, developing a statewide staffing plan, improving compensation for and retention of CYFD employees, retaining current foster families and finding new ones and ensuring that biological parents have access to the services that they need. In terms of staffing, the CYFD has worked with the State Personnel Office to develop a "rapid hire" program that greatly reduces the time that it takes to hire new employees. The rapid hire program allows for job fairs, where every step of the hiring process can be completed in one day and employees can be hired on the spot, pending the outcome of background checks. The CYFD has held two of these job fairs. At the last one, the agency was able to hire 23 people.

Concerning juvenile justice, Secretary Jacobson stated that since all children in CYFD custody will leave by age 21 or earlier, there needs to be a focus on rehabilitation. Thus, the CYFD plans to continue to foster the success of the Cambiar model. Concerning early childhood services, the focus will be on expanding access to child care assistance as funding allows, revising the rate structure for child care providers and assisting communities to build the infrastructure necessary to expand home visiting and pre-kindergarten programs. Finally, concerning behavioral health, the CYFD plans to develop a needs assessment in every county and align services in those counties to ensure that New Mexico has a balanced array of services, grounded in evidence-based practices.

Secretary Jacobson discussed the "prevention" plank and indicated that the efforts in this area will be focused on ensuring that prevention initiatives are reaching at-risk families,

expanding the family support worker program and developing a comprehensive, trauma-informed approach to serving the "0-3 population". The third plank involves improving communication and relationships with law enforcement. This would entail co-locating child protective services with law enforcement, as well as a number of other initiatives. The fourth plank calls for the agency to focus on making sure that every dollar is spent in the most efficient and effective way possible. Finally, the fifth plank stresses the need to conduct outreach with foster parents, schools, law enforcement, providers, community leaders and the general public and engage communities to figure out what challenges are facing those communities.

Members of the committee asked questions about and discussed:

- ▶ the shift toward the Cambiar model;
- ▶ whether there has been any follow-up concerning Senate Joint Memorial 3 (2014), which called for the CYFD to prepare a report on issues related to foster care and child protective services;
- ▶ hiring efforts;
- ▶ raises for CYFD workers;
- ▶ whether compensation is addressed in the CYFD's staffing plan;
- ▶ whether any services or support is offered to kinship caregivers;
- ▶ CYFD program evaluation;
- ▶ issues concerning the Statewide Central Intake hotline; and
- ▶ whether CYFD funding levels and resources are adequate.

Members of the committee specifically requested that the CYFD provide data on the number of kinship caregivers in New Mexico, the services that are currently offered to those caregivers, the percentage of children who are currently involved with the CYFD in some manner and the average cost per case for children who are involved with the CYFD.

New Mexico Criminal Defense Lawyers Association (NMCDLA) Presentation on Drugged Driving Laws, Child Pornography Laws and Solitary Confinement

Margaret Strickland, a criminal defense lawyer, discussed some of the issues concerning "drugged driving" laws. She explained that, frequently, these law conflict with science — that the level of drugs in one's system does not necessarily correlate with driving ability or field performance. She indicated that the majority of states have not adopted these types of laws.

Bennett Baur, district defender, north-central New Mexico, Law Offices of the Public Defender (LOPD), expressed concerns that having per se levels may cause law enforcement to focus less on other investigation tools, such as field sobriety tests and drug recognition experts. Mr. Baur reiterated that having drugs in one's system does not necessarily mean impaired driving. He pointed out a recent study conducted by the National Highway Traffic Safety Administration (NHTSA), which found that the presence of drugs in one's system does not necessarily correlate with an increase in crash risk, whereas a clear correlation was found between blood alcohol concentration and crash risk.

Kim Chavez-Cook, assistant appellate defender, LOPD, discussed the case of *State v. Olsson/Ballard* (consolidated), 2014-NMSC-012, concerning the unit of prosecution for child pornography cases. She stated that the New Mexico Supreme Court found that statute does not clearly define how many crimes a person commits when the person possesses multiple images at once. In particular, changes in technology and digital file storage require changing the statute to bring it up to date. Ms. Chavez-Cook discussed the federal scheme for addressing this problem, which addresses the quantity issue at sentencing through a "points" system. Under the federal scheme, points are assigned based on factors such as the quantity of images and age of the victim, and these points affect the length of a sentence that a person is given, essentially functioning as a sentencing enhancement.

Members of the committee discussed various approaches to the unit of prosecution issue. Mr. Carver indicated that this issue would be revisited at the September meeting of the CCJ.

Matt Coyte, president of the NMCDLA, discussed the issue of solitary confinement. He explained that other terms used to describe solitary confinement include "administrative segregation", "disciplinary segregation", "protective custody" and "medical observation". He stated that solitary confinement is commonly defined as confining a person in a cell for 22 or more hours per day. Mr. Coyte indicated that the Corrections Department uses 23 hours as the benchmark, while in county detention facilities, 24 hours is common.

Mr. Coyte discussed a case pending against Sierra County and indicated that the Sierra County Detention Facility has been temporarily closed. He indicated that New Mexico currently has between 16 percent and 19 percent of inmates serving in solitary confinement at any given time. He indicated that the national average is only five percent.

Mr. Coyte stated that House Bill 376 (2015) would have prohibited the use of solitary confinement for inmates younger than 18 years of age and for inmates who have a serious mental illness. Additionally, the bill would have prohibited the use of solitary confinement for more than 15 consecutive days, or a total of 60 days, in a 12-month period. Finally, the bill contained certain reporting requirements, which would allow lawmakers and others to better track how solitary confinement is being used.

Mr. Coyte explained that the European Union has set 15 days as the limit on the use of solitary confinement. By contrast, he stated that New Mexico currently has approximately 1,500 inmates serving long-term solitary confinement. Mr. Coyte told members of the committee that the law should be changed because the use of solitary confinement results in releasing people in worse condition than before they went to jail or prison, and lawsuits concerning the use of solitary confinement are costing the state and counties money.

Public Comment

Diana Crowson told members of the committee that her son is incarcerated at the Southern New Mexico Correctional Facility (SNMCF) and that her son's unit at the SNMCF has

been on lockdown since March 7, 2014. She indicated that inmates in that unit are being subjected to solitary confinement for 22.5 hours per day and are allowed only three showers per week and four phone calls per month. She urged members of the committee to consider restrictions on the use of solitary confinement and also to implement measures that would improve training and rehabilitation for inmates.

Update on the New Mexico DNA Identification System

John Krebsbach, crime laboratory director, Scientific Evidence Division, Albuquerque Police Department, presented data concerning New Mexico's DNA identification system. He indicated that more than 100,000 persons have been required to provide DNA samples, 38 percent of whom were required to provide samples pursuant to "Katie's Law". He stated that in 3,119 cases, the DNA samples were used in furtherance of an investigation. Mr. Krebsbach explained that there has been an 87.5 percent increase in arrestees matched to a case due to offenses added by Katie's Law.

Members of the committee asked questions about and discussed:

- ▶ the effect of expungement on DNA samples;
- ▶ whether data are available to indicate the percentage of people who are arrested for offenses listed in Katie's Law and subsequently convicted; and
- ▶ what constitutes a DNA "match".

Proposed Drugged Driving Bill

Representative Rehm introduced David Mills, director, Scientific Laboratory Division (SLD), Department of Health, and James Dickens, prosecutor. Representative Rehm described legislation that would prohibit driving with certain amounts of controlled substances or metabolites in the blood.

Dr. Mills explained that alcohol is water soluble, so alcohol consumption and blood alcohol concentration are closely correlated. On the other hand, most drugs dissolve in fat and concentrate in the brain. Thus, the level in the blood does not necessarily correlate with the level in the brain. Nevertheless, Dr. Mills indicated that the levels included in the bill presented by Representative Rehm were chosen because they are the levels at which it can be determined that a person has recently used the listed drug. He added that the metabolites and substances listed in the bill are only those that have an impairing effect.

Dr. Mills stated that 19 states have laws that identify per se drug levels. Of those states, 15 states set zero as the allowable amount, while four states have levels higher than zero as the allowable limit. He further indicated that the SLD receives more than 1,800 subpoenas per year, and the bill proposed by Representative Rehm would lower the burden on the SLD.

Dr. Mills told the committee that when a blood sample comes in, the SLD first looks for an alcohol concentration of .08 or greater. If it finds an alcohol concentration of .08 or greater, it

does not proceed to test for any additional substances; however, if an alcohol concentration of less than .08 is found, the lab will proceed to test for other impairing substances. Dr. Mills indicated that of the samples tested by the SLD, 60 percent have an alcohol concentration of more than .08 and 40 percent have an alcohol concentration of less than .08. Dr. Mills indicated that when the lab proceeds to test the remaining 40 percent, 89 to 90 percent of those samples test positive for impairing drugs.

Members of the committee asked questions about and discussed:

- ▶ whether there is a correlation between crash risk and the presence of tetrahydrocannabinol (THC) in one's blood;
- ▶ the fact that many medical cannabis strains are high in therapeutic cannabidiol but not THC; and
- ▶ the results of a 2014 NHTSA study concerning crash risk.

Proposed Three Strikes Bill

Representative Rehm presented legislation that would add additional violent felonies to the Criminal Sentencing Act for the purposes of mandatory life imprisonment. Representative Rehm requested input on whether voluntary manslaughter should be added to the list of offenses. Members of the committee requested data on the projected number of offenders who would be subject to the legislation and an estimate of the increased cost to incarcerate those offenders. Representative Rehm indicated that the New Mexico Sentencing Commission was gathering those data and would be making a presentation to the committee in the future. There was a discussion regarding the vehicular homicide offenses that were included in the legislation.

Proposed Modification to the Statute of Limitations for Criminal Prosecutions

Representative Rehm explained that the proposed legislation would remove the statute of limitations for a first degree felony or murder in the second degree. In addition, the bill would extend the time limitation for prosecuting conspiracy and tampering with evidence.

Representative Rehm stated that there is very little difference in the intent requirement between first and second degree murder. Currently, first degree murder has no statute of limitations, while second degree murder is subject to a six-year statute of limitations. Mr. Dickens indicated that New Mexico is the only state that has a statute of limitations for second degree murder.

Public Comment

Elena Bost expressed concern about increasing sentences, particularly when increased sentences will result in an increased burden on the prison system and greater cost to the state.

Mr. Baur, responding to the proposed "three strikes" bill, stated that life without the possibility of parole will not be helpful for geriatric inmates, who generally do not pose a threat to society. Concerning the proposed "drugged driving" bill, Mr. Baur stated that if the intent is to

eliminate the requirement that someone from the SLD come to testify at trial, having per se levels will not solve the problem.

Margarita Sanchez asked the committee to address the following issues: rehabilitation of inmates; geriatric and medical release; eliminating the "school-to-prison pipeline"; mental health; and solitary confinement.

Recess

The committee recessed at 4:22 p.m.

Friday, July 17

Tour of Southern New Mexico Correctional Facility

Members of the CCJ toured the Southern New Mexico Correctional Facility.

Adjournment

There being no further business before the committee, the second meeting of the CCJ for the 2015 interim adjourned at 11:15 a.m.

Wednesday, August 12

- 9:00 a.m. (7) **Presentation from Corrections Department on Deferred Maintenance at the State's Prisons and Tour of Western New Mexico Correctional Facility**
- 12:00 noon **Adjourn**

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

**August 11-12, 2015
University of New Mexico-Gallup Campus
Room 200, Student Services Tech Center
Gallup
and
Western New Mexico Correctional Facility
Grants**

The third meeting of the Courts, Corrections and Justice Committee (CCJ) was called to order by Senator Richard C. Martinez, co-chair, on August 11, 2015 at 9:24 a.m. at the University of New Mexico (UNM)-Gallup campus.

Present

Sen. Richard C. Martinez, Co-Chair
Rep. Eliseo Lee Alcon
Rep. Gail Chasey
Rep. Rick Little (8/11)
Sen. Linda M. Lopez (8/11)
Rep. Georgene Louis
Rep. Antonio Maestas (8/11)
Sen. Cisco McSorley
Rep. Andy Nunez
Rep. William "Bill" R. Rehm

Absent

Rep. Zachary J. Cook, Co-Chair
Sen. Joseph Cervantes
Rep. Jim Dines
Sen. Sander Rue
Sen. Lisa Torracco

Advisory Members

Rep. W. Ken Martinez (8/12)
Sen. John Pinto (8/11)

Sen. Craig W. Brandt
Sen. Jacob R. Candelaria
Rep. Brian Egolf
Rep. Doreen Y. Gallegos
Sen. Daniel A. Ivey-Soto
Sen. Bill B. O'Neill
Rep. Paul A. Pacheco
Sen. William H. Payne
Rep. Patricia Roybal Caballero
Rep. Patricio Ruiloba
Sen. Michael S. Sanchez
Sen. Mimi Stewart
Rep. Christine Trujillo
Sen. Peter Wirth

Guest Legislator

Rep. Patricia A. Lundstrom (8/11)

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

Staff

Douglas Carver, Staff Attorney, Legislative Council Service (LCS)

Caela Baker, Staff Attorney, LCS

Monica Ewing, Staff Attorney, LCS

Rebecca Griego, Records Officer, LCS

Guests

The guest list is in the meeting file.

Handouts

Handouts and other written testimony are in the meeting file.

Tuesday, August 11

Senator Martinez welcomed the committee members and meeting attendees, and the committee members introduced themselves.

Update from the Public Defender Department (PDD)

Jorge Alvarado, chief public defender, discussed issues concerning staffing levels and compensation at the PDD. He stated that the Public Defender Act was amended in 2014 to exempt PDD employees from the Personnel Act. Mr. Alvarado told members of the committee that the Public Defender Commission has issued rules — located in Title 10, Chapter 12 of the New Mexico Administrative Code — concerning personnel policies.

Mr. Alvarado discussed adequacy of staffing levels at the PDD. He stated that the New Mexico Sentencing Commission (NMSC) reviewed data concerning caseloads at the PDD and recommended that the PDD receive funding for 63 additional attorneys. In the most recent fiscal year, the PDD was granted funding for 30 additional support staff, but was not granted any additional funding for attorneys. He indicated that the PDD's budget request for the upcoming fiscal year will address needs with respect to both attorney and support staff positions. Mr. Alvarado discussed the PDD's budget shortfall and indicated that a \$1.3 million special appropriation for the PDD was vetoed by the governor.

Mr. Alvarado presented several charts concerning contract counsel compensation and caseload. He indicated that there has been significant turnover in contract counsel positions. In particular, five counties in the southern part of the state — Roosevelt, Lea, Eddy, Lincoln and Luna — are experiencing a crisis due to the lack of contract counsel available to handle cases. Mr. Alvarado highlighted efforts under way at the PDD to attract and retain contract counsel. He

discussed considerations regarding whether to pay an hourly rate or a flat rate to contract counsel, and he discussed recent litigation concerning appropriate compensation for contract counsel.

Finally, Mr. Alvarado indicated that the PDD is in the process of filling approximately 50 new positions, some of which have been unfilled since the hiring freeze, and some of which are newly created positions.

Members of the committee asked questions about and discussed:

- ▶ how members of the Public Defender Commission are appointed;
- ▶ the recent litigation concerning contract counsel compensation;
- ▶ implementation of the new rule issued by the New Mexico Supreme Court concerning case management in Bernalillo County, LR2-400, and its effect on the PDD;
- ▶ details concerning contracts and compensation for contract counsel;
- ▶ a recent reversion of funding by the PDD; and
- ▶ whether employees of the PDD are subject to collective bargaining agreements.

PDD: Substantive Legislative Presentations

Mr. Alvarado presented a document containing proposed legislative changes, which can be found at www.nmlegis.gov. He discussed the concept of a "civil compromise", which would allow a victim in a criminal case to request that the case be dismissed upon the victim "being made whole". A committee member asked a question concerning removing marijuana from the list of Schedule I drugs and whether this proposed change would conflict with federal law. Mr. Alvarado responded that it would be a step toward "decriminalizing" marijuana in New Mexico, rather than legalizing it.

New Mexico Prison Population Forecast: Fiscal Year (FY) 2016-FY 2025

Tony Ortiz, executive director, NMSC, and Linda Freeman, deputy director, NMSC, presented the *New Mexico Prison Population Forecast: FY 2016 - FY 2025*. Mr. Ortiz indicated that New Mexico is experiencing a rapid increase in the female inmate population, whereas the male inmate population is increasing at a modest rate. In FY 2015, the female inmate population increased by 11 percent over the previous fiscal year. Mr. Ortiz told the committee that an effectively and safely managed prison should have at least a five percent bed-vacancy rate. This flexibility is needed to allow administrators to appropriately classify inmates based on their security risk and because there are certain inmates who cannot be safely placed in the general inmate population.

Mr. Ortiz highlighted the fact that the number of female "release eligible inmates" — those inmates who are still incarcerated because they do not have an approved parole plan — reached a high of 56 in December 2013. In June 2015, the number had decreased to 23.

Mr. Ortiz told the committee that the Corrections Department (NMCD) had opted out of the Interagency Behavioral Health Purchasing Collaborative and no longer pays the 12 percent

administrative fee on every dollar spent for services. These savings will increase the number of transitional-living facility beds for offenders, with 42 additional beds for women and 41 additional beds for men.

Ms. Freeman told the committee that the growth in the female inmate population is unprecedented. She pointed out that in FY 2016, the projected high count for the female inmate population is 855, and in FY 2017, the projected high count is 904. She told members of the committee that both of these figures exceed the current operational capacity at the New Mexico Women's Correctional Facility in Grants, which was recently increased to 792 beds. Ms. Freeman elaborated on the methodology used to formulate these projections.

Members of the committee asked questions about and discussed:

- ▶ the cost per day to house inmates;
- ▶ the extent of alcohol and substance abuse problems among inmates;
- ▶ the risk and needs assessment used by the NMCD;
- ▶ the average caseload for probation and parole officers;
- ▶ budget cuts experienced by the NMSC;
- ▶ the need to focus on treatment and rehabilitation to reduce prison populations; and
- ▶ whether additional tools should be developed to help courts determine risk.

The *New Mexico Prison Population Forecast: FY 2016 - FY 2025* can be accessed online at www.nmlegis.gov or at the web site of the NMSC, www.nmsc.unm.edu.

Prison Program Utilization and Recidivism Among Female Inmates in New Mexico

Kristine Denman, director, New Mexico Statistical Analysis Center, UNM, presented a report concerning prison program utilization and recidivism among female inmates in New Mexico. Ms. Denman highlighted some key findings of the study, including:

- ▶ women with longer stays in prison were more likely to participate in programming;
- ▶ women with a greater number of "criminogenic" needs and recommendations were more likely to participate in programs; and
- ▶ program participation was not significantly related to recidivism, with one exception — women who participated in educational programming were less likely to reoffend.

Members of the committee asked questions about and discussed:

- ▶ how New Mexico programs compare to national programs;
- ▶ the effectiveness of therapeutic communities and drug court programs;
- ▶ study methodology; and
- ▶ whether private prisons are providing the same level of programming as NMCD facilities.

Ms. Denman pointed out that, for the purpose of this study, programs were grouped into categories based on the general type of program. Thus, the study does not account for the effectiveness of specific programs. Ms. Denman acknowledged that this may be an important limitation of the study.

Members of the committee engaged in a discussion about probation violations, and what effect such violations have on prison populations. Mr. Ortiz indicated that most probation violators would be returned to county detention facilities, and most get at least two to three chances before being returned to a detention facility. Mr. Ortiz also told members of the committee that the Pew-MacArthur Results First Initiative is working with the NMCD to build an inventory of programs that are available to inmates.

Navajo Nation Peacemaking

Gloria Benally, peacemaking program coordinator, Navajo Nation, introduced herself and described the mission and vision of the Navajo Nation Peacemaking Program. She explained that the program promotes a nonadversarial forum for solving disputes and emphasizes Navajo customs in the resolution process. Participants in the program either voluntarily agree to participate or are referred to the program. Ms. Benally told the committee that members of the Navajo Nation community can become trained and certified as peacemakers. In addition, the peacemaking program offers mentoring services and training for youth to become youth peacemakers.

Ms. Benally explained that the Navajo Nation Peacemaking Program accepts matters that would require a court order to achieve resolution. Referrals to the peacemaking program are made by court order. Upon reaching a resolution during a peacemaking session, the terms of the resolution are sent back to the court, which issues an order finalizing the agreement.

Ms. Benally described the collaboration between the Navajo Nation Peacemaking Program and other agencies and officials, and she presented an organizational chart identifying the role of the peacemaking program in relation to other programs. Finally, Ms. Benally provided an overview of the types of cases that are referred to the peacemaking program.

Population of Inmates in County Jails

Matthew Elwell, detention affiliate chair, New Mexico Association of Counties (NMAC), and administrator, Luna County Detention Facility, presented data concerning detention facilities. He indicated that there are six detention facilities that have attained certification through the NMAC, and four others are in the process of attaining this certification.

Mr. Elwell told the committee that the length of stay in county detention facilities is increasing. The median length of stay is 80 days for misdemeanor arrestees, 70 days for unsentenced probation violators and 114 days for unsentenced persons booked on warrants. Concerning the reasons for incarceration, Mr. Elwell stated that 62 percent are for new charges

and 36 percent are for "failure to comply", which includes probation and parole violations and arrests on warrants. Mr. Elwell pointed out that competency proceedings significantly affect length of stay. The median length of stay for inmates ultimately found to be competent was 332 days, whereas the median length of stay for inmates found to be incompetent was 537 days.

Mr. Elwell discussed Senate Joint Memorial 4 from the 2015 regular session, which requested the NMAC to study housing and clinical service options for individuals with serious mental illness who are in custody awaiting trial.

Members of the committee asked questions about and discussed:

- ▶ the Sierra County Detention Facility, which was recently closed due to a lawsuit, and the inmates of which were transferred to Luna County Detention Facility;
- ▶ shifting the focus in detention facilities to treatment and rehabilitation;
- ▶ issues concerning pregnant inmates and the provision of prenatal care;
- ▶ recent reductions in the inmate population at the Metropolitan Detention Center in Bernalillo County;
- ▶ the availability of work-release programs;
- ▶ the use of solitary confinement in county detention facilities;
- ▶ efforts to enroll inmates in Medicaid prior to release;
- ▶ availability of prescription medications to inmates upon release;
- ▶ the prevalence of mental health issues among inmates;
- ▶ challenges to obtaining NMAC accreditation for detention facilities; and
- ▶ the use of telemedicine in detention facilities.

Public Comment

Margarita Sanchez discussed issues concerning mental health, solitary confinement, civil rights, the increasing prison population, community reentry programs, the number of release-eligible inmates being held in prison and availability of educational programs.

Ignacio Torrez discussed concerns regarding drug trafficking, prison violence, the lack of jobs for former inmates and issues with the economy in New Mexico.

Recess

The committee recessed at 3:43 p.m.

Wednesday, August 12

Tour of Western New Mexico Correctional Facility

Members of the CCJ toured the Western New Mexico Correctional Facility and received a presentation from representatives of the NMCD concerning deferred maintenance at NMCD facilities.

Adjournment

There being no further business before the committee, the third meeting of the CCJ for the 2015 interim adjourned at 11:20 a.m.

Revised: September 16, 2015

**TENTATIVE AGENDA
for the
FOURTH MEETING
of the
COURTS, CORRECTIONS AND JUSTICE COMMITTEE**

**September 22-24, 2015
University of New Mexico
Albuquerque**

**Tuesday, September 22 — University of New Mexico (UNM) Continuing Education
Building, 1634 University Blvd. NE**

- 9:00 a.m. **Call to Order/Introductions**
- 9:15 a.m. **Welcome from UNM School of Law (SOL)**
—Alfred D. Mathewson, Co-Dean, UNMSOL
—Sergio Pareja, Co-Dean, UNMSOL
- 9:45 a.m. **New Mexico Sentencing Commission (NMSC) Recidivism Studies
Overview**
—Linda Freeman, Deputy Director, NMSC
- 10:00 a.m. (1) **NMSC Study of Crossroads for Women and Maya's Place**
—Linda Freeman, Deputy Director, NMSC
—TBD, Crossroads for Women and Maya's Place
- 10:30 a.m. (2) **NMSC Study of Peanut Butter & Jelly Family Services' Fathers
Building Futures Program**
—Linda Freeman, Deputy Director, NMSC
—TBD, Fathers Building Futures Program
- 11:00 a.m. (3) **NMSC Study of the New Mexico Men's and Women's Recovery
Academies**
—Linda Freeman, Deputy Director, NMSC
—TBD, Men's and Women's Recovery Academies
- 11:30 a.m. **Voices from the Programs**
—TBD, Crossroads for Women and Maya's Place
—TBD, Fathers Building Futures Program
—TBD, Men's and Women's Recovery Academies

- 9:25 a.m. (12) [Juvenile Justice: The Children, Youth and Families Department \(CYFD\)](#)
—Monique Jacobson, Secretary, CYFD
- 9:40 a.m. (13) [Performance Review: Cambiar New Mexico](#)
—Kelly Klundt, Senior Fiscal Analyst, LFC
- 10:00 a.m. **Break**
- 10:10 a.m. (14) [The Missouri Model and Cambiar New Mexico](#)
—Tom Breedlove, Senior Consultant, Missouri Youth Institute
—Peter Cubra, Esq.
—Henry Gardner
- 10:30 a.m. (15) [Sequoyah Adolescent Treatment Center: The Building Bridges Model](#)
—Retta Ward, Secretary, Department of Health
- 10:45 a.m. (16) [Sequoyah Adolescent Treatment Center Task Force](#)
—Anilla Del Fabbro, M.D., Division Chief for Child and Adolescent Psychiatry, UNM
—Henry Gardner
- 11:00 a.m. (17) [The Neuropsychology of Youth Violence](#)
—Gregory Van Rybroek, M.D., Director, Mendota Mental Health Institute
—Kent A. Kiehl, Ph.D., Professor of Psychology, Neuroscience and Law, UNM
- 11:30 a.m. (18) [Reducing the Flow in the School-to-Prison Pipeline Through the Southwest Community School Collaborative](#)
—Representative Patricio Ruiloba, Member, New Mexico House of Representatives; School Resource Officer, Albuquerque Public Schools
—G. Antonio Gonzales, Principal, Atrisco Heritage Academy High School
—Jolene Aguilar, Partnership for Community Action
- 11:45 a.m. (19) [Youth Empowerment and Diversion: Promising Practices](#)
—Michael Gass, M.D., Professor, College of Health and Human Services, University of New Hampshire
—Daniel "Nane" Alejandrez, Executive Director, Barrios Unidos Institute for Peace and Economic Development
—Sky Gray, Executive Director, Santa Fe Mountain Center
—Albino Garcia, Jr., Executive Director, La Plazita Institute

- 12:25 p.m. **What to Expect: Roundtable Discussions**
—Philip Crump, Facilitator
—Dave Gold, Facilitator
- 12:30 p.m. **Lunch**
- 1:30 p.m. **First Roundtable Discussion**
- 2:15 p.m. **Reporting from First Roundtable Discussion**
- 2:30 p.m. **Break**
- 2:45 p.m. **Second Roundtable Discussion**
- 3:30 p.m. **Reporting from Second Roundtable Discussion**
- 3:45 p.m. **Break**
- 4:00 p.m. **What I Learned: Expert Panels**
- 4:45 p.m. **Wrap-Up**
- 5:00 p.m. **Recess**

Thursday, September 24 — UNM SUB, Ballroom C

- 9:30 a.m. **Call to Order**
- 9:15 a.m. (20) [Presentation on the UNMSOL Southwest Indian Law Clinic](#)
—Christine Zuni Cruz, Dickason Professor and Associate Dean, Indian Law
Program, UNMSOL
- 10:00 a.m. (21) [Presentation from the Office of the Attorney General](#)
—Attorney General Hector Balderas
- 11:00 a.m. (22) [Problems Concerning the Unit of Prosecution in Child Pornography
Cases](#)
—Representative Sarah Maestas Barnes

- 12:00 noon (23) **Working Lunch — Uniform Trust Decanting Act, Rule Against Perpetuities and Uniform Powers of Appointment Act — Combined Legislation**
—John W. Anderson, Executive Vice President, New Mexico Bankers Association
—Patrick Schaefer, Attorney and Trust Officer, New Mexico Bank & Trust
—Eric Burton, Attorney, Empire Trust
—Jack Burton, Uniform Law Commissioner
- 1:00 p.m. (24) **Curfew**
—Representative Nate Gentry
- 1:30 p.m. (25) **GPS Monitoring and Orders of Protection**
—Representative Carl Trujillo
—Crystal Sanchez
- 2:00 p.m. (26) **Memorial Concerning Family Law and Custody Issues**
—Representative Javier Martinez
- 2:30 p.m. **Public Comment**
- 3:00 p.m. **Adjourn**

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

**September 22-24, 2015
University of New Mexico
Albuquerque**

The fourth meeting of the Courts, Corrections and Justice Committee was called to order by Representative Zachary J. Cook, co-chair, on September 22, 2015 at 9:13 a.m. at the University of New Mexico (UNM) Continuing Education Building in Albuquerque.

Present

Rep. Zachary J. Cook, Co-Chair
Sen. Richard C. Martinez, Co-Chair (9/24)
Rep. Eliseo Lee Alcon
Sen. Joseph Cervantes (9/22, 9/23)
Rep. Gail Chasey
Rep. Jim Dines
Rep. Rick Little (9/22)
Sen. Linda M. Lopez (9/22, 9/23)
Rep. Georgene Louis
Rep. Antonio Maestas
Sen. Cisco McSorley (9/23, 9/24)
Rep. William "Bill" R. Rehm

Advisory Members

Sen. Jacob R. Candelaria (9/23)
Sen. Bill B. O'Neill (9/22, 9/23)
Rep. Patricia Roybal Caballero (9/22, 9/23)
Rep. Patricio Ruiloba (9/23, 9/24)
Sen. Mimi Stewart (9/23)

Absent

Rep. Andy Nunez
Sen. Sander Rue
Sen. Lisa Torracco

Sen. Craig W. Brandt
Rep. Brian Egolf
Rep. Doreen Y. Gallegos
Sen. Daniel A. Ivey-Soto
Rep. W. Ken Martinez
Rep. Paul A. Pacheco
Sen. William H. Payne
Sen. John Pinto
Sen. Michael S. Sanchez
Rep. Christine Trujillo
Sen. Peter Wirth

Guest Legislator

Rep. Alonzo Baldonado (9/22)

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

Staff

Douglas Carver, Staff Attorney, Legislative Council Service (LCS)

Celia A. Ludi, Staff Attorney, LCS

Nancy Martinez, Intern, LCS

Guests

The guest list is in the meeting file.

Handouts

Copies of all handouts are in the meeting file.

Tuesday, September 22**Call to Order**

Representative Cook welcomed members of the committee, staff and guests to the meeting.

Welcome from UNM School of Law (SOL)

Alfred D. Mathewson and Sergio Pareja, co-deans, UNMSOL, explained the co-deanship model adopted by the UNMSOL this year, which was pioneered by Case Western Reserve Law School and has since been adopted by other schools. The model acknowledges the complexity of law school administrative and teaching responsibilities, and it allows each co-dean to focus on his or her areas of strength to support the mission of the school. The tenure of law school deans nationwide has been getting progressively shorter, now averaging three years, and it is hoped that the co-deanship model will alleviate the stress of the position and result in longer tenure. In a wide-ranging discussion with committee members, the deans:

- affirmed the UNMSOL's traditional and foundational experiential emphasis, particularly in its various clinical programs, including a new natural resources clinic and a study-abroad program in Madrid, Spain;
- stressed the UNMSOL's continued top-10 ranking for clinical training of public law schools in the country; and
- noted that 80% of the student body are New Mexico residents, and annual tuition is \$15,000 per year, which should allow students to graduate without an enormous debt burden and stay in New Mexico, where salaries are generally lower than in other parts of the country.

Introductions

Committee members and LCS staff members introduced themselves.

New Mexico Sentencing Commission (NMSC) Recidivism Studies Overview

Tony Ortiz, executive director of the NMSC, introduced Linda Freeman, deputy director, NMSC, and staff members Amir Chapel and Kristine Denman. Ms. Freeman, referring to her handout "New Mexico Sentencing Commission Recidivism Studies Overview" at item (6) ("Understanding Recidivism: Definitions and Return to Prison Rates for Individuals Released from New Mexico Prisons FY 2007-FY 2011"), began by explaining that there is no universal definition of "recidivism", and it is therefore measured differently depending on the purpose and perspective of the measurer. The broadest measure of recidivism is arrest subsequent to release; the definitions narrow progressively from there to adjudication, conviction, incarceration and, finally, imprisonment.

NMSC Study of Crossroads for Women and Maya's Place

KC Quirk, executive director, Crossroads for Women (Crossroads), referring to her handout, "Crossroads for Women" at item (1), informed the committee that Crossroads is doubling its numbers and still not meeting the needs of its clientele. Ms. Quirk affirmed that the Crossroads model is more cost-effective than incarceration, and she said that the Corrections Department (NMCD) has asked Crossroads to open a transitional service in Los Lunas. Ms. Freeman observed that arrest and booking is the level of involvement in the justice system where the opportunity to intervene and prevent further progression is greatest, and she noted that most of Crossroads' clients had not been to the NMCD yet.

Ms. Quirk explained that Crossroads is the umbrella organization for Maya's Place and other programs. Another program, "Hope House", has just opened, and "Pavilions" will open soon. Most clients are between the ages of 25 and 45, and most are mothers. In some cases, their children are in someone else's care. All of the programs have a strong component of supporting and reunifying families. Maya's Place does not serve children, but all of the other programs do.

Ms. Freeman reviewed her handout, "Arrest Rates: Maya's Place Clients 2005-2011 and Crossroads Clients 2001-2011" (item (1), Maya's Place).

Answering a committee member's question, Ms. Quirk said that her vision for the future is evidence-based and includes developing processes to identify people who do not have access to the things they need, such as adequate housing, food and medical care, before they offend, and offering resources to help them address those needs, thereby preventing offenses. Crossroads' approach is to identify potential clients earlier and target the necessary resources to help stabilize the clients.

NMSC Study of Peanut Butter & Jelly Family Services' (PB&J) Fathers Building Futures (FBF) Program

Ms. Freeman reviewed the "PB&J Family Services Building Futures Evaluation Timeline" at item (2). Ms. Denman, referring to the reverse of the handout, explained evidence-based programs or practices. Ms. Freeman then introduced Susannah Burke, executive director, PB&J; and Emet Ma'ayan, director of development and strategic initiatives, FBF, PB&J. Ms. Freeman explained that Mr. Ma'ayan works only with the fathers and Ms. Burke works with the families participating in the FBF program. The program focuses on helping fathers to get jobs and to develop interpersonal and parenting skills that support family reunification. Mr. Ma'ayan informed the committee that the program had received a federal grant to start a business employing the fathers for a limited period to provide work experience and training and help in the transition to permanent employment. He reported that the program, now in its fourth year, has served 70 fathers so far, has assisted fathers in establishing regular child support schedules, resulting in the payment of \$50,000 in child support, and that all of the participating fathers are current on their taxes. Mr. Ma'ayan said the program is on track to receive another five-year grant and is working on becoming sustainable on its own. Ms. Burke related that PB&J is moving toward evidence-based programs. Ms. Denman, director, New Mexico Statistical Analysis Center, Institute for Social Research, UNM, made a presentation.

In answer to a question from a committee member, Ms. Freeman replied that PB&J cannot track the impact of the programs on children's school performance, e.g., truancy, because school records are protected by law and are not available for review by outside agencies.

NMSC Study of the New Mexico Men's and Women's Recovery Academies (MWRA)

Ms. Freeman introduced Jessie Wade, probation and parole supervisor, NMCD, and Angela Dannenbring, director, MWRA. Ms. Wade explained that the MWRA works with probation and parole on-site, and participants complete the appropriate academy before starting probation. Ms. Wade reviewed the handout at item (3), "Executive Summary: New Mexico Recovery Academy Evaluation Study". Ms. Dannenbring informed the committee that the men's facility now has 16 beds for dual-diagnosis clients; the women's program has always had dual-diagnosis beds and services.

Voices from the Programs

Several clients of the various programs addressed the committee regarding their experiences in the programs.

Joseph Shaw has been involved in FBF since December 2012, is now employed full time by the program as the workshop supervisor and recently earned his class A commercial driver's license (CDL). He spoke of his pride in taking care of his family and paying bills.

Santana Bayuk is a veteran, father, recovering addict and four-time offender who connected with PB&J while in prison. Mr. Bayuk attended the Men's Recovery Academy and committed to the FBF program on his release. He just earned his class A CDL, has a job as a

truck driver and is current on his child support. He affirmed that if a person is willing to change, the help is there.

LaShell Haynes is a multiple recidivist who completed the Women's Recovery Academy program the second time she enrolled, and she has now been clean almost five years. She said she has gotten some of her life back because she wanted it.

Linda Nastacio graduated from Maya's Place after her release and has transitioned to Crossroads. She said the support she received from the programs has made all the difference, although it is still hard to find a job with her background.

Monique Gabaldon has been on the street since she was 10 years old and is a recovering addict who has been clean for four years. Thanks to Crossroads, she now has a beautiful home and her children back.

Cynthia is a client of Crossroads who learned "how to act in a sober life" and is now hoping to be a firefighter.

Approval of Minutes

The minutes were approved without amendment.

DWI and the 24/7 Sobriety Program

Bill Mickelson, Mickelson Consulting Group, LLC, worked through his handout at item (4), "The South Dakota 24/7 Sobriety Project An Overview". Mr. Mickelson emphasized that the 24/7 Sobriety Program is an evidence-based program that saves more than \$10.00 for every dollar invested. He said the program works because there is a "sure, measured and swift" response to violations; the responses vary depending on the violation. Mr. Mickelson described South Dakota's program and said that federal funds are available for states that want to implement the model; it would not require state funding. The committee discussed with Mr. Mickelson the particulars of the program.

Collateral Consequences of Conviction

Sheila Lewis, a former public defender, worked through her handout at item (5), "Collateral Consequences: A Life Sentence for Families". She explained that collateral consequences of conviction are negative effects of a felony conviction that are not addressed in the statutes prescribing punishment. Collateral effects may include loss of employment, housing and education opportunities, loss of access to public benefits and loss of family connections, as well as loss of voting rights. These effects continue long after a sentence is completed, affecting not just the person with the conviction on the person's record but also the person's family. She urged the committee to support legislation that would mitigate the negative effects of a felony conviction after the sentence had been completed and help reintegrate ex-offenders into communities as productive workers, good family members and engaged citizens. Proposals include:

- having the Motor Vehicle Division issue identification cards to inmates prior to release;
- limiting access to and use of criminal records for non-law-enforcement purposes;
- providing for expungement of certain records;
- redefining a deferred sentence;
- redefining a conditional discharge;
- reclassifying low-level felonies as misdemeanors; and
- expanding "ban the box" to private employers and to affordable housing programs.

Ms. Lewis particularly urged the committee to endorse the Uniform Collateral Consequences of Conviction Act, which to date has only been adopted in its entirety by Vermont. The Uniform Collateral Consequences of Conviction Act addresses the penalties and disqualifications that individuals face incidental to criminal sentencing. A committee member commented that the act had been passed unanimously by both houses of the legislature in 2011, but the governor vetoed it and promised to veto it if it came to her again.

Ban the Box

Senator O'Neill explained that Senate Bill 583 (2015 regular session), co-sponsored by himself and Representative Baldonado, would have expanded an existing law that prohibits public employers from asking about criminal convictions on job applications to apply to private employers. The bill passed the senate and died in the House Judiciary Committee. Senator O'Neill said that there had been opposition to the bill by some small business owners who raised concerns about liability and cost of background checks. Senator O'Neill said that the co-sponsors have been meeting with many of the groups that opposed the bill in its initial form to try to address their concerns in its next iteration. Representative Baldonado added that the best approach to the issue is to enact a separate statute addressing private employers, instead of amending the existing law prohibiting governmental employers from inquiring about an applicant's criminal record on a job application. He emphasized that there is a carve-out for sensitive positions, such as jobs where the employee has substantial contact with children or sick people.

The co-sponsors met in April with the Association of Commerce and Industry and are also in contact with other business groups to explain that employers may ask about previous convictions in an interview but not on a job application. The co-sponsors agreed that they will continue to work on the issue and that instead of amending the existing statute, they think a stand-alone statute that applies to private employers would be more effective. Mr. Shaw expressed support for the bill because many people with records of conviction never get past the application process, making it extremely difficult to find a job and become a contributing member of society.

Growing Costs at the NMCD

Charles Sallee, deputy director for program evaluation, Legislative Finance Committee (LFC), and Theresa Rogers, analyst, LFC, reviewed their handout titled, "Fiscal Overview of

Criminal Justice System". Mr. Sallee suggested that if the legislature is not getting the results it hopes for from the corrections system, it may be because the NMCD is not prioritizing the things that will help, such as evidence-based programs. He mentioned the "Justice Re-Investment Initiative" of the Pew Charitable Trusts as a source of more information. In response to a question by a committee member about the increase in female inmates shown on page 8 of the handout, Mr. Ortiz noted that New Mexico is one of 36 states where the female prison population is growing; in the past four years, the New Mexico female prison population has grown by 20%. Mr. Ortiz said that there are more violent offenses and drug charges. He further informed the committee that it is very difficult to put together an approved parole plan for these inmates because of the lack of services, described earlier, outside of Albuquerque. There was a brief discussion of the appropriate agency in which to locate the Adult Probation and Parole Division of the NMCD, given that the procedures for revocation of parole require oversight by a judge.

Public Comment

Brian Stengel stated that he had recently been released from prison and described the barriers that had prevented him from being able to access educational and rehabilitation services while incarcerated, including punitive responses to minor violations of policy, and alleged that prison personnel are not held accountable for violations of NMCD policies. Mr. Stengel noted that even though all of the facilities in New Mexico have corrections industries, the only facility that has an actual program in operation is in Los Lunas. He opined that if the state used corrections industries effectively, it would not have to outsource everything from uniforms to mattresses, and inmates would gain valuable rehabilitative skills.

Paul Haidle expressed support for the expungement of certain criminal convictions, for "ban the box" and for wider judicial discretion in sentencing. He observed that one in three people in the United States now has some kind of criminal background, from traffic stops to imprisonment, and this has a hugely negative impact on society and the economy.

Recess

The committee recessed at 4:40 p.m.

Wednesday, September 23

The second day of the meeting, a Juvenile Justice Summit, was a joint session with the Legislative Health and Human Services Committee.

Thursday, September 24

Representative Cook reconvened the meeting at 9:52 a.m. and welcomed members of the committee, staff and guests.

Presentation on the UNMSOL Southwest Indian Law Clinic (SILC)

Christine Zuni Cruz, Dickason professor and associate dean of the Indian Law Program at the UNMSOL, explained that the SILC will seek additional funding to expand a clinic program that will operate in tribal communities throughout the state. The program currently works with Native American clients in metropolitan areas and in communities close to Albuquerque, but Professor Zuni Cruz would like to be able to increase the area and the number of clients served by the program. She said that with expanded funding, the students in the program would be able to actively participate in tribal court proceedings, become familiar with tribal laws and codes and assist with the development of tribes' laws. The program seeks to hire a full-time administrator and to include a clinical fellowship position to assist with the clinic's additional work.

EJ John, a third-year law student, told the committee that he participated in the SILC during the summer semester. As a SILC student, Mr. John participated in peacemaking on the Navajo Nation and, using a community-centered approach, helped to settle a dispute. He also worked on educating court volunteers on the federal Indian Child Welfare Act of 1978. He reported that the SILC enriches the educational experience of UNMSOL students.

Erica Valdez, a law student from the Pueblo of Santa Ana, also participated in the SILC during the summer semester. She reported that working in the SILC boosted her confidence and was her favorite law school experience. Her work with the SILC included collaborating with the Pueblo of Nambe tribal court to update the tribe's code. She also worked on a case in Indian country that involved tax and divorce issues. She is currently working with another SILC professor, Barbara Creel, on a project that will involve translation of certain English words into pueblo languages.

Jeremy Martin, another third-year law student, said that he is currently working in the SILC program. Mr. Martin said that prior to his participation in the SILC, and as a non-Native American person, he did not recognize the importance of tribal issues in New Mexico. Working in the SILC has helped him to see that importance and has helped enhance his cultural empathy. His work with a client in the Pueblo of Isleta tribal court has been challenging and a good educational experience.

Professor Zuni Cruz said that she spent a year away from the UNMSOL in Saskatchewan learning about and working in indigenous legal traditions. She is excited to work with the SILC to bring indigenous practices and philosophies into state and other court systems. She said she looks forward to the SILC having the resources to work with all of the tribes in the state to help develop legal solutions using those tribes' own knowledge bases.

In response to a member's question, Professor Zuni Cruz said that the American Indian Law Center (AILC) is a nonprofit organization that is housed in the UNMSOL. She said that the AILC, through the Pre-Law Summer Institute (PLSI), helps to prepare indigenous students from the United States for law school. She added that the UNMSOL's clinical program ranks in the top-10 programs in the United States.

A member stated that she participated in the PLSI and SILC and served on the UNMSOL *Tribal Law Journal*. She noted that learning about the complexities of federal Indian law is an important part of law students' education. She emphasized the importance of increased funding to allow SILC students to serve and learn in many tribal communities throughout the state, not just those communities that are near Albuquerque. In response, Professor Zuni Cruz said that most of the tribes in the state are in rural areas and it is important that the UNMSOL prepare lawyers to practice in rural areas of the state.

Presentation from the Office of the Attorney General (OAG)

Attorney General Hector Balderas updated the committee on his office's progress since he became attorney general. He said that the Criminal Affairs Section of the office is divided into four divisions, and realignment of staffing within those divisions is complete. He hopes to have the divisions fully staffed by November 2015.

He noted that the Medicaid Fraud and Elder Abuse Division of the OAG received funding to assist with investigations, and the OAG has contracted with a firm to assist the office with behavioral health-related investigations. The OAG continues to perform unannounced visits to nursing home locations about which the office receives complaints. The division will be expanded to Las Cruces, and the office will seek additional funding. He said that the federal government will provide a 75%/25% funding match and that his office will seek the 25% from the legislature. He asked for the committee's support.

The Special Prosecutions Division's caseload has increased and is pursuing child exploitation cases, among many others. The Special Investigations Division is working with law enforcement agency partners to share information and training related to internet crimes against children. For use in connection with its computer-based investigations, the OAG will seek the legislature's support in acquiring a mobile, digital forensic lab, which will support operations in rural parts of the state.

The attorney general introduced his staff members who accompanied him to the meeting and informed the committee that his office could provide an organizational chart to the committee.

In response to a member's comments about the Cambiar juvenile justice model in the state, the attorney general said that the office is focusing on topics related to the Children, Youth and Families Department, and he said that he would provide the committee with an update focused on those topics.

A member asked about personnel in the OAG who are assigned to work on issues related to open government. The attorney general said that those issues are addressed by the office's Civil Affairs Section, and it includes approximately 20 attorneys and administrative staff. The office has in the past employed a lawyer focused on the Inspection of Public Records Act, but the position is currently not filled. A lawyer in the Civil Affairs Section conducts in-office training

on issues related to open meetings and open records, and the office produces compliance guides and offers training to others in the community, as well.

In response to a question about the attorney general's function as a prosecutor, John Wheeler, chief counsel for the OAG, said that according to statute, an attorney general can choose to prosecute a case for the state in the event that a local district attorney chooses not to prosecute. The member said that the function is important, especially in districts that are unable to handle particular cases.

A member requested that the OAG submit recommendations for revision of criminal statutes, especially those that lead to numerous appeals, such as the child abuse and kidnapping statutes.

Problems Concerning the Unit of Prosecution in Child Pornography Cases

Representative Sarah Maestas Barnes introduced several experts on the issue of units of prosecution in child pornography cases: Andrea Reeb, district attorney for the Ninth Judicial District; Clara Moran, head of the OAG's Special Prosecutions Division; and Anthony Maes, commander of the New Mexico Internet Crimes Against Children Task Force for the OAG.

Representative Maestas Barnes informed the committee that House Bill 440, introduced during the 2015 regular session, aimed to clarify existing law in response to the *New Mexico v. Olsson* and *New Mexico v. Ballard* decisions by the New Mexico Supreme Court. The court's decisions noted that the statute was not clear with respect to the unit of prosecution to be used for the crime of possession of child pornography.

A member expressed concern about the bill passing during a 30-day session, and Representative Maestas Barnes said that she was hopeful and noted that the bill was introduced late in the 2015 60-day session.

In response to a question about the bill's language, which included a reference to "film", Ms. Reeb said that the cases that her office pursues most often involve videos rather than photographs, and, as a practice in that office, one video is charged as one count. The member noted that this charging practice might differ among each of the 13 districts in the state, and the legislature's goal is to avoid ambiguity and aim to for consistency in how criminal statutes are applied.

A member suggested that the bill should provide a second degree felony punishment and include a cap of 30 to 50 years of imprisonment for convicted persons. Those adjustments would help ensure that the punishment for possession of child pornography is not out of proportion to other crimes, such as first degree murder, for which a person may be sentenced to 30 years' imprisonment. Ms. Moran noted that the proposed bill's language, while providing for many counts, allows prosecutorial discretion, and a court can also choose to merge all possession charges.

Another member asked about the "intent" requirement in the statute. Ms. Reeb said that the crime is a general intent crime, so a jury would be given instructions on how to determine whether a person had intent to possess child pornography.

Kim Chavez Cook, a criminal defense attorney, commented that the current statute treats the making of child pornography in the same way as making a digital copy of an image when no child is present. She said that the revision to the statute, which has multiple ambiguities, needs to be comprehensive and should be developed within the context of the entire Criminal Code.

Representative Maestas Barnes thanked the committee for its time and said she would consider the committee's suggestions to ensure that the right solution is developed.

Uniform Trust Decanting Act, Rule Against Perpetuities and Uniform Powers of Appointment Act — Combined Legislation

John W. Anderson, executive vice president, New Mexico Bankers Association, informed the committee that a group of 15 bankers and lawyers has been meeting to discuss trust-related legislation. He provided a copy of a draft bill developed by the group.

Eric Burton, a senior vice president and attorney with Empire Trust, Inc., said that states are ranked on how friendly their policies are toward estates and wealth management, and people shop for jurisdictions with the most favorable estate laws. He said that the rule against perpetuities is an archaic law that needs to be revised and suggested that New Mexico adopt a "365 rule" similar to Nevada's. That rule, reflected in the draft bill language, provides that a trust could hold real property for no longer than 365 years. He opined that if New Mexico adopted such a rule, wealth management business in the state could increase.

Jack Burton, a uniform law commissioner, said that the state's Uniform Probate Code and Uniform Trust Code are in need of revision. One change he proposed would be to allow for longer trust terms.

In response to a question about a chart provided to the committee titled, "3rd Annual Dynasty Trust State Rankings Chart", Eric Burton explained that the legislature for the top-ranked state, South Dakota, worked with the state's bar association and with banks to develop favorable wealth management policies, including elimination of the rule against perpetuities.

A member asked whether the changes in the draft bill will have any positive economic effects on the state, and Eric Burton said that in addition to increased wealth management business in the state, as the state's banking institutions begin to manage more assets, those institutions will be better positioned to make loans and finance capital improvements.

Jack Burton said that he spoke with Steve Oshins, the person who compiles information and prepares the state rankings chart, and Mr. Oshins said that New Mexico is not in a position to

be ranked in the top-10-friendliest states for wealth management unless the state revises its rule against perpetuities.

Curfew

Representative Nate Gentry provided the committee with a draft bill relating to curfews and informed the committee that, previously, the New Mexico Supreme Court struck down an Albuquerque curfew ordinance. The court stated that it is impermissible for an ordinance to impose a criminal penalty on minors for conduct that is lawful for adults. Representative Gentry's draft bill does not impose statewide curfews, but it allows local governments to impose curfews with a few restrictions.

In response to a question, Representative Gentry said that there is no criminal penalty provided for in the draft bill, and local governments would provide for any curfew-related penalties if those governments chose to enact a curfew law.

Another member asked whether the draft bill is the same bill proposed in previous years by former Representative Dennis Kintigh. Representative Gentry said that the draft bill is similar to the previous bill, except that the draft bill is less prescriptive and does not include sanctions.

A member expressed concern about language in the draft bill that addresses resources to be used in the event that a minor is taken into custody for violating a curfew and emphasized the limitations of the understaffed and overworked Children, Youth and Families Department.

Another member offered his assistance with the draft bill and noted that juvenile crime in Albuquerque has dropped by 64%, and when violent juvenile crime is committed, it is often related to runaway minors who are not enrolled in school.

Global Positioning System (GPS) Monitoring and Orders of Protection

Representative Carl Trujillo and Crystal Sanchez, a constituent, presented a draft bill related to orders of protection. Representative Trujillo said that the bill would add two new sections to the Family Violence Protection Act. The bill language would provide for the use of GPS technology to establish and monitor geographic exclusion zones into which a restrained party could not enter. He said that this system could be a deterrent for restrained parties and could help victims feel and remain safe. He emphasized that he and Ms. Sanchez are interested in input and suggestions from the committee about the bill.

Ms. Sanchez related some statistics about domestic violence and said that, frequently, a woman who is murdered in this state was a victim of domestic violence perpetrated by the person who murdered her.

A member asked why the monitoring system is necessary, and Ms. Sanchez said that the system would provide an updated location for a restrained party every five seconds and would

alert a protected party if the restrained party entered an exclusion zone. The system would provide safety and peace of mind for protected parties.

Memorial Concerning Family Law and Custody Issues

Representative Javier Martinez presented a draft memorial requesting that an interim committee study issues related to parental rights. He said that he would like the legislature to look at how child custody and related laws are affecting families. He suggested that the legislature could consider issues, including whether joint custody is always in a child's best interest and the enforcement of parenting plans.

A member noted that if a parent violates a parenting plan, that person is in contempt of court and the other parent can ask the court to help with enforcement of the plan.

Another member noted that this issue could be addressed in the upcoming fiscally focused legislative session through the appropriation of sufficient resources for the courts.

Public Comment

Connie Vigil explained that her child was taken from the state in violation of a court order and that parental rights need to be strengthened.

Adrian Carver expressed opposition to the proposed bill that would allow local governments to enact curfews. He noted that law enforcement resources are already strained and suggested that efforts be focused on: prevention and intervention for youths; early childhood education; youth employment opportunities; and culturally relevant activities for youths, rather than on curfews.

Emma Sandoval said that she has been working in youth development for 10 years and she has witnessed the negative effect punitive policies have on youths. She suggested investment in proactive solutions and listening to the input of young people.

Steve Allen, a representative of the American Civil Liberties Union of New Mexico, expressed his agreement with previous public comments about the curfew bill. He noted that the Albuquerque Police Department is bound by a consent decree because of documented use of excessive force, and he opined that enacting curfews in this environment and increasing interactions with law enforcement are not advisable.

Sophia Young informed the committee that she is a seventh grade student and native New Mexican. She has a friend who was in need of assistance from law enforcement but was afraid to call for help. She said that youths in Albuquerque have concerns with trusting law enforcement, and criminalizing behavior will not help.

Grace Spulak, staff attorney with Pegasus Legal Services for Children, said that curfews could be problematic for her clients, some of whom do not have parents and are in the custody of

the Children, Youth and Families Department. She added that while the legislation may be well-intended, it fails to address the actual issues involved with certain juvenile behaviors.

Alyssa Lopez said that enacting curfews will criminalize more youths and that time and money should instead be spent on programs that benefit youths. She also noted that there are concerns with youths who have been emancipated.

Sulema Maraza expressed opposition to curfew laws and noted that the laws will place hardships on families.

Hope Alvarado said that many school-related events and clubs take place in the evening and end after 10:00 p.m. and that a curfew could discourage participation. She said that youths in New Mexico are already facing many obstacles, and curfews would be another.

Margarita Sanchez said that curfews will cause more harm than good. She added that many young people work late hours, and curfews will unnecessarily increase policing of the state's young people.

Rosie Garibaldi said that she works with young people who are directly and indirectly affected by the juvenile justice system. She recalled the previous day's Juvenile Justice Summit, which was focused, in part, on hearing young peoples' voices. Curfews, she said, are reactionary policies that can have unintended consequences. She noted that juvenile crime rates have decreased, law enforcement resources are overextended and youth shelters are over-capacity. Even though the bill does not implement curfews, it allows for curfews, and there is evidence that curfews do not deter crime.

Adjournment

There being no further business before the committee, the fourth meeting of the Courts, Corrections and Justice Committee for the 2015 interim adjourned at 3:25 p.m.

Revised: October 27, 2015

**TENTATIVE AGENDA
for the
FIFTH MEETING
of the
COURTS, CORRECTIONS AND JUSTICE COMMITTEE**

**October 29-30, 2015
New Mexico State University Alamogordo
Alamogordo**

Thursday, October 29

- 10:00 a.m. **Call to Order/Introductions**
- 10:15 a.m. **Welcoming Comments**
—Ken Van Winkle, Ph.D., Interim President, New Mexico State University
Alamogordo
- 10:30 a.m. (1) **Judiciary's Unified Budget and Proposed Legislation**
—Chief Justice Barbara J. Vigil, New Mexico Supreme Court
—Arthur W. Pepin, Director, Administrative Office of the Courts
- 11:15 a.m. (2) **Proposed Amendment to the Constitution of New Mexico (Article 2,
Section 13) Concerning Bail**
—Chief Justice Barbara J. Vigil, New Mexico Supreme Court
—Justice Charles W. Daniels, New Mexico Supreme Court
—Arthur W. Pepin, Director, Administrative Office of the Courts
—Senator Peter Wirth
- 11:45 a.m. (3) **Response to Proposed Amendment to the Constitution of New Mexico
Concerning Bail**
—Representative David M. Gallegos
—Diana A. Martwick, Twelfth Judicial District Attorney
—Rikki-Lee G. Chavez, New Mexico Criminal Defense Lawyers
Association
—Matt Coyte, Attorney
—TBD, Herrera's Bail Bonds
—Randy Gomez, Moose Bail Bonds
—Jeffrey Clayton, Attorney, Policy Director, American Bail Coalition
- 12:30 p.m. (4) **Children's Court Improvement Project Education Efforts**
—Angela Peinado, Ph.D., Senior Statewide Program Manager, Children and
Family Services Department

- 1:00 p.m. **Lunch**
- 2:00 p.m. (5) **Juvenile Justice Advisory Committee (JJAC)**
—Sharon Stover, JJAC Chair
—Judge Angie Cook, JJAC Vice Chair; District Court Judge, Twelfth Judicial District
—Carolyn Casillas, Chief Juvenile Probation Officer, Twelfth Judicial District
—Tony Ortiz, JJAC Board Member; Executive Director, New Mexico Sentencing Commission
—Janet Musolf, JJAC Program Manager; Juvenile Justice Specialist, Children, Youth and Families Department
—TBD, Young Person Involved with JJAC Issues
- 2:45 p.m. (6) **New Mexico Sentencing Commission's Justice Information Sharing Council**
—Tony Ortiz, Executive Director, New Mexico Sentencing Commission
- 3:30 p.m. (7) **Corrections Department (NMCD) Public Safety and Program Update**
—Gregg Marcantel, Secretary, NMCD
—Jerry Roark, Director, Adult Prison Division, NMCD
—Rose Bobchak, Director, Adult Probation and Parole Division, NMCD
- 4:30 p.m. (8) **Problems with Obtaining Mental Health Evaluations**
—Diana A. Martwick, Twelfth Judicial District Attorney
- 5:00 p.m. (9) **Truancy as a Stand-Alone Offense**
—Diana A. Martwick, Twelfth Judicial District Attorney
- 5:30 p.m. **Public Comment**

Friday, October 30

- 9:30 a.m. **Tour of Otero County Prison Facility (Chaparral)**
- 12:00 noon **Adjourn**

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

**October 29-30, 2015
New Mexico State University Alamogordo
Alamogordo**

The fifth meeting of the Courts, Corrections and Justice Committee (CCJ) was called to order by Representative Zachary J. Cook, co-chair, on October 29, 2015 at 10:29 a.m. at New Mexico State University Alamogordo in Alamogordo.

Present

Rep. Zachary J. Cook, Co-Chair (10/29)
Sen. Richard C. Martinez, Co-Chair
Rep. Eliseo Lee Alcon
Sen. Joseph Cervantes (10/29)
Rep. Gail Chasey (10/29)
Rep. Jim Dines (10/29)
Rep. Rick Little
Sen. Cisco McSorley
Sen. Sander Rue (10/29)

Advisory Members

Sen. Peter Wirth (10/29)

Absent

Sen. Linda M. Lopez
Rep. Georgene Louis
Rep. Antonio Maestas
Rep. Andy Nunez
Rep. William "Bill" R. Rehm
Sen. Lisa Torraco

Sen. Craig W. Brandt
Sen. Jacob R. Candelaria
Rep. Brian Egolf
Rep. Doreen Y. Gallegos
Sen. Daniel A. Ivey-Soto
Rep. W. Ken Martinez
Sen. Bill B. O'Neill
Rep. Paul A. Pacheco
Sen. William H. Payne
Sen. John Pinto
Rep. Patricia Roybal Caballero
Rep. Patricio Ruiloba
Sen. Michael S. Sanchez
Sen. Mimi Stewart
Rep. Christine Trujillo

Guest Legislators

Rep. David M. Gallegos (10/29)

Sen. Ron Griggs (10/29)

Rep. Debbie A. Rodella (10/29)

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

Staff

Douglas Carver, Staff Attorney, Legislative Council Service (LCS)

Monica Ewing, Staff Attorney, LCS

Celia Ludi, Staff Attorney, LCS

Nancy Martinez, Intern, LCS

Guests

The guest list is in the meeting file.

Handouts

Handouts and other written testimony are in the meeting file.

Thursday, October 29

Representative Cook welcomed committee members and guests to the meeting, and the committee members introduced themselves.

Welcoming Comments

Ken Van Winkle, interim president of New Mexico State University Alamogordo, said that the two-year institution serves the community through strong academics and vocational and technical certificate programs. The school's strategic plan is to retain students and ensure their success while focusing on diversity and resource stewardship. Dr. Van Winkle thanked the committee for visiting the campus.

Judiciary's Unified Budget and Proposed Legislation

Chief Justice Barbara J. Vigil of the New Mexico Supreme Court (NMSC) addressed the court's fiscal year 2017 budget and proposed legislation, including a constitutional amendment for the 2016 legislative session. The NMSC has three priorities for the coming fiscal year: 1) a workforce investment plan; 2) a modest base budget increase for the courts and the Administrative Office of the Courts (AOC); and 3) a request for additional judicial compensation.

Regarding the workforce investment plan, Justice Vigil said that there are salary inequities among employees of the Second Judicial District. The court formed a committee of members of the judiciary to examine the courts' employees' compensation across the state, and the committee developed the workforce investment plan. The plan aims to provide additional

support to court clerks, who comprise 50% of the courts' workforce. To reduce high court clerk turnover, the plan would provide for career and salary progression for clerks within their job classifications, which would cost \$2,621,690, and which would increase the average clerk's hourly pay from \$15.09 to \$17.52. Arthur W. Pepin, director of the AOC, added that 92% of court clerks are women, and they are being paid at a lower pay range than the pay range in which they are performing. Justice Vigil emphasized that if the courts reduce turnover, productivity will improve and fewer resources will be needed to repeatedly fill clerk vacancies.

The second part of the court's plan involves establishing a career progression plan for court employees. The plan would cost \$2,049,757 and would provide for employees to receive salary increases within their job classifications, based on their years of employment in those jobs.

The third part of the plan provides for a compensation increase for judges' at-will staff members, including paralegals, court administrators, court monitors, court reporters and bailiffs. The \$183,703 request would provide a 2% pay increase for those employees.

Finally, the court's plan provides for salary adjustments to remedy inequities among certain employees. It provides for a 3% increase for those employees and would cost \$1,229,448.

Mr. Pepin emphasized that the workforce investment plan was calculated using actual employee information, rather than estimates. Justice Vigil said that she was troubled to learn that many clerks' current salaries are at such a level that the clerks' families would qualify for the courts' indigency services.

A committee member suggested that the court seek assistance from the University of New Mexico's Bureau of Business and Economic Research to provide a report on how the increased investment in court personnel would affect the economy.

Another committee member asked whether recent changes to court data management systems are a concern. Justice Vigil said that the management system was a good investment and that clerks' skill sets have increased and improved through the operation of the system, and those skills have made the clerks more marketable as employees. Mr. Pepin added that public funds are wasted if the courts have to continue to recruit and train new clerks. Increasing clerks' pay would be a good investment.

In response to another committee member's question, Mr. Pepin said that the courts employ more than 700 clerks, about two-thirds in district courts and another one-third in magistrate courts. He said that the majority of court clerk work in the courts is completed by employees in court clerk 2 positions, and many clerks stay in that position for their entire careers. He added that there is a higher court clerk vacancy rate among magistrate courts than district courts.

In response to a question, Mr. Pepin said that all at-will employees in the same positions are paid the same salary.

In response to another committee member's question, Mr. Pepin said that court clerks received a pay increase in 2015, but the courts are still having difficulty retaining clerks. Clerk exit interviews reveal that low salaries are a primary issue.

Justice Vigil said that the court's second priority is a base budget increase of \$6,942,800 to support the courts' critical needs. Each court's needs are vetted through an internal process, and the resulting request is conservative. Mr. Pepin referred the committee to a spreadsheet titled "UNIFIED JUDICIARY FY17 BUDGET REQUEST SUPREME COURT ADOPTED" and said that because magistrate courts have lost operations funding from other state funds, an increase of general fund dollars is sought for those courts.

Justice Vigil said that the court's third priority is an increase of judicial compensation rates, which will cost \$1,432,300. It has been difficult to attract qualified and skilled candidates to careers in the judiciary because of low compensation rates. The courts seek lawyers who have approximately 15 years of experience to fill judicial vacancies, but the fact that New Mexico has the lowest rate of compensation for judges in the western states means that few lawyers are interested in filling vacancies.

In response to a committee member's question about the loss of funding for magistrate courts, Mr. Pepin said that in 2015, supplemental funding for those courts was approved by the legislature but was vetoed by the governor. Some funding was approved during the 2015 special session. He added that the AOC regularly reports the amount of revenue generated by magistrate courts through fines and fees to the Legislative Finance Committee.

Another committee member expressed support for the judiciary's budget requests and added that the committee member has litigated cases in other states and appreciates and prefers the efficiency of New Mexico's courts. He added that it is important to consider that the judiciary is a co-equal branch of government. Justice Vigil thanked the member and said that, among other things, the courts aim to address issues of public safety and issues of importance to the business community, which is not possible without sufficient resources.

Justice Vigil informed the committee of several pieces of legislation that the AOC will pursue in the 2016 session. The first bill adds another judgeship in the Fifth Judicial District. The second bill separates language access services from the Jury and Witness Fee Fund by creating the Language Access Fund and providing for the AOC to manage the two funds separately. The third bill creates the Judge Pro Tempore Fund, which provides for the hiring of retired judges and other personnel to resolve cases that active members of the judiciary cannot address.

In response to a question, Justice Vigil said that the court has created a subcommittee of the Chief Judges Council to consider and make determinations on where additional judgeships might be needed. The subcommittee considers the types of cases before courts and is considering whether population trends and frequency of pro se litigation should be factored into decisions.

Proposed Amendments to the Constitution of New Mexico (Article 2, Section 13) Concerning Bail

Senator Wirth presented a proposed joint resolution to amend the Constitution of New Mexico. He said that the state's bail system has equated a defendant's risk with the ability to pay, and the joint resolution addresses a situation in which a defendant is proven to be a threat to the community by clear and convincing evidence and allows a judge to deny bail.

Regarding the NMSC's opinion in *State v. Brown*, Justice Charles W. Daniels, NMSC, said that the case provides an extensive history of the state's law governing bail but does not create new law. He said that fixed bond schedules used throughout the state are inconsistent, and the schedules do not factor in whether a defendant poses a risk of danger to the community. Because the state has strayed in its approach to bail from what the constitution requires, the court created a task force to study the issue. The task force recommended that the state's constitution be amended to give judges the power to deny release on bail. New Jersey has taken the same action, and the amendment received bipartisan support. Justice Daniels noted that the commercial bonding industry opposes the proposed amendment.

In response to a question about how often bail is denied in jurisdictions that have adopted the proposed amendment, Justice Daniels said that approximately 15% of defendants are held in pretrial detention. Senator Wirth reiterated that due process is afforded, and pretrial detention is only authorized after a hearing for which the clear and convincing evidentiary standard applies.

In response to another question, Justice Daniels agreed that human beings will administer the new rule, so there could be some variation in how the rule is applied, but he noted that defendants will have a right to appeal the denial of bail. He said that he believes judges will make reasonable decisions.

A committee member agreed that a defendant's financial means should not be a factor in whether the person is held before trial. The committee member asked whether New Jersey has seen increased recidivism rates after implementing this approach, and Justice Daniels said that New Jersey has not seen a change in recidivism rates.

In response to a committee member's question about the percentage of defendants that are currently held pending trial, Justice Daniels said that approximately 40% are held. He added that it is of concern that jails are often holding people who have mental and behavioral health concerns. Mr. Pepin noted that Bernalillo County has used money saved through the release of defendants who do not need to be held to create needed transitional housing and to work on providing intervention services. Savings could also be used to provide mental health services.

Justice Daniels added that, often, judges and prosecutors do not have sufficient information about a defendant at the time bail is considered. The NMSC is interested in finding a way to ensure that criminal information about defendants is available to courts.

A committee member expressed concern about implementing a program that provides for defendants' release in Albuquerque, a city that has 400 fewer police officers than it needs.

A committee member asked about the fiscal impact of passing the resolution. Senator Wirth said that fewer defendants held before trial would reduce some costs, but the hearings needed to determine whether defendants should be released will require additional resources.

A member asked whether the NMSC has taken action to stop courts from using bail schedules. Justice Daniels said that the NMSC is proceeding cautiously, and the AOC sent notice to courts that the use of bail schedules appears to violate the law. Judge George Anaya, Jr., a magistrate judge from Santa Fe, informed committee members that he is not currently using a bail schedule. Mr. Pepin said that about half of the state's courts are using bail schedules.

In response to a question, Justice Daniels said that the constitution gives the NMSC the right to create procedural rules. The court has created a standing committee on rules of criminal procedure, and that committee proposes changes to the court, after which the public has an opportunity to provide input before rules are changed. He said that there is a perception that the resolution seeks to eliminate the bail bond industry in New Mexico. That perception is not the intent of the resolution, which does not remove a judge's discretion to order a money bond for a defendant's release.

Regarding appeal of a decision to deny bail, Justice Daniels said that the Court of Appeals would consider such a case using the "abuse of discretion" standard. If the case was further appealed to the NMSC, the petition for certiorari would be decided within approximately one week. The member expressed concern about the number of appeals that could occur in cases in which bail is denied.

Response to Proposed Amendment to the Constitution of New Mexico Concerning Bail

Jeffrey Clayton, attorney and policy director for the American Bail Coalition, acknowledged that the proposed constitutional amendment presents complicated issues, and those issues are a national political cause. He opined that the resolution would impair public confidence and said that the NMSC is charged with upholding the constitution and not with advocating or criticizing the constitution. He noted that Colorado considered implementing the proposed bail approach but ultimately did not. He added that New Jersey's model of bail costs that state \$60 million to \$100 million.

Mr. Clayton said that the Constitution of New Mexico currently strikes the right balance, and there is a lack of data to support the changes proposed in the resolution. Safety and cost-benefit analyses should be completed before New Mexico implements changes to the bail system.

He said that the assertion that many of the defendants who are held in jail are poor is without merit and that other reasons have been identified. Those reasons include the existence of multiple pending cases, immigration issues and others.

He added that there has not been a dispositive court ruling regarding a violation of the Equal Protection Clause of the United States Constitution in a case in which a defendant does not post bail. Mr. Clayton asked the court to delay its decision on support for the resolution for six months, and he offered his organization's assistance in considering the issue.

Angelica Herrera-Lucero, a representative of a bail bonding company, said that people are deterred from committing crimes by detention or fines, and one study has shown that pretrial services, in lieu of incarceration, are ineffective.

John Herrera, a representative of a bail bonding company, said that he has been in the business since 1969, and he does not believe New Mexico should adopt New Jersey's bail approach. Bonding companies take responsibility for their clients and ensure that they appear in court, or the bonding company suffers a financial loss.

Gerald Madrid, a representative of a bail bonding company, said that he served on the committee created by the NMSC to consider the state's bail process. He was one of two representatives from the bail bonding industry. Serving on the committee was interesting and also frustrating, he said. It is not reasonable to believe that defendants will appear in court without a secured bond in place, Mr. Madrid stated. The resolution allows the court to decide which defendants are dangerous and to release non-dangerous defendants. He opined that the *State v. Brown* decision is used by defendants to obtain unsecured release from jail. He believes that offenders are not deterred from committing drug and property crimes because they know that they will be released from jail.

Randy Gomez, a representative of a bail bonding company, agreed with the other bonding representatives and said that courts have used bail schedules for convenience. He said the important issue is how bail is set and the need for courts to consistently follow the rules of criminal procedure.

In response to a committee member's question, Mr. Gomez said that if one of his clients does not appear in court, the judge will issue a warrant for that person's arrest and declare forfeiture of the bond. If the bonding company is unable to bring the defendant to court, the company will have to pay the amount of the forfeited bond. Mr. Herrera said that while a bonding company will have to pay a forfeited bond if a client does not appear in court, no one is financially accountable for a person who is released without security and who fails to appear in court.

A committee member asked whether the presenters are concerned that the resolution will interfere with the bonding industry. Mr. Clayton said that the concern is with an increase of unsecured releases.

Representative Gallegos joined the panel of presenters and discussed several pertinent cases in Lea County. He asked that the proponents of the resolution work with him to develop a solution. His constituent, Judy Garcia, told the committee about one such case that involved her son, who had been shot. The defendants in that case have been released, and she said that safeguards need to be in place to protect the community from defendants who are released.

Rikki-Lee Chavez, New Mexico Criminal Defense Lawyers Association, and Matt Coyte, an attorney, presented concerns about the state's bail system. Mr. Coyte said that after careful thought and consideration, they have come to support the amendment. He noted that many people who are held pending trial in New Mexico are poor, and that is an unfair system.

Mr. Coyte provided the committee with a copy of a draft of a resolution that differed slightly from the draft presented by Senator Wirth. He said that in drafting their proposal, they focused on dangerous people and, therefore, specified that it related to people "pending trial for a felony offense". He noted that his organization also considered the concerns related to holding people who have mental health concerns, like many of the clients he has represented.

A committee member said that the proposed resolutions will increase the work of the Public Defender Department, and a representative of that office said that with a budget increase for the past fiscal year, the office has added staff positions, including a social worker and a paralegal.

In response to a committee member's question, Mr. Coyte said that he believes the change to the law should be in the constitution and not in rules because rules and underlying principles can change over time. His motivation is to find fundamental fairness, and the proposed language gives judges the ability to hold someone, if necessary, after a hearing.

Diana Martwick, district attorney for the Twelfth Judicial District, said that after discussion and debate, the New Mexico District Attorney's Association has given its support to Senator Wirth's proposed resolution. She noted that the justice system is underfunded, and the change to the constitution will increase the workload on already overworked district attorneys' and public defenders' offices. She said that it will be difficult to find time for the many additional hearings that will result from the change or for contacting victims to let them know that hearings have taken place. She suggested that more realistic time lines should be included.

Juvenile Justice Advisory Committee (JJAC)

Sharon Stover, chair of the JJAC, spoke to the committee about the JJAC, which supports evidence-based programming and alternatives to detention in the juvenile justice system. The JJAC reviews applications for funding from organizations that provide youth services. The JJAC

makes recommendations to the Children, Youth and Families Department on how funding might be allocated.

Ms. Stover said that the Juvenile Detention Alternatives Initiative has entered a memorandum of understanding with the NMSC and the New Mexico Association of Counties to further work on improving the juvenile justice system.

Judge Angie Schneider, Twelfth Judicial District, said that Otero County is the site of one of the state's 21 JJAC continuums. In March 2014, the JJAC surveyed stakeholders to determine what resources are needed in the juvenile justice system. She said that the Otero County JJAC continuum can work to obtain needed resources.

Carolyn Casillas, chief juvenile probation officer for the Twelfth Judicial District, said that the juvenile drug court was started in June 2014, and it is now considered a model for working with juveniles who use drugs. In an average week, clients participate in several sessions and breath alcohol tests, and clients' parents participate in parenting groups. Clients have an average of 12 contacts with the drug court team each week.

A former drug court participant informed the committee that the program was very helpful, and he noted that it needs additional funding to continue operations.

John Richmond said that he has served on the JJAC since 2011 as a youth representative. He has represented the state in Washington, D.C., and said that he enjoys working to make changes in the state.

Tony Ortiz, executive director of the New Mexico Sentencing Commission, said that as a result of juvenile justice programs, a significant number of youths are diverted from the criminal justice system.

Janet Musolf, JJAC program manager, said that she works to ensure accountability in the program. The JJAC has built strong relationships with the continuum communities and meets with communities before and during the continuum funding application process. After grants are made to continuums, the JJAC works with the continuums to help track funds and address any issues quickly so that services are not interrupted. Thirty-two percent of the programs are in urban areas, and 68% of the programs are in rural and frontier communities. Each community is unique, and she works with the continuums to identify their specific needs.

A committee member noted how important it is to hear perspectives from young people who participate in and benefit from juvenile justice programs.

Corrections Department (NMCD) Public Safety and Program Update

Gregg Marcantel, secretary, NMCD, said that the state is positioned to make important decisions that can create meaningful changes. When he started with the NMCD in 2011, the

department did not have any programming for inmates in prison, and segregation of inmates had been overused for many years. In 2011, approximately 11% of the state's prison population was held in segregation at any given time. He added that the prison population was also increasing and infrastructure was suffering at that time.

Jerry Roark, director of the Adult Prison Division, NMCD, said that the department passed its audits successfully and exceeded established standards in 12 areas. He said that there are changes the NMCD needs to make to accommodate the growing female inmate population. The NMCD will begin housing female inmates in the western New Mexico facility and in the facility in Springer, New Mexico. The facility in Springer is better suited for programming and will allow for family visits and better records maintenance.

Currently 6.5% of the NMCD's inmates are held in restricted or segregated housing, and the NMCD's goal is to reduce that number to 5%. Another 7% of inmates are housed in protective housing. The NMCD's approach is to place predatory inmates in lockdown rather than placing those predators' victims in lockdown.

The NMCD has also changed its restrictive housing policy so that an inmate is no longer subject to 365 days in segregation for misconduct but is, instead, subject to up to just 30 days. If, after 30 days, the inmate is unable to leave segregation, the inmate is placed in predatory housing Mr. Roark said.

The facility in Clayton houses former gang members who have renounced their gang membership, Mr. Roark noted. The facility also houses former law enforcement officers.

Secretary Marcantel said that the department is committed to using segregation only for predatory inmates, and in other situations only when it is necessary. The NMCD is also looking at implementing programs recommended by the Pew Research Center, as well as those that have been developed within the NMCD. Regarding inmates in the state's sex offender management units, Secretary Marcantel said that those inmates who are within five years of release participate in programming every day.

Rose Bobchak, director of the Adult Probation and Parole Division, NMCD, said she has recently taken on the responsibilities of the director of recidivism reduction, and she is excited to use the opportunity to bridge gaps and expand department initiatives. In cooperation with the Pew Research Center, she has worked on a corrections program inventory to complete a cost-benefit analysis of the NMCD's programs. The NMCD may be able to redirect some program funding to those programs that produce the best outcomes.

Ms. Bobchak said that the Paws Program in the Las Cruces facility is an example of an innovative program that has been very successful. The program allows inmates to train dogs from a local shelter to help prepare the dogs for adoption. The facility has had no significant disciplinary reports about the participants in that program.

Studies show that peer tutoring is important, so the NMCD is looking to expand its peer tutoring programs. The department is also working to expand drug treatment programs in its institutions to help inmates maintain sobriety when they are released from a facility. Another initiative the department is working on would give inmates who are within 180 days of release the opportunity to have video conferences with their loved ones who are outside the prison to help with transitions. Finally, Ms. Bobchak said that the NMCD is opening a gender-specific housing unit in Los Lunas in cooperation with KC Quirk, director of Maya's Place and Crossroads for Women. When complete, the facility will have 50 beds.

Secretary Marcantel said that the department has access to a new drug to treat hepatitis C, but he added that the drug is very expensive. Over half of the prison population in the state tests positive for hepatitis C.

Finally, the secretary emphasized the importance of stabilizing the NMCD's workforce. He said that many employees are forced to work overtime, and there is a significant difference between staffing levels at privately run versus publicly run prisons in the state.

In response to a question about the transfer of female inmates to Springer, Secretary Marcantel said that the facility would be designed to support extensive programming. Mr. Roark added that the lowest-security female inmates would be housed in Springer.

A committee member asked whether inmates pay restitution to their victims, and Secretary Marcantel said that all inmates who work inside the prisons pay victim reparations.

In response to a committee member's question about how mental health concerns are diagnosed, Secretary Marcantel said that there are effective systems in place in the state's prisons to diagnose and treat mental health issues, but he noted that the same is not true in the state's jails.

Public Comment

Parla Rathgeber provided comments about the day's bail bond presentations. He said that a judge once required a \$1 million cash-only bond for his release even though he had no criminal history and no prior convictions. He believes the bail requirement was politically motivated. While he was held in jail, he was assaulted, and he entered a plea agreement only so he could be released. He added that medical services are lacking in prisons, and while he was incarcerated, another inmate died of a ruptured appendix. Finally, he said that the family visiting areas are not hospitable.

Irene Whitehead said that she is the mother of an inmate in a special management unit in the Otero County facility in Chaparral, and she relayed her observations of the facility. The facility was designed to house inmates for short terms, and adjustments need to be made now that inmates are held for longer terms in the facility. She agreed that the visiting areas are inhospitable, and visitors are not able to spend time outside with family members because it is

often very hot outside and there is no shade provided. She said that her son's pod houses 72 men and includes only seven toilets and five telephones. Medical services are inadequate, she said, and an inmate has to request medical assistance three times before the inmate can see a medical professional. There is no hands-on job training at the facility.

Shelly Shaw said that her son is 32 years old and is homeless and living in Denver. She has tried to get her son's probation case transferred to New Mexico so her son can live with her, but she has been unable to transfer the case. A member suggested that she contact the NMCD for assistance.

Margarita Sanchez addressed several topics, including the state's medical marijuana laws and automatic voter registration. She expressed support for closing prison facilities and noted that because the NMCD is understaffed, the department would not have to lay off many employees. She also suggested that the committee hear presentations and perspectives from people who have been incarcerated.

Recess

The committee recessed at 6:57 p.m.

Friday, October 30

Tour of the Otero County Prison Facility

Members of the CCJ toured the Otero County Prison Facility in Chaparral.

Adjournment

There being no further business before the committee, the fifth meeting of the CCJ for the 2015 interim adjourned at 12:00 noon.

Revised: December 2, 2015

**TENTATIVE AGENDA
for the
SIXTH MEETING
of the
COURTS, CORRECTIONS AND JUSTICE COMMITTEE**

**November 30-December 2, 2015
State Capitol, Room 322
Santa Fe**

Monday, November 30

- 9:30 a.m. **Call to Order/Introductions**
—Representative Zachary J. Cook, Co-Chair
—Senator Richard C. Martinez, Co-Chair
- 9:45 a.m. (1) **Election Reform Legislation: Campaign Finance Disclosure and Changes to the Voter Action Act**
—Senator Peter Wirth
- 11:15 a.m. (2) **Report on In-House Parole**
—Bette Fleishman, Executive Director, New Mexico Women's Justice Project
- 12:00 noon (3) **Consideration of Legislation — Bills Proposed by the Administrative Office of the Courts (AOC)**
—Arthur W. Pepin, Director, AOC
- Approval of Minutes from the September and October Meetings*
- 12:15 p.m. **Lunch**
- 1:30 p.m. (4) **Reorganization of the Department of Public Safety (DPS) Under Senate Bill 95 (2015)**
—Gregory J. Fouratt, Secretary, DPS
—Pete Kassetas, Chief, New Mexico State Police (NMSP); Deputy Secretary, DPS
- 2:15 p.m. (5) **Violent Crime in New Mexico — The 2014 Uniform Crime Report**
—Gregory J. Fouratt, Secretary, DPS
—Pete Kassetas, Chief, NMSP; Deputy Secretary, DPS

- 3:00 p.m. (6) [Unprocessed Rape Kits](#)
—Connie Monahan, Statewide Sexual Assault Nurse Examiner (SANE) Coordinator
—Julianna Koob, Legislative Advocate, New Mexico Coalition of Sexual Assault Programs
—Gregory J. Fouratt, Secretary, DPS
—Timothy Keller, State Auditor
—John F. Krebsbach, M.S., Crime Laboratory Director, Scientific Evidence Division, Albuquerque Police Department
- 4:00 p.m. (7) [Inmate Dairy Work Program](#)
—Dr. Al Squire, D.V.M., Owner/Operator, Southwind Dairy
—Dr. Linda Squire, D.V.M., Owner/Operator, Southwind Dairy
- 4:30 p.m. **Public Comment**
- 5:00 p.m. **Recess**

Tuesday, December 1

- 9:30 a.m. **Reconvene**
—Representative Zachary J. Cook, Co-Chair
—Senator Richard C. Martinez, Co-Chair
- 9:30 a.m. (8) [Law Enforcement Assisted Diversion \(LEAD\)](#)
—Angela "Spence" Pacheco, First Judicial District Attorney
—Bennett J. Baur, Acting Deputy Chief, Public Defender District, North Central New Mexico
—Emily Kaltenbach, New Mexico State Director, Drug Policy Alliance
—Captain Jerome Sanchez, Santa Fe Police Department
—Michael DeBernardi, Director of Behavioral Health Services, The Life Link
- 10:30 a.m. (9) [Report on Housing and Clinical Service Options for Individuals with Serious Mental Illness Who Are in Custody Awaiting Trial \(Senate Joint Memorial 4 \(2015\)\)](#)
—Senator Sander Rue
—Grace Philips, General Counsel, New Mexico Association of Counties (NMAC)
—Dino Sgambellone, Chief, Los Alamos Police Department
—Kathleen Sabo, Attorney, AOC
—Angela "Spence" Pacheco, First Judicial District Attorney
—Hank Hughes, Executive Director, New Mexico Coalition to End Homelessness

—Matthew Elwell, Director, Luna County Detention Facility; Chair,
Detention Administrators Affiliate, NMAC
—Micah Pearson, Vice President, National Alliance on Mental Illness,
Dona Ana County

12:00 noon (10) [Progress Made Toward Alleviating Segregated Housing — An Update](#)
—Matthew Elwell, Director, Luna County Detention Center; Chair,
Detention Administrators Affiliate, NMAC

12:30 p.m. **Lunch**

1:45 p.m. (11) [Consideration of Legislation — Uniform Trust Decanting Act, Rule
Against Perpetuities and Uniform Powers of Appointment Act —
Combined Legislation](#)
—John W. Anderson, Executive Vice President, New Mexico Bankers
Association
—Jack Burton, Uniform Law Commissioner

2:15 p.m. (12) [Human Trafficking](#)
—Susan Loubet, New Mexico Women's Agenda

2:45 p.m. (13) [Problems with Obtaining Mental Health Evaluations](#)
—Diana A. Martwick, Twelfth Judicial District Attorney

3:15 p.m. (14) [Truancy as a Stand-Alone Offense](#)
—Diana A. Martwick, Twelfth Judicial District Attorney

3:45 p.m. (15) [Homeowner Association Act — Two Perspectives](#)
Panel 1 — The Homeowner Association Act — Problems and Concerns
—Senator Mimi Stewart
—Tom K. Pollard, Ph.D.
—Tego Venturi, Venturi Team Realtors
—Teri Buhl, Vice President, Santa Fe Area Home Builders Association
—TBD

Panel 2 — The Homeowner Association Act — View from the Industry
—Tom Simon, Professional Community Association Manager, WestGate
Properties, LLC
—Rey Post, Sotheby's International Realty
—Javier Delgado, Attorney, Carpenter, Hazlewood, Delgado & Bolen, PLC
—John Krueger, Vice President, Government Affairs, Associa

5:30 p.m. **Public Comment**

6:00 p.m. **Recess**

Wednesday, December 2

- 9:30 a.m. **Reconvene**
—Representative Zachary J. Cook, Co-Chair
—Senator Richard C. Martinez, Co-Chair
- 9:30 a.m. (16) **Consideration of Legislation — A Bill Requiring the Corrections Department to Submit a List of Inmates Who Are Eligible, or Who May Become Eligible, for Medical or Geriatric Parole to the Parole Board**
—Senator Bill B. O'Neill
- 10:00 a.m. (17) **Consideration of Legislation — A Bill Requiring That a Person Assigned to an Intensive Supervision Program Also Be Enrolled in a Behavioral Health Program; Requiring Incorporation of Evidence-Based Behavioral Health Programs into Community Corrections; Requiring the Corrections Department to Use a Validated Risk and Needs Assessment**
—Senator Bill B. O'Neill
—Charles Sallee, Deputy Director, Legislative Finance Committee
- 10:30 a.m. (18) **Consideration of Legislation — A Bill to Expand the Scope of the Three-Strikes Statute**
—Representative William "Bill" R. Rehm
- 11:00 a.m. (19) **Consideration of Legislation — A Bill Establishing the Crime of Driving While Intoxicated with a Minor in the Vehicle**
—Senator Lisa Torracco
- 11:30 a.m. (20) **Consideration of Legislation — A Bill Allowing for the Use of Civil Compromise**
—Representative Rick Little
—Jorge Alvarado, Chief Public Defender
- 12:00 noon (21) **Consideration of Legislation — A Bill to Allow the New Mexico Department of Agriculture to Adopt Rules for Research on Industrial Hemp**
—Senator Cisco McSorley
- 12:20 p.m. (22) **Consideration of Legislation — An Appropriation to DPS to Analyze DNA Evidence Kits**
—Senator Cisco McSorley
- 12:25 p.m. (23) **Consideration of Legislation — An Appropriation to the Department of Health for Sexual Assault and Rape Crisis Center Services**
—Senator Cisco McSorley

- 12:30 p.m. (24) [Consideration of Legislation — A Bill to Expand the Scope of the Three-Strikes Statute](#)
—Representative Paul A. Pacheco

Working Lunch

- 1:00 p.m. (25) [Consideration of Legislation — A Bill Providing for a Distribution from the Law Enforcement Protection Fund to Certified Regional Law Enforcement Training Facilities and the New Mexico Law Enforcement Academy](#)
—Representative Patricio Ruiloba

- 1:30 p.m. (26) [Consideration of Legislation — Bills Proposed by the Children, Youth and Families Department \(CYFD\)](#)

Battery on a CYFD Worker (Sponsored by Representative Doreen Y. Gallegos)

- Monique Jacobson, Secretary, CYFD
—Lisa Madrid-Schleicher, Protective Services Division, CYFD
—Amanda Romero, Office of General Counsel, CYFD

Absconders (Sponsored by Representative William "Bill" R. Rehm)

- Representative William "Bill" R. Rehm
—Nick Costales, Deputy Director for Juvenile Justice Services, CYFD

Intentional Abuse Increased Penalties (Sponsored by Representative Conrad James)

- Representative Conrad James
—Jennifer Saavedra, Deputy Secretary, CYFD

Negligent and Intentional Child Abuse (Sponsored by Representative Conrad James)

- Representative Conrad James
—Michael Heitz, General Counsel, CYFD

Criminal Images to Children (Sponsored by Representative Kelly K. Fajardo)

- Representative Kelly K. Fajardo
—Michael Heitz, General Counsel, CYFD

- 3:30 p.m. (27) [Consideration of Legislation — A Bill to Remove the Age Distinction in Cases of Intentional Abuse of a Child Resulting in Death](#)
—Representative Nate Gentry

4:00 p.m. (28) [Consideration of Legislation — A Bill to Add Law Enforcement Officers to the Hate Crimes Act](#)
—Representative Nate Gentry

4:30 p.m. **Public Comment**

5:00 p.m. **Adjourn**

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

**November 30-December 2, 2015
State Capitol, Room 322
Santa Fe**

The sixth meeting of the Courts, Corrections and Justice Committee (CCJ) was called to order by Senator Richard C. Martinez, co-chair, on November 30, 2015 at 9:44 a.m. in Room 322 of the State Capitol in Santa Fe.

Present

Rep. Zachary J. Cook, Co-Chair
Sen. Richard C. Martinez, Co-Chair
Rep. Eliseo Lee Alcon
Sen. Joseph Cervantes
Rep. Gail Chasey (11/30, 12/2)
Rep. Jim Dines (12/2)
Rep. Rick Little
Sen. Linda M. Lopez
Rep. Antonio Maestas (11/30, 12/2)
Sen. Cisco McSorley
Rep. Andy Nunez
Rep. William "Bill" R. Rehm
Sen. Sander Rue

Absent

Rep. Georgene Louis
Sen. Lisa Torracco

Advisory Members

Sen. Jacob R. Candelaria
Sen. Bill B. O'Neill
Rep. Paul A. Pacheco (12/2)
Sen. John Pinto
Rep. Patricia Roybal Caballero (12/1, 12/2)
Rep. Patricio Ruiloba (12/1, 12/2)
Sen. Mimi Stewart
Sen. Peter Wirth

Sen. Craig W. Brandt
Rep. Brian Egolf
Rep. Doreen Y. Gallegos
Sen. Daniel A. Ivey-Soto
Rep. W. Ken Martinez
Sen. William H. Payne
Sen. Michael S. Sanchez
Rep. Christine Trujillo

Guest Legislators

Rep. Jimmie C. Hall (12/1, 12/2)
Rep. Monica Youngblood (12/1)

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

Minutes Approval

Because the committee will not meet again this year, the minutes for this meeting have not been officially approved by the committee.

Staff

Douglas Carver, Staff Attorney, Legislative Council Service (LCS)
Monica Ewing, Staff Attorney, LCS
Celia Ludi, Staff Attorney, LCS
Shawna Casebier, Staff Attorney, LCS
Rebecca Griego, Records Officer, LCS
Nancy Martinez, Intern, LCS

Guests

The guest list is in the meeting file.

Handouts

Handouts and other written testimony are in the meeting file.

Monday, November 30

Senator Martinez welcomed members of the committee and the audience to the meeting, and committee members introduced themselves.

Election Reform Legislation: Campaign Finance Disclosure and Changes to the Voter Action Act

Senator Wirth introduced two election reform bills for the committee's consideration.

The first bill, which revises the Campaign Reporting Act, addresses campaign finance disclosures and revises provisions of law that were rendered unconstitutional following decisions by the United States Supreme Court and the Tenth Circuit Court of Appeals.

The bill provides: a definition for "coordinating" in the context of an independent expenditure committee working with a candidate; certain increased contribution limits; clarification on when disclosures are required by entities that expressly advocate and that educate voters within established 30- and 60-day time frames; and a delayed effective date of November 9, 2016 to allow for the current election cycle to end before the law takes effect. Senator Wirth noted that the Secretary of State's Office (SOS) has been working on the issues represented in the legislation.

Jon Boller, staff attorney, LCS, said that the bill creates two categories with respect to independent expenditure committees: one for political committees and one for organizations whose campaign spending is below a certain threshold.

In response to a member's question, Senator Wirth recalled the progress of the bill during previous legislative sessions. He said that the bill has passed the senate twice but has encountered obstacles despite the fact that the language in the bill mirrors existing federal law. He added that the bill he presented is the version of the bill that was passed by the House Judiciary Committee during the 2015 session, except that the delayed effective date has been added. Mr. Boller added that he made some stylistic changes to Section 12 of the bill.

A member suggested that the use of a graphic to show relevant time triggers contained in the bill would be helpful. The member also thanked the SOS for its work on the issue and for delaying rulemaking on the issue to allow for a possible legislative solution to be developed.

In response to a member's question about the applicability of the bill's reporting provisions, Senator Wirth said that the requirements relate to all nonprofit organizations that are campaigning or educating voters during relevant time periods. He added that the bill has received unanimous support in the senate in part because of its equal treatment of those organizations.

A member asked for clarification about the definition of "coordinated expenditure". Mr. Boller and Senator Wirth explained that the definition helps clarify whether a certain activity qualifies as "coordinating" and said that the reporting provisions are triggered only when "coordination" is present.

Kari Fresquez, state elections director, SOS, introduced Amy Bailey, SOS general counsel; Mandy Vigil, manager of the SOS Ethics Division and deputy election director. Ms. Fresquez said that she worked with Senator Wirth on the issues presented in the bill. The current law is difficult to administer because it is outdated and includes unconstitutional provisions. The SOS supports changes to the law that provide clarity and ease of administration, and she added that Senator Wirth's bill resolves some of those issues and the current SOS administration supports the legislation.

In response to a member's question, Ms. Fresquez said that it would be difficult to report information about certain entities that participate in campaign activities, but that are not required to register with the SOS. Because independent expenditure committees voluntarily report to the SOS, enforcing compliance could be problematic. Historically, when the SOS confirms a failure to comply with reporting requirements, the SOS will refer the case to the Attorney General's Office (AGO).

Senator Wirth presented a second bill that includes revisions to the Voter Action Act and addresses issues related to publicly financed candidates. He recalled that the bill passed the

legislature in the 2013 session but was vetoed by the governor and then passed the senate during the 2015 session. Among other provisions, the bill provides restrictions on the use of public campaign funds, details related to candidates who run in uncontested elections and provisions related to matching funds.

A member suggested that the bill be revised to explicitly restrict the use of public campaign funds for living expenses of candidates, their family members and other persons who reside with a candidate.

Ms. Fresquez said that the SOS has not taken a position on the bill.

A member suggested that the public financing provisions in law should be changed to allow a person to opt out of publicly financing the person's campaign even if the person initially chose that option.

A member emphasized that the legislature and legislative leadership will have to make the bill a priority in order for it to pass in time for the end of the current election cycle.

Report on In-House Parole

Judith Rosenstein, president of the board of directors for the New Mexico Women's Justice Project, presented the results of a study of the use of "in-house parole", which is the practice of keeping inmates incarcerated during their parole period. She said that in-house parole is used in some instances because inmates' parole plans are not approved by the time an inmate is eligible for release. Insufficient staffing contributes to the delay in preparation of parole plans. Ms. Rosenstein noted that the Legislative Finance Committee (LFC) estimated that delayed parole release cost the state \$10.3 million in fiscal year (FY) 2014.

Marcia Wilson explained the differences between probation and parole. Both periods are imposed by a judge and are supervised by Corrections Department (CD) probation and parole officers. When a person violates the terms of his or her probation, a judge hears the matter; however, parole is administered by the Adult Parole Board and the CD. Ms. Wilson explained that the report on in-house parole served by female inmates was prepared using documents from the CD, which included case managers' notes about every woman in the states' prisons who served in-house parole during 2014.

Ms. Rosenstein said that there are similar concerns with in-house parole served by male inmates. She expressed concerns with the use of in-house parole, particularly in privately run prisons that may have a financial incentive to maintain higher inmate populations. She added that the state has not contracted with the Corrections Corporation of America to operate the women's correctional facility in Grants and that the facility will instead be run by the CD.

Ms. Rosenstein informed the committee that the function of parole is to help an inmate's transition from incarceration to life outside a facility. If a woman serves her entire period of

parole inside a facility, upon release she will have no supervision and no assistance with supportive services. Ms. Wilson noted that public health concerns, such as alcohol and substance use addiction, are present among a majority of incarcerated women, and it is important that inmates have access to services when they are released.

A member suggested that the CD should be required to release inmates when they are eligible for parole. The current statute provides that it is permitted, but not required, that the CD release inmates who become eligible for parole.

A member noted that New Mexico is among a minority of states that administer probation through the executive branch. In most states, probation is administered through the judicial branch.

In response to a member's question, Sherry Stevens, director, Adult Parole Board, said that the board has requested additional funding for the coming fiscal year for parole hearings at the Grants women's facility. Rose Bobchak, director of probation and parole for the CD, added that the CD will provide information to the CCJ about fiscal needs that relate to in-house parole.

Ms. Wilson noted that the LFC reported that 78% of incarcerated women were released on time; however, it is not clear whether those who were released had been released on parole or were released after having served a period of in-house parole.

In response to a member's question, Missy Ortiz, a representative of the CD, informed the committee that some women who enter a corrections facility have been sentenced to incarceration for fewer than 180 days, so the CD must begin work on those inmates' parole plans immediately upon their arrival in the facility. She added that the CD has reduced the number of inmates who serve in-house parole periods.

A member asked whether the CD has requested additional funding in its budget for caseworkers. Ms. Ortiz responded that the CD requested funding for additional full-time employees. The member emphasized the importance of additional caseworkers and programming in the state's correctional facilities, and he added that it is problematic that many parolees do not have living arrangements upon their release.

Consideration of Legislation — Bills Proposed by the Administrative Office of the Courts (AOC)

Arthur W. Pepin, director, AOC, presented three pieces of legislation for the committee's consideration.

The first bill creates a "language access fund" to allow for the segregation of funding used for language access services and jury and witness fees. It passed the legislature during 2015, but was vetoed by the governor. He noted that both programs need adequate funding and should

therefore be tracked separately so that the AOC is able to identify and request necessary funding. The committee endorsed the bill without opposition.

Mr. Pepin explained that the second bill creates the "judge pro tempore fund" to hold money used to pay the costs associated with judges pro tempore, who serve under circumstances provided in the Constitution of New Mexico. He said that annual costs associated with judges pro tempore vary significantly, and if the AOC maintains a balance in the newly created nonreverting fund, it would not have to pursue supplemental funding from the legislature each year. A member emphasized the importance of judges pro tempore because of the insufficient number of judges in the state and because they are often needed in complex cases, such as water law cases. It is important that there is sufficient funding to pay those judges and not pass the cost of special masters or judges on to litigants. The committee endorsed the bill without opposition.

The third bill creates a new judgeship in the Fifth Judicial District and provides a related appropriation. Mr. Pepin explained that the AOC follows a detailed process to determine which judicial districts have the greatest needs for additional judgeships. The proposed judgeship would serve Chaves, Lea and Eddy counties. A member expressed support for the bill and added that the state also needs additional district judges and magistrate judges. The committee endorsed the bill without opposition.

Approval of Minutes

The committee approved the minutes for the September and October committee meetings.

Reorganization of the Department of Public Safety Under Senate Bill 95 (2015)

Gregory Fouratt, secretary of public safety, thanked the committee for the legislature's support of the reorganization of the Department of Public Safety (DPS) in 2015.

Pete Kassetas, chief of the New Mexico State Police and deputy secretary of the DPS, said that the department recently toured the state to discuss the reorganization and to respond to concerns about it. The department has hired an organizational consultant to assist with the reorganization and has formed reorganization working groups. The department's goal is to create a unified state police department, with a single uniform, insignia and commission. On Friday, December 4, 2015, the first class of recruits will graduate under the newly unified operation.

Chief Kassetas said that the DPS wants to identify how it can cooperate with and support other agencies in addressing crime. The department is in need of new equipment, cars and cameras. The department will continue consolidation of its dispatch centers over the next five years into three centers. He reported on the work of the five working groups, and Secretary Fouratt said that the groups were composed of junior and senior members of the departments' ranks in all three enforcement divisions.

A member commended Secretary Fouratt for his work on the reorganization, which will improve the efficiency of the department. He expressed support for the department's requests for

additional funding. Secretary Fouratt reported that with the legislature's support, the DPS has improved its marketability as an employer and is currently between sixth and seventh in the state in terms of favorable law enforcement agency employers.

A member suggested that because the department has difficulty recruiting officers, perhaps a short-term hiring incentive could be developed. Chief Kassetas noted that the inability of a retired officer to be rehired and to continue to receive a pension places the department at a disadvantage, but it helps university and tribal police departments in which retired officers often become employed. Another member said that he was informed that law enforcement officers who return to work after retirement contribute approximately \$15 million per year to the state's public employee retirement funds.

In response to a member's question, Chief Kassetas explained that the number of officers on a shift at any time varies significantly by geographic area.

Gregg Marcantel, secretary of corrections, said that the University of New Mexico is conducting a department staffing study and the results should advise on the appropriate size of the department and related funding needs. The report results will be presented to the committee.

In response to questions from a member, Chief Kassetas said that the DPS would provide a department salary schedule to the committee. He said that the top salary for a patrolman is between approximately \$52,000 and \$53,000, and he added that employees who leave the department cite low pay and inconsistent pay increases as reasons for departure. Secretary Fouratt added that many officers retire as soon as they are eligible to pursue other policing jobs that offer better pay.

Violent Crime in New Mexico — The 2014 Uniform Crime Report

Secretary Fouratt informed the committee that New Mexico was ranked the second-most-violent state in 2013, using the rates of murder, forcible rape, robbery and aggravated assaults as measurements. In 2014, the state was ranked the fourth-most-violent state in the country. Espanola was ranked the most violent city in the state, followed by Gallup and Belen. Albuquerque is in the top 5% of the most violent cities in the country.

Secretary Fouratt highlighted slide #7 in his presentation materials, titled "Violent Crime in New Mexico 2014 Uniform Crime Reporting (UCR) Data". The slide ranks the most violent cities in the state and shows each city's violent crime trend since 2012. He emphasized that the DPS needs additional resources to help improve the state's crime rates, and he added that the state could face economic development challenges without a change to its crime rates.

Chief Kassetas said that the state is also considered a dangerous place to drive, but there has been a decrease in fatal accidents from 2014 to 2015.

A member said that economic difficulties, crime rates and substance abuse are all related, and the state should dedicate more resources to treating substance abuse.

Unprocessed Rape Kits

Julianna Koob, legislative advocate for the New Mexico Coalition of Sexual Assault Programs, and Connie Monahan, coordinator, Statewide Sexual Assault Nurse Examiner (SANE), spoke to the committee about a backlog of unprocessed sexual assault examination kits and about sexual assault services in the state.

Ms. Koob expressed appreciation to the people who have been working to address the backlog of untested kits, including Senator Stewart, Representative Nate Gentry, State Auditor Tim Keller, Secretary Fouratt and John Krebsbach, Crime Laboratory director, Scientific Evidence Division, Albuquerque Police Department. She reported that the number of untested kits is approximately 5,000 to 6,000, and she added that several law enforcement agencies have not reported the number of untested kits in their possession, so that number could increase.

Ms. Koob acknowledged the courage it takes for a victim of sexual assault to report the crime and to allow a sexual assault examination to be performed. Victims of sexual assault should have access to services from rape crisis centers and other service providers, so adequate funding of those services is critical, particularly as testing of the backlogged examination kits takes place. She asked that the committee encourage its colleagues on the LFC to support a funding proposal to provide \$1 million to the Department of Health, \$1 million to \$2 million to the DPS and \$500,000 to the Human Services Department to provide for testing and services related to the backlog of untested kits.

Ms. Monahan said that the accumulation of untested kits in law enforcement agencies reveals a need for more education and training on the use of DNA evidence in the prosecution of crimes. A working group was convened and has met several times to discuss: how to build consensus on testing prioritization; how testing results will be shared with victims by advocates and law enforcement; and how other agencies will be affected by testing of the kits.

Secretary Fouratt emphasized that when the DPS requested inventories of untested kits from law enforcement agencies throughout the state, the department did not seek explanation for why the kits were untested. The department's initial concern is to determine the scope of the backlog. Approximately 31 agencies have not provided the number of untested kits in their possession, and the state auditor will pursue responses from those agencies.

State Auditor Keller acknowledged that the Office of the State Auditor's involvement in the case is aligned with the inventory-control audits the office already performs of police departments throughout the state. He said that from an accounting perspective, tracking the untested kits is an issue of inventory control. The state auditors in Kentucky and other states are also participating in similar audits to inventory untested kits in those states. The audit of untested sexual assault examination kits could become an annual process for the office.

Mr. Krebsbach said that the untested kits in the Albuquerque area date back to 1988. He noted that technology in this area changes very quickly and investigation procedures have evolved significantly since 1988, so it may be difficult to perform some tests. The working group and DNA laboratories will have to decide whether kits that are related to closed or resolved cases should still be tested because those results could help with other cases.

Ms. Koob said that while many things are uncertain, the group does know that victims who are notified of test results will need to be contacted by a trained advocate, and it is likely those victims will also need services in connection with the contact. She added that it is promising that people understand that sexual assault is a crime and that it is being reported; however, as reporting increases, the provision of resources must also increase.

In response to a question about how kits are tested, Mr. Krebsbach said that the kits include some or all of the following: hair, swabs from a person's body, saliva samples and clothing. Those items are examined to determine whether they include information that can be analyzed. The laboratories try to analyze samples from a victim's known partners, so they can determine whether that person's information was found in the test results. Information from testing is uploaded to a searchable database, and analysis is performed to determine whether the information matches any existing files in the database. He added that his laboratory will provide a report of the dates for the untested kits held in his laboratory.

A member asked how the legislature can assist, and Secretary Fouratt said that the laboratory in Albuquerque needs to be expanded and additional scientists, equipment and testing materials are needed. He said that testing a kit costs approximately \$4,000 and that more complicated kits cost more. Mr. Krebsbach agreed that his laboratory needs funding for the facility, personnel and equipment. He said he has employed five staff members since 1997 and the laboratory needs additional employees to help with an increased workload. He is seeking grant money to supplement resources. The member noted that individual members may be able to assist the laboratory with capital outlay-related needs.

In response to a question about privately testing the kits, Mr. Krebsbach said that his laboratory prefers not to have kits privately tested because it is costly and outside laboratories' systems and reports do not align with his, so his laboratory ultimately spends additional resources re-analyzing other laboratories' reports.

A member asked for an estimate of the funding required to test all of the samples from the Albuquerque area. Mr. Krebsbach said that it would cost approximately \$6 million over five years to test all of the untested sexual assault examination kits in his laboratory. Secretary Fouratt added that the DPS has requested approximately \$1.7 million to \$2.2 million to test the 2,000 kits that the DPS is responsible for testing, and he added that its testing would take 2.8 years. He confirmed that it would cost approximately \$8.5 million over five years to test all of the untested kits currently accounted for. Ms. Koob stressed that the cost would be a one-time expense of \$8 million and \$1 million in recurring funds.

A member reiterated that other states are dedicating resources to resolving this issue and thanked the state auditor for his assistance.

In response to a comment about prioritization of testing, Ms. Koob said that there are many perspectives that should be considered, and it may help to establish a task force through legislation for this purpose. She added that her priority is to ensure that victims are served by experts throughout the process.

Inmate Dairy Work Program

Linda Squire, a veterinarian and owner and operator of the Southwind Dairy, said that she contacted the Roswell Correctional Center (RCC) about 18 months ago to establish an inmate work program at her dairy. The goal of the program was to provide training, introduce inmates to a trade and allow them to save money before their release. The program benefited the dairy, which has a hard time finding dedicated agricultural workers. The 30 inmates who participated in the program were categorized as low-risk inmates, and one participant continues to work for the dairy since his release. The dairy has offered jobs to several other participants. While dairy jobs are hard work, a dedicated employee can make a good living in this stable industry.

The dairy and the RCC discontinued the program because neither party was able to develop a contract for the program that sufficiently protected the parties from potential liability arising from the program. Ms. Squire was disappointed because the program was beneficial to everyone involved.

Al Squire, also a veterinarian and owner and operator of the Southwind Dairy, expressed appreciation for several employees of the RCC who worked with the dairy to establish the work program. He explained that participants were paid \$7.50 per hour, \$5.00 of which was used to provide security, transportation and participant clothing and equipment and the rest of which was paid to participants. Participants worked during one of two six-hour shifts during the day milking cows, performing other work on the dairy and learning about care and compassion for the animals.

Bill Squire, Linda and Al's son who works for the family business, said that the training provided by the dairy was specialized and helped ensure the safety of the cows and the workers. The dairy initially delivered a presentation to the RCC and explained how the dairy business works. He said the program required a significant commitment by the dairy and participants and it was a successful program.

Bill Nesbitt, the father of one of the inmate participants, read a letter that he wrote about the value of the work release program to the committee. In the letter, he expressed his appreciation for the program and its effect on his son, Pete. After Pete started his work with the dairy, Mr. Nesbitt's son talked about the value of hard work, compassion for animals, education and his own rehabilitation. He said that the terms of Pete's probation did not allow him to continue work at the dairy, but he would like to return to work there.

A member asked Anna Martinez, acting director for the Corrections Industries Division of the CD, if the CD has found a way to allow the dairy's work program to continue. Ms. Martinez said that the department was happy with the program, but had difficulty accommodating the liabilities that arose in connection with it. She said the program would have to be run as a work-release program or as a corrections industries program, but both options present obstacles for the CD and the dairy. The general counsel for the CD said that the department would require a dairy, such as the Southwind Dairy, to be insured in the event that the dairy's negligence caused harm to inmate-participants.

In response to a question about the possibility of other programs like the Southwind Dairy program, Al Squire emphasized how beneficial dairy work programs could be, particularly because many of the state's corrections facilities are located in close proximity to dairies.

A member stressed the importance of finding a way to allow the dairy work program to continue, given the reports of its success and the CD's support of the program.

A member suggested that Mr. Carver, the Squire family and the general counsel for the CD meet after the 2016 legislative session to work on developing a solution to the problems identified by the department and the dairy.

Recess

The committee recessed at 5:51 p.m.

Tuesday, December 1

Senator Martinez called the meeting to order at 9:40 a.m., and Representative Cook welcomed the committee members and meeting attendees.

Update on Law Enforcement Assisted Diversion (LEAD)

Emily Kaltenbach, New Mexico state director, Drug Policy Alliance, discussed the progress of the LEAD program one and one-half years into its implementation. Ms. Kaltenbach reminded members of the committee that LEAD is a pre-booking diversion program that redirects people who law enforcement has probable cause to arrest for low-level drug offenses from jail and prosecution to treatment and social supports, including harm reduction and intensive case management, in an effort to treat the root causes of opiate addiction. Ms. Kaltenbach discussed how LEAD provides access to community-based supports, including housing, food, transportation, mental health and addiction services, to qualifying individuals in an effort to reduce harm to the individual and community from drug addiction.

Ms. Kaltenbach noted that Santa Fe is the second jurisdiction in the United States after Seattle to implement the LEAD model. She pointed out that over 30 jurisdictions around the country are interested in implementing LEAD and that they are looking to New Mexico for guidance on how to replicate this program.

Ms. Kaltenbach stressed that criminalizing drug use is not working and that addiction is a public health issue, not a criminal issue. She stated that the LEAD program reduces property crimes linked to drug use, recidivism and the costs of drug use to the criminal justice and public health systems, in addition to reducing harm to the individual and the community by providing participants with increased access to community-based services and intensive case management.

Bennett J. Baur, acting deputy chief, Public Defender District, North Central New Mexico, commented that LEAD is a community system with input from multiple stakeholders. He stated that a policy committee composed of representatives of the district attorney and the city agencies meets once a week to go over the logistics of the program. He noted that training of Santa Fe police officers has been an interactive process full of questions and skepticism. However, he explained that everyone involved agrees that something new needs to be attempted to address drug addiction and its consequences and that at its core, LEAD is a public safety program. He mentioned that law enforcement and the district attorney determine who is allowed to participate and they also make the decision if someone has to leave the program.

Detective Casey Salazar of the Santa Fe Police Department discussed the eligibility requirements for participation in LEAD. He stated that law enforcement considers the criminal history of the individual and whether the crime involved possession of less than three grams of opiates. He further stated that the individual must be over 18 and not involved with the exploitation of minors nor the promotion of prostitution. As to criminal history, Detective Salazar explained that the individual cannot have a history of violent crime or aggravated felonies, and he stressed that LEAD eligibility is not a substantive right.

As to the LEAD process, Detective Salazar stated that a police officer first makes the arrest and, if the LEAD requirements are met, the police officer will contact a LEAD officer, who looks at the criminal history of the individual and makes contact with the district attorney to make a final eligibility determination. He stated that if the individual does not qualify for LEAD, the individual will go through the criminal justice system as usual. He stated that if the individual is eligible for LEAD, the individual will be referred to a case manager and must report to the case manager within seven days to do a full intake assessment. He noted that if the individual does the full intake assessment, the charges will be dropped; however, if within seven days the individual does not meet with the case manager for a full intake assessment, the district attorney may proceed to file charges. He added that the officers and case managers meet twice a month as a case coordinating group to discuss the progress of the individual and to learn about the services being provided.

Detective Salazar further noted that an individual could also participate in LEAD through a social contact referral. He explained that if someone is known as an opiate addict, an officer does not have to make an arrest to put the person in the LEAD program. He pointed out that the social contact referral component allows officers to be proactive, to prevent criminal activity and to help deal with addiction before arrest happens. He said that since April 2014, 51 clients have been referred to LEAD, 12 of whom were deemed ineligible due to incarceration, probation,

pending felony cases in other jurisdictions, violent behavior or declining to participate; there are 39 active clients, 18 of whom were social contact referrals.

Michael DeBernardi, director of behavioral health services, The Life Link, reported to the committee on the demographics of LEAD clients and the services they receive. He described clients as being a young population composed of mostly females. He further stated that most clients are homeless or unemployed and have substance use or mental health disorders. Mr. DeBernardi explained that The Life Link coordinates care and services for participants, with the foundation being harm reduction, as opposed to an abstinence-only approach. He said that through intensive case management and daily contact, The Life Link is a one-stop shop for clients to access other services, including basic needs such as housing, food and transportation, child care and opiate replacement therapy. He stated that all clients are engaged in case management, with a majority additionally engaged in coordinated care services and individual or family therapy.

Ms. Kaltenbach reported that from Seattle's LEAD evaluation results, participants were 58% less likely to go back to criminal justice, had 1.4 fewer jail bookings and spent 39 fewer days in jail in comparison to the control group of individuals who did not participate in LEAD. She also stated that LEAD participants showed cost reductions to the criminal justice and legal systems, whereas control group nonparticipants showed cost increases. She indicated that an evaluation plan for Santa Fe LEAD was being developed.

Angela "Spence" Pacheco, district attorney, First Judicial District, told the committee that there is a serious heroin addiction problem in the United States and that law enforcement is struggling with drug cartels and associated crimes. She said that it is a matter of hope about how the issue is perceived. She emphasized that heroin is a health issue, not a crime issue. She offered that society criminalizes the behavior, which leads to more people in prison and forced treatment, which, she was of the opinion, does not work. She stated that LEAD does not force anyone into sobriety, but rather helps the individual to stabilize and make better choices, leading to cost savings for government. She offered that the public cannot stop addiction and needs to reframe the issue of addiction to deal with it in ways other than putting someone in jail. She remarked that on the national level, Santa Fe is in the spotlight and that the country is looking toward Santa Fe to figure out how to deal with the issue. She informed the committee that Senator Nancy Rodriguez is requesting \$200,000 to support the LEAD program and asked the committee to endorse the program for funding.

Several members of the committee expressed support for the program and concept and stated that they would support continued funding of LEAD.

A member of the committee disagreed with Ms. Pacheco about the efficacy of forced sobriety, stating that drug courts are successful because they offer the choice of sobriety or jail.

Members of the committee inquired as to what had happened to Senator Rodriguez's 2015 appropriation request for LEAD, and Ms. Kaltenbach answered that the legislation for a two-year appropriation was line-item-vetoed by the governor, that Senator Rodriguez is reintroducing the bill and that it has been endorsed by the Legislative Health and Human Services Committee. Ms. Pacheco opined that the governor vetoed Senator Rodriguez's bill because the governor erroneously believed that there was a duplication of services because all district attorneys have in-house diversion programs. Mr. Baur stated that LEAD is not a replacement for drug court, which works well with a certain population that is not the LEAD population. He said that the point of LEAD is to help people who are nonfunctioning to build them up and get them what they need to function in society, which leads to hope and motivation to move forward and to get them to care about their lives.

In response to committee members' concerns about relying on the numbers provided regarding the efficacy of the program, Ms. Kaltenbach clarified that the statistics provided were based on the experience of Seattle over the past few years. She agreed with a committee member that, because the program in Santa Fe is new, there have not been enough years nor clients to do a quality study and that there will not be an evaluation from Santa Fe for another couple of years, as five to 10 years is needed to see a true benefit.

A member of the committee inquired into the intake assessment process. Mr. DeBernardi explained that the process is twofold: first, there is a LEAD assessment to ensure eligibility for the program; and second, a clinical assessment by a licensed professional clinical counselor, including a two-hour clinical interview, a taking of the client's full history and utilization of screening tools. Mr. DeBernardi explained that assessment is an ongoing process and clients will be monitored for diagnoses and treatment throughout the program.

In response to question by a committee member, Detective Salazar stated that someone who drops out of LEAD can choose to participate again as long as the individual is still qualified.

Members of the committee questioned why LEAD is only focused on opiate addiction and residential property crimes. Members of the committee expressed concern that the same diversion opportunity was not available to individuals with, for example, a history of alcohol abuse or violent crime, and that services afforded by participation in LEAD could be helpful for a broader category of community concerns. Ms. Pacheco responded that development of the program was in response to the city of Santa Fe dealing with a serious burglary rate, and money for the program was conditioned on addressing Santa Fe's specific concerns.

A member of the committee asked how the LEAD model could be developed in a larger community. Detective Salazar suggested that it is important for the community to develop trainings in coordination with law enforcement and get the officers to support the program. He stated that Seattle is a good model for a larger community, where the street and bike teams are at the forefront of making referrals. He also suggested that law enforcement look to its proactive

officers and assign them as a core team. However, he cautioned that departments should not be too selective because it is important to have broad support from the street-level officers.

Members of the committee wondered how much money the state has saved by implementation of LEAD and how much it costs per participant. Ms. Kaltenbach responded that a cost-benefit analysis was done before the program started but that the program has not been in existence long enough to know for sure. She said that she originally believed the program would cost about \$10,000 per participant, but the real cost is variable around \$7,000 per participant, depending on the participant's specific issues, which may include homelessness or other chronic problems. She stated that many of the participants are Medicaid-eligible and able to get services through that source.

A member of the committee questioned whether participation in the program was voluntary. Detective Salazar clarified that one aspect of the program was diversion from arrest and jail and that participation was dependent on an eligible individual following up to do a full intake assessment seven days after the initial intake; otherwise, arrest was possible. He said the social contact aspect of the program was absolutely voluntary.

In response to a committee member's concerns about participants continuing to use drugs while participating in the program, Mr. DeBernardi stated that participants are tested for drugs once per week, but that testing was used as motivator for services instead of as a punitive measure.

A member of the committee raised the concern that more lives could be saved from overdose if people understood the effectiveness of naloxone and had access to it. Panel members agreed that public education about naloxone and its efficacy could be increased in addition to barriers being eliminated to increased access.

In response to a question about the lack of detox facilities in New Mexico and the relationship to LEAD, Mr. Baur responded that LEAD is building better relationships between law enforcement and the treatment field so as to have options for people who need that type of assistance.

Report on Housing and Clinical Service Options for Individuals with Serious Mental Illness in Custody of County Facilities

Senator Rue thanked the committee for its role last session in passing Senate Joint Memorial 4, which established a task force to study and make recommendations for clinically appropriate housing options for individuals with serious mental illness who are in custody in county detention facilities. He stated that the consequence of people with severe mental issues committing crimes is a public health and safety issue, and in order to address the public safety issues, society needs to find a way to help those individuals who cannot help themselves. He then introduced the members of the task force.

Grace Philips, general counsel, New Mexico Association of Counties (NMAC), addressed the members of the committee, stating that there are 27 detention facilities throughout the state and, on a fiscal level, one-third of a county's budget goes to detention operations. She informed the committee that on a human level, New Mexico is only one of two states in the nation that has more people in jail than prison, citing that in 2013, there were twice as many women and 1,000 more men in county jails than in prisons. Although there were 100,000 county jail bookings in New Mexico last year, she informed the committee that three-fourths of those booked are out within 14 days, and for felonies, 147 days. However, she stated, if mental illness is a factor, the length of stay increases by at least a month, with a psychotic diagnosis increasing the length of stay by 121 days. Additionally, she informed the committee that when competency is challenged, the median length of stay is increased by 11 months if the individual is found competent and 18 months if the individual is found incompetent.

She noted that there are fewer than 200 beds in the New Mexico Behavioral Health Institute at Las Vegas, and the state has a total of 491 licensed psychiatric beds. Using data from the Bernalillo County Metropolitan Detention Center as a guide, she stated that 35% of the detention center population is on psychotropic medications, which suggests that there are over 2,500 individuals with serious mental issues in jail. She advised that these statistics do not mean that all individuals would be eligible for hospital care but that it is worth noting to understand the scope of the problem.

In coming up with its recommendations, Ms. Philips stated that the task force referred to studies by the New Mexico Sentencing Commission and took informal surveys of detention administrators to identify the individuals who are most challenging to manage and do not belong in jail. She explained that from the surveys and data, the task force tried to define the characteristics of the population concerned. She summarized that many individuals were in the pretrial stage, charged with nonviolent offenses, and two-thirds have had their competency challenged.

The panel then reviewed with the committee the six recommendations of the task force listed in the handout titled "Senate Joint Memorial 4 Task Force Recommendations, December 2015". Recommendations include:

- identify the population and assess its risks and needs;
- inventory available resources and gaps;
- provide for release from detention supported by wraparound services;
- provide for housing in conjunction with other services;
- create secure clinical facilities to serve "gap" populations; and
- educate stakeholders regarding benefits of supportive treatment for individuals living with serious mental illness and available tools for release.

Chris Tokarski, executive director, Mental Health Resources, Inc., reviewed the task force's first recommendation to identify the population and assess its risks. He asserted that the

assessment process across the state is very diverse and that recommendations are needed to fit the various counties, including frontier and rural areas. He stated that detention facilities have a growing population of the mentally ill, and assessments at the facilities usually determine prescribed medications and whether a mental health issue exists, but not treatment needs. He offered that assessments need to identify substance abuse, housing, medical, community support, financial and mental health issues to allow detention centers to develop release plans, treatment plans and an accountability process with a focus on reducing, but not necessarily eliminating, the number of individuals with mental health challenges being detained.

Kathleen Sabo, attorney, AOC, reviewed the second recommendation and summarized that an accounting of services on a community-by-community basis is needed to determine what is available to the population post release and what is lacking.

Ms. Pacheco reviewed the third recommendation to provide for release from detention supported by wraparound services. She summarized that because the mental health condition is usually tied to the crime, the individual should not be treated as a criminal; however, without comprehensive services, people with serious mental health issues will continue to linger in jail facilities.

Hank Hughes, executive director, New Mexico Coalition to End Homelessness, reviewed the fourth recommendation to provide for housing in conjunction with other services. He stated that permanent supportive housing models could show significant financial savings for jails and hospitals and that there is some federal funding available. He said that the New Mexico Linkages program has over 100 beds, but that more are needed. He also mentioned that individuals could participate in a program to receive a housing voucher for 70% of housing costs, which automatically improves mental health and also connects a client to directed, individualized services. He explained that for people who need more assistance with taking their medications or support until they are able to manage on their own, group homes are a viable option. He offered that there is a role for the legislature to provide more money for state-funded linkages and more structured housing.

Matthew Elwell, director, Luna County Detention Facility, and chair, Detention Administrators Affiliate, NMAC, discussed the fifth recommendation, to create secure clinical facilities to serve "gap" populations. He stated that New Mexico needs therapeutic, secure facilities spread throughout the state to help individuals who have essentially hit rock bottom. He explained that these people have possibly not been on their medications for years, are self-medicating or do not have a diagnosis of their mental health condition. He suggested that a facility is needed to help get them back on medications and get stable, so that they can either be housed with the general population or kept in a therapeutic facility until adjudicated. He pointed out that there are not a lot of models on this countrywide and that New Mexico would be on the cutting edge in creating secure clinical facilities. He suggested that the facilities should be of a detention administrator classification, but they could also have a community component to them, for example, outpatient or vocational facilities. He proposed that it was important to ask how the

facility can serve the community as well as corrections and that providing dual services may help to keep costs down as well as generate good outcomes for the community. He indicated that creation of secure clinical facilities would potentially require changing some laws (for example, building codes) and making determinations about the proper oversight authority (for example, health, corrections or regional authority).

Micah Pearson, vice president, National Alliance on Mental Illness, Dona Ana County, discussed the last recommendation, to educate stakeholders regarding benefits of supportive treatment for individuals living with serious mental illness and available tools for release. Mr. Pearson, who is bipolar, stated that education around mental illness is necessary for all to reduce the stigma in society. He summarized that people with mental illnesses are usually the victims of crime and education will minimize interactions with law enforcement.

Members of the committee asked questions about and discussed:

- the lack of uniformity of assessment across counties;
- federal Health Insurance Portability and Accountability Act of 1996 implications for law enforcement and referrals to mental health services;
- how to provide services to individuals who are homeless;
- housing options after incarceration;
- the cost-effectiveness of providing treatment instead of incarceration;
- the potential necessity of redefining the rules and regulations regarding secure facilities to serve both law enforcement and mental health treatment purposes;
- the New Mexico Behavioral Health Institute as a secure mental health treatment facility; and
- Medicaid eligibility of individuals in detention.

A committee member asked the panel to provide a funding request by January 2016 to implement the treatment recommendations discussed.

Progress Made Toward Alleviating Segregated Housing — An Update

Mr. Elwell informed the committee that the special management policy was implemented in 29 separately run facilities statewide. He advised the committee that the past year was spent looking at which facilities had implemented the policy, if the policy was being followed as drafted and what tools and support facilities need to get staffing up to speed for implementation. He summarized that the policy mitigates liability and creates cohesion in special management housing. He added that every center had been visited and that data are being gathered now.

He reported that in Luna County, when the process was started three years ago, 15% of the population was in special management, but today only 2% to 4% percent are. He explained that although the population has grown, fewer people need to be managed. He said that of those who are involuntarily in segregation, more of them are now in small general population areas and double cells are being used instead of single cells for disciplinary measures. He stated that

individuals are getting two to 10 hours a day out of confinement, in addition to access to mental health treatment, anger management, self-help, anxiety support groups and resources for developing coping skills while incarcerated. He told the committee that seriously ill individuals, once stabilized, are placed in a peer-mentoring program and are allowed to mingle with the general population, although there has been little success with seriously mentally ill individuals living in the general population for more than three days.

Mr. Elwell concluded by stating that there were more developments to come, and he encouraged members of the committee to visit local jails and see the various models in the pilot stage.

Consideration of Legislation — Uniform Trust Decanting Act, Rule Against Perpetuities and Uniform Powers of Appointment Act — Combined Legislation

John W. Anderson, executive vice president, New Mexico Bankers Association, introduced Jack Burton, attorney and commissioner, Uniform Law Commission, and Patrick Schaefer, senior vice president, New Mexico Bank and Trust.

Mr. Schaefer reviewed his handout, "4th Annual Dynasty Trust State Rankings Chart", and explained that the proposed legislation could put New Mexico in the top 10 of the rankings, which would be a more attractive position to compete with other states to attract wealthy people to establish residency in New Mexico. Wealthy people who establish residency in the state because of favorable treatment of estate planning and management services would provide economic benefits to professions such as legal, tax accounting and real estate management services, as well as increasing bank deposits. He noted that some states have combined the proposed measures with no state personal income tax to attract wealth to their states.

Mr. Burton explained that the proposed legislation, available at item (11), "Uniform Trust Acts", combines the provisions of Senate Bill (SB) 60 (2015), which passed the senate and died in the house of representatives, and adds the Uniform Trust Decanting Act and amends the statutory rule against perpetuities in regard to assets held in a trust.

Committee members expressed concern about including the provisions of SB 60 with the amendments to the statutory rule against perpetuities and the addition of the Uniform Trust Decanting Act. One member wondered whether the inclusion of all of these provisions could be considered "logrolling"; another observed that a bill to amend the statutory rule against perpetuities had been introduced in the past eight sessions and had never passed; and another commented that passing on wealth is not always a good idea and offered the San Francisco 49ers as an example. A committee member asked if there would be a message for the bill; Mr. Burton said the group is working on it. A committee member commented that the legislature will need to consider if it wants New Mexico to be a place that encourages people to come to shelter assets from children, spouses and creditors, and noted that the states on the top-10 list are not necessarily known as models of economic growth. Mr. Schaefer replied that being on the list is known to bring in wealth that residents can benefit from assisting to manage. Mr. Burton added

that some uniform laws have non-uniform options, and the Uniform Law Commission does not favor provisions that allow protection of assets from creditors, spouses and children. He said that the states on the list from Wyoming down do not allow that protection.

In the absence of a motion to endorse the proposed legislation, Mr. Anderson said in closing that the proponents are trying to provide an impetus for wealthy people to have their assets managed in New Mexico, and the proposed legislation would jump-start the economy in New Mexico at no cost to the state.

Human Trafficking

Susan Loubet, chair, Human Trafficking Task Force, referring to her handout at item (12), "Human Trafficking Task Force Update", provided the committee with updates on funding the Crime Victims Reparation Commission, legal services and ongoing FBI investigations of human trafficking. She then detailed the short-term and long-term needs of victims, following her handouts at item (12), "Victim Needs Short Term" and "Victim Needs Long Term". She explained that crisis housing for human trafficking victims should not be provided in domestic violence shelters because it increases risk from traffickers to both victims and other residents. She also informed the committee that a two-year study in Washington state identified the most important long-term need of victims as education and job training, especially for victims who are minors because often minors do not realize that what is happening to them is against the law and there are protections available to them. In answer to a question from a committee member, Ms. Loubet said that not all victims are female and not all victims are forced to work in the sex trade. Some traffickers specialize in workers in other industries such as construction and domestic services, and in some areas there are more specialized industries, such as in Ruidoso where horse racing is a big industry that draws participants temporarily from many different places.

Problems with Obtaining Mental Health Evaluations

Diana A. Martwick, district attorney, Twelfth Judicial District, spoke on behalf of the New Mexico District Attorneys Association (NMDAA) to inform the committee of the recent difficulties that prosecutors have encountered with the process to obtain competency-mental health evaluations. She said the practice statewide has been to send defendants whose competency is in question to the Behavioral Health Institute at Las Vegas for evaluation and treatment to competency, if necessary. In the past six months, the administration of the hospital has stopped performing evaluations and in numerous instances has informed prosecutors that the hospital will only treat but not evaluate, even though it is funded for both functions. The administration has not provided any explanation for this change in policy, and the district attorneys are concerned because their budgets do not include funding for private competency evaluations. Ms. Martwick observed that the Public Defender Department has money in its budget for experts, but the district attorneys do not because they are supposed to use the institute. Members of the committee expressed concern about the new policy.

Truancy as a Stand-Alone Offense

Ms. Martwick expressed concern about older minors who are truant from school after being dropped off by their parents. She said that parents can be charged if their child misses 10 days of school or more, but all of the responsibility is on the parents and none on the students. She said that in a situation where the parent is taking the student to school and the student leaves the school after the parent has left, the parent should not be held responsible; rather, the student should have to be accountable. Ms. Martwick said the district attorneys would like to see an alternative sentencing program to address truancy in older minors. A committee member asked about school responses to truant students, and Ms. Martwick responded that the school's response depends on the superintendent and so this varies widely across the state. A committee member recalled that information presented in other committee meetings indicated that evidence shows that one night spent in a detention center increases the chances of the juvenile not graduating high school by 50% and opined that a referral to a court often creates more problems for students and their families than it solves. Another committee member observed that it will require huge resources to find, arrest and place truants and that taking truants to court does not seem like a solution to the issue. A committee member suggested reaching out to the Legislative Education Study Committee. A committee member asked whether legislation is being contemplated, and Ms. Martwick confirmed that it is but has not been drafted yet. The committee member noted that committees do not endorse concepts, only actual proposed legislation, and thanked Ms. Martwick for informing the committee of the NMDAA's intention.

Homeowner Association Act — Two Perspectives

Senator Stewart provided a brief overview of legislative work regarding homeowner associations (HOAs). She said many legislators had received complaints over the years about various HOAs, particularly about governance issues such as notice of meetings, meeting attendance, voting rights and financial management transparency. In the absence of statutory guidance, conflicts regarding HOAs often end up in court, where they are usually decided based on contract law. After several years of work, a bill was introduced in 2010 and passed in one chamber but died in a last-minute filibuster in the other chamber. In 2013, an outline of a regulatory scheme for HOAs was passed, but some issues and unintended consequences have emerged since then that require remediation. One of the difficulties is that the Homeowner Association Act applies more to new HOAs than to existing HOAs. HOA issues are different from realtor and homeowner points of view, so she arranged two panels to address the issues.

Panel 1 — The Homeowner Association Act — Problems and Concerns

Teri Buhl, vice president, Santa Fe Area Home Builders Association, informed the committee that she lives in Rancho Viejo in Santa Fe, a community that has an HOA, and that she served as a member of the board of the HOA for a period of time. During her term, she saw other board members circumvent the bylaws, call board meetings without notifying dissenting board members and call the sheriff on homeowners who attended meetings and asked questions about association finances and about an outstanding audit with questions about missing money. She said that current state law allows a board to use HOA fees to pay a lawyer to stifle dissident homeowners, but dissident homeowners have to pay their own costs to challenge the board; there

is no recourse for homeowners. She asked for legislation that gives the AGO authority to oversee HOAs and a mechanism to hold boards accountable for fiscal and policy management.

Tom K. Pollard reviewed his handout at item (15), "Testimony of Tom K. Pollard, PhD". He asked for legislation modeled on Maine and Connecticut statutes regarding private road maintenance.

Tego Venturi, Venturi Team Realtors, spoke on behalf of the Greater Albuquerque Association of Realtors. He said that 3,500 of 11,000 real estate transactions in Albuquerque last year involved HOAs and opined that, in general, HOAs do a good job keeping property values up. Mr. Venturi told the committee that since passage of the 2013 legislation, buyers are getting more information about HOAs than ever before, but sellers' costs have increased, in some cases substantially, because of HOA charges to provide information required to be disclosed. He said much of the information is standard, but HOAs are charging the same fees for providing the same information, sometimes several times during the course of marketing and eventual sale of a property. What happens is a sale contract is signed, the seller requests the required disclosures from the HOA, the HOA provides the disclosures and charges a fee, and then for some reason the sale falls through, and the same thing happens with the next potential buyer: the information has not changed, but the HOA charges again for the same information because the disclosure is only good for 30 days. He noted that the seller had been paying monthly HOA fees during the term of ownership for the HOA to, among other things, maintain the records required to be disclosed at sale, and he expressed the opinion that it is unfair to charge the seller again for providing the information that had already been paid for through HOA fees. He suggested: (1) creating an oversight authority for HOAs; (2) creating a statewide database showing HOA fees for disclosure statements; and (3) requiring HOAs to disclose all potential fees at the closing.

Julie Yuska Buckalew, vice president and escrow operations manager, Stewart Title, commented that the title insurance industry was not included in bill drafting and subsequent legislative discussions. She commended the intent of the bill, but she said in practice it is proving to penalize sellers and not regulate HOAs. She also said the disclosure statements need more consistency. She suggested creating uniform documents and fee schedules and providing for collection of disclosure statement preparation fees at closing. She observed that paying the disclosure fees, especially multiple times, before they have received money from the sale can be a hardship for sellers.

Panel 2 — The Homeowner Association Act — View from the Industry

Tom Simon, professional community association manager, WestGate Properties, LLC, introduced the panel.

John Krueger, vice president, government affairs, Associa, informed the committee that the industry estimates that there are approximately 2,000 HOAs representing 260,000 residents and that property values in communities with HOAs are approximately 5% to 7% higher than in non-HOA communities. Only about 40% of HOAs are professionally managed; the rest are run

by volunteers. Mr. Kreuger stated that Associa had supported the Homeowner Association Act because the intent is to make the purchase of a home a fully informed transaction and said the act has resulted in fewer questions and disputes at closings and after. He remarked that it is important to have the information at least seven days before closing to allow time to properly review it. He questioned why the legislature would get involved in setting a cap on a service that has nothing to do with the cost of the service. He informed the committee that professional management companies make their money on ancillary fees like disclosure reports and that management fees are a net loss.

Mr. Simon concurred with Mr. Kreuger. Mr. Simon agreed that HOA boards need oversight, but averred that HOA management companies do not need the same oversight. He said the management company's job is to educate the board on how to manage the HOA and to educate new members of the community prior to purchasing about how to be a compliant homeowner. He further opined that HOA boards should not be required to have open meetings.

Rey Post, Sotheby's International Realty, focused his remarks on the relationship between realtors and HOAs. He said that transferring property has become much more complicated since the financial meltdown and there are new federal mandates for lenders regarding home sales; the Homeowners Association Act just adds more bureaucracy. He said that in his experience, HOAs that are self-managed are a nightmare to deal with and that professionally managed HOAs are much better.

Javier Delgado, attorney, Carpenter, Hazlewood, Delgado and Bolen, PLC, in Arizona, informed the committee that he has been representing HOAs since 2002 and cautioned the committee that fees charged for disclosure statements should cover the risk that the information provided is incorrect. He remarked that in his opinion, good governance cannot be legislated. He noted that HOA boards are elected, and he suggested that a homeowner who does not like the way the board operates should get elected to the board or not reelect board members. He further opined that the Nevada ombudsman process to resolve disputes between HOAs and homeowners is too slow and adds to the problem. In his opinion, nonprofessionally managed HOAs are the problem.

A committee member noted that there is a considerable range of fees and asked how fees are set. Mr. Kreuger said his company has a management fee and a fee schedule for ancillary services. Mr. Venturi said he has seen disclosure statement fees range from \$0 to \$400, transfer fees from \$0 to \$200 and "rush" fees of up to \$100. Mr. Kreuger noted that some HOAs also require inspection fees to complete a disclosure statement.

A committee member asked why the HOA could not publish information that is not particular to a specific property on a website instead of re-creating it for every individual sale. Mr. Simon said that the Nonprofit Corporation Act also impacts the issue; the act addresses some governance issues. He continued that most management companies have information packages

and that producing the packages requires regular updates. Mr. Kreuger added that fees are negotiated with the board when the management company is hired.

A committee member stated that more than half of the items on the disclosure statement apply to all properties in the community, so they do not change from one sale to the next. The member added that some realtors have requested the information now required to be included in the disclosure statement and have been given it by the HOA at no charge, but after passage of the Homeowner Association Act, HOAs and management companies have begun charging for the same information. Passage of the Homeowner Association Act spurred management companies and HOAs to create a very profitable new income stream without oversight.

Senator Stewart thanked the committee and panels for the discussion and said she hoped the industry would continue to work on the issue in the coming year so that a bill could be introduced to address the issues discussed today.

Public Comment

Diana Crowson addressed the issue of solitary confinement of incarcerated persons. She noted that in 1890, the United States Supreme Court said that solitary confinement is cruel and unusual punishment, and she added that evidence shows that solitary confinement can cause psychotic changes and increases recidivism rates for prisoners upon their eventual release. Referring to the Southern New Mexico Correctional Facility in Las Cruces, she said that 21 months ago, the entire facility was placed in lockdown, which is essentially solitary confinement for all prisoners, because of a murder in one area and allegations of gang membership, and that the lockdown has not been lifted since, despite court orders to do so. The committee chair asked Mr. Carver to follow up with the facility and provide an update to the committee.

Greg Cohelo, a 15-year resident of Eldorado south of Santa Fe and a two-year member of the HOA board, noted that the Homeowner Association Act does not have a sunset clause and suggested adding language regarding governance.

Eduardo, a resident of Eldorado, encouraged the committee to publish notice of its meetings more widely so all homeowners would have a chance to appear and the committee would not just hear from industry representatives.

Chris Mechels referred to his handout suggesting reforms in the DPS and the AGO and requested that the legislature withhold funds from those agencies until the reforms are achieved.

Recess

The committee recessed at 5:43 p.m.

Wednesday, December 2

Senator Martinez called the meeting to order at 9:31 a.m.

Public Comment on Policing Reform

Margarita Sanchez discussed various proposals for policing reform in the state. The proposals included ending "broken windows" policing, increasing community oversight of police, limiting the police use of force, having independent investigations and prosecutions of police misconduct, having police forces better reflect the communities they serve, increasing use of body and dashboard cameras and similar recording devices by the police and changing and increasing police training.

Consideration of Legislation — A Bill Requiring the Corrections Department to Submit a List of Inmates Who Are Eligible, or Who May Become Eligible, for Medical or Geriatric Parole to the Parole Board

Senator O'Neill presented the bill on geriatric parole to the committee, noting that it was one of the package of bills proposed by the Criminal Justice Reform Subcommittee (CJRS) in 2014. After discussion of the proposed legislation, upon a motion by Senator Rue, seconded by Representative Alcon, the committee endorsed the bill with no objections.

Consideration of Legislation — A Bill Requiring That a Person Assigned to an Intensive Supervision Program Also Be Enrolled in a Behavioral Health Program; Requiring Incorporation of Evidence-Based Behavioral Health Programs into Community Corrections; Requiring the Corrections Department to Use a Validated Risk and Needs Assessment

Senator O'Neill and Charles Sallee, deputy director, LFC, presented the bill on evidence-based programming and validated risk and needs assessments, noting that it was also one of the package of bills proposed by the CJRS in 2014. After discussion of the proposed legislation, upon a motion by Senator McSorley, seconded by Representative Maestas, the committee endorsed the bill with no objections.

Consideration of Legislation — A Bill Allowing for the Use of Civil Compromise

Representative Little and Jorge Alvarado, chief public defender, presented a bill to allow the use of civil compromise as an alternative to criminal prosecution, modeled on California law. After discussion of the proposed legislation, upon a motion by Senator McSorley, seconded by Representative Rehm, the committee endorsed the bill, with Senators Cervantes, Martinez and Rue voting against it.

Consideration of Legislation — A Bill to Expand the Scope of the Three-Strikes Statute

Representative Pacheco and Mr. Carver presented a bill to expand the scope of the state's three-strikes statute. After vigorous discussion of the proposed legislation, upon a motion by Senator Rue, seconded by Representative Rehm, the committee, after a roll call vote, endorsed the bill, with an amendment to add an applicability section, on a 9 to 4 vote. Representatives Cook, Alcon, Dines, Little, Maestas, Nunez and Rehm and Senators Cervantes and Rue voted in favor of the bill. Senator Martinez, Representative Chasey and Senators Lopez and McSorley voted against it.

Consideration of Legislation — An Appropriation to DPS to Analyze DNA Evidence Kits

Senator McSorley presented an appropriation added to the agenda to provide funds to the DPS to assist it clearing the backlog of DNA evidence kits. After discussion of the proposed legislation, upon a motion by Senator McSorley, seconded by Representative Alcon, the committee endorsed the appropriation with no objections.

Consideration of Legislation — An Appropriation to the Department of Health for Sexual Assault and Rape Crisis Center Services

Senator McSorley presented a second appropriation added to the agenda to provide funds to the Department of Health to provide sexual assault and rape crisis center services. After discussion of the proposed legislation, upon a motion by Senator Martinez, seconded by Representative Nunez, the committee endorsed the appropriation with no objections.

Consideration of Legislation — A Bill to Allow the New Mexico Department of Agriculture to Adopt Rules for Research on Industrial Hemp

Senator McSorley presented a bill concerning research on industrial hemp. After discussion of the proposed legislation, upon a motion by Senator Martinez, seconded by Representative Nunez, the committee endorsed the bill with no objections.

Consideration of Legislation — A Bill to Expand the Scope of the Three-Strikes Statute

Representative Rehm presented a bill to expand the scope of the state's three-strikes statute. After discussion of the proposed legislation, upon a motion by Representative Dines, seconded by Representative Nunez, the committee endorsed the bill, with Senators Martinez, Lopez and McSorley and Representative Chasey voting against it.

Consideration of Legislation — A Bill Providing for a Distribution from the Law Enforcement Protection Fund to Certified Regional Law Enforcement Training Facilities and the New Mexico Law Enforcement Academy

Representative Ruiloba; Gilbert Najar, director, Western New Mexico University Police Academy; Lt. Broderick Sharp, academy commander of training, Bernalillo County Sheriff's Department Regional Training Academy; and Sgt. Pat Flores, director, San Juan County Criminal Justice Authority, presented a bill to expand the distributions made from the Law Enforcement Protection Fund. After discussion of the proposed legislation, upon a motion by Representative Rehm, seconded by Representative Little, the committee endorsed the bill with no objections.

Consideration of Legislation — Bills Proposed by the Children, Youth and Families Department (CYFD)

Monique Jacobson, secretary of children, youth and families, made opening comments on the bills proposed by the Children, Youth and Families Department (CYFD), noting that all of the pieces of legislation before the committee were cleared by the house of representatives in the prior legislative session with strong bipartisan support.

Battery on a CYFD Worker (Sponsored by Representative Gallegos)

Secretary Jacobson; Lisa Madrid-Schleicher, Protective Services Division, CYFD; and Amanda Romero, Office of General Counsel, CYFD, presented a bill proposing the creation of the crimes of assault and battery on a CYFD worker. After discussion of the proposed legislation, upon a motion by Representative Rehm, seconded by Representative Maestas, the committee endorsed the bill, with no objections.

Absconders (Sponsored by Representative Rehm)

Representative Rehm and Nick Costales, deputy director for juvenile justice services, CYFD, presented a bill making certain changes to the Delinquency Act, principally concerning children who abscond from supervision. After discussion of the proposed legislation, upon a motion by Representative Nunez, seconded by Representative Little, the committee endorsed the bill, with Senator McSorley and Representative Chasey voting against it.

Intentional Abuse Increased Penalties (Sponsored by Representative Conrad James)

Representative James and Jennifer Saavedra, deputy secretary, CYFD, presented a bill to increase the penalty for the intentional abuse of a child 12 to 18 years of age that results in the death of a child. After discussion of the proposed legislation, Representative Rehm made a motion, seconded by Representative Dines, to endorse the bill. Senator McSorley challenged the quorum. As there was not a quorum of voting members present, the committee was not able to vote on endorsement of the proposed legislation.

Negligent and Intentional Child Abuse (Sponsored by Representative James)

Representative James and Michael Heitz, general counsel, CYFD, presented a bill to distinguish between the penalties for negligent versus intentional abuse of a child. There was discussion of the proposed legislation. As a quorum of voting members had not been reestablished, the committee was not able to vote on endorsement of the proposed legislation.

Criminal Images to Children (Sponsored by Representative Kelly K. Fajardo)

Representative Fajardo and Mr. Heitz presented a bill to provide for penalties for electronic communication of images of any person's intimate parts to a child. There was discussion of the proposed legislation. As a quorum of voting members had not been reestablished, the committee was not able to vote on endorsement of the proposed legislation.

Consideration of Legislation — A Bill to Add Law Enforcement Officers to the Hate Crimes Act

Representative Gentry presented a bill to add law enforcement officers to the Hate Crimes Act. After discussion of the proposed legislation, Representative Little made a motion, seconded by Representative Rehm, to endorse the bill. As a quorum of voting members had not been reestablished, the committee was not able to vote on endorsement of the proposed legislation.

Consideration of Legislation — A Bill Establishing the Crime of Driving While Intoxicated with a Minor in the Vehicle

Although on the agenda, this bill was not presented to the committee.

Consideration of Legislation — A Bill to Remove the Age Distinction in Cases of Intentional Abuse of a Child Resulting in Death

Although on the agenda, this bill was not presented to the committee.

Public Comment

Mr. Mechels raised concerns with the membership of the Law Enforcement Academy Board and spoke against the bill concerning additional disbursements from the Law Enforcement Protection Fund.

Ms. Sanchez spoke out against the committee considering a large number of bills that were a return to being tough on crime instead of being smart on crime.

Adjournment

There being no further business before the committee, the sixth and final meeting of the CCJ for the 2015 interim adjourned at 4:08 p.m.

ENDORSED LEGISLATION

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SENATE BILL

52ND LEGISLATURE - STATE OF NEW MEXICO - SECOND SESSION, 2016

INTRODUCED BY

ENDORSED BY THE COURTS, CORRECTIONS AND JUSTICE COMMITTEE

AN ACT

RELATING TO COURT ADMINISTRATION; CREATING THE LANGUAGE ACCESS
FUND TO PROVIDE FOR LANGUAGE ACCESS SERVICES IN THE COURTS.

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

SECTION 1. A new section of Chapter 34, Article 9 NMSA
1978 is enacted to read:

"[NEW MATERIAL] LANGUAGE ACCESS FUND--CREATED.--

A. There is created in the state treasury the
"language access fund" to be administered by the administrative
office of the courts.

B. All balances in the language access fund may be
expended only upon appropriation by the legislature to the
administrative office of the courts for the purpose of paying
the costs of:

- (1) court interpreters;

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1 (2) operating and staffing the New Mexico
2 center for language access to accomplish its mission to provide
3 and support programs that will help courts obtain, improve or
4 increase the availability of language access services;

5 (3) operating and staffing language access
6 services for the administrative office of the courts;

7 (4) training for the purpose of enhancing
8 language access services in the courts; and

9 (5) additional activities deemed necessary by
10 the director of the administrative office of the courts to meet
11 constitutional and statutory requirements for language access
12 services in court and for court-related activities.

13 C. All fees and other revenue collected by the New
14 Mexico center for language access and interest earned on money
15 in the language access fund shall be credited to the fund.

16 Payments shall be made upon certification by judicial agencies
17 of eligible amounts. No part of the fund shall revert at the
18 end of any fiscal year.

19 D. Payments from the language access fund shall be
20 made upon vouchers issued and signed by the director of the
21 administrative office of the courts or the director's designee
22 upon warrants drawn by the secretary of finance and
23 administration."

24 SECTION 2. Section 34-9-11 NMSA 1978 (being Laws 1993,
25 Chapter 106, Section 1, as amended) is amended to read:

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1 "34-9-11. JURY AND WITNESS FEE FUND CREATED--
2 ADMINISTRATION--DISTRIBUTION.--

3 A. There is created in the state treasury the "jury
4 and witness fee fund" to be administered by the administrative
5 office of the courts.

6 B. All balances in the jury and witness fee fund
7 may be expended only upon appropriation by the legislature to
8 the administrative office of the courts for the purpose of
9 paying the costs of:

- 10 (1) jurors and prospective jurors;
- 11 (2) witnesses of fact or character subpoenaed
12 by the court, the prosecution or the defense;

- 13 (3) expert witnesses for grand juries and
14 magistrate courts; and

15 [~~(4) court interpreters; and~~

16 ~~(5)] (4) defending persons whom the court has
17 ordered the public defender to represent, when those persons do
18 not meet the public defender's indigency standards.~~

19 C. All jury fees that the courts collect from
20 parties requesting civil juries, except for jury demand fees as
21 set forth in Section 35-6-1 NMSA 1978, and interest earned on
22 money in the jury and witness fee fund shall be credited to the
23 fund. Payments shall be made upon certification by judicial
24 agencies of eligible amounts. No part of the fund shall revert
25 at the end of any fiscal year.

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SENATE BILL

52ND LEGISLATURE - STATE OF NEW MEXICO - SECOND SESSION, 2016

INTRODUCED BY

ENDORSED BY THE COURTS, CORRECTIONS AND JUSTICE COMMITTEE

AN ACT

RELATING TO COURTS; CREATING THE JUDGE PRO TEMPORE FUND TO PAY
THE COSTS OF JUDGES PRO TEMPORE; MAKING AN APPROPRIATION;
DECLARING AN EMERGENCY.

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

SECTION 1. [NEW MATERIAL] JUDGE PRO TEMPORE FUND--

CREATED.--There is created in the state treasury the "judge pro
tempore fund" to be administered by the administrative office
of the courts. The fund shall be used to pay the costs of
judges pro tempore. The fund shall consist of appropriations,
gifts, grants, donations and bequests made to the fund. Income
from the fund shall be credited to the fund, and money in the
fund shall not revert or be transferred to any other fund at
the end of a fiscal year. Payments from the judge pro tempore
fund shall be made upon vouchers issued and signed by the

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1 director of the administrative office of the courts or the
2 director's designee upon warrants drawn by the secretary of
3 finance and administration.

4 SECTION 2. EMERGENCY.--It is necessary for the public
5 peace, health and safety that this act take effect immediately.

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HOUSE BILL

52ND LEGISLATURE - STATE OF NEW MEXICO - SECOND SESSION, 2016

INTRODUCED BY

ENDORSED BY THE COURTS, CORRECTIONS AND JUSTICE COMMITTEE

AN ACT

RELATING TO COURTS; CREATING AN ADDITIONAL JUDGESHIP IN THE
FIFTH JUDICIAL DISTRICT; MAKING AN APPROPRIATION.

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

SECTION 1. Section 34-6-8 NMSA 1978 (being Laws 1968,
Chapter 69, Section 11, as amended) is amended to read:

"34-6-8. JUDGES--FIFTH JUDICIAL DISTRICT.--There shall be
[~~eleven~~] twelve district judges in the fifth judicial
district."

SECTION 2. TEMPORARY PROVISION--DISTRICT JUDGE--
APPOINTMENT.--The additional district judgeship provided for in
this act shall be filled by appointment by the governor
pursuant to the provisions of Article 6 of the constitution of
New Mexico.

SECTION 3. APPROPRIATION.--Three hundred fifty-six

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1 thousand four hundred dollars (\$356,400) is appropriated from
2 the general fund to the fifth judicial district court for
3 salaries and benefits and furniture, supplies and equipment for
4 one additional district judge and support staff. Any
5 unexpended or unencumbered balance remaining at the end of
6 fiscal year 2017 shall revert to the general fund.

7 SECTION 4. EFFECTIVE DATE.--The effective date of the
8 provisions of this act is July 1, 2016.

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HOUSE BILL

52ND LEGISLATURE - STATE OF NEW MEXICO - SECOND SESSION, 2016

INTRODUCED BY

FOR THE COURTS, CORRECTIONS AND JUSTICE COMMITTEE

AN ACT

RELATING TO THE CHILDREN, YOUTH AND FAMILIES DEPARTMENT;
CREATING THE CRIMES OF ASSAULT AND BATTERY UPON A PUBLIC
SERVICE WORKER OF THE CHILDREN, YOUTH AND FAMILIES DEPARTMENT;
ESTABLISHING PENALTIES.

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

SECTION 1. A new Section 30-3-9.3 NMSA 1978 is enacted to
read:

"30-3-9.3. [NEW MATERIAL] ASSAULT--BATTERY--PUBLIC
SERVICE WORKERS OF THE CHILDREN, YOUTH AND FAMILIES
DEPARTMENT.--

A. As used in this section:

(1) "in the lawful discharge of the public
service worker's duties" means engaged in the performance of
the duties of a children, youth and families department public

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1 service worker; and

2 (2) "public service worker" means an employee
3 of the children, youth and families department who works
4 directly with children and families in either the protective
5 services division or juvenile justice division of the children,
6 youth and families department and shall include any child
7 protection investigator, family services worker, client service
8 worker, permanency planning worker, placement worker, foster
9 care worker, adoption worker, social worker, in-home services
10 worker, youth transition coordinator, case worker, juvenile
11 probation officer or family-centered mediator or any supervisor
12 of any of those or any person authorized to transport clients
13 for the department.

14 B. Assault upon a public service worker consists
15 of:

16 (1) an attempt to commit a battery upon the
17 person of a public service worker who is in the lawful
18 discharge of the public service worker's duties; or

19 (2) any unlawful act, threat or menacing
20 conduct that causes a public service worker who is in the
21 lawful discharge of the public service worker's duties to
22 reasonably believe that the public service worker is in danger
23 of receiving an immediate battery.

24 Whoever commits assault upon a public service worker is
25 guilty of a misdemeanor.

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1 C. Aggravated assault upon a public service worker
2 consists of:

3 (1) unlawfully assaulting or striking at a
4 public service worker with a deadly weapon while the public
5 service worker is in the lawful discharge of the public service
6 worker's duties; or

7 (2) willfully and intentionally assaulting a
8 public service worker who is in the lawful discharge of the
9 public service worker's duties with intent to commit any
10 felony.

11 Whoever commits aggravated assault upon a public service
12 worker is guilty of a third degree felony.

13 D. Battery upon a public service worker is the
14 unlawful, intentional touching or application of force to the
15 person of a public service worker who is in the lawful
16 discharge of the public service worker's duties, when done in a
17 rude, insolent or angry manner.

18 Whoever commits battery upon a public service worker is
19 guilty of a fourth degree felony.

20 E. Aggravated battery upon a public service worker
21 consists of the unlawful touching or application of force to
22 the person of a public service worker with intent to injure
23 that public service worker while the public service worker is
24 in the lawful discharge of the public service worker's duties.

25 Whoever commits aggravated battery upon a public service

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1 worker, inflicting great bodily harm or does so with a deadly
2 weapon or in any manner whereby great bodily harm or death can
3 be inflicted, is guilty of a third degree felony.

4 F. A person who assists or is assisted by one or
5 more other persons to commit a battery upon a public service
6 worker who is in the lawful discharge of the public service
7 worker's duties is guilty of a fourth degree felony."

8 SECTION 2. EFFECTIVE DATE.--The effective date of the
9 provisions of this act is July 1, 2016.

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HOUSE BILL

52ND LEGISLATURE - STATE OF NEW MEXICO - SECOND SESSION, 2016

INTRODUCED BY

FOR THE COURTS, CORRECTIONS AND JUSTICE COMMITTEE

AN ACT

RELATING TO THE DELINQUENCY ACT; REPLACING TERMS REFERENCING
PAROLE WITH THOSE REFERENCING SUPERVISED RELEASE; ALLOWING A
CHILDREN'S COURT ATTORNEY TO FILE A PETITION ALLEGING THAT A
CHILD HAS WILLFULLY ABSCONDED FROM SUPERVISED RELEASE; ALLOWING
THE COURT TO EXTEND THE COMMITMENT OF A CHILD; ALLOWING FOR THE
TOLLING OF THE SUPERVISED RELEASE PERIOD UPON THE ISSUANCE OF A
WARRANT.

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

SECTION 1. Section 32A-2-25 NMSA 1978 (being Laws 1993,
Chapter 77, Section 54, as amended) is amended to read:

"32A-2-25. [~~PAROLE REVOCATION~~] SUPERVISED RELEASE--
PROCEDURES.--

A. A child on [~~parole from an agency that has legal
custody~~] supervised release who violates a term of [~~parole~~]

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1 supervised release may be proceeded against in a [~~parole~~
2 ~~revocation~~] supervised release proceeding conducted by the
3 department [~~or the supervising agency~~] or by a hearing officer
4 contracted by the department [~~who is neutral to the child and~~
5 ~~the agency~~] in accordance with procedures established by the
6 department in cooperation with the juvenile [~~parole~~] public
7 safety advisory board and any other person designated by the
8 department. If a child willfully absconds from supervised
9 release, the children's court attorney from the district where
10 the child was initially committed may file a petition pursuant
11 to Subsection E of this section.

12 B. A juvenile probation [~~and parole~~] officer may
13 detain a child on [~~parole status~~] supervised release who is
14 alleged to have violated a term or condition of [~~parole~~]
15 supervised release until the completion and review of a
16 preliminary [~~parole~~] supervised release revocation hearing. A
17 child may waive the right to a preliminary [~~parole~~] supervised
18 release revocation hearing after consultation with the child's
19 attorney, parent, guardian or custodian.

20 [~~B.~~] C. If a retake warrant is issued by the
21 department upon the completion of the preliminary [~~parole~~]
22 supervised release revocation hearing, or in the case of a
23 waiver, the juvenile [~~institution~~] facility to which the
24 warrant is issued shall promptly transport the child to that
25 [~~institution~~] facility at the expense of the department. If a

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1 child absconds from [~~parole supervision~~] supervised release and
2 is apprehended in another state after the issuance of a
3 [~~retake~~] warrant by the [~~department~~] district court, the
4 juvenile justice division of the department [~~shall~~] may cause
5 the return of the child to this state at the expense of the
6 department.

7 D. The issuance of a warrant, upon the finding that
8 the child has absconded from supervised release, shall toll the
9 supervised release period.

10 E. The children's court attorney may file a
11 petition alleging that a child has willfully absconded from
12 supervised release. If the court finds that the child
13 willfully absconded from supervised release and that it is
14 necessary to safeguard the welfare of the child or the public's
15 safety, the court may extend the child's commitment not to
16 exceed six months on a short-term commitment, not to exceed one
17 year on a long-term commitment or until the child reaches the
18 age of twenty-one. The petition shall be filed in the district
19 where the child was initially committed."

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SENATE BILL

52ND LEGISLATURE - STATE OF NEW MEXICO - SECOND SESSION, 2016

INTRODUCED BY

FOR THE COURTS, CORRECTIONS AND JUSTICE COMMITTEE

AN ACT

RELATING TO PAROLE; REQUIRING THE CORRECTIONS DEPARTMENT TO
SUBMIT A LIST OF INMATES ELIGIBLE OR WHO MAY BECOME ELIGIBLE
FOR MEDICAL OR GERIATRIC PAROLE TO THE PAROLE BOARD EACH
QUARTER; REQUIRING THE PAROLE BOARD TO DETERMINE WHETHER
INMATES LISTED ON QUARTERLY REPORTS ARE ELIGIBLE FOR PAROLE.

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

SECTION 1. Section 31-21-17.1 NMSA 1978 (being Laws 1994,
Chapter 21, Section 2) is amended to read:

"31-21-17.1. MEDICAL AND GERIATRIC PAROLE--ADMINISTRATION
BY DEPARTMENT.--

A. The corrections department shall:

(1) identify geriatric, permanently
incapacitated and terminally ill inmates who are eligible or
who may become eligible for [~~geriatric or~~] medical or geriatric

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1 parole based on rules established by the board; and
2 (2) on a quarterly basis, submit a list of
3 inmates who are eligible or who may become eligible for medical
4 or geriatric parole to the board.

5 B. An inmate or an inmate's representative may
6 submit an application for medical or geriatric parole. The
7 corrections department shall forward an application and
8 documentation in support of parole eligibility to the board
9 within thirty days of receipt of an application from an inmate.
10 The documentation shall include information concerning the
11 inmate's age, medical history and prognosis, institutional
12 behavior and adjustment and criminal history. [~~The inmate or~~
13 ~~inmate's representative may submit an application to the~~
14 ~~board.~~]"

15 SECTION 2. Section 31-21-25.1 NMSA 1978 (being Laws 1994,
16 Chapter 21, Section 3) is amended to read:

17 "31-21-25.1. PAROLE BOARD--ADDITIONAL POWERS AND DUTIES--
18 MEDICAL AND GERIATRIC PAROLE PROGRAM.--

19 A. The parole board shall:
20 (1) establish rules and implement a "medical
21 and geriatric parole program", in cooperation with the
22 corrections department, by December 31, 1994;

23 (2) determine the appropriate level of
24 supervision following parole and develop a comprehensive
25 discharge plan for geriatric, permanently incapacitated and

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1 terminally ill inmates released under the medical and geriatric
2 parole program;

3 (3) report annually to the corrections
4 department and the legislature:

5 (a) the number of applications for
6 medical parole and geriatric parole [~~it~~] that the parole board
7 receives;

8 (b) the nature of the applicants'
9 illnesses, [~~disease~~] diseases or [~~condition of applicants~~]
10 conditions;

11 (c) the reasons for denial of any
12 applications for medical or geriatric parole; and

13 (d) the number of persons on medical
14 parole and geriatric parole who have been returned to the
15 custody of the corrections department and the reasons for their
16 return;

17 (4) make a determination whether to grant
18 [~~geriatric or~~] medical or geriatric parole within thirty days
19 of receipt of an application and supporting documentation from
20 the corrections department;

21 (5) review lists of inmates eligible for
22 medical or geriatric parole submitted quarterly by the
23 corrections department and determine whether parole should be
24 granted for those inmates;

25 [~~5~~] (6) at the time of an inmate's release,

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1 prescribe terms and conditions of [~~geriatric or~~] medical or
2 geriatric parole, including medical supervision and intervals
3 of periodic medical evaluations; and

4 [~~(6)~~] (7) authorize the release of geriatric,
5 permanently incapacitated and terminally ill inmates upon terms
6 and conditions as the parole board may prescribe if the board
7 determines that an inmate is geriatric, permanently
8 incapacitated or terminally ill; parole is not incompatible
9 with the welfare of society; and the inmate is not a first
10 degree murder felon.

11 B. Inmates who have not served their minimum
12 sentences may be considered eligible for parole under the
13 medical and geriatric parole program. Medical and geriatric
14 parole consideration shall be in addition to any other parole
15 for which a geriatric, permanently incapacitated or terminally
16 ill inmate may be eligible.

17 C. When considering an inmate for medical or
18 geriatric parole, the parole board may request that certain
19 medical evidence be produced or that reasonable medical
20 examinations be conducted.

21 D. The parole term of a geriatric, permanently
22 incapacitated or terminally ill inmate on medical or geriatric
23 parole shall be for the remainder of the inmate's sentence,
24 without diminution of sentence for good behavior.

25 E. When determining an inmate's eligibility for

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1 ~~[geriatric or]~~ medical or geriatric parole, the parole board
2 shall consider the following criteria concerning the ~~[inmate's]~~
3 inmate:

- 4 (1) age;
- 5 (2) severity of illness, disease or
6 infirmities;
- 7 (3) comprehensive health evaluation;
- 8 (4) institutional behavior;
- 9 (5) level of risk for violence;
- 10 (6) criminal history; and
- 11 (7) alternatives to maintaining the geriatric,
12 ~~[or medical inmates]~~ permanently incapacitated or terminally
13 ill inmate in traditional settings.

14 F. As used in this section:

- 15 (1) "geriatric inmate" means a male or female
16 offender who:
 - 17 (a) is under sentence to or confined in
18 a prison or other correctional institution under the control of
19 the corrections department;
 - 20 (b) is sixty-five years of age or older;
 - 21 (c) suffers from a chronic infirmity,
22 illness or disease related to aging; and
 - 23 (d) does not constitute a danger to
24 ~~[himself]~~ the offender's own self or society;

- 25 (2) "permanently incapacitated inmate" means a

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1 male or female offender who:

2 (a) is under sentence to or confined in
3 a prison or other correctional institution under the control of
4 the corrections department;

5 (b) by reason of an existing medical
6 condition, is permanently and irreversibly physically
7 incapacitated; and

8 (c) does not constitute a danger to
9 ~~himself~~ the offender's own self or to society; and

10 (3) "terminally ill inmate" means a male or
11 female offender who:

12 (a) is under sentence or confined in a
13 prison or other correctional institution under the control of
14 the corrections department;

15 (b) has an incurable condition caused by
16 illness or disease that would, within reasonable medical
17 judgment, produce death within six months; and

18 (c) does not constitute a danger to
19 ~~himself~~ the offender's own self or society."

20 SECTION 3. EFFECTIVE DATE.--The effective date of the
21 provisions of this act is July 1, 2016.

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SENATE BILL

52ND LEGISLATURE - STATE OF NEW MEXICO - SECOND SESSION, 2016

INTRODUCED BY

FOR THE COURTS, CORRECTIONS AND JUSTICE COMMITTEE

AN ACT

RELATING TO CORRECTIONS; REQUIRING THAT A PERSON ASSIGNED TO AN INTENSIVE SUPERVISION PROGRAM ALSO BE ENROLLED IN A BEHAVIORAL HEALTH PROGRAM; REQUIRING THAT EVIDENCE-BASED BEHAVIORAL HEALTH TREATMENT PROGRAMS BE INCORPORATED INTO COMMUNITY CORRECTIONS AND INTENSIVE SUPERVISION PROGRAMS; REQUIRING THE CORRECTIONS DEPARTMENT TO USE A VALIDATED RISK AND NEEDS ASSESSMENT FOR ALL INMATES AND IMPLEMENT EVIDENCE-BASED PRISON PROGRAMMING.

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

SECTION 1. Section 31-21-13.1 NMSA 1978 (being Laws 1988, Chapter 62, Section 3, as amended) is amended to read:

"31-21-13.1. INTENSIVE SUPERVISION PROGRAMS.--

A. As used in this section:

(1) "cost beneficial" means that the cost savings realized over a reasonable period of time are greater

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1 than the costs of implementation;

2 (2) "evidence-based program" means a
3 behavioral health treatment program that:

4 (a) incorporates methods demonstrated to
5 be effective for the intended population through scientifically
6 based research, including statistically controlled evaluations
7 or randomized trials;

8 (b) can be implemented with a set of
9 procedures to allow successful replication in New Mexico; and

10 (c) when possible, has been determined
11 to be cost beneficial;

12 (3) "intensive supervision programs" means
13 programs that provide highly structured and intense
14 supervision, with stringent reporting requirements, of certain
15 individuals who represent an excessively high assessment of
16 risk of violation of probation or parole, emphasize meaningful
17 rehabilitative activities and reasonable alternatives without
18 seriously increasing the risk of recidivist crime and
19 facilitate the payment of restitution by the offender to the
20 victim. "Intensive supervision programs" [~~include~~] includes
21 house arrest programs or electronic surveillance programs or
22 both; and

23 (4) "validated risk and needs assessment"
24 means an actuarial tool scientifically proven to determine a
25 person's risk to reoffend and criminal risk factors that, when

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1 properly addressed, can reduce that person's likelihood of
2 committing future criminal behavior.

3 B. The corrections department shall implement and
4 operate intensive supervision programs in various local
5 communities. The programs shall provide services for
6 appropriate individuals by probation and parole officers of the
7 corrections department. The corrections department shall
8 promulgate rules and regulations to provide that the officers
9 providing these services have a maximum caseload of forty
10 offenders and to provide for offender selection and other
11 criteria. The corrections department may cooperate with all
12 recognized law enforcement authorities and share all necessary
13 and pertinent information, records or documents regarding
14 probationers or parolees in order to implement and operate
15 these intensive supervision programs.

16 C. The corrections department shall incorporate
17 evidence-based programs as follows:

18 (1) by January 1, 2017, twenty percent of
19 intensive supervision program funding shall be spent on
20 evidence-based programs;

21 (2) by January 1, 2018, thirty percent of
22 intensive supervision program funding shall be spent on
23 evidence-based programs;

24 (3) by January 1, 2019, forty percent of
25 intensive supervision program funding shall be spent on

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1 evidence-based programs; and

2 (4) by January 1, 2020, fifty percent of
3 intensive supervision program funding shall be spent on
4 evidence-based programs.

5 ~~[G.]~~ D. For purposes of this section, a judge
6 contemplating imposition of an intensive supervision program
7 for an individual shall consult with the adult probation and
8 parole division of the corrections department and consider the
9 recommendations before imposing such probation. The adult
10 probation and parole division of the corrections department
11 shall recommend only those individuals who would have otherwise
12 been recommended for incarceration for intensive supervision
13 programs. A judge has discretion to impose an intensive
14 supervision program for an individual, regardless of
15 recommendations made by the adult probation and parole
16 division. Inmates eligible for parole, or within twelve months
17 of eligibility for parole, or inmates who would otherwise
18 remain in a correctional institution for lack of a parole plan
19 or those parolees whose parole the board would otherwise revoke
20 are eligible for intensive supervision programs. The
21 provisions of this section do not limit or reduce the statutory
22 authority vested in probation and parole supervision as defined
23 by any other section of the Probation and Parole Act.

24 E. If an intensive supervision program is imposed
25 for an individual, that individual shall be enrolled in an

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1 appropriate behavioral health program. The individual's needs
2 shall be assessed through the use of a validated risk and needs
3 assessment. The corrections department shall promulgate rules
4 for the administration of the validated risk and needs
5 assessment.

6 ~~[D-]~~ F. There is created in the state treasury the
7 "corrections department intensive supervision fund" to be
8 administered by the corrections department upon vouchers signed
9 by the secretary of corrections. Balances in the corrections
10 department intensive supervision fund shall not revert to the
11 general fund. Beginning July 1, 1988, the intensive
12 supervision programs established pursuant to this section shall
13 be funded by those supervision costs collected pursuant to the
14 provisions of Sections 31-20-6 and 31-21-10 NMSA 1978. The
15 corrections department is specifically authorized to hire
16 additional permanent or term full-time-equivalent positions for
17 the purpose of implementing the provisions of this section."

18 SECTION 2. A new section of the Adult Community
19 Corrections Act is enacted to read:

20 "[NEW MATERIAL] EVIDENCE-BASED PROGRAMS.--

21 A. The department shall incorporate evidence-based
22 programs as follows:

23 (1) by January 1, 2017, twenty percent of
24 community corrections program funding shall be spent on
25 evidence-based programs;

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1 (2) by January 1, 2018, thirty percent of
2 community corrections program funding shall be spent on
3 evidence-based programs;

4 (3) by January 1, 2019, forty percent of
5 community corrections program funding shall be spent on
6 evidence-based programs; and

7 (4) by January 1, 2020, fifty percent of
8 community corrections program funding shall be spent on
9 evidence-based programs.

10 B. As used in this section:

11 (1) "cost beneficial" means that the cost
12 savings realized over a reasonable period of time are greater
13 than the costs of implementation; and

14 (2) "evidence-based program" means a
15 behavioral health treatment program or practice that:

16 (a) incorporates methods demonstrated to
17 be effective for the intended population through scientifically
18 based research, including statistically controlled evaluations
19 or randomized trials;

20 (b) can be implemented with a set of
21 procedures to allow successful replication in New Mexico; and

22 (c) when possible, has been determined
23 to be cost beneficial."

24 SECTION 3. A new section of Chapter 33, Article 2 NMSA
25 1978 is enacted to read:

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1 "[NEW MATERIAL] VALIDATED RISK AND NEEDS ASSESSMENT AND
2 EVIDENCE-BASED PROGRAMS.--

3 A. Inmates incarcerated in state correctional
4 facilities shall have their needs for prison programming
5 assessed through the use of validated risk and needs
6 assessments. Inmates shall be assigned to programs based on
7 the results of the validated risk and needs assessment. The
8 corrections department shall promulgate rules and regulations
9 for the administration of the validated risk and needs
10 assessment.

11 B. The corrections department shall incorporate
12 evidence-based programs into its prison programming as follows:

13 (1) by January 1, 2017, twenty percent of
14 inmate program funding shall be spent on evidence-based
15 programs;

16 (2) by January 1, 2018, thirty percent of
17 inmate program funding shall be spent on evidence-based
18 programs;

19 (3) by January 1, 2019, forty percent of
20 inmate program funding shall be spent on evidence-based
21 programs; and

22 (4) by January 1, 2020, fifty percent of
23 inmate program funding shall be spent on evidence-based
24 programs.

25 C. As used in this section:

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1 (1) "cost beneficial" means that the cost
2 savings realized over a reasonable period of time are greater
3 than the costs of implementation;

4 (2) "evidence-based program" means a program
5 or practice that:

6 (a) incorporates methods demonstrated to
7 be effective for the intended population through scientifically
8 based research, including statistically controlled evaluations
9 or randomized trials;

10 (b) can be implemented with a set of
11 procedures to allow successful replication in New Mexico; and

12 (c) when possible, has been determined
13 to be cost beneficial; and

14 (3) "validated risk and needs assessment"
15 means an actuarial tool scientifically proven to determine a
16 person's risk to reoffend and criminal risk factors that, when
17 properly addressed, can reduce that person's likelihood of
18 committing future criminal behavior."

19 SECTION 4. EFFECTIVE DATE.--The effective date of the
20 provisions of this act is July 1, 2016.

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HOUSE BILL

52ND LEGISLATURE - STATE OF NEW MEXICO - SECOND SESSION, 2016

INTRODUCED BY

FOR THE COURTS, CORRECTIONS AND JUSTICE COMMITTEE

AN ACT

RELATING TO CIVIL COMPROMISE; ALLOWING FOR A PERSON INJURED BY
A CRIMINAL ACT FOR WHICH THERE IS A CIVIL REMEDY TO COMPROMISE
THE CHARGE THROUGH SETTLEMENT PAID TO THE VICTIM OF THE CRIME;
MAKING EXCEPTIONS.

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

SECTION 1. [NEW MATERIAL] CIVIL COMPROMISE--EXCEPTIONS.--

A. When a person injured by an act constituting
criminal conduct has a remedy to the injury through a civil
action, the criminal offense may be compromised, as provided in
Subsection B of this section, except when the criminal act is
committed:

(1) by or upon a peace officer, while in the
execution of the peace officer's duties;

(2) with an intent to commit a violent felony,

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- 1 as defined in Section 31-18-23 NMSA 1978;
- 2 (3) in violation of a court order, as defined
- 3 in the Family Violence Protection Act;
- 4 (4) by or upon a household member, as defined
- 5 in the Family Violence Protection Act;
- 6 (5) upon someone sixty years of age or older;
- 7 (6) upon someone less than eighteen years of
- 8 age or younger; or
- 9 (7) by a defendant who has a prior violent
- 10 felony conviction, as defined in Section 31-18-23 NMSA 1978.

11 B. If the person injured appears in person or by
12 affidavit before the court in which the action for the criminal
13 offense is pending at any time before trial and acknowledges
14 that the injured person has received satisfaction for the
15 injury, the court may order all proceedings to be stayed upon
16 the prosecution and dismiss the case. The reasons for the
17 order must be set forth in a written order. The order is a bar
18 to another prosecution for the same offense.

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SENATE BILL

52ND LEGISLATURE - STATE OF NEW MEXICO - SECOND SESSION, 2016

INTRODUCED BY

FOR THE WATER AND NATURAL RESOURCES COMMITTEE AND
THE COURTS, CORRECTIONS AND JUSTICE COMMITTEE

AN ACT

RELATING TO AGRICULTURE; ENACTING A NEW SECTION OF CHAPTER 76
NMSA 1978 TO PROVIDE AUTHORIZATION FOR THE NEW MEXICO
DEPARTMENT OF AGRICULTURE TO ADOPT RULES FOR RESEARCH ON
INDUSTRIAL HEMP; PROVIDING FOR THE ESTABLISHMENT OF THE NEW
MEXICO INDUSTRIAL HEMP RESEARCH AND DEVELOPMENT FUND.

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

SECTION 1. A new section of Chapter 76 NMSA 1978 is
enacted to read:

"[NEW MATERIAL] INDUSTRIAL HEMP RESEARCH--NEW MEXICO
DEPARTMENT OF AGRICULTURE.--

A. As used in this section, "industrial hemp" means
the plant Cannabis sativa L. and any part of the plant, whether
growing or not, containing a delta-9-tetrahydrocannabinol
concentration of no more than three-tenths percent on a dry

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1 weight basis.

2 B. The intent of this section is to bring New
3 Mexico into compliance with federal law.

4 C. Notwithstanding any other provision of law to
5 the contrary, the New Mexico department of agriculture shall
6 issue licenses pursuant to rules enacted under Subsection D of
7 this section to grow industrial hemp for research and
8 development purposes, including agricultural, agronomic,
9 ecological, processing, sales and marketing research.

10 D. The director of the New Mexico department of
11 agriculture shall adopt rules to establish and carry out the
12 provisions of this section, including requirements for
13 licensure, training of law enforcement personnel, inspection,
14 recordkeeping, fees not to exceed program costs and compliance
15 processes. An institution of higher education, person or
16 business that plans to grow industrial hemp seed or industrial
17 hemp fiber shall obtain a grower's license by submitting an
18 application to the New Mexico department of agriculture
19 pursuant to promulgated rules.

20 E. A person who holds a license issued pursuant to
21 this section may grow industrial hemp for commercial or
22 research and development purposes, including agricultural,
23 agronomic, ecological, processing, sales and marketing
24 research.

25 F. New Mexico state university shall establish a

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1 "New Mexico industrial hemp research and development fund".
2 The fund consists of fees collected by the New Mexico
3 department of agriculture for administration of the industrial
4 hemp research and development program, donations, grants and
5 income earned from investment of the fund and money otherwise
6 accruing to the fund. Money in the fund shall not revert to
7 any other fund at the end of a fiscal year. The New Mexico
8 department of agriculture shall administer the fund, and money
9 in the fund is subject to appropriation by the legislature to
10 the New Mexico department of agriculture to conduct related
11 programs. Money in the fund shall be disbursed on warrants
12 signed by the secretary of finance and administration pursuant
13 to vouchers signed by the director of the New Mexico department
14 of agriculture or the director's authorized representative."

15 **SECTION 2.** Section 30-31-2 NMSA 1978 (being Laws 1972,
16 Chapter 84, Section 2, as amended) is amended to read:

17 "30-31-2. DEFINITIONS.--As used in the Controlled
18 Substances Act:

19 A. "administer" means the direct application of a
20 controlled substance by any means to the body of a patient or
21 research subject by a practitioner or the practitioner's agent;

22 B. "agent" includes an authorized person who acts
23 on behalf of a manufacturer, distributor or dispenser. It does
24 not include a common or contract carrier, public
25 warehouseperson or employee of the carrier or warehouseperson;

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1 C. "board" means the board of pharmacy;

2 D. "bureau" means the narcotic and dangerous drug
3 section of the criminal division of the United States
4 department of justice, or its successor agency;

5 E. "controlled substance" means a drug or substance
6 listed in Schedules I through V of the Controlled Substances
7 Act or rules adopted thereto;

8 F. "counterfeit substance" means a controlled
9 substance that bears the unauthorized trademark, trade name,
10 imprint, number, device or other identifying mark or likeness
11 of a manufacturer, distributor or dispenser other than the
12 person who in fact manufactured, distributed or dispensed the
13 controlled substance;

14 G. "deliver" means the actual, constructive or
15 attempted transfer from one person to another of a controlled
16 substance or controlled substance analog, whether or not there
17 is an agency relationship;

18 H. "dispense" means to deliver a controlled
19 substance to an ultimate user or research subject pursuant to
20 the lawful order of a practitioner, including the
21 administering, prescribing, packaging, labeling or compounding
22 necessary to prepare the controlled substance for that
23 delivery;

24 I. "dispenser" means a practitioner who dispenses
25 and includes hospitals, pharmacies and clinics where controlled

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1 substances are dispensed;

2 J. "distribute" means to deliver other than by
3 administering or dispensing a controlled substance or
4 controlled substance analog;

5 K. "drug" or "substance" means substances
6 recognized as drugs in the official United States
7 pharmacopoeia, official homeopathic pharmacopoeia of the United
8 States or official national formulary or any respective
9 supplement to those publications. It does not include devices
10 or their components, parts or accessories;

11 L. "hashish" means the resin extracted from any
12 part of marijuana, whether growing or not, and every compound,
13 manufacture, salt, derivative, mixture or preparation of such
14 resins;

15 M. "manufacture" means the production, preparation,
16 compounding, conversion or processing of a controlled substance
17 or controlled substance analog by extraction from substances of
18 natural origin or independently by means of chemical synthesis
19 or by a combination of extraction and chemical synthesis and
20 includes any packaging or repackaging of the substance or
21 labeling or relabeling of its container, except that this term
22 does not include the preparation or compounding of a controlled
23 substance:

24 (1) by a practitioner as an incident to
25 administering or dispensing a controlled substance in the

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1 course of the practitioner's professional practice; or

2 (2) by a practitioner, or by the
3 practitioner's agent under the practitioner's supervision, for
4 the purpose of or as an incident to research, teaching or
5 chemical analysis and not for sale;

6 N. "marijuana" means all parts of the plant
7 cannabis, including any and all varieties, species and
8 subspecies of the genus Cannabis, whether growing or not, the
9 seeds thereof and every compound, manufacture, salt,
10 derivative, mixture or preparation of the plant or its seeds.
11 It does not include the mature stalks of the plant, hashish,
12 tetrahydrocannabinols extracted or isolated from marijuana,
13 fiber produced from the stalks, oil or cake made from the seeds
14 of the plant, any other compound, manufacture, salt,
15 derivative, mixture or preparation of the mature stalks, fiber,
16 oil or cake, or the sterilized seed of the plant that is
17 incapable of germination or the plant Cannabis sativa L. and
18 any part of the plant, whether growing or not, containing a
19 delta-9-tetrahydrocannabinol concentration of no more than
20 three-tenths percent on a dry weight basis;

21 O. "narcotic drug" means any of the following,
22 whether produced directly or indirectly by extraction from
23 substances of vegetable origin or independently by means of
24 chemical synthesis or by a combination of extraction and
25 chemical synthesis:

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1 (1) opium and opiate and any salt, compound,
2 derivative or preparation of opium or opiate;

3 (2) any salt, compound, isomer, derivative or
4 preparation that is a chemical equivalent of any of the
5 substances referred to in Paragraph (1) of this subsection,
6 except the isoquinoline alkaloids of opium;

7 (3) opium poppy and poppy straw, including all
8 parts of the plant of the species *Papaver somniferum* L. except
9 its seeds; or

10 (4) coca leaves and any salt, compound,
11 derivative or preparation of coca leaves, any salt, compound,
12 isomer, derivative or preparation that is a chemical equivalent
13 of any of these substances except decocainized coca leaves or
14 extractions of coca leaves that do not contain cocaine or
15 ecgonine;

16 P. "opiate" means any substance having an
17 addiction-forming or addiction-sustaining liability similar to
18 morphine or being capable of conversion into a drug having
19 addiction-forming or addiction-sustaining liability. "Opiate"
20 does not include, unless specifically designated as controlled
21 under Section 30-31-5 NMSA 1978, the dextrorotatory isomer of
22 3-methoxy-n-methylmorphinan and its salts, dextromethorphan.
23 "Opiate" does include its racemic and levorotatory forms;

24 Q. "person" means an individual, partnership,
25 corporation, association, institution, political subdivision,

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1 government agency or other legal entity;

2 R. "practitioner" means a physician, certified
3 advanced practice chiropractic physician, doctor of oriental
4 medicine, dentist, physician assistant, certified nurse
5 practitioner, clinical nurse specialist, certified nurse-
6 midwife, prescribing psychologist, veterinarian, euthanasia
7 technician, pharmacist, pharmacist clinician or other person
8 licensed or certified to prescribe and administer drugs that
9 are subject to the Controlled Substances Act;

10 S. "prescription" means an order given individually
11 for the person for whom is prescribed a controlled substance,
12 either directly from a licensed practitioner or the
13 practitioner's agent to the pharmacist, including by means of
14 electronic transmission, or indirectly by means of a written
15 order signed by the prescriber, bearing the name and address of
16 the prescriber, the prescriber's license classification, the
17 name and address of the patient, the name and quantity of the
18 drug prescribed, directions for use and the date of issue and
19 in accordance with the Controlled Substances Act or rules
20 adopted thereto;

21 T. "scientific investigator" means a person
22 registered to conduct research with controlled substances in
23 the course of the person's professional practice or research
24 and includes analytical laboratories;

25 U. "ultimate user" means a person who lawfully

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1 possesses a controlled substance for the person's own use or
2 for the use of a member of the person's household or for
3 administering to an animal under the care, custody and control
4 of the person or by a member of the person's household;

5 V. "drug paraphernalia" means all equipment,
6 products and materials of any kind that are used, intended for
7 use or designed for use in planting, propagating, cultivating,
8 growing, harvesting, manufacturing, compounding, converting,
9 producing, processing, preparing, testing, analyzing,
10 packaging, repackaging, storing, containing, concealing,
11 injecting, ingesting, inhaling or otherwise introducing into
12 the human body a controlled substance or controlled substance
13 analog in violation of the Controlled Substances Act. It
14 includes:

15 (1) kits used, intended for use or designed
16 for use in planting, propagating, cultivating, growing or
17 harvesting any species of plant that is a controlled substance
18 or controlled substance analog or from which a controlled
19 substance can be derived;

20 (2) kits used, intended for use or designed
21 for use in manufacturing, compounding, converting, producing,
22 processing or preparing controlled substances or controlled
23 substance analogs;

24 (3) isomerization devices used, intended for
25 use or designed for use in increasing the potency of any

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1 species of plant that is a controlled substance;

2 (4) testing equipment used, intended for use
3 or designed for use in identifying or in analyzing the
4 strength, effectiveness or purity of controlled substances or
5 controlled substance analogs;

6 (5) scales or balances used, intended for use
7 or designed for use in weighing or measuring controlled
8 substances or controlled substance analogs;

9 (6) diluents and adulterants, such as quinine
10 hydrochloride, mannitol, mannite dextrose and lactose, used,
11 intended for use or designed for use in cutting controlled
12 substances or controlled substance analogs;

13 (7) separation gins and sifters used, intended
14 for use or designed for use in removing twigs and seeds from,
15 or in otherwise cleaning and refining, marijuana;

16 (8) blenders, bowls, containers, spoons and
17 mixing devices used, intended for use or designed for use in
18 compounding controlled substances or controlled substance
19 analogs;

20 (9) capsules, balloons, envelopes and other
21 containers used, intended for use or designed for use in
22 packaging small quantities of controlled substances or
23 controlled substance analogs;

24 (10) containers and other objects used,
25 intended for use or designed for use in storing or concealing

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1 controlled substances or controlled substance analogs;

2 (11) hypodermic syringes, needles and other
3 objects used, intended for use or designed for use in
4 parenterally injecting controlled substances or controlled
5 substance analogs into the human body;

6 (12) objects used, intended for use or
7 designed for use in ingesting, inhaling or otherwise
8 introducing marijuana, cocaine, hashish or hashish oil into the
9 human body, such as:

10 (a) metal, wooden, acrylic, glass,
11 stone, plastic or ceramic pipes, with or without screens,
12 permanent screens, hashish heads or punctured metal bowls;

13 (b) water pipes;

14 (c) carburetion tubes and devices;

15 (d) smoking and carburetion masks;

16 (e) roach clips, meaning objects used to
17 hold burning material, such as a marijuana cigarette, that has
18 become too small to hold in the hand;

19 (f) miniature cocaine spoons and cocaine
20 vials;

21 (g) chamber pipes;

22 (h) carburetor pipes;

23 (i) electric pipes;

24 (j) air-driven pipes;

25 (k) chilams;

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- 1 (l) bongs; or
2 (m) ice pipes or chillers; and
3 (13) in determining whether an object is drug
4 paraphernalia, a court or other authority should consider, in
5 addition to all other logically relevant factors, the
6 following:
7 (a) statements by the owner or by anyone
8 in control of the object concerning its use;
9 (b) the proximity of the object, in time
10 and space, to a direct violation of the Controlled Substances
11 Act or any other law relating to controlled substances or
12 controlled substance analogs;
13 (c) the proximity of the object to
14 controlled substances or controlled substance analogs;
15 (d) the existence of any residue of a
16 controlled substance or controlled substance analog on the
17 object;
18 (e) instructions, written or oral,
19 provided with the object concerning its use;
20 (f) descriptive materials accompanying
21 the object that explain or depict its use;
22 (g) the manner in which the object is
23 displayed for sale; and
24 (h) expert testimony concerning its use;

25 W. "controlled substance analog" means a substance

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1 other than a controlled substance that has a chemical structure
2 substantially similar to that of a controlled substance in
3 Schedule I, II, III, IV or V or that was specifically designed
4 to produce effects substantially similar to that of controlled
5 substances in Schedule I, II, III, IV or V. Examples of
6 chemical classes in which controlled substance analogs are
7 found include the following:

- 8 (1) phenethylamines;
- 9 (2) N-substituted piperidines;
- 10 (3) morphinans;
- 11 (4) ecgonines;
- 12 (5) quinazolinones;
- 13 (6) substituted indoles; and
- 14 (7) arylcycloalkylamines.

15 Specifically excluded from the definition of "controlled
16 substance analog" are those substances that are generally
17 recognized as safe and effective within the meaning of the
18 Federal Food, Drug, and Cosmetic Act or have been manufactured,
19 distributed or possessed in conformance with the provisions of
20 an approved new drug application or an exemption for
21 investigational use within the meaning of Section 505 of the
22 Federal Food, Drug, and Cosmetic Act;

23 X. "human consumption" includes application,
24 injection, inhalation, ingestion or any other manner of
25 introduction;

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1 Y. "drug-free school zone" means a public school,
2 parochial school or private school or property that is used for
3 a public, parochial or private school purpose and the area
4 within one thousand feet of the school property line, but it
5 does not mean any post-secondary school; and

6 Z. "valid practitioner-patient relationship" means
7 a professional relationship, as defined by the practitioner's
8 licensing board, between the practitioner and the patient."

9 **SECTION 3.** Section 30-31-6 NMSA 1978 (being Laws 1972,
10 Chapter 84, Section 6, as amended) is amended to read:

11 "30-31-6. SCHEDULE I.--The following controlled
12 substances are included in Schedule I:

13 A. any of the following opiates, including their
14 isomers, esters, ethers, salts, and salts of isomers, esters
15 and ethers, unless specifically exempted, whenever the
16 existence of these isomers, esters, ethers and salts is
17 possible within the specific chemical designation:

- 18 (1) acetylmethadol;
- 19 (2) allylprodine;
- 20 (3) alphacetylmethadol;
- 21 (4) alphameprodine;
- 22 (5) alphamethadol;
- 23 (6) benzethidine;
- 24 (7) betacetylmethadol;
- 25 (8) betameprodine;

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- 1 (9) betamethadol;
- 2 (10) betaprodine;
- 3 (11) clonitazene;
- 4 (12) dextromoramide;
- 5 (13) dextrorphan;
- 6 (14) diampromide;
- 7 (15) diethylthiambutene;
- 8 (16) dimenoxadol;
- 9 (17) dimepheptanol;
- 10 (18) dimethylthiambutene;
- 11 (19) dioxaphetyl butyrate;
- 12 (20) dipipanone;
- 13 (21) ethylmethylthiambutene;
- 14 (22) etonitazene;
- 15 (23) etoxeridine;
- 16 (24) furethidine;
- 17 (25) hydroxypethidine;
- 18 (26) ketobemidone;
- 19 (27) levomoramide;
- 20 (28) levophenacymorphan;
- 21 (29) morpheridine;
- 22 (30) noracymethadol;
- 23 (31) norlevorphanol;
- 24 (32) normethadone;
- 25 (33) norpipanone;

- 1 (34) phenadoxone;
- 2 (35) phenampromide;
- 3 (36) phenomorphan;
- 4 (37) phenoperidine;
- 5 (38) piritramide;
- 6 (39) proheptazine;
- 7 (40) properidine;
- 8 (41) racemoramide; and
- 9 (42) trimeperidine;

10 B. any of the following opium derivatives, their
11 salts, isomers and salts of isomers, unless specifically
12 exempted, whenever the existence of these salts, isomers and
13 salts of isomers is possible within the specific chemical
14 designation:

- 15 (1) acetorphine;
- 16 (2) acetyldihydrocodeine;
- 17 (3) benzylmorphine;
- 18 (4) codeine methylbromide;
- 19 (5) codeine-N-oxide;
- 20 (6) cyprenorphine;
- 21 (7) desomorphine;
- 22 (8) dihydromorphine;
- 23 (9) etorphine;
- 24 (10) heroin;
- 25 (11) hydromorphanol;

- 1 (12) methyldesorphine;
- 2 (13) methyldihydromorphine;
- 3 (14) morphine methylbromide;
- 4 (15) morphine methylsulfonate;
- 5 (16) morphine-N-oxide;
- 6 (17) myrophine;
- 7 (18) nicocodeine;
- 8 (19) nicomorphine;
- 9 (20) normorphine;
- 10 (21) pholcodine; and
- 11 (22) thebacon;

12 C. any material, compound, mixture or preparation
13 that contains any quantity of the following hallucinogenic
14 substances, their salts, isomers and salts of isomers, unless
15 specifically exempted, whenever the existence of these salts,
16 isomers and salts of isomers is possible within the specific
17 chemical designation:

- 18 (1) 3,4-methylenedioxy amphetamine;
- 19 (2) 5-methoxy-3,4-methylenedioxy amphetamine;
- 20 (3) 3,4,5-trimethoxy amphetamine;
- 21 (4) bufotenine;
- 22 (5) diethyltryptamine;
- 23 (6) dimethyltryptamine;
- 24 (7) 4-methyl-2,5-dimethoxy amphetamine;
- 25 (8) ibogaine;

1 (9) lysergic acid diethylamide;
2 (10) marijuana;
3 (11) mescaline;
4 (12) peyote, except as otherwise provided in
5 the Controlled Substances Act;

6 (13) N-ethyl-3-piperidyl benzilate;
7 (14) N-methyl-3-piperidyl benzilate;
8 (15) psilocybin;
9 (16) psilocyn;
10 (17) tetrahydrocannabinols;
11 (18) hashish;

12 (19) synthetic cannabinoids, including:
13 (a) 1-[2-(4-(morpholinyl)ethyl)-3-(1-
14 naphthoyl)indole];

15 (b) 1-butyl-3-(1-naphthoyl)indole;
16 (c) 1-hexyl-3-(1-naphthoyl)indole;
17 (d) 1-pentyl-3-(1-naphthoyl)indole;
18 (e) 1-pentyl-3-(2-methoxyphenylacetyl)
19 indole;

20 (f) cannabicyclohexanol (CP 47, 497 and
21 homologues: 5-(1,1-dimethylheptyl)-2-[(1R,3S)
22 -3-hydroxycyclohexyl]-phenol (CP-47,497); and 5-(1,
23 1-dimethyloctyl)-2-[(1R,3S)-3-hydroxycyclohexyl]-phenol;

24 (g) 6aR,10aR)-9-(hydroxymethyl)
25 -6,6-dimethyl-3-(2-methyloctan-2-yl)-6a,7,10,

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1 10a-tetrahydrobenzo[c]chromen-1-ol);

2 (h) dexanabinol, (6aS,10aS)

3 -9-(hydroxymethyl)-6,6-dimethyl-3-(2-methyloctan-2-yl)

4 -6a,7,10,10a-tetrahydrobenzo[c]chromen-1-ol;

5 (i) 1-pentyl-3-(4-chloro naphthoyl)

6 indole;

7 (j) (2-methyl-1-propyl-1H-indol-3-yl)

8 -1-naphthalenyl-methanone; and

9 (k) 5-(1,1-dimethylheptyl)-2-(3-hydroxy

10 cyclohexyl)-phenol;

11 (20) 3,4-methylenedioxy methcathinone;

12 (21) 3,4-methylenedioxy pyrovalerone;

13 (22) 4-methylmethcathinone;

14 (23) 4-methoxymethcathinone;

15 (24) 3-fluoromethcathinone; and

16 (25) 4-fluoromethcathinone;

17 D. the enumeration of peyote as a controlled
18 substance does not apply to the use of peyote in bona fide
19 religious ceremonies by a bona fide religious organization, and
20 members of the organization so using peyote are exempt from
21 registration. Any person who manufactures peyote for or
22 distributes peyote to the organization or its members shall
23 comply with the federal Comprehensive Drug Abuse Prevention and
24 Control Act of 1970 and all other requirements of law;

25 E. the enumeration of marijuana,

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underscoring material = new
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1 tetrahydrocannabinols or chemical derivatives of
2 tetrahydrocannabinol as Schedule I controlled substances does
3 not apply to:

4 (1) cultivation of industrial hemp by
5 qualified entities pursuant to rules adopted by the New Mexico
6 department of agriculture; or

7 (2) the use of marijuana,
8 tetrahydrocannabinols or chemical derivatives of
9 tetrahydrocannabinol by certified patients pursuant to the
10 Controlled Substances Therapeutic Research Act or by qualified
11 patients pursuant to the provisions of the Lynn and Erin
12 Compassionate Use Act; and

13 F. controlled substances added to Schedule I by
14 rule adopted by the board pursuant to Section 30-31-3 NMSA
15 1978."

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HOUSE BILL

52ND LEGISLATURE - STATE OF NEW MEXICO - SECOND SESSION, 2016

INTRODUCED BY

FOR THE COURTS, CORRECTIONS AND JUSTICE COMMITTEE

AN ACT

RELATING TO CRIMINAL SENTENCING; PROVIDING ADDITIONAL VIOLENT
FELONIES IN THE CRIMINAL SENTENCING ACT FOR THE PURPOSES OF
MANDATORY LIFE IMPRISONMENT FOR THREE VIOLENT FELONY
CONVICTIONS.

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

SECTION 1. Section 31-18-23 NMSA 1978 (being Laws 1994,
Chapter 24, Section 2, as amended) is amended to read:

"31-18-23. THREE VIOLENT FELONY CONVICTIONS--MANDATORY
LIFE IMPRISONMENT--EXCEPTION.--

A. When a defendant is convicted of a third violent
felony, and each violent felony conviction is part of a
separate transaction or occurrence, and at least the third
violent felony conviction is in New Mexico, the defendant
shall, in addition to the sentence imposed for the third

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1 violent conviction, be punished by a sentence of life
2 imprisonment. The life imprisonment sentence shall be subject
3 to parole pursuant to the provisions of Section 31-21-10 NMSA
4 1978.

5 B. The sentence of life imprisonment shall be
6 imposed after a sentencing hearing, separate from the trial or
7 guilty plea proceeding resulting in the third violent felony
8 conviction, pursuant to the provisions of Section 31-18-24 NMSA
9 1978.

10 C. For the purpose of this section, a violent
11 felony conviction incurred by a defendant before the defendant
12 reaches the age of eighteen shall not count as a violent felony
13 conviction.

14 D. When a defendant has a felony conviction from
15 another state, the felony conviction shall be considered a
16 violent felony for the purposes of the Criminal Sentencing Act
17 if that crime would be considered a violent felony in New
18 Mexico.

19 E. As used in the Criminal Sentencing Act,

20 [~~(1) "great bodily harm" means an injury to~~
21 ~~the person that creates a high probability of death or that~~
22 ~~causes serious disfigurement or that results in permanent loss~~
23 ~~or impairment of the function of any member or organ of the~~
24 ~~body; and~~

25 ~~(2)] "violent felony" means:~~

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- 1 [~~(a)~~] (1) murder in the first or second
2 degree, as provided in Section 30-2-1 NMSA 1978;
- 3 (2) voluntary or involuntary manslaughter, as
4 provided in Section 30-2-3 NMSA 1978;
- 5 (3) aggravated assault with intent to commit a
6 violent felony, as provided in Section 30-3-3 NMSA 1978;
- 7 (4) third degree aggravated battery, as
8 provided in Section 30-3-5 NMSA 1978;
- 9 (5) second or third degree shooting at a
10 dwelling or occupied building, as provided in Section 30-3-8
11 NMSA 1978;
- 12 [~~(b)~~] (6) second or third degree shooting at
13 or from a motor vehicle [~~resulting in great bodily harm~~], as
14 provided in [~~Subsection B of~~] Section 30-3-8 NMSA 1978;
- 15 (7) third degree aggravated battery against a
16 household member, as provided in Section 30-3-16 NMSA 1978;
- 17 [~~(c)~~] (8) kidnapping [~~resulting in great~~
18 bodily harm inflicted upon the victim by the victim's captor],
19 as provided in [~~Subsection B of~~] Section 30-4-1 NMSA 1978;
- 20 (9) first degree abuse of a child, as provided
21 in Section 30-6-1 NMSA 1978;
- 22 [~~(d)~~] (10) aggravated, first, second or third
23 degree criminal sexual penetration, as provided in [~~Subsection~~
24 C or D or Paragraph (5) or (6) of Subsection E of] Section
25 30-9-11 NMSA 1978; [and

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1 ~~(e)~~] (11) second or third degree criminal
2 sexual contact of a minor, as provided in Section 30-9-13 NMSA
3 1978;

4 (12) first or second degree robbery [~~while~~
5 ~~armed with a deadly weapon resulting in great bodily harm~~], as
6 provided in Section 30-16-2 NMSA 1978 [~~and Subsection A of~~
7 ~~Section 30-1-12 NMSA 1978~~];

8 (13) aggravated burglary, as provided in
9 Section 30-16-4 NMSA 1978;

10 (14) aggravated arson, as provided in Section
11 30-17-6 NMSA 1978;

12 (15) aggravated assault upon a peace officer,
13 as provided in Section 30-22-22 NMSA 1978;

14 (16) assault with intent to commit a violent
15 felony upon a peace officer, as provided in Section 30-22-23
16 NMSA 1978; and

17 (17) aggravated battery upon a peace officer,
18 as provided in Section 30-22-25 NMSA 1978."

19 **SECTION 2. APPLICABILITY.**--The provisions of this act
20 apply to persons who have been convicted on, before or after
21 July 1, 2016 of one of the violent felonies described in
22 Section 1 of this act for the purpose of determining sentencing
23 enhancements pursuant to that section for subsequent violent
24 felony convictions on or after July 1, 2016.

25 **SECTION 3. EFFECTIVE DATE.**--The effective date of the
26 .201931.3

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1 provisions of this act is July 1, 2016.

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HOUSE BILL

52ND LEGISLATURE - STATE OF NEW MEXICO - SECOND SESSION, 2016

INTRODUCED BY

FOR THE COURTS, CORRECTIONS AND JUSTICE COMMITTEE

AN ACT

RELATING TO LAW ENFORCEMENT; PROVIDING FOR A DISTRIBUTION FROM THE LAW ENFORCEMENT PROTECTION FUND TO CERTIFIED REGIONAL LAW ENFORCEMENT TRAINING FACILITIES AND THE NEW MEXICO LAW ENFORCEMENT ACADEMY FOR TRAINING; MAKING AN APPROPRIATION.

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

SECTION 1. Section 29-13-2.1 NMSA 1978 (being Laws 1993, Chapter 179, Section 4, as amended) is amended to read:

"29-13-2.1. DEFINITIONS.--As used in the Law Enforcement Protection Fund Act:

A. "academy" means the New Mexico law enforcement academy;

~~[A.]~~ B. "division" means the local government division of the department of finance and administration;

~~[B.]~~ C. "fund" means the law enforcement protection

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1 fund;

2 [G-] D. "governmental entity" means a municipality,
3 university, tribe or a county;

4 E. "regional facility" means a certified regional
5 law enforcement training facility within the state certified by
6 the director of the academy pursuant to the Law Enforcement
7 Training Act;

8 [D-] F. "tribal police department" means the police
9 department of a tribe that has entered into an agreement with
10 the department of public safety pursuant to Section 29-1-11
11 NMSA 1978;

12 [E-] G. "tribe" means an Indian nation, tribe or
13 pueblo located wholly or partly in New Mexico; and

14 [F-] H. "university" means a four-year post-
15 secondary educational institution listed in Article 12, Section
16 11 of the constitution of New Mexico."

17 **SECTION 2.** Section 29-13-4 NMSA 1978 (being Laws 1993,
18 Chapter 179, Section 6, as amended by Laws 2002, Chapter 78,
19 Section 5 and by Laws 2002, Chapter 92, Section 3) is amended
20 to read:

21 "29-13-4. DETERMINATION OF NEEDS AND RATE OF
22 DISTRIBUTION.--

23 A. Annually on or before April 15, the division
24 shall consider and determine the relative needs as requested by
25 tribal, municipal and university police [~~and~~], county sheriff's

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1 departments, regional facilities and the academy for money in
2 the fund pursuant to the provisions of Subsection C of this
3 section.

4 B. As necessary during the year, the division shall
5 transfer an amount from the [~~law enforcement protection~~] fund
6 to the peace officers' survivors fund that enables the balance
7 of the peace officers' survivors fund to be maintained at a
8 minimum balance of three hundred fifty thousand dollars
9 (\$350,000).

10 C. The division shall determine the rate of
11 distribution of money remaining in the fund to each tribal,
12 municipal and university police, [~~and~~] county sheriff's
13 department and regional facility and the academy as follows:

14 (1) all municipal police and county sheriff's
15 departments shall be rated by class pursuant to this paragraph
16 in accordance with populations established by the most recently
17 completed decennial census; provided that the population of any
18 county shall not include the population of any municipality
19 within that county that has a municipal police department. The
20 rate of distribution to which a municipal police or county
21 sheriff's department is entitled is the following:

22	CLASS	POPULATION	AMOUNT
23	1	0 to 20,000	\$20,000
24	2	20,001 to 160,000	30,000
25	3	160,001 to 1,280,000	40,000;

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1 (2) university police departments shall be
2 entitled to a rate of distribution of seventeen thousand
3 dollars (\$17,000);

4 (3) each regional facility and the academy
5 shall be entitled to a rate of distribution of fifty thousand
6 dollars (\$50,000);

7 [~~3~~] (4) tribal police departments shall be
8 entitled, unless allocations are adjusted pursuant to the
9 provisions of Subsection [E] D of this section, to [~~six hundred~~
10 ~~dollars (\$600)] one thousand dollars (\$1,000) for each
11 commissioned peace officer in the tribe. To be counted as a
12 commissioned peace officer for the purposes of this paragraph,
13 a commissioned peace officer shall have been assigned to duty
14 and have worked in New Mexico for no fewer than two hundred
15 days in the calendar year immediately prior to the date of
16 payment. Payments shall be made for only those divisions of
17 the tribal police departments that perform services in New
18 Mexico. [~~No~~] A tribal police department shall not be eligible
19 for any disbursement under the fund if commissioned peace
20 officers cite non-Indians into the tribal court for civil or
21 criminal citations; and~~

22 [~~4~~] (5) municipal and university police and
23 county sheriff's departments shall be entitled, unless
24 allocations are adjusted pursuant to the provisions of
25 Subsection D of this section, to [~~six hundred dollars (\$600)]~~

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1 one thousand dollars (\$1,000) for each police officer or
2 sheriff's deputy employed full time by [~~his~~] a department who
3 has been certified by the [~~New Mexico law enforcement~~] academy
4 as a police officer or has been authorized to act as a New
5 Mexico peace officer pursuant to the provisions of Section
6 29-1-11 NMSA 1978.

7 D. After distributions are determined in accordance
8 with Subsection A, Subsection B and Paragraphs (1), [~~and~~] (2)
9 and (3) of Subsection C of this section, if the balance in the
10 fund is insufficient to permit the total allocations provided
11 by Paragraphs [~~(3)~~] (4) and [~~(4)~~] (5) of Subsection C of this
12 section, the division shall reduce that allocation to the
13 maximum amount permitted by available money."

14 **SECTION 3.** Section 29-13-5 NMSA 1978 (being Laws 1983,
15 Chapter 289, Section 5, as amended) is amended to read:

16 "29-13-5. DETERMINATION OF NEEDS--REVIEW.--No later than
17 May 1 of each year, the division shall notify in writing each
18 affected municipal police, university police, tribal police
19 [~~and~~], county sheriff's department and regional facility and
20 the academy of its determination of money to be distributed
21 pursuant to the provisions of Section 29-13-4 NMSA 1978. Any
22 affected department or regional facility or the academy may
23 appeal that determination by filing a notice of appeal with the
24 secretary of finance and administration no later than May 15.
25 If an appeal is filed, the secretary of finance and

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1 administration shall review the determination of the division
2 in an informal and summary proceeding and shall certify the
3 result of the appeal to the division no later than June 30, and
4 the division shall adjust its determination accordingly. If no
5 appeal is filed, the original determination of the division
6 shall be final and binding and not subject to further review."

7 SECTION 4. Section 29-13-7 NMSA 1978 (being Laws 1983,
8 Chapter 289, Section 7, as amended) is amended to read:

9 "29-13-7. EXPENDITURE LIMITATION--CONTROL.--

10 A. Except as provided for regional facilities and
11 the academy in Subsection B of this section, amounts
12 distributed from the fund shall be expended only for the
13 following:

14 (1) the repair and purchase of law enforcement
15 apparatus and equipment, including the financing and
16 refinancing thereof, that meet minimum nationally recognized
17 standards;

18 (2) the purchase of law enforcement equipment,
19 including protective vests, for police dogs;

20 (3) expenses associated with advanced law
21 enforcement planning and training;

22 (4) maintaining the balance of the peace
23 officers' survivors fund at a minimum amount of three hundred
24 fifty thousand dollars (\$350,000);

25 (5) complying with match or contribution

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1 requirements for the receipt of federal funds relating to
2 criminal justice programs; and

3 (6) no more than fifty percent of the
4 replacement salaries of municipal and county law enforcement
5 personnel of municipalities or counties rated as Class 1 in
6 Paragraph (1) of Subsection B of Section 29-13-4 NMSA 1978
7 participating in basic law enforcement training.

8 B. For regional facilities and the academy, amounts
9 distributed from the fund shall be expended only for providing
10 basic, advanced or in-service law enforcement training and for
11 the purchase of equipment directly related to that training.

12 [~~B-~~] C. Amounts distributed from the fund shall be
13 expended only pursuant to approved budgets and upon duly
14 executed vouchers approved as required by law."

15 **SECTION 5. APPROPRIATION.--**Fifty thousand dollars
16 (\$50,000) is appropriated from the general fund to the law
17 enforcement protection fund for expenditure in fiscal year 2017
18 for advanced training of officers at regional facilities and
19 the New Mexico law enforcement academy pursuant to the Law
20 Enforcement Protection Fund Act. The appropriation shall be
21 divided equally between each of the regional facilities and the
22 New Mexico law enforcement academy, as defined in the Law
23 Enforcement Protection Fund Act. Any unexpended or
24 unencumbered balance remaining at the end of fiscal year 2017
25 shall revert to the general fund.

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SECTION 6. EFFECTIVE DATE.--The effective date of the provisions of this act is July 1, 2016.

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HOUSE BILL

52ND LEGISLATURE - STATE OF NEW MEXICO - SECOND SESSION, 2016

INTRODUCED BY

FOR THE COURTS, CORRECTIONS AND JUSTICE COMMITTEE

AN ACT

RELATING TO CRIMINAL SENTENCING; PROVIDING ADDITIONAL VIOLENT FELONIES IN THE CRIMINAL SENTENCING ACT FOR THE PURPOSES OF MANDATORY LIFE IMPRISONMENT WITHOUT THE POSSIBILITY OF PAROLE FOR THREE VIOLENT FELONY CONVICTIONS; PROVIDING EXCEPTIONS THAT ALLOW FOR PAROLE IN CERTAIN CIRCUMSTANCES; PROVIDING THAT CERTAIN CONVICTIONS INCURRED BY A DEFENDANT BEFORE THE AGE OF EIGHTEEN SHALL CONSTITUTE VIOLENT FELONIES; PROVIDING PENALTIES.

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

SECTION 1. Section 31-18-23 NMSA 1978 (being Laws 1994, Chapter 24, Section 2, as amended) is amended to read:

"31-18-23. THREE VIOLENT FELONY CONVICTIONS--MANDATORY LIFE IMPRISONMENT--EXCEPTION.--

A. When a defendant is convicted of a third violent

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[bracketed material] = delete

1 felony, and each violent felony conviction is part of a
2 separate transaction or occurrence, and at least the third
3 violent felony conviction is in New Mexico, the defendant
4 shall, in addition to the sentence imposed for the third
5 violent felony conviction, be punished by a sentence of life
6 imprisonment. Except as provided in Subsection D of Section
7 31-21-10 NMSA 1978, the life imprisonment sentence shall not be
8 subject to parole [~~pursuant to the provisions of Section~~
9 ~~31-21-10 NMSA 1978~~].

10 B. The sentence of life imprisonment shall be
11 imposed after a sentencing hearing, separate from the trial or
12 guilty plea proceeding resulting in the third violent felony
13 conviction, pursuant to the provisions of Section 31-18-24 NMSA
14 1978.

15 C. For the purpose of this section, a violent
16 felony conviction incurred by a defendant before the defendant
17 reaches the age of eighteen shall not count as a violent felony
18 conviction, unless:

19 (1) the defendant was sentenced as an adult
20 pursuant to the provisions of Section 31-18-15.3 or 32A-2-20
21 NMSA 1978; or

22 (2) in the case of a violent felony conviction
23 from another state, the defendant was sentenced as an adult
24 pursuant to the laws of that state.

25 D. When a defendant has a felony conviction from

underscored material = new
[bracketed material] = delete

1 another state, the felony conviction shall be considered a
2 violent felony for the purposes of the Criminal Sentencing Act
3 if that crime would be considered a violent felony in New
4 Mexico.

5 E. As used in the Criminal Sentencing Act:

6 (1) "great bodily harm" means an injury to the
7 person that creates a high probability of death or that causes
8 serious disfigurement or that results in permanent loss or
9 impairment of the function of any member or organ of the body;
10 and

11 (2) "violent felony" means:

12 (a) murder in the first or second
13 degree, as provided in Section 30-2-1 NMSA 1978;

14 (b) voluntary manslaughter, as provided
15 in Subsection A of Section 30-2-3 NMSA 1978;

16 (c) involuntary manslaughter, as
17 provided in Subsection B of Section 30-2-3 NMSA 1978;

18 (d) aggravated battery, as provided in
19 Subsection C of Section 30-3-5 NMSA 1978;

20 (e) shooting at a dwelling or occupied
21 building resulting in great bodily harm, as provided in
22 Subsection A of Section 30-3-8 NMSA 1978;

23 [~~b~~] (f) shooting at or from a motor
24 vehicle resulting in great bodily harm, as provided in
25 Subsection B of Section 30-3-8 NMSA 1978;

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1 (g) aggravated battery against a
2 household member, as provided in Subsection C of Section
3 30-3-16 NMSA 1978;

4 [~~(e)~~] (h) kidnapping resulting in great
5 bodily harm inflicted upon the victim by the victim's captor,
6 as provided in Subsection B of Section 30-4-1 NMSA 1978;

7 (i) abuse of a child that results in
8 great bodily harm to the child, as provided in Subsection E of
9 Section 30-6-1 NMSA 1978;

10 (j) negligent abuse of a child that
11 results in the death of the child, as provided in Subsection F
12 of Section 30-6-1 NMSA 1978;

13 (k) intentional abuse of a child that
14 results in the death of the child, as provided in Subsection G
15 or H of Section 30-6-1 NMSA 1978;

16 [~~(d)~~] (l) criminal sexual penetration,
17 as provided in Subsection C, [~~or~~] D, [~~or Paragraph (5) or (6)~~
18 ~~of Subsection~~] E or F of Section 30-9-11 NMSA 1978; [~~and~~

19 ~~(e)~~] (m) robbery while armed with a
20 deadly weapon resulting in great bodily harm, as provided in
21 Section 30-16-2 NMSA 1978 [~~and Subsection A of Section 30-1-12~~
22 ~~NMSA 1978~~];

23 (n) aggravated arson, as provided in
24 Section 30-17-6 NMSA 1978;

25 (o) aggravated battery upon a peace

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1 officer, as provided in Subsection C of Section 30-22-25 NMSA
2 1978;

3 (p) homicide by vehicle or great bodily
4 harm by vehicle, as provided in Section 66-8-101 NMSA 1978,
5 while: 1) under the influence of intoxicating liquor; 2) under
6 the influence of any drug; 3) driving recklessly, as provided
7 in Section 66-8-113 NMSA 1978; or 4) resisting, evading or
8 obstructing an officer, as provided in Section 30-22-1 NMSA
9 1978; and

10 (q) injury to pregnant woman by vehicle,
11 as provided in Section 66-8-101.1 NMSA 1978, while: 1) under
12 the influence of intoxicating liquor; 2) under the influence of
13 any drug; 3) driving recklessly, as provided in Section
14 66-8-113 NMSA 1978; or 4) resisting, evading or obstructing an
15 officer, as provided in Section 30-22-1 NMSA 1978."

16 SECTION 2. Section 31-21-10 NMSA 1978 (being Laws 1980,
17 Chapter 28, Section 1, as amended) is amended to read:

18 "31-21-10. PAROLE AUTHORITY AND PROCEDURE.--

19 A. An inmate of an institution who was sentenced to
20 life imprisonment becomes eligible for a parole hearing after
21 the inmate has served thirty years of the sentence. Before
22 ordering the parole of an inmate sentenced to life
23 imprisonment, the board shall:

24 (1) interview the inmate at the institution
25 where the inmate is committed;

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- 1 (2) consider all pertinent information
2 concerning the inmate, including:
3 (a) the circumstances of the offense;
4 (b) mitigating and aggravating
5 circumstances;
6 (c) whether a deadly weapon was used in
7 the commission of the offense;
8 (d) whether the inmate is a habitual
9 offender;
10 (e) the reports filed under Section
11 31-21-9 NMSA 1978; and
12 (f) the reports of such physical and
13 mental examinations as have been made while in an institution;
14 (3) make a finding that a parole is in the
15 best interest of society and the inmate; and
16 (4) make a finding that the inmate is able and
17 willing to fulfill the obligations of a law-abiding citizen.

18 If parole is denied, the inmate sentenced to life
19 imprisonment shall again become entitled to a parole hearing at
20 two-year intervals. The board may, on its own motion, reopen
21 any case in which a hearing has already been granted and parole
22 denied.

23 B. Unless the board finds that it is in the best
24 interest of society and the parolee to reduce the period of
25 parole, a person who was sentenced to life imprisonment shall

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1 be required to undergo a minimum period of parole of five
2 years. During the period of parole, the person shall be under
3 the guidance and supervision of the board.

4 C. Except as provided in Subsection D of this
5 section, an inmate of an institution who was sentenced to life
6 imprisonment without possibility of release or parole is not
7 eligible for parole and shall remain incarcerated for the
8 entirety of the inmate's natural life.

9 D. An inmate of an institution who was sentenced to
10 life imprisonment pursuant to Section 31-18-23 NMSA 1978
11 becomes eligible for a parole hearing if the inmate:

12 (1) has served ten or more years of a sentence
13 imposed pursuant to Section 31-18-23 NMSA 1978; and

14 (2) the inmate is sixty years of age or older.

15 A person granted parole pursuant to this subsection shall
16 be required to undergo parole, and shall be under the guidance
17 and supervision of the board, for the entirety of the person's
18 natural life.

19 ~~[D-]~~ E. Except for certain sex offenders as
20 provided in Section 31-21-10.1 NMSA 1978 and persons granted
21 parole pursuant to Subsection D of this section, an inmate who
22 was convicted of a first, second or third degree felony and who
23 has served the sentence of imprisonment imposed by the court in
24 an institution designated by the corrections department shall
25 be required to undergo a two-year period of parole. An inmate

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1 who was convicted of a fourth degree felony and who has served
2 the sentence of imprisonment imposed by the court in an
3 institution designated by the corrections department shall be
4 required to undergo a one-year period of parole. During the
5 period of parole, the person shall be under the guidance and
6 supervision of the board.

7 ~~[E.]~~ F. Every person while on parole shall remain
8 in the legal custody of the institution from which the person
9 was released, but shall be subject to the orders of the board.
10 The board shall furnish to each inmate as a prerequisite to
11 release under its supervision a written statement of the
12 conditions of parole that shall be accepted and agreed to by
13 the inmate as evidenced by the inmate's signature affixed to a
14 duplicate copy to be retained in the files of the board. The
15 board shall also require as a prerequisite to release the
16 submission and approval of a parole plan. If an inmate refuses
17 to affix the inmate's signature to the written statement of the
18 conditions of parole or does not have an approved parole plan,
19 the inmate shall not be released and shall remain in the
20 custody of the institution in which the inmate has served the
21 inmate's sentence, excepting parole, until such time as the
22 period of parole the inmate was required to serve, less
23 meritorious deductions, if any, expires, at which time the
24 inmate shall be released from that institution without parole,
25 or until such time that the inmate evidences acceptance and

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1 agreement to the conditions of parole as required or receives
2 approval for the inmate's parole plan or both. Time served
3 from the date that an inmate refuses to accept and agree to the
4 conditions of parole or fails to receive approval for the
5 inmate's parole plan shall reduce the period, if any, to be
6 served under parole at a later date. If the district court has
7 ordered that the inmate make restitution to a victim as
8 provided in Section 31-17-1 NMSA 1978, the board shall include
9 restitution as a condition of parole. The board shall also
10 personally apprise the inmate of the conditions of parole and
11 the inmate's duties relating thereto.

12 [~~F-~~] G. When a person on parole has performed the
13 obligations of the person's release for the period of parole
14 provided in this section, the board shall make a final order of
15 discharge and issue the person a certificate of discharge.

16 [~~G-~~] H. Pursuant to the provisions of Section
17 31-18-15 NMSA 1978, the board shall require the inmate as a
18 condition of parole:

19 (1) to pay the actual costs of parole services
20 to the adult probation and parole division of the corrections
21 department for deposit to the corrections department intensive
22 supervision fund not exceeding one thousand eight hundred
23 dollars (\$1,800) annually to be paid in monthly installments of
24 not less than twenty-five dollars (\$25.00) and not more than
25 one hundred fifty dollars (\$150), as set by the appropriate

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1 district supervisor of the adult probation and parole division,
2 based upon the financial circumstances of the defendant. The
3 defendant's payment of the supervised parole costs shall not be
4 waived unless the board holds an evidentiary hearing and finds
5 that the defendant is unable to pay the costs. If the board
6 waives the defendant's payment of the supervised parole costs
7 and the defendant's financial circumstances subsequently change
8 so that the defendant is able to pay the costs, the appropriate
9 district supervisor of the adult probation and parole division
10 shall advise the board and the board shall hold an evidentiary
11 hearing to determine whether the waiver should be rescinded;
12 and

13 (2) to reimburse a law enforcement agency or
14 local crime stopper program for the amount of any reward paid
15 by the agency or program for information leading to the
16 inmate's arrest, prosecution or conviction.

17 [~~H.~~] I. The provisions of this section shall apply
18 to all inmates except geriatric, permanently incapacitated and
19 terminally ill inmates eligible for the medical and geriatric
20 parole program as provided by the Parole Board Act."

21 **SECTION 3. APPLICABILITY.**--The provisions of this act are
22 applicable to a person convicted of a violent felony on or
23 after July 1, 2016. A person convicted of a violent felony
24 prior to July 1, 2016 and who, on July 1, 2016, was still
25 incarcerated, on probation or on parole for commission of a

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1 violent felony shall be deemed to have been convicted of one
2 violent felony for the purposes of this act.

3 SECTION 4. EFFECTIVE DATE.--The effective date of the
4 provisions of this act is July 1, 2016.

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SENATE BILL

52ND LEGISLATURE - STATE OF NEW MEXICO - SECOND SESSION, 2016

INTRODUCED BY

FOR THE COURTS, CORRECTIONS AND JUSTICE COMMITTEE

AN ACT

MAKING AN APPROPRIATION TO THE DEPARTMENT OF PUBLIC SAFETY FOR
ANALYZING DNA EVIDENCE KITS.

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

SECTION 1. APPROPRIATION.--Two million three hundred
thousand dollars (\$2,300,000) is appropriated from the general
fund to the department of public safety for expenditure in
fiscal years 2017 through 2019 to hire necessary staff and
purchase the materials or equipment necessary to clear the
existing backlog of unprocessed DNA evidence kits to be
processed by the department. Any unexpended or unencumbered
balance remaining at the end of fiscal year 2019 shall revert
to the general fund.

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SENATE BILL

52ND LEGISLATURE - STATE OF NEW MEXICO - SECOND SESSION, 2016

INTRODUCED BY

FOR THE COURTS, CORRECTIONS AND JUSTICE COMMITTEE

AN ACT

MAKING AN APPROPRIATION TO THE DEPARTMENT OF HEALTH TO PROVIDE
SEXUAL ASSAULT AND RAPE CRISIS CENTER SERVICES.

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

SECTION 1. APPROPRIATION.--One million dollars
(\$1,000,000) is appropriated from the general fund to the
department of health for expenditure in fiscal year 2017 to
contract with sexual assault and rape crisis service centers to
provide trauma-informed counseling to victims of sexual assault
and rape. Any unexpended or unencumbered balance remaining at
the end of fiscal year 2017 shall revert to the general fund.

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