



NEW MEXICO LEGISLATURE

# COURTS, CORRECTIONS AND JUSTICE COMMITTEE

2018 INTERIM FINAL REPORT

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## INTERIM SUMMARY



**Courts, Corrections and Justice Committee  
and  
Criminal Justice Reform Subcommittee  
2018 Interim Summary**

The Courts, Corrections and Justice Committee (CCJ) met on 14 days in Santa Fe and Albuquerque during the 2018 interim and heard presentations from state officials and advocates on a wide array of issues ranging from trends in arrests to a statewide ethics commission to policies that may reduce recidivism.

The Criminal Justice Reform Subcommittee (CJRS) of the CCJ met on nine days in Santa Fe and Albuquerque to discuss issues ranging from the collateral consequences of conviction to the use of preliminary hearings instead of grand juries to the importance of data collection and data sharing among criminal justice actors.

Throughout the 2018 interim, the CCJ heard from many state officials and advocates about the state's criminal justice issues and how those issues can be addressed through changes to current statutes or with new legislation. The CCJ heard from several task forces discussing statewide criminal justice reform measures, sex trafficking prosecution, services and reparations for sexual assault victims and issues related to law enforcement body cameras. The CCJ also heard from presenters who spoke on a variety of other topics, including data analysis of the state's correctional populations; forecasts of the prison population; child abuse and neglect prevention; public health issues related to gun violence; the status of bail and pretrial detention in the state; probation and parole reform; and crime trends. As in past years, the CCJ welcomed groups of advocates that presented a variety of legislative priorities for the CCJ's consideration.

The CJRS, like the CCJ, heard several presentations on the necessity of data sharing and the use of data analytics in reducing recidivism and providing adequate due process to defendants. The CJRS also heard presentations on the relationship between adverse childhood experiences and the likelihood of criminal activity; juvenile sentencing; alternatives to juvenile detention; and methods of law enforcement and prosecutorial authorities to divert criminal defendants from jail or prison. The CJRS concluded its informational presentations with reports from nationwide experts and advocates. Finally, the CJRS heard from legislators and the courts on legislation to recommend for CCJ endorsement.

The CCJ's interim concluded, as in past years, with the presentation of several pieces of legislation for consideration and possible endorsement. The CCJ endorsed legislation related to judicial elections; the transfer of jurisdiction over certain matters from municipal or probate courts to nearby magistrate courts; appeals from the metropolitan court; excusal of jurors over the age of seventy-five from jury service; sex offender probation review; the Reserve Police Officer Act; ending the prosecution of trafficked minors; "ban the box" for private employers; removal of law enforcement in-service training requirements; changes to the Law Enforcement Protection Fund; and solitary confinement.





## WORK PLAN AND MEETING SCHEDULE



**2018 APPROVED  
WORK PLAN AND MEETING SCHEDULE  
for the  
COURTS, CORRECTIONS AND JUSTICE COMMITTEE  
and the  
CRIMINAL JUSTICE REFORM SUBCOMMITTEE**

**Members**

Rep. Gail Chasey, Co-Chair	Rep. Antonio Maestas
Sen. Richard C. Martinez, Co-Chair	Rep. Sarah Maestas Barnes
Rep. Eliseo Lee Alcon	Rep. Javier Martínez
Sen. Gregory A. Baca	Sen. Cisco McSorley
Sen. Jacob R. Candelaria	Rep. William "Bill" R. Rehm
Rep. Zachary J. Cook	Rep. Angelica Rubio
Rep. Jim Dines	Sen. Sander Rue
Sen. Linda M. Lopez	

**Advisory Members**

Rep. Deborah A. Armstrong	Sen. William H. Payne
Sen. William F. Burt	Sen. John Pinto
Rep. Brian Egolf	Rep. Patricia Roybal Caballero
Rep. Doreen Y. Gallegos	Sen. Mimi Stewart
Sen. Daniel A. Ivey-Soto	Rep. Christine Trujillo
Sen. Bill B. O'Neill	Sen. Peter Wirth

**Criminal Justice Reform Subcommittee**

**Members**

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

**Work Plan**

The Courts, Corrections and Justice Committee (CCJ) and the Criminal Justice Reform Subcommittee of the CCJ were created by the New Mexico Legislative Council on April 26, 2018. During the 2018 interim, and as time permits, the CCJ will receive presentations on the following:

1. an update from the Administrative Office of the Courts, including discussion of:
  - staffing and staff training, programs, unified budget, budget priorities and legislative priorities;
  - court updates;
  - case management systems; and
  - bail/pretrial detention and release issues;

2. an update from the Corrections Department, including discussion of:
  - the department's staffing and staff training, programs, budget, budget priorities and legislative priorities;
  - inmate housing and facilities;
  - probation and parole;
  - inmate health care;
  - the status of efforts to reduce recidivism and improve public safety using the New Mexico Results First initiative;
  - gender-specific policies and practices of the department, including treatment of pregnant and lactating inmates;
  - the use of isolated confinement;
  - good-time policies; and
  - the use of private prisons in New Mexico;
  
3. an update from the Department of Public Safety, including discussion of:
  - the department's staffing and staff training, programs, budget, budget priorities and legislative priorities;
  - forensic laboratory issues, including sexual assault examination kit testing and processing progress; and
  - criminal justice clearinghouse project update;
  
4. an update from the Children, Youth and Families Department, including discussion of:
  - the department's staffing and staff training, programs, budget, budget priorities and legislative priorities;
  - juvenile justice and the school-to-prison pipeline; and
  - the Protective Services Division;
  
5. an update from the Public Defender Department, including discussion of:
  - the department's staffing and staff training, programs, budget, budget priorities and legislative priorities; and
  - changes in indigent defense policies;
  
6. an update from the Administrative Office of the District Attorneys and the New Mexico District Attorney's Association, including discussion of:
  - caseloads, staffing, budgets and budget priorities in each district; and
  - legislative priorities;
  
7. an update from the New Mexico Association of Counties, including discussion of:
  - issues affecting county jails; and
  - the association's legislative priorities;

8. the 2018 New Mexico Prison Population Forecast from the New Mexico Sentencing Commission;
9. reports on 2018 legislative memorial studies, including:
  - House Joint Memorial 16, Criminal Justice and Public Safety Task Force;
  - House Memorial 82, Encourage Pro Bono Legal Services;
  - House Memorial 89/Senate Memorial 92, Services for Victims of Human Trafficking;
  - House Memorial 106, Corrections Department Health Care System;
  - Senate Bill 19, Uniform Guardianship & Other Arrangements; and
  - Senate Memorial 98/House Memorial 104, Study Law Enforcement Body Camera Issues;
10. sexual assault and violence, domestic violence and gun violence;
11. consideration of elections and voting laws as they pertain to access to justice issues;
12. a report on gender justice issues;
13. data collection across law enforcement and public safety agencies and courts;
14. discussion of a state ethics commission;
15. a joint meeting with the Legislative Health and Human Services Committee, including discussion of issues implicating public health and the criminal justice system;
16. discussion of possible amendments to Chapter 57, Article 16 NMSA 1978 in regard to motor vehicle dealers franchising; and
17. legislation for committee consideration.

The Criminal Justice Reform Subcommittee will focus on reforms to the Criminal Code and the state's criminal justice system.

**Courts, Corrections and Justice Committee  
and  
Criminal Justice Reform Subcommittee  
2018 Approved Meeting Schedule**

**Courts, Corrections and Justice Committee**

<u>Date</u>	<u>Location</u>
May 30	Santa Fe
July 16-17	Santa Fe/Albuquerque
August 6-7	Albuquerque (joint meeting with the Legislative Health and Human Services Committee)
September 6-7	Albuquerque
September 24-25	Albuquerque
October 18-19	Albuquerque
November 29-30	Santa Fe

**Criminal Justice Reform Subcommittee**

<u>Date</u>	<u>Location</u>
July 18	Albuquerque
August 10	Ruidoso
August 24	Albuquerque
September 26	Albuquerque
October 17	Albuquerque
November 13	Albuquerque

# AGENDAS AND MINUTES





COURTS, CORRECTIONS & JUSTICE COMMITTEE  
AGENDAS AND MINUTES



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

**May 30, 2018  
State Capitol, Room 321  
Santa Fe**

**Wednesday, May 30**

- 9:30 a.m.           **Call to Order and Introductions**  
—Senator Richard C. Martinez, Co-Chair  
—Representative Gail Chasey, Co-Chair
- 9:45 a.m.       (1)   **Overview of House Joint Memorial 16, Supreme Court's Criminal Justice and Public Safety Task Force**  
—Justice Edward L. Chavez, Chair, Criminal Justice and Public Safety Task Force
- 10:15 a.m.       (2)   **Trends in Arrests and Correctional Populations: A Look at Department of Public Safety and Corrections Department Data**  
—Linda Freeman, Executive Director, New Mexico Sentencing Commission
- 11:00 a.m.       (3)   **Overview of Criminal Justice Reform Subcommittee Work for the 2018 Interim**  
—Senator Sander Rue, Co-Chair, Criminal Justice Reform Subcommittee  
—Representative Antonio Maestas, Co-Chair, Criminal Justice Reform Subcommittee
- 11:30 a.m.       (4)   **Review of 2018 Legislation Endorsed by Committee in 2017 Interim**  
—Celia Ludi, Staff Attorney, Legislative Council Service (LCS)
- 12:00 noon       (5)   **Review and Adoption of 2018 Interim Work Plan and Meeting Schedule**  
—Celia Ludi, Staff Attorney, LCS
- 12:30 p.m.           **Public Comment**
- 12:45 p.m.           **Adjourn**



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

**May 30, 2018  
State Capitol, Room 321  
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 May 30, 2018 at 9:41 a.m. in Room 321 of the State Capitol in Santa Fe.

**Present**

Rep. Gail Chasey, Co-Chair  
Sen. Richard C. Martinez, Co-Chair  
Rep. Eliseo Lee Alcon  
Sen. Gregory A. Baca  
Sen. Jacob R. Candelaria  
Rep. Zachary J. Cook  
Rep. Jim Dines  
Sen. Linda M. Lopez  
Rep. Antonio Maestas  
Rep. Sarah Maestas Barnes  
Sen. Cisco McSorley  
Rep. William "Bill" R. Rehm  
Rep. Angelica Rubio  
Sen. Sander Rue

**Absent**

Rep. Javier Martínez

**Advisory Members**

Sen. Bill B. O'Neill  
Sen. John Pinto  
Sen. Mimi Stewart  
Rep. Christine Trujillo  
Sen. Peter Wirth

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

**Guest Legislator**

Sen. Nancy Rodriguez

**Staff**

Celia Ludi, Staff Attorney, Legislative Council Service (LCS)  
Randall Cherry, Staff Attorney, LCS  
Erin Bond, Research Assistant, LCS

**Guests**

The guest list is in the meeting file.

**Handouts**

Copies of all handouts are in the meeting file.

**Wednesday, May 30****Call to Order**

Senator Martinez welcomed members of the committee, staff and guests to the meeting and asked the committee members and staff to introduce themselves.

**Overview of 2018 House Joint Memorial (HJM) 16, Supreme Court's Criminal Justice and Public Safety Task Force**

The Honorable Edward L. Chavez, justice (retired), New Mexico Supreme Court, and chair of the Criminal Justice and Public Safety Task Force, which was created pursuant to 2018 HJM 16, presented an overview of the current status of the task force and its plans to fulfill the tasks assigned it. HJM 16 requested that the task force identify issues of primary concern within the state's criminal justice and public safety system and develop a strategic plan to ameliorate those concerns, including measurable outcomes to help ensure that public investments in improvements to the system are as efficient and effective as possible.

Justice Chavez reported that the task force held its first meeting on March 29, 2018 and expects to complete its work on or before October 15, 2018 when its report is due. He noted that the task force receives no funding for support staff or offices, but Representative Daymon Ely has offered to provide administrative support as needed.

The task force is composed of representatives from each of the entities listed in HJM 16. Justice Chavez noted that neither the secretary of health nor the secretary of human services has attended a meeting, but he will continue to invite their participation. Additional members appointed by Justice Chavez are: Terri Cole, president and chief executive officer, Greater Albuquerque Chamber of Commerce; Robert L. Martinez, president, Albuquerque Lodge No. 01, Fraternal Order of Police; Nan G. Nash, chief judge, Second Judicial District Court; and Sandra Dietz, chair, Parole Board. The task force also includes Senators McSorley and Baca and Representative Ely. Representative Nate Gentry has also been invited to participate or name a designee, but he has not responded.

At the first task force meeting, Legislative Finance Committee (LFC) staff members Jon Courtney and Travis McIntyre reviewed the *Status Report of LFC Review of Criminal Justice System in Bernalillo County*, which was presented to the LFC on January 15, 2018. At its second meeting, the task force received reports regarding geographic dispersion and concentration of crime in the Albuquerque area.

Justice Chavez expressed confidence that gathering all of the key participants in the criminal justice system on the task force will generate positive results, as a major obstacle to progress in this area up to now has been the failure to gather all of the key participants in one forum to share information and coordinate goals, efforts and resources. To explain the importance of including all key participants in discussions, Justice Chavez used the example of setting a goal to complete criminal trials within 18 months. He noted that the goal would impact not only the courts, but also law enforcement, district attorneys, public defenders and the crime lab. Thus, the mission and resources of each of the participants must be considered and coordinated in order to achieve the goal.

Justice Chavez stated that he plans to meet individually with each of the task force members in the coming months to obtain their views on their needs and ideas for how to improve the criminal justice system and public safety in New Mexico. He also plans to form work groups to focus on release, pretrial, supervision, treatment programs, sentencing, the need for additional law enforcement and developing performance measures.

Justice Chavez noted that much of the work of the task force has already been done in other states. He hopes to use the lessons learned through their efforts, including the work of the Council of State Governments, to assist the task force. Finally, he noted that the federal government is currently considering legislation to address issues regarding criminal justice reform, including reentry of formerly incarcerated persons into civil society and the opioid problem.

The task force plans to have four or five meetings. The next meeting is on August 8, 2018 at the offices of the Greater Albuquerque Chamber of Commerce.

Senator Martinez invited Justice Chavez and all of the task force members to attend a public safety forum to be convened at the State Capitol on June 19, 2018 and moderated by a representative from the Council of State Governments. The forum will include several panels that will address criminal justice issues.

A committee member noted that he had discussed the need for coordination among criminal justice agencies with a number of individuals from various participating agencies, and the individuals stated that they did not discuss coordinating needs and resources. The committee member expressed hope that joining all of the relevant parties in the task force would facilitate those discussions.

A committee member requested a list of task force members and agendas. The member also expressed hope that the efforts of the task force would dovetail with the efforts of the Criminal Justice Reform Subcommittee (CJRS). The member noted that agencies in government often seem to work at cross-purposes and posed the example of incarcerated parents refusing to travel to child custody hearings, which might help reunify the family, because the travel days negatively impacted the prisoner's "good time" credit. Thus, the rules of the different agencies involved do not encourage an optimum outcome.

A committee member encouraged the task force to seek input from entities such as the Bernalillo County Criminal Justice Review Commission, composed of representatives from the various parties in the criminal justice system. The member also encouraged the task force to coordinate with the CJRS. Finally, the member suggested that the task force should include mid-level personnel in its discussions, as those individuals have valuable practical experience that can assist in evaluating proposals. The member provided the example of prohibiting the use of prisoner isolation under all circumstances, which some argue is a good long-term goal. Jail personnel have warned that to do so may create safety issues for staff and other prisoners when a prisoner is detoxing from a drug.

### **Trends in Arrests and Correctional Populations: A Look at Department of Public Safety (DPS) and Corrections Department Data**

Linda Freeman, executive director, New Mexico Sentencing Commission, reviewed the commission's membership and its role as a criminal and juvenile justice policy resource. Referring to her report, "Trends in Arrests and Correctional Populations: A Look at New Mexico Department of Public Safety and New Mexico Corrections Department Data", she presented information on arrests, county and state prison populations and population growth projections.

Ms. Freeman explained that the commission has statutory authority to collect, analyze and disseminate data from state, county and municipal agencies that possess criminal and juvenile justice data. The commission also acts as a repository for the data it receives. She emphasized that the information the commission obtains and disseminates has a high level of protection because the data are not deemed to belong to the commission and thus are not subject to open records requests addressed to the commission. Further, to ensure accuracy, all reports published by the commission are reviewed by the agency providing the data before reports regarding those data are released to the public.

Ms. Freeman informed the committee that data provided by the commission are not "real-time" because the data provided to the commission by the various reporting agencies are generally provided on a quarterly basis. However, the commission can usually obtain data in real time if needed.

Ms. Freeman discussed trends in arrests from January 1, 2001 through March 31, 2018. Arrest data are reliable because they are based on fingerprints taken at the time of arrest. She noted that the arrest report does not include arrests based on warrants issued for failure to appear or failure to comply with court orders.

Referring to the slide titled "Analysis of Arrest Data January 1, 2001-March 31, 2018", Ms. Freeman noted that during that period, 1,961,315 criminal charges were filed. This resulted in 1,147,296 arrests of 409,006 individuals. Similarly, the slide titled "Analysis of Arrest Frequency" showed that of the total number of individuals arrested in New Mexico between January 1, 2001 and March 31, 2018, approximately 53 percent were arrested only once. Approximately 31 percent of those individuals were arrested two to four times, and approximately 16 percent were arrested five or more times. Finally, 21,909, or approximately



five percent, of the arrestees were arrested 10 or more times. That five percent of individuals reflected 30 percent of all charges and 28 percent of all arrests for the period. Ms. Freeman noted that 46 percent of the individuals included in the five percent were arrested in three or more counties. These data indicate that a relatively small number of people are responsible for the majority of crimes.

Ms. Freeman next reviewed incarceration data, discussing county jail populations as well as data provided by the Corrections Department for state prison populations. She explained that New Mexico is one of a few states in which local jail population numbers have historically been almost identical to state prison population numbers. However, Bernalillo County recently significantly reduced its jail population, so as of June 30, 2017, there were 6,119 persons incarcerated in local jails and 7,252 persons incarcerated in state prisons. She also noted that the local jail numbers do not include persons on federal hold or persons who are housed for other agencies.

The slide titled "Monthly High Total Male Prison Population" shows that the male prison population from January 1, 2001 through May 1, 2018 increased by 27 percent. The slide titled "Monthly High Total Female Prison Population" shows that the female prison population for the same time period increased by 47 percent. Ms. Freeman added that from 2010 to 2017, the number of female prisoners housed in local jails increased from 13 percent to 18 percent of the total jail population. The national average at the end of 2016 was 14.5 percent.

Referring to the slide titled "Factors Affecting Growth in Prison Population", Ms. Freeman commented that New Mexico houses more violent offenders than other states as a proportion of total prisoner population. This may be due primarily to two factors: (1) length of sentences; and (2) applicability of earned meritorious deductions (good time). Serious violent offenses usually carry longer sentences, and serious violent offenders earn good time of only four days per month of time served, whereas other offenders earn good time at a rate of 30 days for each month served. In response to a member's question, she explained that the term "serious violent offender" is defined in statute as a person who commits the most serious crimes, such as murder. There is also a group of less serious crimes for which the sentencing judge has the discretion to sentence the offender as a serious violent offender. She observed that although male admissions for violent crimes, including serious violent crimes, have been relatively steady since 2007, the number of serious violent offenders has increased in proportion to other offenders from approximately 20 percent to approximately 30 percent.

Referring to the slide titled "Admissions Trends Over the last 5 Years", Ms. Freeman noted that, comparing admissions of males and females, males commit more violent offenses and females commit more property and drug offenses. Public order offenses are committed by males and females at similar rates. She added that the basis for the highest number of female prisoners admitted tends to alternate yearly between property crimes and drug crimes, likely as a result of charging patterns; persons charged with drug offenses are often charged with property offenses as well, but they may be convicted and sentenced on only one type of offense.

Referring to the slide titled "Factors Affecting Growth in Prison Population", a member asked what "drug" includes and asked for a breakdown by race and ethnicity of incarceration for drug crimes. Ms. Freeman responded that "drug" includes both possession and trafficking. The commission will provide the committee a breakdown of the admissions for "possession" and "trafficking". She also noted that the commission is currently researching the reasons for the increase in female population based on drug offenses. With regard to race and ethnicity, the commission receives those data from the Corrections Department. The reliability of the data is questionable because it is unclear how the data are obtained. The commission will follow up on this issue.

A member observed that New Mexico law does not require that an offender have a minimum amount of a drug to be charged for trafficking and asked for more information regarding what portion of the increasing prison population is due to large-volume trafficking and what portion reflects persons who are trafficking simply to support their own addictions.

Referring to the slide titled "Factors Affecting Growth in Prison Population", a member asked what offenses are included in the term "Public Order"; what percentage of the public order offenses were down from "violent" offenses; and how many persons included in public order offenses were first-time offenders. Ms. Freeman responded that the public order offenses are all felonies and include resisting arrest, tampering with evidence and witness intimidation. She will provide a breakdown of the offenses to the committee and attempt to provide the other information requested.

Parole violation admissions from 2008 to 2018 accounted for 33 percent of all admissions of males; for females, the 10-year average was 31 percent.

Looking at all admissions, not including parole violations, for men released in 2017, the median length of stay was 546 days. For women, the median length of stay was 409 days. Ms. Freeman explained that the commission uses the median instead of the average because those prisoners with extremely long terms would render an average inaccurate.

Ms. Freeman mentioned that the annual prison population forecast will be finalized in early summer.

A member noted that the enabling statute for the commission includes making recommendations and asked whether and where the commission provides recommendations. Ms. Freeman answered that the commission sometimes provides recommendations in reports with regard to particular issues. More often, the commission provides recommendations informally in interactions with LFC staff and other agencies as they work through evaluations and other commission studies. The commission also provides recommendations through fiscal impact reports during legislative sessions. She noted as an example that the commission has provided a cost analysis to legislators regarding proposed "three strikes" legislation.

A member asked whether the commission analyzes and publishes information regarding the reasons for changes in prison population. Ms. Freeman responded that the commission has not provided formal reports regarding the reasons for prison population changes. However, the commission works informally with agencies regarding this issue. She noted that the commission often attempts to research the reasons for changes with regard to particular issues but also noted that relevant data are generally not readily available electronically. For example, the commission would like to compare data from different systems, such as Corrections Department and court data, but the personal identifiers used across agencies to identify a particular person vary. The DPS has a system of identifying each arrestee with a unique identification number that is based on fingerprints and derived from a federal database, but that number is not used by the courts, the Corrections Department or other agencies, which may assign their own identifying numbers. Thus, it is difficult to verify the identity of each person as that person transitions through the law enforcement, court and incarceration processes, making comparison of data across agencies difficult. The commission generally does not have the resources to accomplish this type of research because of the need to verify individuals across agencies.

A member noted that numerous agencies have testified before various committees regarding the problem of the inability to "interface" among the various agency data systems and asked whether the commission has a plan to address this. Ms. Freeman responded that commission staff informally advise on this issue as an interested party at committee meetings regarding data sharing among different agencies. She noted that many agencies are interested in data sharing, but one of the issues is that they often have different and very specific needs and uses for the data. The commission is currently working with the University of Cincinnati to develop a method to identify persons based on partial information. This methodology might be applicable to other agencies as well.

In response to a question about the comparison of New Mexico to other state prisons, Ms. Freeman explained that "other state prisons" refers to state prisons but not county jails. In other states, it does not include populations in federal prisons.

A member expressed frustration that in spite of the sophistication of information technologies, agencies continue to struggle with the sharing and accuracy of information. The member asked the commission to create a "wish list" of what it would need in order to obtain more and better information from other agencies.

A member observed that parole revocations seem consistently high over the last several years. The member stated that there seems to be an opportunity to reduce prison populations for both males and females if the state can better address the needs of persons coming out of prison, adding that Bernalillo County now has a facility and program that provides counseling and support to persons as they are released from prison.

A member asked how many Native Americans are currently in prison and which county jail has the highest number of Native American inmates. Ms. Freeman stated that she would

provide that information to the committee at a later time and remarked that the jail in San Juan County has the highest Native American population.

In response to a question, Ms. Freeman stated that the commission is located at the University of New Mexico Advisement Center; it has four full-time staff members and a number of contract employees, including university students. Staff includes a business manager, a research scientist and a half-time senior research scientist.

A member asked how the commission obtains data from courts and other agencies. Ms. Freeman responded that the commission has data-sharing agreements with the various agencies that have been developed over many years. For example, the commission obtains information from the courts through the Judicial Information Division of the Administrative Office of the Courts. If the commission requires certain information, it must request it through the Judicial Information Systems Council (JIFFY). JIFFY allows the commission to access the courts' "Odyssey" data system so that it can obtain more specific information and verify the accuracy of the information. As to other agencies, the commission generally coordinates with administrative and information technology staff.

A member asked what types of information the commission is charged with gathering. Ms. Freeman explained that its authority is very broad and includes arrests, juvenile information, court disposition data and probation data.

A member suggested that the commission compile information on probation violations with regard to drug use, pointing out that drug users tend to relapse as part of their recovery process, and information on incarceration as a result of relapses would be useful in crafting policy regarding this issue.

A member commented that it may not be good policy to treat inmates differently with respect to good time credit, noting that some crimes carry 50 percent good time credit and others carry 15 percent good time credit. This makes it very difficult for the Corrections Department to manage the good time credit. The member suggested that the credit process should be the same for all; the sentence could simply be increased for more serious crimes if the intent is to keep the person in prison longer.

A member said that private prisons in the past added days to women's sentences for in-house violations that, when committed by men, were not considered egregious enough to increase sentences. The member asked if the commission had done research to determine whether female and male prisoners are currently receiving equal treatment in this regard. Ms. Freeman stated that the commission has not studied this issue, but she believes that a researcher at the University of New Mexico has done so. She will obtain and provide the study.

Ms. Freeman remarked that a problem for female prisoner management is that women typically receive relatively short sentences. This creates a problem because the inmate is

required to receive certain programming in prison, and after credit for good time, it is often difficult to provide the mandatory programming within the limited time left.

A member asked for clarification on where female prisoners are housed. Ms. Freeman responded that women are all currently housed either in the Western New Mexico Correctional Facility in Grants or in the Springer Correctional Center, which are both state-run facilities.

A member noted that California has attempted to institute programs to provide rehabilitation to offenders before they are sent to prison. The member asked whether the commission has followed the progress of these programs, what their cost is and if they are working. Ms. Freeman stated that the commission will research the California programs and provide information to the committee.

A member asked if Ms. Freeman could confirm that the most common shared trait among persons sent to prison is drug use. Ms. Freeman stated that federal estimates are that 70 percent to 80 percent of persons in the criminal justice system have a substance abuse problem.

A member stated that the federal government recently announced a national program to address drug abuse. Despite having two counties with high rates of drug use, New Mexico is not receiving a significant share of that money. The allegation has been made that race was a factor in determining how the funds would be allocated. The member noted that the majority of the funds were directed to rural counties located in the midwest and northeast with low minority populations. The member requested that the commission research this issue and report to the committee and also suggested that this issue should be included in the committee's interim work plan. Another member commented that United States Senator Martin Heinrich indicated that there will be amendments to the federal program that will provide additional funds to needy counties.

A member asked whether, with regard to prison population forecasts, the commission has reviewed the forecasts of those states that are engaged in criminal justice reform to determine whether their innovations have had an impact on projected prison populations. Ms. Freeman responded that the commission will work with the Council of State Governments to obtain that information.

### **Overview of CJRS Work for the 2018 Interim**

Senator Rue and Representative Maestas, co-chairs, CJRS, briefed the committee on the subcommittee's plans for the interim. They stated that the CJRS will build on the work the subcommittee did in 2013 and 2014. This will include efforts to educate the public on the benefits of criminal justice reform programs that have proven effective at reducing crime in other states. Representative Maestas observed that programs that include a compassionate approach to enforcement and ultimately increase public safety are often perceived by the public as being "soft on crime". He noted that it is important to obtain public understanding and support for these programs if they are to succeed.

Senator Rue noted that the CJRS is working with the Council of State Governments to convene a forum on June 19, 2018 at the State Capitol to explore and discuss criminal justice issues in New Mexico. The Council of State Governments has agreed to work with New Mexico to develop reform proposals if all of the branches of government will commit to join in the effort. He described the forum agenda and noted that the programs that will be discussed have proven successful in other states and, if appropriate, will be adjusted to suit the particular needs of New Mexico.

Senator Rue also noted that the LFC will complete and present a study this summer regarding the criminal justice system in Bernalillo County, including the reentry process for persons released from the Corrections Department.

Finally, he stated his hope that the work of the CJRS and the full committee will result in one or a number of bills coordinated to address various reform issues for introduction in the 2019 legislative session.

A member suggested that the CJRS focus on consensus issues that will garner broad public support and that it attempt to educate and seek public support on the concept and purpose of "criminal justice reform".

#### **Review of 2018 Legislation Endorsed by the Committee in the 2017 Interim**

Ms. Ludi provided a schedule showing the outcome of each of the nine bills endorsed by the committee during the 2017 interim. Four bills passed and were signed, and two died in committee. A member clarified that the first item on the schedule, entitled "Revised DWI Blood Test Requirements", was, in fact, introduced as House Bill 71 and Senate Bill 26, and both died in the Senate Judiciary Committee. A member also clarified that House Bill 53 died, but the appropriation was included in House Bill 2.

#### **Review and Adoption of the 2018 Interim Work Plan and Meeting Schedule**

Ms. Ludi presented the proposed work plan for the 2018 interim.

Members suggested adding the following topics:

- possible amendments to Chapter 57, Article 16 NMSA 1978, commonly referred to as the Motor Vehicle Dealers Franchising Act, with reference to Tesla, Inc.;
- enabling legislation regarding legislative ethics (a working group to be chaired by Senator Lopez and Representative Dines was appointed for this purpose);
- the problems regarding sharing data among state and other agencies;
- child abuse, including whether the applicable statutes require significant review and amendment; and
- the jurisdiction of the New Mexico Law Enforcement Academy and continuing training for law enforcement officers, including reserve officers.

The committee agreed that it will consider bills for endorsement at the final committee meeting of the interim so that a long presentation on a proposed bill during a regular committee meeting may be unnecessary.

A motion to accept the work plan and meeting schedule as presented and amended passed.

A member announced and invited members to a ceremony to be held on June 2, 2018 to display the original version of a treaty signed between Navajo leaders and the United States government in 1868.

**Public Comment**

There was no public comment.

**Adjournment**

There being no further business before the committee, the first meeting of the CCJ for the 2018 interim adjourned at 12:31 p.m.





Revised: July 12, 2018

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

**July 16, 2018  
State Capitol, Room 307  
Santa Fe**

**July 17, 2018  
University of New Mexico Science & Technology Park Rotunda  
Albuquerque**

**Monday, July 16 — State Capitol, Room 307**

- 9:00 a.m.           **Call to Order and Introductions**  
—Representative Gail Chasey, Co-Chair  
—Senator Richard C. Martinez, Co-Chair
- Action Item: Approval of Minutes of May 30 Meeting*
- 9:15 a.m.       (1) [New Mexico Sentencing Commission \(NMSC\) Prison Population Forecast](#)  
—Linda Freeman, Executive Director, NMSC
- 10:00 a.m.       (2) [Corrections Department Update](#)  
—Jerry Roark, Deputy Secretary, Corrections Department
- 11:45 a.m.       **Public Comment**
- 12:00 noon       **Lunch**
- 1:00 p.m.       (3) [Privately Operated Prisons in New Mexico with Contracts to House Federal Immigration Detainees](#)  
—Ronald D. Vitiello, Acting Director, U.S. Immigration and Customs Enforcement (*invited*)  
—Ann Morse, Federal Affairs Counsel and Director of Immigrant Policy Project, National Conference of State Legislatures  
—Adriel Orozco, Attorney, New Mexico Immigrant Law Center
- 3:00 p.m.       **Public Comment**
- 4:00 p.m.       **Recess**

**Tuesday, July 17 — University of New Mexico Science & Technology Park Rotunda**

- 9:00 a.m.           **Reconvene — Introductions**
- 9:15 a.m.           **Welcome**  
—Richard L. Wood, Ph.D., Interim Senior Vice Provost for the Academic Mission, University of New Mexico
- 9:30 a.m.           (4) **Juvenile Drug Courts**  
—Robert Mitchell, Senior Statewide Program Manager for Problem Solving Courts, Administrative Office of the Courts  
—Krista Lawrence, Division Director, Problem-Solving Courts, Eleventh Judicial District Court  
—The Honorable Marie Ward, District Judge, Second Judicial District Court  
—Lindsey Lucero, Program Manager, Second Judicial District Juvenile Drug Court
- 10:30 a.m.          (5) **Children, Youth and Families Department (CYFD)**  
—Jeremy Howard, Chief Data Officer, CYFD  
—Lisa M. Fitting, S.H.R.M.-S.C.P., Human Resources Director, CYFD  
—Camille Hancock, Protective Services Training Director, CYFD
- 12:30 p.m.          **Public Comment**
- 1:00 p.m.           **Lunch**
- 1:30 p.m.           (6) **The Use of Isolated Confinement for Adults and Children**  
—Steven Robert Allen, Director of Public Policy, American Civil Liberties Union of New Mexico  
—Jerry Roark, Deputy Secretary, Corrections Department  
—Tamera Marcantel, Deputy Director, Juvenile Justice Facilities, CYFD  
—Patrick Trujillo, Loss Prevention Attorney, New Mexico Counties  
—Clay Corn, Detention Administrator, Chaves County Detention Center
- 3:00 p.m.           **Public Comment**
- 3:30 p.m.           **Adjourn**

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

**July 16, 2018  
State Capitol, Room 307  
Santa Fe**

**July 17, 2018  
University of New Mexico Science & Technology Park Rotunda  
851 University Blvd. SE  
Albuquerque**

The second meeting of the Courts, Corrections and Justice Committee (CCJ) was called to order by Senator Richard C. Martinez, co-chair, on July 16, 2018 at 9:22 a.m. in Room 307 of the State Capitol in Santa Fe.

**Present**

Rep. Gail Chasey, Co-Chair (7/16)  
Sen. Richard C. Martinez, Co-Chair  
Rep. Eliseo Lee Alcon  
Sen. Gregory A. Baca (7/17)  
Rep. Zachary J. Cook (7/16)  
Rep. Jim Dines (7/16)  
Sen. Linda M. Lopez  
Rep. Antonio Maestas  
Rep. Javier Martínez  
Sen. Cisco McSorley  
Rep. Angelica Rubio (7/16)

**Advisory Members**

Sen. Bill B. O'Neill  
Sen. John Pinto (7/17)  
Sen. Mimi Stewart  
Rep. Christine Trujillo

**Guest Legislators**

Rep. Harry Garcia  
Rep. Bill McCamley

**Absent**

Sen. Jacob R. Candelaria  
Rep. Sarah Maestas Barnes  
Rep. William "Bill" R. Rehm  
Sen. Sander Rue

Rep. Deborah A. Armstrong  
Sen. William F. Burt  
Rep. Brian Egolf  
Rep. Doreen Y. Gallegos  
Sen. Daniel A. Ivey-Soto  
Sen. William H. Payne  
Rep. Patricia Roybal Caballero  
Sen. Peter Wirth

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

**Staff**

Celia Ludi, Staff Attorney, Legislative Council Service (LCS)  
Randall Cherry, Staff Attorney, LCS  
Erin Bond, Research Assistant, LCS

**Guests**

The guest list is in the meeting file.

**Handouts**

Copies of all handouts are in the meeting file.

**Monday, July 16****Call to Order**

Senator Martinez welcomed members of the committee, staff and guests to the meeting and asked the committee members and staff to introduce themselves.

**New Mexico Prison Population Forecasts**

Linda Freeman, executive director, and Douglas Carver, deputy director, New Mexico Sentencing Commission (commission), provided an update on prison population forecasts for both female and male state prison populations, referring to the report titled "New Mexico Prison Population Forecasts: FY 2019-FY 2028" (Forecast). Ms. Freeman and Mr. Carver summarized the report and highlighted a number of important points.

Mr. Carver noted that, based on the most recent U.S. Department of Justice Bureau of Justice Statistics report (2016), the federal prison population has been trending downward since 2009, with a slight uptick in 2014. The aggregate state prison population also decreased from 2015 to 2016. Finally, the imprisonment rate for sentenced prisoners was the lowest since 1997. Mr. Carver also noted that, when compared to the national average, New Mexico houses a higher percentage of male prisoners convicted of violent offenses.

Ms. Freeman discussed the findings in the Forecast, noting that there is a general upward trend when looking at the highest actual annual population rates of both males and females in New Mexico prisons from 2004 to date. The commission expects the trend to continue through 2028.

Ms. Freeman also noted that the female inmate population has increased at a faster rate than the male inmate population for the period reviewed and continues to increase. However, the increase appears to be slowing down. Nevertheless, Ms. Freeman warned that the current operational capacity for female inmates is 850. The commission estimates that the female inmate population will exceed that capacity in 2024. Ms. Freeman added that the commission also expects the male inmate population to exceed operational capacity in 2024.

Ms. Freeman stated that, while predictions regarding the growing inmate populations are troubling, the commission's projections are based on records over the past three to five years. She believes that criminal justice reform initiatives being considered by the legislature may impact the current trends and result in a decrease in the total population for both male and female prisoners over time.

Ms. Freeman discussed the age of New Mexico's prison population, pointing out that an older population generally has more medical needs. She noted that, fortunately, New Mexico has a relatively small number of older prisoners, but suggested that the age factor should be monitored closely because it will affect the health care costs that will need to be included in budgets.

Finally, Ms. Freeman noted that while prison admissions are trending downward, prison releases are not keeping pace. She believes that this relates to the lengths of sentences, but the commission currently does not have the resources to analyze this issue. She believes that the commission will be better able to access the data necessary to understand and explain this phenomenon when the Corrections Department (NMCD) implements its new case management system.

On questioning, the following topics were discussed:

- the need for the commission to advise the legislature on causes of recidivism and other matters that may affect the prison population;
- what resources the commission needs to expand its access to information and expand its ability to provide broader analysis;
- the reasons for the increasing female prison population;
- the impact of alcohol- and drug-related sentences on the prison population;
- the Parole Board and parole requirements; and
- diagnostic processing of incoming prisoners and opportunities to provide helpful basic education and skills training.

### **NMCD Update**

Jerry Roark, deputy secretary, NMCD, introduced the NMCD executive team and briefed the committee on current issues within the NMCD, referring to his report titled "New Mexico Corrections Department". Deputy Secretary Roark described the NMCD's basic mission, summarized the NMCD's budget and spending and provided a number of highlights regarding the NMCD and its programs.

He informed the committee that the NMCD has purchased four body scanners, which are deployed at the Springer Correctional Center, the Penitentiary of New Mexico and the Central New Mexico Correctional Facility. The scanners have proven effective, and the NMCD hopes to purchase four more.

Deputy Secretary Roark stated that the number of positive reports for drugs based on urinalysis averages four percent per month. Eighty percent of the positive reports result from the presence of Suboxone.

The NMCD has had, and continues to have, high employee vacancy rates. In this year's legislative session, the NMCD was authorized additional funding to provide for a pay raise for correctional officers. The NMCD hopes that the improved funding will assist in addressing the vacancy problem.

Deputy Secretary Roark noted that the hepatitis C rate for the inmate population continues to be approximately 40 percent. The NMCD works with Project ECHO (Extension for Community Healthcare Outcomes) at the University of New Mexico (UNM) School of Medicine to address the most acute cases within the inmate population.

The NMCD has 31 HIV-positive inmates. Health care services for these inmates are provided by Centurion and CHRISTUS St. Vincent.

The NMCD has revised its policies to allow more inmates to access the NMCD's Residential Drug Abuse Program (RDAP). The NMCD believes this is a positive step, as the recidivism rate for RDAP graduates is approximately 21 percent compared to 46 percent for those not completing the RDAP.

Deputy Secretary Roark noted that the NMCD is replacing its current offender management system. The new system will be called "offender management network information" or "OMNI". The NMCD hopes to have the new system in place by December 31, 2019.

The NMCD continues its efforts to improve and expand programming to reduce recidivism. Previously, 81 percent of its programs were evidence-based, but currently that number is 72 percent. The drop is because the NMCD decided to increase the number of programs to avoid problems caused by having idle inmates. Deputy Secretary Roark noted that the programming includes numerous programs specifically directed to female inmates.

On questioning, the following topics were discussed:

- the purchase, location and use of body scanners;
- participation in education and other programming;
- comparison between New Mexico and other states regarding the age and condition of facilities;
- escape risks and statistics;
- recidivism rates and methods to reduce recidivism;
- risks and incidents involving drone aircraft;
- hepatitis C rates and management issues;

- processing new inmates;
- parole issues regarding both male and female inmates;
- costs of housing inmates in private and state prisons;
- prison staff training;
- gang membership and activity within prisons;
- community corrections programs; and
- issues regarding timely release of inmates from private prisons.

### **Public Comment**

Dr. Deborah Blanton suggested that drug and alcohol abuse should be considered as a health issue and not a criminal issue. She also noted that recidivism is often linked to a lack of employment and employers are reluctant to hire individuals who have been in prison. She recommended that the legislature consider expanding community-based programs. Finally, she observed that private prisons have a profit incentive to keep people incarcerated.

Don Johnston discussed in-house parole statistics, housing availability and issues concerning sex offenders and the sex offender registry. He noted that including a sex offender's place of employment on the registry website deters employers from hiring a sex offender. He suggested that successful felons should be able to associate with other felons, as the successful felon can assist parolees in integrating back into society. Finally, he stated that the recidivism rate for persons on the sex offender registry is only five percent.

Diane McCash suggested that probation and parole periods should be shortened, as longer periods can cause the person to cycle in and out of prison. She noted that probation and parole do not work for all individuals. She suggested that a person who has not committed a new crime, but who is not functioning well within the system, as indicated by technical violations of parole or probation, should simply be released from the system.

Denicia Cadena, policy director, Young Women United, described the work done by her organization and thanked the committee for discussing gender-related issues at the meeting.

### **Privately Operated Prisons in New Mexico with Contracts to House Federal Immigration Detainees**

Representative Chasey introduced the topic of contracts between private prisons and federal agencies. She noted that two New Mexico counties contract with the federal Department of Homeland Security's U.S. Immigration and Customs Enforcement (ICE) to house immigrants detained for civil immigration violations. Cibola County houses immigrant detainees at the Cibola County Correctional Center (CCCC) in Milan, and Otero County houses immigrant detainees at the Otero County Processing Center (OCPC) in Chaparral. The CCCC is operated by CoreCivic, and the OCPC is operated by the Management and Training Corporation (MTC).

Representative Chasey noted that Ronald D. Vitiello, acting director, ICE, and the wardens at the CCCC and the OCPC were invited to attend the committee meeting. Mr. Vitiello

did not respond, and the wardens for the CCCC and the OCPC declined to attend, although the warden for the CCCC invited committee members to tour the facility.

Ann Morse, federal affairs counsel and director of the Immigrant Policy Project, National Conference of State Legislatures (NCSL), highlighted a number of issues that are addressed in detail in her report titled "U.S. Immigration: A Primer for State Policy Makers".

Ms. Morse began by reminding the committee that while federal law governs immigration, states can and have recently taken active roles in regulating the provision of services for those immigrants located within their states. She noted that the last comprehensive review and reform of the federal immigration laws occurred in 1986, and that the current federal administration has implemented numerous executive policies that impact immigration, including separating immigrant children from their families. She added that the NCSL is attempting to develop alternative policies that may address some of the problem issues.

Ms. Morse noted that a 2016 study by the National Academy of Sciences that examined a large number of studies on the economic impact of immigration concluded that immigration provides positive national long-term economic benefits, has little negative impact on wages and employment and has some negative initial impacts on states due to the provision of health and education services. However, there is a net positive long-term economic benefit to the states as the immigrants progress in their careers and become better established financially, and the children of immigrants tend to do better economically than their parents.

Ms. Moore stated that through meetings with researchers, economists, union leaders, legislators and others, the NCSL has concluded that there is a growing consensus that immigrants play a vital role in the nation's social, economic and civic life. She cited examples of immigrants providing needed labor, introducing new crops and creating new markets.

Ms. Morse noted that the states have historically worked with federal authorities to address certain immigration issues. During the 1980s and 1990s, the states generally focused on social services, health care and nutritional assistance. In the early 2000s, the focus shifted to driver's licenses and education. In 2010-2011, the focus was on immigration enforcement reforms.

Ms. Morse said that the NCSL currently monitors state legislative activities in immigration. She stated that, in the aggregate, states introduce approximately 1,200 pieces of legislation per year and pass approximately 200 laws. Ms. Morse noted that some states are currently considering the issue of occupational licensing because, as a large portion of the United States population ages, the workforce is losing a high number of licensed health care professionals at all levels. These states are exploring the viability of allowing professionals from other countries to obtain a professional license based upon their experience and the licensing authority in their country of origin.



Finally, Ms. Morse described a number of efforts in other states, such as Utah and California, to address various immigration issues. She noted that states have authority with regard to certain issues, such as the welfare of children. She also encouraged the committee to pursue creative solutions to address immigration issues and to utilize any resources that the NCSL can offer.

Adriel Orozco, attorney, New Mexico Immigrant Law Center, discussed current issues regarding immigrants detained in New Mexico. He related that President Trump has called for expansion of detention of all undocumented persons and separation of families. The federal administration has enacted a policy of categorically detaining asylum seekers, immigrants with long ties to the United States and others who pose no threat to public safety, and has increased its use of private prison facilities to house immigrant detainees. He noted that under the Obama administration, ICE regularly released detainees who did not present a safety threat, but now each detainee must have a hearing before an immigration judge before the detainee can be released, which often takes two to three months or longer. The number of detained immigrants has increased from 5,000 in 1994 to 19,000 in 2001 to over 39,000 in 2017. He commented that, with ICE spending \$2 billion per year on private detention facilities, profits of private prison companies are soaring, and he does not expect the policy to be revised.

Mr. Orozco stated that both private detention facilities in Cibola and Otero counties have long and well-documented records of incidents involving inmate abuse and neglect prior to the contracts with ICE to house immigrant detainees, noting that the Federal Bureau of Prisons contracted for 16 years with a private prison company to operate a facility in Cibola County to house federal prisoners but closed the facility due to inmate abuse and neglect problems. He stated that when the facility reopened under contract with ICE, the problems continued. Mr. Orozco cited as an example the recent death of a detainee at the CCCC due to HIV complications after the detainee had requested and had not received medical attention from staff. He also noted that an audit of the OCPC facility by the U.S. Department of Justice Office of the Inspector General revealed delays in medical care, unsanitary conditions and the use of solitary confinement as punishment, among other issues.

Mr. Orozco discussed the recent policy of the federal administration to separate children from their parents at the border to deter people from seeking asylum in the United States, citing a number of examples of the impact of this policy has had on parents and children and providing letters written by parents detained at the CCCC who had been separated from their children. He also cited a number of examples in which medical assistance or medication was withheld from detainees, resulting in serious medical consequences.

Mr. Orozco encouraged the committee to consider options to monitor and regulate conditions in the facilities, including imposing a moratorium on new contracts between counties and ICE.

On questioning, Mr. Orozco explained that, although approximately one-half of New Mexico state prisons are operated by private prison companies, none contracts with ICE to detain immigrants for civil immigration violations. There are, however, two counties, Cibola and Otero, that contract with ICE to house immigrants detained for civil immigration violations. Both counties subcontract with private prison companies to operate the detention facilities.

The CCCC in Milan is owned by CoreCivic (formerly Corrections Corporation of America). In October 2016, Cibola County contracted with ICE to house immigrants detained for civil immigration violations. In turn, Cibola County subcontracts with CoreCivic to fulfill the county's contract with ICE by housing immigrant detainees at the CCCC. Cibola County is essentially a pass-through entity: most of the revenues received from ICE under the contract are paid, in turn, to CoreCivic, and the county receives a small administrative fee from CoreCivic. Immigrant detainees began being housed at the CCCC in December 2016. The CCCC has 1,116 beds and usually houses 300 to 600 people at any given time depending on current federal immigration policy. The CCCC houses mostly men, but has a dedicated pod for transgender women.

Otero County built the OCPC in early 2008 for the specific purpose of housing immigrants detained for civil immigration violations. Otero County contracts with ICE to house immigrant detainees and with the MTC to operate the OCPC. Immigrant detainees began being housed at the OCPC in June 2008. The OCPC has 1,086 beds and usually houses approximately 900 people. Only men are housed at the OCPC.

The following topics were also discussed:

- whether any states have prohibited counties from contracting with ICE to provide detention facilities;
- the lack of attorney representation at hearings, including for children;
- the availability of translators;
- basic civil rights of detainees;
- the amount of funding provided to the private facilities pursuant to ICE contracts and the amount of funds provided to the counties;
- current efforts to reunite separated parents and children;
- inclusion of detainees in census counts;
- initiatives that New Mexico can take to legislatively address immigration issues, including oversight of county detention facilities;
- pursuing actions for criminal negligence against detention facility officials; and
- an investigation of the CCCC and the OTPC detention facilities by the New Mexico attorney general.

### **Public Comment**

A large number of former immigration detainees described conditions inside the CCCC and the OTPC detention facilities. Their complaints included: delays in medical treatment; lack

of telephone and access to other communication; disrespect by staff; inadequate and spoiled food; the use of solitary confinement; a lack of adequate bedding; and extreme cold and hot temperatures.

### **Recess**

The committee recessed at 5:06 p.m.

### **Tuesday, July 17**

### **Reconvene**

Senator Martinez reconvened the meeting at 9:25 a.m at the UNM Science and Technology Park Rotunda in Albuquerque.

### **Welcome**

Richard L. Wood, Ph.D., interim senior vice provost for the academic mission, UNM, welcomed the committee to the UNM campus. He noted that a top priority of the university administration is campus safety, especially in regard to car theft and women's safety, and includes: systematic personal safety training for all students; installation of more cameras and additional security personnel; and new programs to bring more people on campus so that there are fewer dark, empty spaces that may encourage assaults. He announced that the four-year graduation rate has more than doubled from 12 percent in 2006 through 2010 to 29 percent last year, although enrollment has fallen by six percent.

### **Juvenile Drug Courts**

Robert Mitchell, senior statewide program manager for problem-solving courts, Administrative Office of the Courts, referring to his handout, explained that drug courts are a specialized category of problem-solving courts that target a variety of offenders who have alcohol and other drug dependency problems. He remarked that no criminal justice intervention has been studied more than adult drug courts, and the research shows that adult drug courts significantly reduce drug use and associated crime better than jail or prison, probation or treatment alone and at less expense than any other justice strategy. Drug courts are usually initially funded by a federal grant, which is later absorbed into an individual court's base budget. New Mexico has developed drug court standards based on research and national best practices.

Marie Ward, district judge, Second Judicial District Court, explained that, originally, the Juvenile Drug Treatment Court (JDTC) in the Second Judicial District Court was modeled after adult drug courts. The court, however, worked with the National Drug Court Institute to revise the JDTC based on new research on brain development that shows that the brains of young people are developmentally different from adults. Judge Ward commented that since the JDTC receives its referrals from the Children, Youth and Families Department (CYFD), the high turnover in CYFD personnel affects the JDTC also, resulting in a decreased number of referrals. In addition, the treatment provider contract has been vacant for the last two years or so.

Krista Lawrence, division director of problem-solving courts, Eleventh Judicial District Court, commented that the JDTC in the Eleventh Judicial District Court has experienced a decline in referrals from the CYFD. The CYFD has informed the court that it was finding that mental health issues are more prevalent than substance abuse issues among its populations. In response, the court implemented multi-systemic therapy (MST), which provides intensive support to the juveniles and their families.

Lindsey Lucero, program manager, Second Judicial District Juvenile Drug Court, commented that the court had done a lot of outreach to the community before it lost the full-time treatment provider, and the court has continued partnerships to support clients.

On questioning, Judge Ward explained that the JDTC accepts youth up to age 17, but an individual already enrolled in the treatment program may continue after the individual reaches age 18. Many of the JDTC clients are not in school, but the program includes an education component to help participants either complete their high school classes and graduate or obtain a high school equivalency credential.

Ms. Lawrence explained that the major difference between juvenile and adult drug treatment programs is that juvenile programs involve the juvenile's family. The MST approach addresses family issues first and then individual issues of the participating juvenile. Often, it turns out that parents have co-occurring issues, which are also addressed.

## **CYFD**

Jeremy Howard, chief data officer, CYFD, informed the committee that since the agency's fiscal year 2020 budget is incomplete, he is unable to address specific budget priorities. He noted that the CYFD's client population continues to grow. Referring to his handout, he discussed agency vacancy rates and staff training programs. In response to a committee member's questions, he was unable to explain why the agency reverts money for early childhood home visits every year, or whether the CYFD coordinates with the NMCD regarding child welfare issues, especially in the area of inmates with children.

## **Public Comment**

Tanya Covington spoke in support of expanding the use of restorative justice principles in juvenile justice. Restorative justice is evidence-based, has been shown to reduce recidivism and heal communities and is less expensive than incarceration.

## **The Use of Isolated Confinement for Adults and Children**

Steven Robert Allen, director of public policy, American Civil Liberties Union of New Mexico, cited a position statement on the use of solitary confinement issued by the National Commission on Correctional Health Care in 2016. The position statement found that solitary confinement longer than 15 consecutive days is cruel, inhuman and degrading treatment and is harmful to an individual's health, and it recommends that juveniles, mentally ill individuals and pregnant women should be excluded from solitary confinement of any duration. He reviewed

House Bill (HB) 175 (2017), sponsored by Representatives Maestas and Patricia A. Lundstrom, which would have created the "Restricted Housing Act" and prohibited the use of restricted housing for people under the age of 18, for pregnant women after the first five days of confinement and for persons with a "serious mental disability" under certain circumstances. Mr. Allen noted that Colorado has gone much further in prohibiting the use of solitary confinement. The use of the term "restricted housing" in the New Mexico bill was a compromise with the counties, and the sponsors worked with Disability Rights New Mexico on the definition of "serious mental disability". The bill would also have required all correctional facilities to collect and report data regarding the use of restricted housing in the previous quarter to the legislature or the county commission; and it would have required privately operated facilities to report quarterly all monetary settlements that were paid to inmates or former inmates as a result of lawsuits filed by the inmates or former inmates against the private correctional facility or its employees. The bill passed both houses with broad bipartisan support and substantial majorities but was vetoed by Governor Martinez.

Deputy Secretary Roark reported that the NMCD has reduced its use of restricted housing from 12 percent in 2012 to four percent as of last week, and he noted that there are currently one or two prisoners in protective custody.

Tamera Marcantel, deputy director of juvenile justice facilities, CYFD, stated that the CYFD focuses on rehabilitation, not punishment, and the use of solitary confinement is contrary to the CYFD's mission. She averred that "room confinement" is not the same as restricted housing but is used, under a policy developed in 2015, for limited times and specific purposes. Debriefing is required after every use of room confinement, and violations of the policy are required to be reported to the Office of Inspector General. The average length of room confinement has been reduced from one hour and 37 minutes to 36 minutes total, and client-on-staff assaults and client-on-client assaults have also decreased.

Patrick Trujillo commented that the bill was a good compromise and was supported by New Mexico Counties.

On questioning by members, Clay Corn, detention administrator, Chaves County Detention Center, explained that Chaves County had been successful in implementing incremental change in its "Special Management Detainees Policy". He said the county began by developing an accredited program. He emphasized that assessment of each person upon admission is crucial to its success.

### **Public Comment**

Christian described his two-week experience in detention at the Bernalillo County Juvenile Detention Center. He said that, among other things, residents were held in "lockdown", that is, in their rooms, eating alone, no gym time, with bathroom breaks every three hours, for a week straight. He said lockdown was used as a disciplinary measure, sometimes for all residents

and sometimes only for three or four. He said it was not always clear what violations had been committed that led to being placed in lockdown.

Erik Rivera, La Plazita Institute, relayed corroborating comments from young detainees regarding the use of lockdown when office supplies belonging to staff went missing. He explained that La Plazita is a two-year-old alternative to a detention program that provides individualized life skills and supervision Monday through Friday from 9:00 a.m. to 4:00 p.m. Most detainees are on house arrest and attend the program while wearing a Global Positioning System tracker. The program is funded by grants and private donations and has a capacity of 12 to 14 youth, although there are not that many attendees at the present time.

Dave Schmidt remarked that HB 175 combined provisions used in the Children's Code and the Criminal Code. The term "inmate" is not used in the Children's Code. He suggested that the Children's Code and the Criminal Code provisions should be separate.

### **Adjournment**

There being no further business before the committee, the second meeting of the CCJ for the 2018 interim adjourned at 3:02 p.m.

Revised: August 3, 2018

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

**August 6-7, 2018  
University of New Mexico  
Domenici Center for Health Sciences Education  
North Wing, Room 2720  
1001 Stanford Drive NE  
Albuquerque**

**Monday, August 6 — Joint Meeting with the Legislative Health and Human Services  
Committee (LHHS)**

9:00 a.m.           **Call to Order and Introductions**  
—Representative Gail Chasey, Co-Chair, Courts, Corrections and Justice  
Committee (CCJ)  
—Senator Richard C. Martinez, Co-Chair, CCJ  
—Representative Deborah A. Armstrong, Chair, LHHS  
—Senator Gerald Ortiz y Pino, Vice Chair, LHHS

*Action Item: Approval of Minutes of CCJ's July 16-17 Meeting*

9:30 a.m.       (1)   **Update on Changes to Guardianship and Conservatorship Laws**  
—The Honorable C. Shannon Bacon, District Judge, Second Judicial  
District Court; Chair, Guardianship Reform Implementation Steering  
Committee (GRISC)  
—The Honorable Nancy J. Franchini, District Judge, Second Judicial  
District Court; Vice Chair, GRISC

11:30 a.m.       (2)   **Public Comment**

12:00 noon       **Lunch**

12:30 p.m.       (3)   **Child Protective Services: New Opportunities to Finance Programs for  
Prevention of Child Abuse and Neglect and Plans to Prevent Child  
Abuse Fatalities**  
—Nina Williams-Mbengue, Director, Children and Families Program,  
National Conference of State Legislatures  
—Susan Robison, Director, State Relations, Casey Family Programs  
—Charles Sallee, Deputy Director, Legislative Finance Committee (LFC)  
—Annamarie Luna, Deputy Director, Children's Programs, Protective  
Services Division, Children, Youth and Families Department (CYFD)  
—Bryce Pittenger, Director, Behavioral Health Services, CYFD

2:30 p.m. (4) [Juvenile Justice Update](#)  
—Nick Costales, Deputy Director, Field Services, CYFD  
—Bryce Pittenger, Director, Behavioral Health Services, CYFD  
—TBD, Youth Board, La Plazita Institute  
—Gerri Bachicha, Administrator, Juvenile Detention Alternatives,  
Bernalillo County Youth Services Center

4:30 p.m. (5) [Public Comment](#)

5:00 p.m. **Recess**

**Tuesday, August 7 — Joint Meeting with the LHHS**

8:00 a.m. **CCJ Ethics Commission Working Group**  
—Senator Linda M. Lopez, Co-Chair  
—Representative Jim Dines, Co-Chair

9:00 a.m. **Reconvene; Introductions**

9:30 a.m. (6) [Inmate Health Care](#)  
—Theresa Edwards, Fiscal Analyst, LFC  
—Jerry Roark, Deputy Secretary, Corrections Department (CD)  
—David Selvage, Health Services Administrator, CD  
—Steve Kopelman, Executive Director, New Mexico Counties (NMC)  
—Grace Philips, General Counsel, NMC  
—Matthew Coyte, Esq., Coyte Law, P.C.  
—Maria Martinez Sanchez, Staff Attorney, American Civil Liberties Union  
of New Mexico

11:30 a.m. (7) [Public Comment](#)

12:00 noon **Lunch**

1:00 p.m. (8) [Gun Violence as a Public Health Issue: Background Checks; Extreme Risk Orders of Protection; Domestic Violence](#)  
—Senator Richard C. Martinez, Co-Chair, CCJ  
—Harold Medina, Deputy Chief, Albuquerque Police Department  
—Emilie De Angelis, President, New Mexico Moms Demand Action  
—Zoey Craft, Member, March for Our Lives  
  
—Representative Deborah A. Armstrong, Chair, LHHS  
—Sheila Lewis, Member, New Mexico Coalition Against Domestic  
Violence  
—Jennifer Padgett, Chief Deputy, First Judicial District Attorney's Office



—Representative Daymon Ely  
—Hannah Shearer, Staff Attorney and Second Amendment Litigation  
Director, The Giffords Law Center to Prevent Gun Violence

—TBD, New Mexicans to Prevent Gun Violence

4:00 p.m. (9) [Public Comment](#)

4:30 p.m. **Adjourn**



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

**August 6-7, 2018**  
**University of New Mexico**  
**Domenici Center for Health Sciences Education**  
**North Wing, Room 2720**  
**1001 Stanford Drive NE**  
**Albuquerque**

The joint meeting of the interim Courts, Corrections and Justice Committee (CCJ) and Legislative Health and Human Services Committee (LHHS) was called to order on August 6, 2018 by Representative Gail Chasey, co-chair, CCJ, at 9:26 a.m. in the Domenici Center for Health Sciences Education of the University of New Mexico (UNM).

**Present**

Rep. Gail Chasey, Co-Chair  
Sen. Richard C. Martinez, Co-Chair  
Rep. Eliseo Lee Alcon  
Sen. Gregory A. Baca (8/6)  
Sen. Jacob R. Candelaria  
Rep. Jim Dines (8/7)  
Sen. Linda M. Lopez  
Rep. Antonio Maestas  
Rep. Sarah Maestas Barnes  
Rep. Javier Martínez  
Sen. Cisco McSorley  
Sen. Sander Rue

**Absent**

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

**Advisory Members**

Rep. Deborah A. Armstrong  
Sen. Daniel A. Ivey-Soto (8/7)  
Sen. Bill B. O'Neill  
Rep. Patricia Roybal Caballero  
Sen. Mimi Stewart  
Rep. Christine Trujillo  
Sen. Peter Wirth (8/7)

Sen. William F. Burt  
Rep. Brian Egolf  
Rep. Doreen Y. Gallegos  
Sen. William H. Payne  
Sen. John Pinto

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

**Staff**

Celia Ludi, Staff Attorney, Legislative Council Service (LCS)  
Randall Cherry, Staff Attorney, LCS  
Michael Hely, Staff Attorney, LCS  
Chris Pommier, Bill Drafter, LCS  
Erin Bond, Research Assistant, LCS  
Karen Wells, Contract Staff, LCS

**Guests**

The guest list is in the meeting file.

**Handouts**

Handouts and other written testimony are in the meeting file.

**Monday, August 6****Call to Order and Introductions**

Representatives Chasey and Armstrong offered welcoming remarks. Members introduced themselves.

**Update on Changes to Guardianship and Conservatorship Laws**

The Honorable C. Shannon Bacon, district judge, Second Judicial District Court, and chair, Guardianship Reform Implementation Steering Committee (GRISC); and the Honorable Nancy J. Franchini, district judge, Second Judicial District Court, and vice chair, GRISC, addressed the committees.

Judge Bacon summarized Senate Bill (SB) 19, which began as a Uniform Law Commission (ULC) bill and was substantially amended during the 2018 legislative session before passing the legislature and being signed into law. The GRISC was formed to address implementation issues. Statutory changes include requiring all hearings regarding guardianship and conservatorship to be open, improving access to court records related to proceedings and inviting more people to participate in the hearings. Other changes involve financial aspects of guardianship and conservatorship, including requiring and setting parameters for bonding of guardians and conservators, as appropriate.

Judge Franchini addressed the issue of increased access for family members. Judge Bacon described modifications to annual required reporting forms, which provide significant additional information and allow for fewer hearings to obtain needed information.

The new law also contains auditor requirements that clarify who conducts, and the frequency of, audits. The court has established a memorandum of understanding with the Office of the State Auditor to accomplish this enhanced oversight.

Case review and cleanup are funded by a one-time appropriation, and these tasks have been a large part of the work the GRISC has been engaged in since the law's passage. Significant training has been necessary to educate judges and others on the new requirements of the law. The judges emphasized that the process has been under way for approximately one month, with many more months of work ahead.

Committee members had questions and comments in the following areas:

- clarification of elements of the ULC draft that were not adopted: the role of the guardian ad litem was eliminated in the ULC draft but was preserved in SB 19. Additionally, SB 19 added significant training for individuals (particularly family members) as guardians and conservators;
- whether more changes are anticipated in the future: only minimal changes are anticipated;
- whether both guardians and conservators are subject to audits: SB 19 deals with audits of conservators only; however, the electronic capability to review required reports allows auditing of guardians as well;
- whether any on-site oversight visits of guardianships will be conducted: yes, it is possible;
- clarification regarding the number of reviewed cases that have been closed in the Second Judicial District Court: at present, an estimated 120 cases have closed;
- clarification regarding the engagement of families in the process: input was actively sought and received during public hearings conducted by the GRISC;
- acknowledgment that many family members have concerns about the changes;
- clarification regarding the process for educating family members about compliance with new reporting requirements: letters will be sent notifying guardians about the reports and offering help;
- whether New Mexico's law will be difficult to comply with in other states because it amends the ULC draft: New Mexico is a leader in implementing this new law, so other states are looking to this state;
- recognition of regional differences within the state in the process of emergency appointments of guardianships and conservatorships: statewide training to ensure greater consistency will be critical;
- clarification regarding actions to mitigate harm to individuals that has already occurred: where identified, these cases are being referred to the Office of the Attorney General and law enforcement;
- clarification regarding improving the process of petitioning for guardianship: the court cannot initiate a petition; it can only respond to requests. However, the new law identifies more people who may participate in the petition process;
- whether there is any avenue to resolve differences between family members and professional guardians ad litem: yes, family members can send a letter to the judge, who will hold a hearing on the issue. Judges have greater latitude to call upon a larger number of participants in such a hearing;

- whether the Adult Protective Services Division (APS) of the Aging and Long-Term Services Department is contributing in a valuable way to identifying individuals in need of protection: currently, the APS is only conducting cursory reviews;
- recognition of the importance of incorporating language and cultural factors, especially in the process of appointing guardians ad litem;
- recognition of unique issues that arise with people in extreme poverty who are in need of guardianship; and
- acknowledgment of the myriad situations that can arise in making these crucial determinations.

### **Approval of Minutes**

Representative Chasey requested a vote to approve the minutes of the July 16-17, 2018 CCJ meeting. A motion was made and seconded, and the motion passed without objection.

### **Public Comment**

Jacquie Mader, director of guardianship, The Arc of New Mexico, told the committees that having the courts more involved will ensure more appropriate decisions.

Jim Jackson, Disability Rights New Mexico, presented four recommendations for further guardianship reforms: (1) authorizing alternatives to guardianship or conservatorships; (2) ensuring avenues for adequate legal representation, especially in the process of appointing guardians ad litem; (3) requiring "neutral" appointment of qualified court visitors; and (4) clarifying the scope of a guardian's authority. He said that there is a need for adequate funding going forward, especially to fund checks on whether guardians are functioning appropriately.

Ann Edenfield Sweet, executive director, Wings for LIFE International, requested consideration of funding for family day services for children of parents incarcerated in New Mexico prisons. She asserted that quarterly family visits to incarcerated persons have been shown to greatly reduce recidivism rates.

### **Child Protective Services: New Opportunities to Finance Programs for Prevention of Child Abuse and Neglect and Plans to Prevent Child Abuse Fatalities**

The following panel of presenters addressed the committees: Nina Williams-Mbengue, director, Children and Families Program, National Conference of State Legislatures (NCSL); Susan Robison, director, state relations, Casey Family Programs; Charles Sallee, deputy director, Legislative Finance Committee (LFC); Annamarie Luna, deputy director, children's programs, Protective Services Division, Children, Youth and Families Department (CYFD); and Bryce Pittenger, director of behavioral health services, CYFD.

Ms. Robison, referring to her handout "Family First Prevention Services Act Summary", provided an overview of the federal Family First Prevention Services Act of 2017 (FFPSA), which is comprehensive federal legislation intended to guide states in tracking and preventing child abuse and in setting standards for foster care. Referring to her handout "Family First

Prevention Services Act Implementation Timeline", she emphasized that the FFPSA requires states to develop and submit plans to track and prevent child abuse by April 1, 2019. Referring to her handout "Safe, Strong, Supportive: The Families First Prevention Services Act", she highlighted several major provisions of the FFPSA, which include provisions for children in, or imminently at risk of entering, foster care and for those moving to adoption. New federal funding is available for prevention services for not only the child, but for the child's parents and caregivers. Income requirements for accessing the funding have been eliminated. Federal funding will be limited to those environments that meet safety standards and will require state matching funds. Programs must be evidence-based and include mental health services, substance abuse prevention and in-home parenting skills training. New requirements are established for determining who is a candidate for foster care, and states have flexibility in how they define this. "Group foster care" is defined as no more than six children, including foster children, in a home. Requirements for qualified residential treatment programs (QRTPs) are now specified in law. Additional provisions are intended to promote safety, permanency and well-being.

Janet Garcia, who is a Casey Family Programs consultant to New Mexico, addressed some of the work already under way in the state. She highlighted the issue of child fatalities and emphasized the multi-agency collaboration and responsibility to work on this issue. She has been working with the CYFD to meet deadlines and address concerns.

Ms. Williams-Mbengue, referring to her handout "The Family First Prevention Services Act: Opportunities for Legislatures", identified the support available to states through the NCSL. The NCSL has identified deadlines and actions that will be required of states to be in compliance with this new federal law. The role of legislators was highlighted, including planning, implementation and oversight in collaboration with state agencies charged with implementation of the act. The NCSL has convened a legislative work group to address policy, budget and communication needs related to implementation of the FFPSA.

Mr. Sallee, referring to his handout "Cost-Benefit Analysis of Child Welfare Programs", provided some current New Mexico statistics dealing with the effectiveness of child maltreatment prevention and early intervention programs. He noted that most children who come into contact with the state system of child protective services are already known to the state, having been previously reported. He believes that the FFPSA offers the state a new chance to emphasize prevention services, and he highlighted opportunities to provide child protective services through Medicaid and models in other states that could be implemented in New Mexico.

Ms. Luna assured the committees that the CYFD is in alignment with the goals of the FFPSA and that its strategic plan already includes many of the required elements of the act. She emphasized that the department strongly supports the goal of placing children in need in the least restrictive environment. She identified several requirements and described the ways in which the CYFD is implementing the FFPSA, as well as acknowledging the challenges of implementation. The CYFD has been looking very closely at the law and is working with its partners to ensure that they meet the statutory implementation time lines.

Ms. Pittenger described specific next steps to coordinate with Medicaid with regard to QRTPs and other opportunities.

Committee members made comments and asked questions in the following areas:

- clarification regarding the October 1 deadline: a plan will be submitted for tracking and preventing child abuse;
- clarification regarding the staff vacancy rate in the CYFD in child protective services: currently, it is 13%;
- clarification regarding the necessary state match needed to receive the 50% federal matching funds for implementation of the FFPSA: the state does not have a plan at this time that can predict that budget need. Mr. Sallee suggested greater involvement from the legislative body to address decision points;
- whether a task force is needed to identify this budget requirement: Mr. Sallee noted that the LFC is already working with the CYFD to develop this information;
- an observation by Ms. Williams-Mbengue that one option is to free up congregate care dollars and shift them to prevention programs;
- an observation that the effectiveness of some programs has not been researched yet to determine whether the program meets the standard of being evidence-based;
- whether a contingency fund could be established to give the CYFD the funds needed for the implementation work: yes, language can be put in the budget to do that;
- what percent of calls to the Sky Center of the New Mexico Suicide Intervention Project results in a referral to the CYFD's Protective Services Division: about 50%;
- clarification of why New Mexico is low in preventive spending for children: primarily, it is because the state has relied on federal funds that are capped;
- clarification regarding why 125 children were placed out of state for residential treatment: these were individual cases with special needs;
- a request for a publication, "Our Kids Aren't Safe", to be shared with both committees as it addresses many of the issues discussed;
- clarification regarding kinship navigator programs: they are evidence-based programs that help communities with all issues of kinship caregiving, including grandparents raising grandchildren; and
- whether the CYFD is tracking child deaths: yes, there is a committee that is meeting quarterly to look at this, but so far, no follow-up action has been taken.

By consensus, the committees requested the New Mexico Legislative Council to create a subcommittee of the LHHS and CCJ to work with the CYFD to meet the October 19, 2019 deadline for implementation of the FFPSA.

### **Notice**

Senator Gerald Ortiz y Pino, vice chair, LHHS, announced that the early September LHHS meeting has been rescheduled for September 26 through 28.



## **Juvenile Justice Update**

Nick Costales, deputy director of field services, CYFD; Gerri Bachicha, administrator, Juvenile Detention Alternatives Initiative (JDAI), Bernalillo County Youth Services Center; Tamera Marcantel, deputy director of juvenile justice facilities, CYFD; five members of the youth board of La Plazita Institute; and Ms. Pittenger addressed the committees.

Mr. Costales highlighted some approaches to juvenile justice in detention centers in New Mexico. The CYFD is focusing on support services rather than supervision. It is implementing wrap-around services using community providers rather than probation officers. Since the need for probation officers is declining, the CYFD is reclassifying those workers into new positions. The CYFD is working on implementing some best practices from Bernalillo County in other parts of the state.

Ms. Marcantel emphasized that the mission of the CYFD's Juvenile Justice Division is to keep youth safe and prepare them to reenter society. New programming has focused on preparation for a successful life in the community upon release from detention. Excellent results are being seen, with much lower rates of recidivism.

Ms. Pittenger described her role in the Juvenile Justice Division. She works on support services for those between the ages of 12 and 21 to prevent and treat substance abuse disorders. The program has been developed with youth input. Mental health issues are also addressed.

The youth from La Plazita introduced themselves: Davina, Chuy and Antonio were joined by Erik Rivera and Albino Garcia, who work at La Plazita. La Plazita offers a general equivalency diploma program, healthy food, young men's and women's groups and a weekly youth support group. All La Plazita youth addressing the committees said that they have been subjected to strip searches, and they advocate the use of less humiliating and traumatic alternatives. Mr. Rivera described his role and experience in working with the youth, affirming that the goal is to get them what they need to be successful once they are released from the center.

In response to a request for feedback from the youth and their leaders for suggestions on what is missing in the system, answers included better communication within and outside of the institution and elimination of stereotyping.

Ms. Bachicha reviewed her handout "NM Juvenile Crime Stats". She talked about the efforts of counties, beginning in 2007, to fight for funds to build best practices in juvenile justice. The Juvenile Continuum Grant Fund, created in 2007, was the result of their efforts and has had extraordinary results, with significant decreases in juvenile crime as well as the costs attached to that. Continuum boards support the Annie E. Casey Foundation's JDAI and described the JDAI as key to their success. She emphasized that many challenges remain, including rising substance abuse rates. The core principles of the JDAI are embedded in the Children's Code. The continuum boards ask for reinvestment of funds in rural areas, training to implement best

practice programs and consultation and involvement with board representatives regarding funding and legislative proposals.

Committee members had questions and comments in the following areas:

- clarification from the youth presenters regarding what they meant by communication as something that needed to change;
- whether screening devices could be installed in lieu of strip searches: this is being pursued through the capital outlay process;
- whether the CYFD has data on the percentage of children who have been released from a juvenile facility and later entered an adult correctional facility: the rate was 9% last year;
- whether the percentage of non-citizen youth who commit crimes in New Mexico is known and what percentage of them are MS-13 gang members: that information can be found;
- an observation that the primary gateway drug in America is alcohol;
- clarification regarding the number of psychiatrists employed by the CYFD for juveniles: there is one for prescribing; other mental health professionals are available for counseling;
- whether the youth present are satisfied with the proposed solution of electronic screening in lieu of strip searches: generally, yes;
- a suggestion that alternate approaches to strip searches be proposed as legislation;
- whether data regarding recidivism can be routinely collected and reported: the CYFD is working to identify the best way to collect and report this data;
- clarification regarding how the juvenile justice continuum is funded: it is funded primarily through the General Fund, with a small amount coming from federal funds;
- an observation that despite the decline in youth commitment, detention and referrals, constituents still report not feeling safe in their neighborhoods;
- clarification regarding the number of young people involved in the criminal justice system: the data is part of the CYFD annual report, and the department will provide it;
- whether it is known what percentage of youth involved in the criminal justice system are also parents;
- clarification regarding the concept of "race equity": race equity means treating everyone as an individual who is entitled to culturally appropriate services;
- recognition of the link between the lack of postnatal home-visiting services and involvement in the juvenile corrections system at a later age;
- clarification regarding the 10 counties that are not served by the juvenile justice continuum: it is difficult to serve some frontier counties, but the CYFD is hopeful that it can remedy that situation in the future. The difficulty in putting together a board is a factor; and
- an observation that disparate caseloads and challenges for juvenile probation officers in various settings are difficult problems to overcome.

## **Recess**

The committees recessed at 5:38 p.m.

## **Tuesday, August 7**

### **Reconvene and Introductions**

The joint meeting of the CCJ and the LHHS was reconvened at 9:31 a.m. by Representative Chasey. New attending members introduced themselves.

### **Inmate Health Care**

Theresa Edwards, fiscal analyst, LFC, reviewed her handout "Overview of Inmate Health Care Contracts", which compares budgeted costs to actual costs. She reviewed the frequency and tools used to audit continuous quality improvement and management, noting that the cost of treating hepatitis C has declined over the last three years. Some unique financial details were discussed, including fines assessed against Centurion, a prison health care provider, and a program to purchase HIV drugs using the 340B federal discount drug pricing program.

Committee members had questions and comments in the following areas:

- whether results are available regarding a prison health care contract with HealthInsight New Mexico: David Selvage, health services administrator, Corrections Department (CD), will provide the results;
- clarification regarding the status of 17 lawsuits against Centurion filed by inmates alleging neglect and lack of timely and appropriate care; and
- a suggestion to conduct a cost comparison using the 340B drug purchasing program to purchase drugs.

Jerry Roark, deputy secretary, CD, commented briefly on improvements seen in inmate health care management. Mr. Selvage highlighted accomplishments that include audits on diabetes, infection control and readiness. The department has hired a nurse practitioner and an infection control professional. Mr. Selvage highlighted partnerships with CHRISTUS St. Vincent Regional Medical Center, the Department of Health (DOH), Project ECHO and telehealth providers. The CD has purchased and is distributing Narcan to inmates with opioid addiction in overdose situations. The CD is cooperating with the DOH on a request for proposals to acquire a new electronic health record system.

Wendy Price, Psy.D., bureau chief, Behavioral Health Bureau, CD, highlighted the results of projects designed to address mental health and substance abuse issues. There are weekly meetings with psychiatrists to ensure appropriate administration of medications. She reported on program compliance improvements and improvements to women's health.

Grace Philips, general counsel, New Mexico Counties, presented information on county jails and facilities. This data reflects a reduction in the number of inmates and length of stay in facilities. The Bernalillo County Metropolitan Detention Center population alone accounted for 42% of the reductions. She noted that there are nine contracts with entities providing health care services to county inmates. The needs, as well as the ability to identify contractors, vary greatly from county to county. As with the state, contractors and jails have great difficulty hiring clinicians. Counties are distributing Narcan to inmates and also to family members of inmates. Counties are working with the Human Services Department (HSD) to facilitate enrollment in Medicaid upon release from jail.

Maria Martinez Sanchez, staff attorney, American Civil Liberties Union (ACLU) of New Mexico said that she primarily focuses on inmate rights, noting that about one-third of all inmate complaints are in reference to health care services. She provided several examples, including lack of timeliness of treatment, failure to transfer to other levels of care, lack of access to specialists and untreated conditions. The ACLU encourages pursuit of a different model for the provision of inmate health care, with close monitoring of delivery issues in the meantime. Accountability is critical.

Matthew Coyte, Esq., Coyte Law, P.C., described his history of working in New Mexico on inmate health care issues. He identified barriers to quality care that are inherent in privatized health care services for this population. Oversight tends to be based on contractor accountability rather than recognizing individual complaints or issues with inmates.

Committee members had questions and made comments in the following areas:

- clarification regarding payment to contractors with county providers: there is a flat rate to provide whatever health care needs arise;
- whether HIV is being prevented or merely treated: there is a very low incidence of HIV in the prisons. The contract with Centurion covers both preventive and treatment drugs;
- whether the state's constitutional obligation to provide health care services to incarcerated individuals is for treatment or health promotion: Ms. Sanchez believes the obligation is for medically adequate care;
- clarification regarding how long New Mexico prison health care has been privately provided: since 1991;
- an exhortation to treat incarcerated people with compassion and appropriate care, especially when they are terminally ill;
- clarification regarding the nature of the health assessment upon an inmate's entry into jail or prison;
- whether there is data regarding the number of inmates with terminal illnesses: the state system at present classifies chronic illnesses, many of which are terminal;
- whether sharing the hiring for providers for counties would be better than each jail acting independently: it is an idea worth exploring;

- whether there has been any thought to applying for a Medicaid waiver to cover incarcerated individuals: the CD is not aware of what would be required to do this. Research should probably be done to explore this potential;
- clarification regarding circumstances in which county jails are able to obtain Medicaid coverage for inmates: counties are working with the HSD to make this happen more consistently;
- clarification regarding efforts of the state to ensure that people released from prison are enrolled in Medicaid: state law requires that inmates obtain pre-release assessments and an opportunity to connect with managed care organizations prior to release;
- whether the budget for mental health care for male inmates is equal to that of females: no, increases for females reflect increases in facility costs;
- a suggestion that the state should actively pursue moving to a public versus a private delivery of inmate health care;
- clarification regarding what the CD has done to improve the system: progress was reviewed. Program enhancements are overshadowed by the massive opioid and addiction crisis;
- outrage that female inmates are asked to purchase feminine hygiene products: some are provided for free, but if inmates wish to purchase larger quantities or more expensive products, they are given this opportunity;
- clarification regarding the transition of Corizon to Centurion: some employees moved from one contractor to the other, but the full extent of this is not known;
- recognition regarding the special, and expensive, housing needs for geriatric inmates;
- encouragement for greater availability for compassionate release;
- clarification regarding conditions when inmates qualify for Medicaid coverage;
- acknowledgment that rural hospitals might be able to serve the hospital needs of some inmates;
- an observation that local law enforcement needs to be adequately funded for authorized transportation of inmates;
- clarification regarding the portion of mental health inmate services that are subject to the Audit Act: all of them;
- whether there has been a financial analysis in the last four years to compare the cost of operating a public versus a privately contracted prison system: no;
- an observation that a very specific plan, including costs, is necessary before the state can make an informed decision about public versus private provision of prison health care services;
- a request for the LFC to identify the cost and time to conduct such a study: the LFC will look into this. In the last session, \$200,000 was appropriated for the CD to develop a comprehensive plan. A memorial was also passed to look at this topic;
- clarification regarding details of contract requirements, terms and the certification status of Centurion;
- clarification regarding the extent and frequency of quality audits of clinical care: accreditation of all facilities by the American Correctional Association is in progress;

- whether the number of CD employees is adequate to ensure appropriate oversight of all contracts: no; however, it will become appropriate at such time as an electronic health record system is established;
- an observation that many of the facilities housing inmates are in terrible condition and need to be replaced;
- whether the amount budgeted for hepatitis C treatment is adequate: there has been a reduction in the cost for treatment, so the CD feels the current budgeted amount is enough;
- clarification regarding the number of private prisons in New Mexico: there are five;
- clarification regarding who provides the care in private prison facilities: various contractors are paid by the CD;
- whether county indigent funds can pay for health care in jail: this is not known; and
- clarification regarding the number of lawsuits against Centurion: there were 28 or 29 lawsuits since the beginning of the contract period. Nine have been closed.

### **Public Comment**

Don Johnson, Health Ministries, stated that he was jailed for 14 years. He said that while incarcerated, he experienced many unnecessary health emergencies due to poor food preparation and other situations.

Maggie Kiel, National Association of Social Workers, said that the availability of feminine hygiene products is critical. She also provided a personal story of her brother, who has bipolar disorder but whose mental illness went unrecognized and untreated while he was incarcerated.

Following up on the discussion and recommendations regarding the FFPSA, it was moved and seconded, and the motion was adopted without objection, to send a letter from the CCJ and the LHHS to the New Mexico Legislative Council requesting the creation of a subcommittee to be composed of four LHHS members and four CCJ members to provide oversight of the state's implementation of the federal FFPSA program for the prevention of child abuse and neglect. It was proposed that the subcommittee would meet one day per month in September, October and November and would take testimony from personnel from the CYFD and the courts on the progress of planning for this program. The subcommittee would be tasked with providing the LHHS and CCJ with a report at each committee's final meeting.

### **Gun Violence as a Public Health Issue: Background Checks; Extreme Risk Orders of Protection; Domestic Violence**

Senator Martinez presented a discussion draft of a bill, file number 211083.1, that he intends to introduce in the 2019 legislative session that would require a background check for the purchase of firearms. He identified a loophole in the current New Mexico statutes that permits online purchases of firearms without a background check. He introduced Harold Medina, deputy chief, Albuquerque Police Department; Emilie De Angelis, president, New Mexico Moms

Demand Action; and Michaela Ewing, member, March for Our Lives, all of whom spoke in support of the draft bill.

Deputy Chief Medina testified that the proposed legislation is geared toward ensuring community protection, and it does not interfere with the right to bear arms in New Mexico. It will protect the community and protect law enforcement officers.

Ms. De Angelis said that her organization works to establish evidence-based approaches to gun safety. She described an incident in which a person with unfettered access to purchasing firearms went on to engage in a mass murder with his collection of guns. Due to the loophole in New Mexico's laws, he was able to purchase guns in the state by purchasing from an unlicensed seller and avoiding a background check. She reviewed the elements of the proposed draft legislation.

Ms. Ewing provided personal testimony that, as a teenager, she fears for her life every day in school as a result of the loophole that allows teens to buy guns online. Additionally, easy access to guns increases the opportunity for teens to commit suicide. She noted that teens do not have fully developed brains, and they should not have such easy access to gun purchasing.

Committee members had questions and made comments as follows:

- clarification about how the law would be enforced, particularly in rural New Mexico and in counties where most of the population carries guns;
- clarification regarding pricing for the background check: the market should control that;
- whether opportunities exist for enforcement at the local level versus statewide: it would become too variable in its implementation;
- an observation that instant federal background checks are flawed in their effectiveness;
- a request that the bill be discussed at a later date for more thorough consideration; and
- a suggestion that future consideration be given to 3D-printed guns.

Representative Armstrong introduced Sheila Lewis, member, New Mexico Coalition Against Domestic Violence, and Jennifer Padgett, chief deputy, First Judicial District Attorney's Office. Representative Armstrong presented a draft bill, file number .211034.1, which provides that a person who is convicted of domestic violence loses the right to possess firearms. She referred to research showing that the presence of a gun in a domestic violence situation makes it five times more likely that the victim will die from a gunshot. This draft allows state judges to protect victims who are not covered by the federal law.

Ms. Lewis spoke of the importance of restricting guns in domestic violence situations. She compared the draft bill to previous iterations, asserting that the current draft is much stronger than previous versions. The bill establishes two ways of incurring a felony conviction, it

addresses enforcement and it provides a mechanism to allow a person to turn over a gun to law enforcement. This approach has been adopted in 27 other states.

Committee members had questions and made comments as follows:

- an observation that questions will arise in reference to states that have already passed this bill and whether they have seen results: there have been some studies showing results;
- whether threats to pets are or could be included as "threats to property of a household member": it is a good idea and should be added;
- whether this bill is considered a "red flag" bill: no, it is limited to firearms in situations of domestic violence;
- whether a document can be created to reflect the differences and similarities of this law in the 27 other states that have enacted it: yes; and
- clarification regarding issues in which the person wielding the gun is not the rightful owner of the gun.

Representative Daymon Ely presented a draft bill, file number .210975.1, which he described as a "red flag" bill that seeks to protect both gun owners and law enforcement. The bill institutes an "extreme risk protection order" (ERPO), which would allow law enforcement to remove a gun from someone who has already been identified as a potential threat. So far, 11 states have enacted similar bills. He introduced Hannah Shearer, staff attorney and Second Amendment litigation director, The Giffords Law Center to Prevent Gun Violence. Ms. Shearer briefly reviewed the other 11 versions of the bill and the due process safeguards contained in the bill.

Committee members had questions and made comments on this bill as follows:

- concern regarding where a petition will be filed for maximum impact and minimum confusion;
- a suggestion that notification to local law enforcement of rejected background checks be required;
- a statement of the importance of funding checks on gun sellers;
- a request for the names of the states that have already passed ERPO legislation: the 11 states were identified;
- whether the law allows parents who fear that their child is a suicide risk to petition the court to require the relinquishment of a gun in their child's possession: yes;
- whether this provision would also extend to guardians: the sponsors will consider adding this to the bill;
- clarification regarding documentation that is provided if someone has successfully undergone a background check: separate transactions require separate background checks; and
- clarification on whether the approval is gun-specific: yes.



Miranda Viscoli, New Mexicans to Prevent Gun Violence, introduced two young women interested in knowing more about gun laws in New Mexico.

Julia Mazal desires a bill to limit children's access to guns. She is motivated by such acts of violence as the mass shooting at Columbine High School. She described some other individual events in which youth obtained firearms to commit acts of violence. Referring to her handout, she said that guns in homes where there are children create a specific threat. Parents should be required to store their guns safely. A child access prevention (CAP) law makes it a crime to carelessly allow access to guns when there are children in the home. Ms. Mazal cited a particularly effective CAP law in Florida. Such laws, according to research, greatly reduce the incidence of youth suicide. She reminded the committees of incidents of gun violence by youth in New Mexico. She asserted that CAP laws do not prohibit lawful access to gun ownership; they simply require responsible ownership.

Sophia Lassiez provided statistics in New Mexico of gun violence and asserted that current laws in the state do not protect children sufficiently. In just one year, 85 children in New Mexico were killed through unintentional use or reckless storage of guns.

Committee members had questions and made comments as follows:

- an expressed appreciation for the testimony and advocacy expressed by the youth;
- whether the bills presented during the day address their concerns: there are some similarities; however, those bills do not specifically address responsible storage of guns;
- whether the youth are willing to work with a sponsor to create a bill: yes;
- recognition that the students have researched approaches to gun laws, and on their own, they chose the CAP law as the focus;
- whether it is known whether the legislation in other states passed in a bipartisan manner: this was not specifically known, but it is likely that the Florida legislation was bipartisan; and
- recognition that as a nation, the United States has safety standards for automobiles but not for handguns.

### **Public Comment**

Mike Heal, chief, Aztec Police Department, recounted the shooting at Aztec High School in December 2017 that resulted in the death of two students. He is the vice president of the New Mexico Association of Chiefs of Police, which hopes to present a resolution concerning enhanced safety in public schools. He identified gun control issues that the association intends to support during the next legislative session, including ERPO. He also wants to make it a felony to bring a gun to school. The association is working hard to identify multiple ways to keep children safe. He hopes to gain the support of the legislature for these measures.

Dale Perkins, a concealed carry instructor, remarked that all of the day's presentations suggest an intention to take away his guns. He has been threatened with violence in many circumstances and would not feel safe if he did not have the ability to carry a weapon. He was the victim of a false 911 call alleging he was beating his wife, which resulted in him being arrested and placed in handcuffs. He believes that there are already adequate laws to protect society, but they are not being enforced. He worries about New Mexico becoming a police state.

James Frasier Page is a public information officer of Gun Owners of New Mexico. He was previously in law enforcement in California and also was a seller of guns. He asserts that the gun laws in California were followed, but they failed in accomplishing their goals. He is a strong supporter of the Second Amendment of the United States Constitution. He believes that passage of laws that are not enforced simply leads to the belief that laws do not matter.

Rosa Valencia, a member of Moms Demand Action, said that she is a grandmother and a strong supporter of gun control. She noted that the Second Amendment was passed in 1791, but the country is now in a different time. She believes that the United States Constitution is a living document and should reflect the challenges the country faces now. The Sandy Hook Elementary School shootings touched her heart deeply. She exhorted the committees to get ahead of this problem and think of all children, both now and in the future.

Herbert Hoffman, a clinical psychologist, advocated for smart triggers for all firearms. These are triggers that only respond to a particular fingerprint. He does not believe this would be an infringement on gun ownership.

Elizabeth Mullaney, a member of Moms Demand Action, shared a personal story about a home invasion by a man with a gun when she was three. As an emergency room nurse, she has cared for many children with gunshot wounds. Because of her experience with violence in her life, she is committed to protecting the lives of children from gun violence. She believes there is more agreement among people with opposing views than people often realize.

### **Adjournment**

There being no further business before the committees, the third meeting of the CCJ for the 2018 interim adjourned at 5:30 p.m.

Revised: September 5, 2018

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

**September 6-7, 2018  
Central New Mexico Community College  
Student Resource Center, SRC 204  
900 University Blvd. SE  
Albuquerque**

**Thursday, September 6**

- 9:15 a.m.           **Call to Order and Introductions**  
—Representative Gail Chasey, Co-Chair  
—Senator Richard C. Martinez, Co-Chair
- 9:30 a.m.           **Welcome**  
—Tamra Mason, Dean, School of Health, Wellness and Public Safety,  
Central New Mexico Community College
- 9:45 a.m.       (1)   **[Update from the Department of Public Safety \(DPS\)](#)**  
—Scott Weaver, Secretary, DPS
- 10:45 a.m.       (2)   **[New Mexico Law Enforcement Academy](#)**  
—Representative William "Bill" R. Rehm  
—Stephan Marshall, Director, Training and Recruiting Division, DPS
- 11:15 a.m.       (3)   **[New Mexico State Police Association \(NMSPA\) Update](#)**  
—Jeremy Vaughn, President, NMSPA
- 11:45 a.m.           **Public Comment**
- 12:00 noon           **Lunch**
- 1:30 p.m.       (4)   **[New Mexico District Attorney's Association \(NMDAA\) Update](#)**  
—Dianna Luce, District Attorney, Fifth Judicial District; President,  
NMDAA  
—Henry Valdez, Executive Director, Administrative Office of the District  
Attorneys
- 2:30 p.m.       (5)   **[Law Office of the Public Defender \(LOPD\) Update](#)**  
—Bennett J. Baur, Chief Public Defender, LOPD

3:30 p.m.           **Public Comment**

3:45 p.m.           **Recess**

**Friday, September 7**

9:00 a.m.           **Reconvene**

9:15 a.m.       (6)   **Bail and Pretrial Detention System Update**  
—The Honorable Charles W. Daniels, Justice, New Mexico Supreme Court  
—Arthur W. Pepin, Director, Administrative Office of the Courts (AOC)  
—Bennett J. Baur, Chief Public Defender, LOPD  
—Jonathan Ibarra, LOPD; Representative, New Mexico Criminal Defense  
    Lawyers Association  
—Dianna Luce, District Attorney, Fifth Judicial District; President,  
    NMDAA  
—Henry Valdez, Executive Director, Administrative Office of the District  
    Attorneys

10:30 a.m.       (7)   **Judiciary's Unified Budget and Proposed Legislation**  
—The Honorable Judith K. Nakamura, Chief Justice, New Mexico Supreme  
    Court  
—Arthur W. Pepin, Director, AOC

12:00 noon       **Lunch**

1:30 p.m.       (8)   **Legislative Finance Committee (LFC) Drug Court Evaluation Report**  
—Brian Hoffmeister, Program Evaluator, LFC  
—Maria Griego, Program Evaluator, LFC  
—Robert Mitchell, Senior Statewide Program Manager for Problem Solving  
    Courts, AOC

2:30 p.m.           **Public Comment**

2:45 p.m.           **Adjourn**

3:00 p.m.           **Ethics Commission Working Group**

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

**September 6-7, 2018  
Central New Mexico Community College  
Student Resource Center, SRC 204  
900 University Blvd. SE  
Albuquerque**

The fourth meeting of the Courts, Corrections and Justice Committee (CCJ) was called to order by Senator Richard C. Martinez, co-chair, on September 6, 2018 at 9:48 a.m. in Room 204 of the Student Resource Center at Central New Mexico Community College in Albuquerque.

**Present**

Rep. Gail Chasey, Co-Chair  
Sen. Richard C. Martinez, Co-Chair  
Rep. Eliseo Lee Alcon  
Sen. Gregory A. Baca  
Sen. Jacob R. Candelaria  
Rep. Jim Dines  
Sen. Linda M. Lopez  
Rep. Antonio Maestas  
Rep. Sarah Maestas Barnes (9/7)  
Sen. Cisco McSorley  
Rep. William "Bill" R. Rehm  
Rep. Angelica Rubio (9/6)  
Sen. Sander Rue

**Absent**

Rep. Zachary J. Cook  
Rep. Javier Martínez

**Advisory Members**

Sen. Bill B. O'Neill  
Sen. John Pinto  
Sen. Mimi Stewart  
Rep. Christine Trujillo (9/6)  
Sen. Peter Wirth (9/7)

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

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

**Staff**

Celia Ludi, Staff Attorney, Legislative Council Service (LCS)  
Randall Cherry, Staff Attorney, LCS  
Rebecca Griego, Records Officer, LCS

**Guests**

The guest list is in the meeting file.

**Handouts**

Copies of all handouts are in the meeting file.

**Thursday, September 6****Call to Order and Introductions**

Senator Martinez welcomed members of the committee, staff and guests to the meeting.

**Welcome**

Tamra Mason, dean, School of Health, Wellness and Public Safety, Central New Mexico Community College, welcomed the committee and introduced Matthew Thomas, program director for the Criminal Justice Program at the college. Mr. Thomas discussed a number of initiatives that the college has introduced in the area of criminal justice. The college now provides police officer training, including an associate degree in criminal justice. The college is partnering with the Albuquerque Police Department (APD) as a satellite academy for training its officers and is working with the Department of Public Safety (DPS) to develop training and curriculum, including online classes on advanced investigation techniques and tribal law. The program has been approved by the New Mexico Law Enforcement Academy (NMLEA) Board.

A member asked for clarification on what the college is teaching with regard to tribal law. Mr. Thomas explained that the curriculum focuses on teaching tribal youth the basic duties and responsibilities of police officers.

In response to questions, Mr. Thomas explained the associate degree process. He noted that the college is not currently a part of the NMLEA, but it will be a part of the academy in the future. He also stated that the college is aware that a number of regional law enforcement agencies have lost officers due to lateral transfers to the APD because of the APD's recent salary increases. The college hopes to help address this problem by providing well-qualified applicants for positions with all of the law enforcement agencies in the state.

Mr. Thomas described the college's law enforcement program, noting that the college's philosophy is that law enforcement officers are "guardians" and not "warriors" and that it has classes that include teaching compassion. He affirmed that the college provides basic police training. Law enforcement agencies usually provide additional specialized training.

## **Update from the DPS**

Scott Weaver, secretary, DPS, addressed the recent backlog of unprocessed sexual assault test kits. He said that thanks to additional funds provided this year by the legislature, the DPS now has 11 DNA analysts and has made great progress in working through the backlog. He expects to have the backlog resolved within two months.

Secretary Weaver said that the DPS has run a number of samples through the Combined DNA Index System (CODIS), and 41 of the samples matched a person contained in the CODIS database. He also noted that none of the samples matched DNA obtained from suspect arrests. Finally, he said that he expects to retain all of the new DNA analysts, as the need will continue after the backlog is addressed to prevent a backlog from building up again. The DPS receives approximately 150 new cases per week that require DNA analysis.

Secretary Weaver also discussed problems related to data sharing among criminal justice entities. He noted that the DPS is working on a data-sharing system to allow magistrate judges to access a broad spectrum of information on defendants. The process is near completion and has been certified by the Department of Information Technology, but the DPS lacks the funds to complete the project. Further, court rules have changed since the project began, so the DPS will need the assistance of the Administrative Office of the Courts (AOC), as well as an additional infusion of funds.

In response to questions, Secretary Weaver explained that fewer than 100 sexual assault test kits remain in the backlog. Two DNA analysts work exclusively on the backlog kits, and the remaining nine work on new cases. He stated that officers are receiving improved training on how to handle the test kits and that the DPS is working on a new tracking system to ensure that the kits are handled correctly, including a method to allow victims to follow the test kit through the process. Finally, he said that one person is dedicated to following up with law enforcement agencies to ensure that the kits are handled properly after the DPS returns the kits to the originating agency.

In response to other questions, Secretary Weaver stated that DPS officers regularly collect palm prints pursuant to Section 29-3-8 NMSA 1978, but he could not speak to what other agencies do. He noted that the DPS has not experienced any loss of officers to the APD and that the number of uniformed officers in the DPS has, in fact, grown by 10 percent since 2011. However, he also noted that officer retention is a constant problem, and neither he nor his colleagues around the nation have found a solution.

A member suggested that best practices in identifying suspects should be used and taught in basic law enforcement training. Another member suggested that officers should receive more training in courtroom procedures and processes.

Finally, there was an extended discussion regarding data-sharing problems among criminal justice agencies. Secretary Weaver explained that the DPS is the central repository for criminal justice data, but it does not have the capability to share the data with all agencies.

Members expressed concern that the Office of the Second Judicial District Attorney appears to be developing a data system that will not interface with other agencies. The members directed staff to schedule a meeting with all of the affected agencies to attempt to find solutions to the data-sharing problem.

## **NMLEA**

Representative Rehm and Stephan Marshall, director, Training and Recruiting Division, DPS, discussed proposed legislation to create a Reserve Police Officer Act. Representative Rehm noted that while regular law enforcement officers must be certified by the NMLEA Board, the board has no authority over reserve officers. Further, local jurisdictions can hire reserve officers with no qualifications, and according to a report by journalist Larry Barker, some jurisdictions have sold local reserve officer commissions.

The bill would explicitly allow jurisdictions to commission reserve officers, but the officers would have to be trained and certified by the NMLEA. The NMLEA Board would have jurisdiction over the certification of all reserve officers and would promulgate rules to regulate the process.

A member suggested that retired or experienced officers should be authorized to work as reserve officers based upon lesser training requirements. Mr. Marshall responded that the proposed Reserve Police Officer Act gives the board authority to waive training requirements under certain circumstances. He noted that New Mexico already has a waiver process that allows experienced officers from other states to obtain regular certification after two weeks of special training in New Mexico law.

Another member suggested that the NMLEA should use new technologies for initial and continuing training to the extent possible.

## **New Mexico State Police Association (NMSPA) Update**

Jeremy Vaughn, president, NMSPA, expressed appreciation for the legislature's support of state police and discussed the NMSPA's concerns regarding the potential legalization of recreational marijuana in New Mexico and driverless/robotic electric vehicles.

Mr. Vaughn said the NMSPA believes that legalization of recreational marijuana will increase the number of persons driving under the influence of drugs. He stated that according to information obtained from Colorado and California, this has proven to be true in those states, resulting in an increase in fatalities related to marijuana. He also noted increased use of the drug among high school and middle school children. He stated that since marijuana was legalized for



recreational use in Colorado, the DPS has experienced an increase in seizures of marijuana resulting from traffic stops in New Mexico.

Mr. Vaughn said that the NMSPA also believes, based on the experience of other states, that legalization of recreational marijuana in New Mexico will cause the illegal market for marijuana to expand because it will likely encourage drug cartels and other illegal providers to expand their activities in New Mexico, especially given the large geographic area of, and relatively small law enforcement presence in, the state. He explained that the illegal market will expand because illegal providers can undercut the prices charged by legal producers, as illegal producers often use public lands for growing operations, use prohibited pesticides and chemicals to increase production, ignore expensive regulatory requirements and do not charge taxes to consumers or pay taxes to the state. This will increase the workload and dangers for law enforcement personnel, including forestry and game and fish officers. There is also a significant danger of an officer coming into contact with prohibited pesticides and herbicides and other dangerous chemicals used in illegal production and processing. The use of prohibited pesticides and herbicides and other dangerous chemicals may also cause significant environmental damage, especially to water.

The NMSPA is also concerned with the rapid progress in the development of driverless/robotic electric vehicles. Mr. Marshall cited a prediction that 95 percent of all vehicle travel will be done by robotic electric vehicles by the year 2030. The NMSPA believes that this will pose challenges to the way that DPS officers do their work, including detecting criminal behavior, as stops for driving violations often result in the discovery of other criminal activities. With driverless/robotic vehicles, driving violations presumably would be rare or cease altogether. The NMSPA encourages the legislature to consider and plan for this eventuality as soon as possible. The association is concerned that a widespread shift from gasoline to electric vehicles will cause a slump in the oil and gas industry on which New Mexico's economy is so dependent.

In response to questions, Mr. Vaughn noted that legalization of recreational marijuana would also likely strain the resources of tribal law enforcement.

A member acknowledged the concerns but suggested that all nonviolent drug-use offenses should be reduced to misdemeanors, triggering substance abuse treatment and other diversion services and reserving prison beds for violent offenders.

#### **New Mexico District Attorney's Association (NMDAA) Update**

Dianna Luce, district attorney, Fifth Judicial District, and president, NMDAA, and Henry Valdez, executive director, Administrative Office of the District Attorneys (AODA), discussed current issues of concern for district attorneys.

Ms. Luce listed the following issues of concern:

- school-related threats of violence: there are no laws specifically addressing this issue, and penalties for the offenses that could be charged, such as disruption of school activities, are too low. Thus, threats by juveniles are difficult or impossible to prosecute. The Children's Code should be amended to clarify what conduct is prohibited. A member invited the panel to present the problem to the Legislative Education Study Committee;
- driving under the influence of marijuana: current laws do not generally allow for a blood test, and it is impossible to detect marijuana using a breath test, so there is no prohibitive statute that could be used for charging offenders;
- extending the statute of limitations on second degree murder and manslaughter: DNA testing now allows for the resolution of cases long after the event, so extensions would allow more charges to be brought;
- application of the case management process required by the New Mexico Supreme Court in the Second Judicial District Court to other judicial districts: the case management order imposes radical time constraints with which most district attorney's offices will find difficult or impossible to comply. The NMDAA believes implementation in other judicial districts should be delayed to allow the affected parties to develop an alternative process. If implemented beyond the Second Judicial District, the case management order would require significant additional resources for both district attorneys and public defenders;
- pretrial mental health services: the lack of mental health services in rural communities often leads to delays in mental health testing and treatment, which in turn frequently results in long county jail stays for individuals awaiting competency tests and also limits probation options;
- body camera records: video recordings from police body cameras are often used as evidence in court cases, but the district attorneys do not have the technology resources to store, copy and produce the recordings; and
- pretrial detention hearings: New Mexico Supreme Court guidance for implementation of the recently amended Article 2, Section 13 of the Constitution of New Mexico has made it more difficult to hold dangerous suspects in jail pending trial. The district attorneys will propose an amendment to the Constitution of New Mexico to clarify the grounds for holding dangerous suspects in jail pending trial.

Mr. Valdez informed the committee that the AODA will conduct a workload study for all of the state's district attorney offices to determine their needs. The study will compare workloads from district to district. The district attorneys are also considering methods to simplify their budget processes, including the possibility of a unified budget request similar to the unified judicial budget. However, the latter presents practical challenges because the district attorneys do not have a supervisory body analogous to the supreme court's supervisory authority over the lesser courts.

Mr. Valdez discussed information technology issues, noting that the district attorneys are required by statute to create and maintain a statewide case management system (CMS). The

CMS is designed to enhance the prosecutorial process. For example, the CMS will soon include uniform jury instructions. He noted that the system does not store data, but it downloads data to the DPS on a weekly basis.

Mr. Valdez stated that the "consolidated offender query", which was designed to provide real-time criminal history to law enforcement and other users, now resides with the AODA. However, the system is inactive, as funding to maintain the program was vetoed. Nevertheless, the AODA is developing a process to allow defense counsel to obtain electronic discovery through the CMS. Victim notifications will also be done through the CMS.

A member asked what changes the district attorneys would seek in an amendment to Article 2, Section 13 of the Constitution of New Mexico. Ms. Luce responded that the amendment should include a list of serious offenses for which there is a rebuttable presumption that the suspect will not be released. This would reduce the number of release hearings.

In response to questions, the panel noted that assistant district attorneys generally only stay with an office for about two years, citing low salaries and high workloads as primary contributors to the turnover.

Members encouraged the district attorneys to request budgets that will fully meet their needs.

The members and the panel discussed the common problem of data sharing among criminal justice agencies, noting that there is much discussion among the parties but no current plan to address the problems. A member expressed concern that the state's largest district attorney's office may be developing an electronic information system that will not interface with any other system in the state and that this will likely compound the problems. The members again suggested a meeting among all of the affected agencies to attempt to address the problems.

#### **Law Office of the Public Defender (LOPD) Update**

Bennett J. Baur, chief public defender, LOPD, discussed current issues and plans for the LOPD, including its budget request. He stated that the LOPD will request a 19 percent budget increase. The funds will be used to add 29 attorneys, 27 support members, information technology improvements, increased funding for contract attorneys and a traveling team of experienced defense attorneys to assist attorneys in rural locations with complex cases.

Mr. Baur noted that the LOPD is currently conducting a workload study, including implementing a timekeeping system to determine how best to allocate resources. The study should be completed within two years. He noted that the LOPD lacks the minimum resources to meet the current needs in the state, and he observed that a significant part of the problem is the number of persons in the system for offenses related to mental health or substance abuse issues. He recommended that this population should be diverted from the criminal justice system to the

health care system to avoid wasting resources. The members and panel engaged in an extended discussion regarding alternatives to incarceration for this population.

A member asked whether improvements could be made using nonrecurring funds. Committee members and panel members suggested that funds could be used for training social workers and attorneys, for data storage equipment and for a more convenient location for the LOPD office in Albuquerque.

### **Recess**

The committee recessed at 5:15 p.m.

### **Friday, September 7**

### **Reconvene**

Senator Martinez reconvened the meeting at 9:15 a.m. at the Student Resource Center at Central New Mexico Community College in Albuquerque.

### **Bail and Pretrial Detention System Update**

The Honorable Charles W. Daniels, justice, New Mexico Supreme Court, reviewed the implementation of the pretrial detention process mandated by the amendments to Article 2, Section 13 of the Constitution of New Mexico.

Justice Daniels explained that crime rates in New Mexico have been trending upward for several years, not because the state did not incarcerate enough people prior to trial but, rather, because the state does not incarcerate the right people both pretrial and post-conviction. Prior to the adoption of the amendment, the state constitution provided that all persons arrested were entitled to pretrial release if they obtained a bail bond, regardless of the risk of committing a dangerous offense or fleeing to avoid trial. The result was that poor people who could not afford to post bond, even if they presented low risk of reoffending or fleeing, were detained in jail pending trial, while individuals with more financial resources might be released on bond even if there was high risk of reoffense or flight. Essentially, poor people were jailed pending trial and people with sufficient money to obtain a bail bond were released, and it did not matter if the accused person was a danger to others or a flight risk. However, when judges were concerned about an accused person's danger to other people, they often set bail so high that the person did not have financial resources to obtain a bail bond and, therefore, the person was detained pending trial. One person, who was jailed for more than two years awaiting trial because he could not afford the bond set by the judge, sued, and the New Mexico Supreme Court, in *State vs. Brown*, decided that "[i]ntentionally setting bail so high as to be unattainable is simply a less honest method of unlawfully denying bail altogether. If a defendant should be detained pending trial under the New Mexico Constitution, then that defendant should not be permitted any bail at all. Otherwise the defendant is entitled to release on bail, and excessive bail cannot be required." A copy of *State vs. Brown* and other materials provided by Justice Daniels are linked to the online agenda for this meeting at Item (6).

The amendment allows judges to detain high-risk offenders without setting bail and release low-risk offenders without reference to the offender's financial means to purchase release. Bail is still available and is set in some cases, but the Constitution of New Mexico now specifically provides that "[a] person who is not detainable on grounds of dangerousness nor a flight risk in the absence of bond and is otherwise eligible for bail shall not be detained solely because of financial inability to post a money or property bond."

The district attorney must file a motion to retain the person and has the burden to prove by clear and convincing evidence that releasing the person presents an unreasonably high risk to public safety. Courts can also rely on validated risk assessment tools, and the New Mexico Supreme Court has provided lesser courts with the Laura and John Arnold Foundation public safety assessment for this purpose. However, the court should make its determination based on the entirety of the evidence presented. Justice Daniels emphasized that a pretrial detention hearing should be short and simple and should not be a "mini-trial".

Justice Daniels noted public criticism of the new system, including that the system has reduced public safety. Referring to his slides at Item (6), he presented crime statistics that show a general downward trend in almost every area since the new system was implemented. In particular, he pointed out that the incidence of new felony charges within 60 days of being released dropped significantly between January 2017 and January 2018. He also noted a slight upward trend in the number of persons held in pretrial detention and explained that this is a result of denying the release of truly dangerous defendants. Overall, he said, the statistics indicate that judges are making good decisions and the system is working.

Justice Daniels discussed the issue of "failure to appear" (FTA) at subsequent proceedings after the initial detention hearing. He noted that FTA is a problem that requires significant judicial and law enforcement resources. The judiciary will seek additional staff to address this issue in its budget request. He noted that part of the solution is to make good decisions regarding pretrial release and to provide follow-up. This requires effective probation and parole supervision and access to criminal history information by the presiding judge. He also noted that each judicial district has a criminal justice coordinating council composed of representatives from all relevant agencies who meet regularly to discuss this and other criminal justice issues.

He noted that the Bernalillo County Metropolitan Court (metro court) has an effective data-sharing system that provides criminal justice information. Using this information, the metro court has also implemented a process whereby a judicial officer can remotely conduct detention hearings at the Metropolitan Detention Center via the internet. This program has proved to be very successful, and the judiciary intends to request funding to expand remote hearings and data-sharing capabilities to all of its courts.

Finally, Justice Daniels noted that the New Mexico Supreme Court has invited all interested parties to submit ideas and comments regarding potential improvements to the new

court rules. He said that the justices are reviewing extensive written comments and plan to present their recommendations to the legislature in the 2019 regular session.

Ms. Luce and Mr. Valdez informed the committee that they did not have formal presentations but, rather, were present to answer questions from the committee.

Mr. Baur briefly remarked that even though many accused persons are being released on their own recognizance without posting money or property bonds, pretrial release conditions, such as participation in substance abuse treatment, are common.

Panel member Jonathan Ibarra of the LOPD, who is a representative of the New Mexico Criminal Defense Lawyer's Association, provided some statistics regarding pretrial detention in Bernalillo County since January 2017. He said that 1,584 motions were filed in Bernalillo County during that time, of which 65.4 percent involved violent charges and 34.6 involved no violent charges in the criminal complaint. Of those 1,584 motions, 55 involved people with conditions of release for a denied detention motion, five involved people who picked up new charges in jail, nine were post-plea on a previous detention motion case and 22 were no longer on conditions of release for a previous detention case (not indicted or dismissed). The 1,584 total pretrial detention motions included 63 detention motions filed in murder cases, of which 48, or 76.2 percent, were granted. In the 48 murder cases where detention was granted, two defendants were acquitted, seven were dismissed or "nolled" ("nolle prosequi", or "do not prosecute") and two were not ultimately indicted. Of the 15 murder cases where detention was not granted, five were not released from custody and four were not indicted.

Committee members engaged the panel members in an extensive discussion regarding the new pretrial release process. A member asked what percentage of defendants reoffended after release and before trial. The panel responded that no study has been conducted to make that determination. Members suggested that more information is important on this and other issues prior to making any significant additional changes to Article 2, Section 13 of the Constitution of New Mexico. Arthur W. Pepin, executive director, AOC, stated that the AOC has begun a study on this issue, but he could not offer an estimated completion date.

In response to questions, Mr. Baur acknowledged that the new pretrial release process requires more resources at the beginning of a case, but he believes that the system is fair and often results in earlier case resolution because both sides have a better idea of the evidence and facts of the case, thus allowing earlier disposition and saving resources further down the road.

Ms. Luce described the pretrial detention process from a district attorney's perspective. She noted that the detention hearings require significant time. The district attorney must gather and review the evidence concerning the current charges, review the defendant's criminal history, draft the motion, contact and schedule witnesses and attend the hearing, which may last half a day. She said that in rural communities, the hearing does, in fact, resemble a mini-trial, and a district attorney will need more resources to effectively meet these new requirements.

She suggested that amending Article 2, Section 13 of the Constitution of New Mexico to add a list of offenses that create a rebuttable presumption that the defendant will not be released would be very helpful. She noted that New Mexico is the only state using this pretrial model without such a list.

A member reminded the committee that the new process actually increases public safety because, previously, every defendant who could pay for a bond was released, regardless of the defendant's level of risk. Now the district attorney has the ability to seek denial of release.

### **Judiciary's Unified Budget and Proposed Legislation**

The Honorable Judith K. Nakamura, chief justice, New Mexico Supreme Court, and Mr. Pepin discussed the judiciary's unified budget and proposed legislation.

Referring to her handouts at Item (7), Chief Justice Nakamura provided an overview of the judiciary's unified budget, highlighting four priorities.

1. Simplify the judiciary's organizational structure and streamline case processing to improve internal efficiencies and better deliver fair, timely justice. As part of this priority, the judiciary will seek additional funding for judicial education. Chief Justice Nakamura further explained that the state has seven different types of courts, most of which could be consolidated in the district court. She said that these courts often impose a significant financial burden on rural communities, and she noted that the judiciary is working with the New Mexico Municipal League on this issue. The judiciary is also piloting a program in the Twelfth Judicial District to consolidate the administrative functions of the district and magistrate courts. There was discussion of the possibility of closing low-volume magistrate courts. The judiciary is statutorily prohibited from employing part-time magistrate judges, but it uses contract judges to help magistrate judges in courts where the caseload is too large for the existing judges but not large enough for an additional full-time judge.
2. Expand the use of technology, especially online services, to permit greater convenience and service to the public. In particular, institute an online alternative dispute resolution program and a "guide and file for basic divorce cases" program. Approximately 50 percent of all civil cases are filed by self-represented individuals, and a higher percentage of family law cases, such as divorce and custody, drive the need for better service to the public.
3. Enhance public access to and understanding about court processes. Projects include consideration of a limited legal license technician, which would allow persons without law degrees but with a certain level of legal training to provide certain services that currently must be provided by a licensed attorney.
4. Promote safer, more secure, user-friendly court facilities.

Chief Justice Nakamura summarized some of the legislation the judiciary plans to propose as follows:

- allowing metro court appeals to go directly to the New Mexico Court of Appeals instead of to district court, which would be contingent on voter passage of the constitutional amendment authorized by Senate Joint Resolution 1 (2017);
- allowing persons age 75 years and older to request excusal from jury duty without the requirement of an affidavit;
- requiring the Corrections Department to notify district attorneys when inmates are released;
- providing salary increases for judges; and
- proposing a constitutional amendment allowing judges to sit for at least one year before they are subject to a retention election.

Mr. Pepin discussed the judiciary's unified budget request at Item (7), noting that many of the requests address statewide issues.

A member expressed concern regarding jury service and court delays, particularly with regard to civil cases. He asked whether the proposed budget would address these concerns. Chief Justice Nakamura acknowledged that civil cases currently move at a relatively slow pace. She said that the funds requested in the budget would not provide a comprehensive solution to these problems, but the judiciary has taken measures to improve the situation. The member requested that the AOC provide information and a funding request that would speed up the civil trial process.

### **Legislative Finance Committee (LFC) Drug Court Evaluation Report**

Brian Hoffmeister, program evaluator, LFC; Maria Griego, program evaluator, LFC; and Robert Mitchell, senior statewide program manager for problem solving courts, AOC, discussed issues regarding state drug courts.

Mr. Hoffmeister summarized the "LFC Evaluation of Adult and Juvenile Drug Courts", at Item (8), and its key recommendations.

Mr. Mitchell said that he agrees with the LFC evaluation and recommendations. The AOC has been working on implementing those recommendations. He noted that the AOC has difficulty evaluating the various courts' biannual performance reports because each drug court operates autonomously, and the Secure Odyssey Public Access (SOPA) case management system is not currently configured to support them. The AOC is working on modifying the SOPA to include specialty courts to provide uniform reporting from each of the courts. The AOC will require additional information from courts that operate drug courts, including information on Medicaid funding and law enforcement and judges' time usage. The AOC is working with Northpointe, Inc., an information technology consulting firm, to develop automated risk-needs assessments and case-management processes for the courts. The AOC is pilot testing these processes in seven courts and adjusting the processes to meet specific local needs.



The AOC is making operational changes to ensure that its certification standards for its programs and personnel meet national best practices, including working with a national organization to implement best practices in juvenile drug courts. The AOC is also working with the Children, Youth and Families Department (CYFD) to help determine what changes might be appropriate to improve outcomes in juvenile drug courts.

A member asked why participation and graduation rates in juvenile drug courts are declining. Mr. Mitchell responded that there are many complex factors, including that law enforcement has limited resources and that there is a declining number of offenders due to the success of other initiatives. The AOC is working with the CYFD to study whether earlier interventions might prove more helpful.

In response to questions, Mr. Mitchell said that the AOC hopes to improve outcomes by implementing validated assessment tools, avoiding mixing high-risk and low-risk clients and exploring earlier intervention. The AOC is working with the CYFD, the Department of Health, the Human Services Department (HSD) and other agencies to develop a strategic plan to implement an integrated approach to addressing all of those problems.

A member reminded the committee that drug courts are completely voluntary; judges are not paid for their time administering drug courts.

### **Public Comment**

Robert Work, managing attorney with the LOPD's mental health unit, raised the issue of problems resulting from the small number of mental competency evaluators in the state. He explained that certain defendants must be evaluated to determine whether they are competent to stand trial. Because of the limited number of evaluators, this process can take an extended period of time, and the defendant may remain in jail pending the evaluation, during which time the defendant is not receiving needed treatment and the defendant's condition often deteriorates. Mr. Work said that the wait for an evaluation in Bernalillo County averages about three months. In rural communities, the wait can be much longer. The counties bear the cost of housing a defendant pending an evaluation. It is a bad situation for both defendants and counties.

While approximately 30 professionals in New Mexico are qualified to conduct these evaluations, only five or six are contracted statewide. Bernalillo County has only one evaluator. Mr. Work stated that the reason for the low participation rate is that while the current market rate for an evaluation ranges from \$2,500 to \$3,000, the HSD, which is the agency responsible for paying for the evaluations, pays only \$700. The rate has not been raised in 20 years.

In response to a member's question, Mr. Pepin said that a statutory change would be required for the AOC to take over responsibility for providing court-ordered competency evaluations. He suggested that an alternative would be to appropriate the money to the HSD with directions to raise the rates. It was moved and seconded that the committee would write a letter to the HSD, with a copy to the Legislative Health and Human Services Committee (LHHS),

asking how many competency evaluation requests are pending and how long it takes for them to be completed. The committee also suggested that Mr. Work address the LHHS on the issue.

**Adjournment**

There being no further business before the committee, the fourth meeting of the CCJ for the 2018 interim adjourned at 3:15 p.m.

Revised: September 11, 2018

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

**September 24-25, 2018  
University of New Mexico Science & Technology Park Rotunda  
851 University Boulevard SE  
Albuquerque**

**Monday, September 24**

- 9:30 a.m.           **Call to Order and Introductions**  
—Representative Gail Chasey, Co-Chair, Courts, Corrections and Justice  
Committee (CCJ)  
—Senator Richard C. Martinez, Co-Chair, CCJ
- Action Item: Approval of Minutes of the August 6-7, 2018 and September  
6-7, 2018 Meetings*
- 9:45 a.m.           (1) [University of New Mexico School of Law \(UNMSOL\) Update](#)  
—Sergio Pareja, Dean, UNMSOL
- 10:30 a.m.           (2) [Probation and Parole, Community Programming](#)  
—David Jablonski, Secretary, Corrections Department
- 12:00 noon           **Lunch**
- 12:30 p.m.           (3) [Report of the Legislative Subcommittee of the New Mexico Attorney  
General Task Force on Domestic Minor Sex Trafficking](#)  
—April Land, Professor, UNMSOL; Co-Chair, Legislative Subcommittee of  
the New Mexico Attorney General Task Force on Domestic Minor Sex  
Trafficking  
—Susan Loubet, New Mexico Women's Agenda
- 1:30 p.m.           **Public Comment**
- 2:00 p.m.           (4) [Discussion of the Criminal Justice Reform Process](#)  
—Representative Gail Chasey, Co-Chair, CCJ  
—Senator Sander Rue, Co-Chair, Criminal Justice Reform Subcommittee
- 3:00 p.m.           **Recess**

**Tuesday, September 25**

9:00 a.m.           **Reconvene**

9:15 a.m.       (5)   **Gender Justice**

—Renee Villarreal, Program Co-Director, NewMexicoWomen.Org

—Fatima van Hattum, Program Co-Director, NewMexicoWomen.Org

9:45 a.m.       (6)   **Motor Vehicle Dealers Franchising**

—Meredith Roberts, Senior Policy Advisor, Tesla

—Rohan Patel, Director of Policy and Business Development, Tesla

10:45 a.m.      (7)   **New Mexico Counties (NMC) Legislative Priorities**

—Steve Kopelman, Executive Director, NMC

—Grace Philips, General Counsel, NMC

11:30 a.m.       **Public Comment**

12:00 noon       **Adjourn**

12:15 p.m.       **Ethics Commission Working Group**

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

**September 24-25, 2018  
University of New Mexico Science & Technology Park Rotunda  
851 University Boulevard SE  
Albuquerque**

The fifth meeting of the Courts, Corrections and Justice Committee (CCJ) was called to order by Senator Richard C. Martinez, co-chair, on September 24, 2018 at 9:58 a.m. at the University of New Mexico (UNM) Science and Technology Park Rotunda in Albuquerque.

**Present**

Rep. Gail Chasey, Co-Chair  
Sen. Richard C. Martinez, Co-Chair  
Rep. Eliseo Lee Alcon (9/24)  
Sen. Gregory A. Baca  
Sen. Jacob R. Candelaria  
Rep. Zachary J. Cook (9/24)  
Rep. Jim Dines  
Sen. Linda M. Lopez  
Rep. Antonio Maestas (9/25)  
Rep. Sarah Maestas Barnes (9/24)  
Sen. Cisco McSorley  
Rep. William "Bill" R. Rehm  
Sen. Sander Rue

**Absent**

Rep. Javier Martínez  
Rep. Angelica Rubio

**Advisory Members**

Sen. Bill B. O'Neill  
Sen. John Pinto  
Sen. Mimi Stewart  
Rep. Christine Trujillo  
Sen. Peter Wirth (9/25)

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

**Guest Legislator**

Sen. Gerald Ortiz y Pino (9/25)

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

**Staff**

Celia Ludi, Staff Attorney, Legislative Council Service (LCS)  
Randall Cherry, Staff Attorney, LCS  
Erin Bond, Research Assistant, LCS

**Guests**

The guest list is in the meeting file.

**Handouts**

Handouts and other written testimony are in the meeting file.

**Monday, September 24****Call to Order and Introductions**

Senator Martinez welcomed the committee and the audience. Members and staff introduced themselves.

**UNM School of Law (SOL) Update**

Sergio Pareja, dean, UNM SOL, introduced himself and informed the committee that Alfred Mathewson, who has presented to the committee in previous years, completed his term as co-dean on August 1, 2018. Mr. Mathewson plans to retire in December at the conclusion of the school semester. Dean Pareja noted that several UNM SOL professors are expected to retire in the near future, including Professor James Ellis and Professor Scott Hughes. Dean Pareja is now the sole dean, and Professor Camille Carey has been appointed the vice dean.

Dean Pareja stated that UNM SOL's state bar examination passage rate for first-time takers in July 2018 was 85%, up from 68% in July 2016 but down from 91% in 2017. The statewide first-time takers passage rate was 71%. Dean Pareja noted that UNM SOL is not a state bar prep school, and many necessary skills for lawyers are not measured by the state bar examination but are taught at UNM.

UNM SOL was approved by the provost to hire up to six new professors, although UNM's recent revenue shortfall may impact the number actually hired. Dean Pareja hopes to find professors with experience in oil and gas, civil procedure, constitutional law, criminal law or property law. A faculty appointment committee composed of 10 members has been established and is accepting applications. The committee will attend a recruiting conference hosted by the Association of American Law Schools. The committee will pick applicants who will then be approved by the faculty.

Dean Pareja reported that a new law class started in August. The median Law School Admission Test score was 153, and the median grade point average was 3.4. Of the 611 applications submitted, 106 first-year law students and nine master of studies in law degree students were accepted. The 2018 class is smaller than previous years; in 2017, UNM SOL had

more than 700 applications, and 120 law students were accepted. While New Mexico universities have seen a statewide decline in enrollment, Arizona State University has seen an increase. Dean Pareja expressed concern that students, particularly high-performing ones, are being poached by out-of-state schools that can offer full scholarships. Rather than lower UNM SOL's admission standards, a smaller class was accepted for 2018.

Eighty-five percent of the class are New Mexico residents with an average age of 28, although student ages range from 21 to 61 years old. The class is 51% minority and 58% female.

In response to members' questions on faculty diversity, Dean Pareja explained that the faculty appointment committee members are undergoing diversity training, with a focus on implicit bias. The committee members are encouraged to preplan their questions for the interviews to maintain consistency for all interviewees. Of UNM SOL's current faculty, seven are Native American, five are Hispanic, two are African American and one is Asian American. Professional experience among faculty members is less diverse, as academia has formerly viewed work experience as not academic enough for a professor. However, many of the newer members of the faculty have experience outside of academia.

Dean Pareja stated that UNM SOL recognizes the differences between the classroom and the real world and looks for ways to add practice-oriented classes to the curriculum. Such classes include "Law Practice Management" and "Criminal Law in Practice". Dean Pareja agreed with a committee member that such classes often do not appeal to students focused only on passing the bar exam, but he noted that the "Evidence and Trial Practice" course is very popular with students.

### **Probation and Parole, Community Programming**

David Jablonski, secretary, Corrections Department (CD), and Phillipe Rodriguez, acting director, Administrative Services Division, CD, presented to the committee on the CD's plans for the remainder of the year. The Criminal Justice and Public Safety Task Force will hold its final meeting on October 4, and Justice Edward L. Chavez, to whom the CD had offered several reform recommendations, is expected to present a final report that the CD will study. The CD will also meet with Carl Reynolds from the Council of State Governments (CSG) Justice Center for the working group approved by the governor. Additionally, the CD is working with the Legislative Finance Committee (LFC) on evaluations of medical contracts in state prisons. Dr. Travis McIntyre is expected to report the LFC's findings at an upcoming CCJ meeting.

The CD has calculated that approximately one-half of former detainees recidivate. However, Secretary Jablonski indicated that most cases are due to parole violations, not new charges. Recidivism definitions vary from state to state, and Secretary Jablonski offered several ways that New Mexico could change its definition, including expanding the recidivism measurement time frame from three years to five years and reframing the definition to better measure new charges and habitual offenders rather than technical violations. Secretary Jablonski

suggested that technical parole violations would be reduced if violations are swiftly responded to with time in county jail rather than waiting for time in state prison.

Secretary Jablonski explained that in-house parole is a necessary but unfortunate practice for inmates eligible for release. New Mexico statutes mandate that an individual with a felony conviction must serve a one- to two-year parole term. Caseworkers help inmates create a release plan, which then must be approved by the Parole Board. It was noted that developing release plans is difficult when short sentences are combined with time rewarded for good behavior. Inmates may spend less than six months in the facility, although many parole plans take longer than that to develop and approve.

Release plans must include an address or home to which the inmate will parole, or the plan will be denied. In some situations, the inmate is not welcome at the address or home listed, but the residents are uncomfortable informing the individual. In such cases, halfway houses and transitional facilities are the preferred alternative. However, Secretary Jablonski stated, New Mexico must increase the capacity of halfway houses and transitional living facilities to reduce both in-house parole and recidivism rates. In Albuquerque, 260 male former inmates and 140 female former inmates are in transitional housing. In the remainder of the state, only 100 men and 10 women are in transitional housing. Due to the lack of appropriate facilities around the state, dangerous or at-risk people come to Albuquerque for services, overwhelming the systems there.

Secretary Jablonski pointed out to the committee that an uneven distribution of services also impacts community correction efforts. Rural areas lack behavioral health providers. While there are 17 approved providers statewide, seven of those are in Albuquerque. The remaining 10 are scattered across New Mexico. Secretary Jablonski informed the committee that the 17 behavioral health providers have contracts with the CD to provide drug treatment and behavioral health care. He expressed concern that providers must provide quality services to be effective. Remote providers can be more difficult to monitor for effectiveness, and providers with large caseloads may not be able to adequately serve individuals.

Secretary Jablonski highlighted other changes coming to the CD. The Criminal Management Information System will replace the 18-year-old system currently in use. The new system will merge the old offender management system with risk-assessment tools and is expected to substantially reduce time spent entering data into multiple systems. The Criminal Management Information System will be web-based to allow data-sharing among agencies. Individuals will be assigned a unique identifier to track them through multiple aspects of the criminal justice system rather than an identification number at each department or agency. The new system is expected to be up and running in six to eight months.

Other initiatives include introducing evidence-based practices into privately run prisons, improving prison health care provided by contracts with Centurion Correctional Healthcare of New Mexico and decreasing staff vacancy rates.



In response to a committee member's question, Secretary Jablonski explained that some states measure recidivism by counting any arrest as a re-offense. Other states do not include technical violations in their measurements and only count felonies for recidivism purposes. The number of technical violations allowed before an individual is reincarcerated may vary. A judge may place a parolee struggling with addiction on intensive monitoring rather than send him or her to prison. Alternately, the Parole Board may take a zero-tolerance stance and reincarcerate an individual after a first violation due to substance abuse. A member expressed concern that a parole violator may abscond if he or she is not reincarcerated. Secretary Jablonski communicated a belief that swift response and sanctions would prevent absconding by allowing the CD to take control of the situation and place the individual in a recovery house or county jail. To further that cause, the CD will request more funding in its budget to open halfway houses, county jails and specialty programs like drug courts. Secretary Jablonski noted that 25% of released individuals are discharged without supervision; studying this subset could illuminate the effect of supervision on recidivism rates.

In response to members' questions on staff vacancy rates, Secretary Jablonski stated that the CD had approximately a 22% staff vacancy rate in 2018. While pay raises have helped recruit more staff, retirement rates have prevented any change in staffing numbers. Private prisons in rural areas struggle with a limited labor pool and have 30% to 33% vacancy rates. Secretary Jablonski stated that new hires and inexperienced officers take time to train; they must learn the most effective ways to respond to and help parolees. The secretary said that placing parole and probation under separate agencies would result in wasted resources and miscommunication.

Secretary Jablonski explained that many of the state's prison facilities are approximately 35 years old and are in need of repairs. Wardens are advised by their maintenance teams when creating priority lists, which then go to the General Services Department (GSD). The GSD compiles the lists and reviews needs. Engineers from the GSD can inspect and advise on facility needs, but there is no independent review of facilities. Secretary Jablonski stated that emergencies take priority and often eat up budgets. A member reminded the committee that the CD's budget requests have not been met, and they increase every year as facilities fall further into disrepair.

Laura Peele, a parolee and a client of Maya's Place — Crossroads for Women, expressed concern that there are not enough residential drug abuse or intensive outpatient programs for individuals transitioning from prison. Ms. Peele was accepted to nine programs while preparing for release, but the Parole Board rejected them all. Programs that are approved are often at overcapacity, and Ms. Peele hopes that the CD would approve more programs. Secretary Jablonski informed the committee that programs are approved by a judge and the Parole Board because some programs exist to take advantage of vulnerable parolees.

## **Legislative Subcommittee of the New Mexico Attorney General Task Force on Domestic Minor Sex Trafficking**

April Land, professor, UNM SOL, and co-chair, Legislative Subcommittee of the New Mexico Attorney General Task Force on Domestic Minor Sex Trafficking, introduced Christina Vasquez and Simon Suzuki, students at UNM SOL, and Susan Loubet, New Mexico Women's Agenda. Professor Land explained that the subcommittee is seeking to end the prosecution of children for sex trafficking. Current New Mexico law states that if a child sells sex, he or she is a delinquent child and can be charged with prostitution. By removing child prostitution from the Children's Code, New Mexico will fall into line with federal standards and become eligible for funding. Law enforcement will be encouraged to view children as victims, and children will feel safer when reaching out to law enforcement for assistance.

Various pathways to protection for child victims exist. State law mandates that victims of human trafficking are eligible to receive services and benefits through the Children, Youth and Families Department (CYFD) or the Human Services Department (HSD). Services and benefits include case management, mental health counseling, drug addiction treatment and advocacy services. The CYFD must create permanency plans for abused and/or neglected children in protective services; plans for education and health must be individualized to a child's best interests. Additionally, children involved in families in need of court-ordered services must receive an individualized plan and services to help the transition to independent living. By framing minors in sex trafficking as victims and not delinquents, they could more easily receive the services needed to reintegrate them to everyday life.

Professor Land provided the committee with possible legislation to expressly exclude prostitution as a delinquent act and to connect human trafficking victims to services. She acknowledged that few children were prosecuted under current laws, but she said that even one case is too many. Members of the subcommittee and task force were unanimous in their support of the draft legislation.

Ms. Loubet stated that the human trafficking laws passed in 2008 and amended in 2013 have helped victims of human trafficking but still fall short. Agencies have been slow to offer services in a timely fashion and may need encouragement to be more prompt. While working on changes to child prostitution laws, members of law enforcement expressed concern that decriminalizing prostitution for minors would make it difficult for law enforcement to detain, or present jail time to, uncooperative minors. Thus, the definition of child prostitution would be amended to state that child prostitution is a form of child abuse.

Professor Land concluded by stating that passage of the bill would tell children that they are not criminals but victims and that they can be put in touch with services.

In response to a committee member's question, Kathleen Burke, associate director, Street Safe New Mexico, and member, Legislative Subcommittee of the New Mexico Attorney General Task Force on Domestic Minor Sex Trafficking, explained that obtaining statistics on homeless

teens is challenging due to their transient lifestyles. An estimated 45% to 90% of homeless youth are involved in prostitution. She stated that drugs are occasionally used as a leash by a pimp, but most cases are anecdotal. Professor Land added that sexual exploitation frequently seems to predate any drug involvement.

Mr. Suzuki explained to the committee that if a minor who is a victim of sex trafficking is processed through the three pathways laid out in the presentation, the child will receive services. The CYFD is developing a tool to help identify trafficking victims and connect them to services such as advocates and guardians ad litem. Professor Land explained that finding such services can be difficult for a minor but, ideally, should be immediately available to them. Federal funding could be available to assist in these connections if the amendment is passed, but it would not be necessary.

Members offered several technical revisions for the draft legislation, and several members expressed concern that using "shall" in Section 32A-3B-4 NMSA 1978 could cause the CYFD to return a child to an unsafe environment because it would be more expeditious than providing treatment and services. Additionally, the process would not be standardized throughout the state because the CYFD operates by county.

### **Approval of Minutes**

The minutes of the August 6-7, 2018 meeting of the CCJ were approved unanimously.

### **Public Comment**

Ms. Burke stated that New Mexico is one of the least equipped states to deal with minors involved in sex trafficking. She explained that sex trafficking often coincides with drug trafficking and weapon trafficking, but it is less risky and more profitable than drug or weapon trafficking. She requested that members vote in favor of bills that stop human trafficking in New Mexico.

### **Discussion of the Criminal Justice Reform Process**

Ms. Ludi informed the members of the meeting schedule for the CCJ and the Criminal Justice Reform Subcommittee through December. Expected presentations include reports from Justice Chavez on the Criminal Justice and Public Safety Task Force, updates from the CSG working group and various memorial and LFC reports. Meetings that were previously scheduled in Albuquerque will remain there, while the new meeting dates will be held at the State Capitol.

Members expressed concern that the CSG's report may not be finalized by December 4, which is the last CCJ meeting date, and that the LFC may not have sufficient time for fiscal impact statements. Ms. Ludi and Ismael Torres, fiscal analyst, LFC, reassured the members that the LFC keeps up to date on the development of legislation and will be prepared for the 2019 legislative session.

The co-chairs requested that committee members send topics of interest to LCS staff for consolidation and research. Vetoed bills from previous sessions could also be included in the topics.

Members expressed concern that an omnibus bill with too much diversity could be considered logrolling, and they discussed the implications, as well as possible solutions. Members requested that CSG staff examine how other states have used multi-bill packages.

The New Mexico Legislative Council approved one additional meeting of the CCJ, scheduled for December 4, at the council's August 27 meeting. The council also approved additional meetings of the Criminal Justice Reform Subcommittee for September 27, October 25-26 and November 16.

### **Recess**

The committee recessed at 3:00 p.m.

### **Tuesday, September 25**

### **Reconvene and Introductions**

The committee was reconvened at 9:14 a.m. by Senator Martinez.

### **Gender Justice**

Renee Villarreal and Fatima van Hattum, program co-directors, NewMexicoWomen.org (NMW.O), introduced themselves and explained their organization. They said that their presentation would focus on social, racial and gender justice rather than judicial justice. NMW.O is a nonprofit that works to advance opportunities for women and girls in New Mexico through education, leadership and investment. In 2017, NMW.O published a joint research report entitled "The Heart of Gender Justice in New Mexico: Intersectionality, Economic Security, and Health Equity". A joint venture with scholars from UNM and the Robert Wood Johnson Foundation Center for Health Policy, the report includes qualitative and quantitative findings on the intersections between gender, race and ethnicity, health and economic equity.

Ms. Villarreal and Ms. van Hattum explained that research and data for the report were obtained in two ways. NMW.O held community dialogues in cities around the state, including Las Cruces, Silver City, Santa Fe, Espanola and Albuquerque. Data on economic security were drawn from five-year estimates of the U.S. Census Bureau's American Community Survey. The researchers used intersectionality, an analytical tool coined by Kimberlé Crenshaw in 1989, to understand how systems of oppression intersect and how multiple aspects of identity and experience can enrich or complicate lives. Intersectionality acknowledges the interactions between gender and other social factors, such as race, class, sexuality and ability, that impact one's experiences.

The study shows that the legacy of colonialism and race trauma has impacted New Mexico women greatly, particularly women of color in low-income, rural areas. Trauma and loss of culture can lead to self-medication and addiction, which in turn can lead to convictions and jail time. Ms. Villarreal and Ms. van Hattum said that this cycle is a major contributor to the recent increase in the women's prison population.

Ms. Villarreal and Ms. van Hattum suggested several ways the study could help policymakers. Legislators must consider how the conditions in which people live affect their lives and their communities, as well as how the allocation of power and resources shapes social structure and health conditions. The root causes of poverty, violence and incarceration must be treated with a multi-sector approach. Ms. Villarreal and Ms. van Hattum asked the committee to apply a social justice lens to funding and policymaking, while utilizing and partnering with the nonprofit and philanthropic sector.

In response to a member's question, Ms. van Hattum explained that people waiting for pretrial services are often held in private prisons, which can lead to overcrowding and underutilization of behavioral health facilities. Members noted that prisons and behavioral health facilities statewide are underfunded, particularly facilities in rural areas.

Ms. Villarreal and Ms. van Hattum explained that NMW.O is not looking for sponsors for legislation; rather, NMW.O should be seen as a resource for policymakers and a support for other nonprofits. They stated that NMW.O was formed when the Commission on the Status of Women was line-item vetoed in 2011. While the organization originally focused on economic security for women, the focus shifted to gender justice and healing for both women and men.

Members expressed concern that parole violations and simple possession of controlled substances are filling prisons unnecessarily and often hurt the individuals more than help them.

### **Motor Vehicle Dealers Franchising**

Rohan Patel, director of policy and business development, Tesla, Inc. (Tesla), and Meredith Roberts, senior policy advisor, Tesla, introduced themselves and explained why Tesla is important to them. Mr. Patel stated that Tesla is dedicated to innovation in sustainable energy. Due to the expense of pioneering new technology, Tesla entered the market with a high-end sports car in 2012. Recent models are lower-cost and allow Tesla to reach more consumers. Customer satisfaction is high, as Tesla has the highest customer satisfaction and service ratings in the industry.

Mr. Patel explained that Tesla sells its vehicles and vehicle servicing directly to consumers, rather than using a dealer franchise model. Historically, car manufacturers chose to grant businesses the right to sell and service vehicles, rather than the manufacturer selling directly to consumers. State legislatures established franchise laws to regulate interactions between franchisers, franchisees and customers. New Mexico law requires that car manufacturers use franchises to sell and service vehicles in the state. Tesla believes that the

direct-sales model allows for improved customer service for concerned buyers, reduced service and repair costs if problems arise and uniform pricing nationwide without any haggling. Because New Mexico law requires franchises for sales and repairs, Tesla cannot sell or service vehicles in New Mexico shops. Tesla's customers in New Mexico are unable to have vehicles delivered to a Tesla center for service and must take vehicles out of state for service and repairs.

Mr. Patel expressed Tesla's desire to have a presence in New Mexico and abide by state laws to meet customer needs. Tesla has successfully compromised with the Indiana, Utah and Wyoming legislatures on franchise laws, while California, Colorado and Florida provide unfettered consumer access to Tesla. Mr. Patel asserted that consumers should be free to choose the product and purchase method they wish; if consumers do not like Tesla's direct-sales model, they are free to purchase elsewhere.

Ms. Roberts explained that Senator Ortiz y Pino sponsored Senate Bill 255 in the 2018 legislative session. The bill would allow a manufacturer to sell and service vehicles in New Mexico, provided there are no independent franchise dealers of those vehicles already in New Mexico. Ms. Roberts expressed hope that the bill would be reintroduced in the 2019 legislative session.

Members of the committee vocalized concerns that Tesla's direct-sales model would harm the employees of dealerships and the local economies surrounding dealerships. Mr. Patel noted that states with Tesla centers have experienced record automobile sales despite Tesla's presence, and he explained that many franchises in New Mexico have out-of-state owners. Legislative compromises in other states have included requiring a manufacturer to have a domestic presence in the United States, thus preventing foreign manufacturers from entering local markets, and allowing only electric vehicles to be sold without a franchise, preventing Tesla from encroaching on traditional vehicle markets.

Mr. Patel informed the members that Tesla's direct-sales model is similar to that of Apple retail stores. Both companies wish to provide a uniform experience for their customers regardless of locale. Employees are salaried rather than paid by commission or by the number of jobs completed. Unwanted vehicles can be sold back to Tesla, which would then auction the vehicle. New or pre-owned Teslas can be purchased online and delivered. In-store purchases or deliveries to a store are not currently permitted under New Mexico law, and customers must go out of state for such services.

In response to members' questions, Mr. Patel informed the committee that there are approximately 450 Tesla owners in New Mexico. While updates can be performed over Wi-Fi and mobile service technicians can make home visits under interstate commerce laws, many of the 450 owners must go to Denver for more substantial services. However, Mr. Patel stated, customers love Tesla's service model, and Tesla does not foresee changing service models.

Mr. Patel and members of the committee discussed other Tesla products, including electric semi trucks, solar panels and battery packs. Tesla recycles its lithium ion batteries for new cars, and other vehicle parts may be recycled as well. A member noted that Tesla vehicles must use Tesla supercharge stations or home chargers, which can make long trips difficult if no charging stations exist.

### **Public Comment**

Brian Dear, founder and president, Tesla Owners Club of New Mexico, explained that the club had, at last count, 222 members, or approximately one-half of all Tesla owners in New Mexico. Members are frustrated that they must go out of the state for service, as this can mean towing a car to Denver for repairs. Mr. Dear expressed annoyance at this and requested that the legislature allow Tesla to operate in New Mexico.

Another Tesla owner informed the committee that she and her husband had not purchased cars since the early 1990s, then they purchased the Tesla Model 3 in mid-2018. She expressed concern that she must take her vehicle out of state to comply with the warranty and would prefer that services be available locally.

Tesla owner Katie Stone stated that her husband was the first Tesla owner in New Mexico and she currently owns the only holographic Tesla in New Mexico. Since purchasing their Teslas, all services have been performed in Colorado. Ms. Stone stated that the Tesla Model 3 is one of the top-selling vehicles in the United States. She expressed anger that New Mexico would allow the taxes from sales and services go to other states rather than using the taxes to help impoverished New Mexicans.

At the co-chairs' request and by show of hands, audience members signified whether they support or oppose Tesla. No hands were raised in opposition.

### **New Mexico Counties (NMC) Legislative Priorities**

Steve Kopelman, executive director, NMC, and Grace Philips, general counsel, NMC, presented NMC's 2019 legislative priorities. NMC will be seeking three primary appropriations in the General Appropriation Act of 2019. First, NMC would like to restore funding for the County Detention Facility Reimbursement Act to \$5 million; currently, it is at \$2.3 million, and counties are housing more inmates without proper reimbursement. Second, NMC would like a \$750,000 line item in the Department of Finance and Administration's budget. Under Subsection C of Section 4-44-18 NMSA 1978, the state is required to reimburse counties for the transportation of state prisoners, but no money is allocated for reimbursement. Third, NMC would like \$5 million to be appropriated annually for emergency services in the Department of Health budget. Emergency services have not had a line item before, and a designated revenue mechanism for fund growth and stability must be determined.

Mr. Kopelman stated that NMC will lobby for several other causes as well. Inspired by House Bill 160 (2018), NMC will seek to require the HSD to ensure that nonviolent adult and

juvenile defenders who have serious mental illnesses and are housed in CD or county detention centers receive comprehensive behavioral health services. By connecting individuals with the appropriate resources and services immediately upon release, NMC expects to reduce the likelihood of recidivism and reincarceration.

NMC will support tax reform endeavors that improve economic efficiency, economic development, fairness and ease of administration, but it will oppose legislation that negatively impacts county revenue. Counties must participate in all efforts to restructure and reform state and local tax systems. Internet sales tax is of particular interest, as internet retailers could be required to pay local sales tax.

Mr. Kopelman explained that the Fire Marshal Division and administration of the Fire Protection Fund are currently housed in the Public Regulation Commission (PRC), but NMC will seek to have them placed in a more appropriate location, such as the Department of Public Safety. Under the PRC, the fire marshal position has been vacant for a year, and overall vacancy is at 40%. Moving the Fire Marshal Division would ensure stability for critical public safety services and allow for advocacy and communication with fire services statewide.

NMC will seek to address the unintended consequences of the 2015 amendments to the Forfeiture Act. Reforms would include fixing the confusion around abandoned property, providing for reimbursement of law enforcement agencies for the cost of storage and disposal of seized property and extending due process protections to local DWI vehicle seizures.

In response to a member's question, Ms. Philips explained that behavioral health reforms would largely be covered by the Medicaid expansion. The larger problem is the lack of providers in New Mexico. The HSD may need to offer more incentives to persuade providers to practice in New Mexico.

### **Adjournment**

There being no further business before the committee, the fifth meeting of the CCJ adjourned at 12:27 p.m.



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

**October 18-19, 2018  
University of New Mexico Science & Technology Park Rotunda  
851 University Boulevard SE  
Albuquerque**

**Thursday, October 18**

- 9:00 a.m.           **Call to Order and Introductions**  
—Representative Gail Chasey, Co-Chair  
—Senator Richard C. Martinez, Co-Chair
- 9:15 a.m.           **Welcome**  
—Garnett S. Stokes, President, University of New Mexico
- 9:45 a.m.       (1)   **[New Mexico Elections and Voting Update](#)**  
—Maggie Toulouse Oliver, Secretary of State
- 10:45 a.m.       (2)   **[Redistricting](#)**  
—Dick Mason, Vice President and Action Co-Chair, League of Women  
Voters of New Mexico (LWVNM)  
—Meredith Machen, Executive Committee Member, LWVNM
- 11:45 a.m.       (3)   **[Election and Voting Legislation Trends in Other States](#)**  
—Wendy Underhill, Director, Elections and Redistricting, National  
Conference of State Legislatures
- 12:45 p.m.       **Public Comment**
- 1:00 p.m.       **Lunch**
- 1:30 p.m.       (4)   **[Council of State Governments \(CSG\) Justice Reinvestment Initiative Update](#)**  
—Carl Reynolds, Senior Legal and Policy Advisor, CSG Justice Center  
—Michelle Rodriguez, Policy Analyst, State Initiatives, CSG Justice Center

2:30 p.m. (5) [\*\*The Alternatives to Violence Project in New Mexico Prisons with a Discussion of Program Evaluation Activities\*\*](#)  
—Harbert Rice, Alternatives to Violence Project of Northern New Mexico  
—Linda Freeman, Executive Director, New Mexico Sentencing Commission

3:30 p.m. **Public Comment**

3:45 p.m. **Recess**

4:00 p.m. (6) [\*\*Ethics Commission Working Group\*\*](#)  
—Senator Linda M. Lopez  
—Representative Jim Dines

### **Friday, October 19**

9:00 a.m. **Reconvene**

9:15 a.m. (7) [\*\*Report and Recommendations of House Joint Memorial 16 \(2018\) Criminal Justice and Public Safety Task Force \(CJPSTF\)\*\*](#)  
—The Honorable Edward L. Chavez, Retired Justice, New Mexico Supreme Court; Chair, CJPSTF

11:15 a.m. **Public Comment**

11:45 a.m. **Lunch**

12:15 p.m. (8) [\*\*Review of Data Collection, Analysis and Application in the Second Judicial District\*\*](#)  
—Jon Courtney, Ph.D., Program Evaluator Manager, Legislative Finance Committee (LFC)  
—Travis McIntyre, Ph.D., Program Evaluator, LFC

1:00 p.m. **Adjourn**

1:30 p.m. **Tour of Albuquerque's Real Time Crime Center**  
*(For committee members and staff only)*

2:30 p.m. **Tour of Second Judicial District Attorney's Crime Strategy Unit**  
*(For committee members and staff only)*

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

**October 18-19, 2018  
University of New Mexico Science & Technology Park Rotunda  
851 University Boulevard SE  
Albuquerque**

The sixth meeting of the Courts, Corrections and Justice Committee (CCJ) was called to order by Senator Richard C. Martinez, co-chair, on October 18, 2018 at 9:15 a.m. at the University of New Mexico (UNM) Science & Technology Park Rotunda in Albuquerque.

**Present**

Rep. Gail Chasey, Co-Chair  
Sen. Richard C. Martinez, Co-Chair  
Rep. Eliseo Lee Alcon  
Sen. Gregory A. Baca (10/18)  
Sen. Jacob R. Candelaria (10/18)  
Rep. Jim Dines  
Sen. Linda M. Lopez  
Rep. Antonio Maestas  
Rep. Sarah Maestas Barnes  
Rep. Javier Martínez (10/18)  
Sen. Cisco McSorley  
Rep. William "Bill" R. Rehm

**Absent**

Rep. Zachary J. Cook  
Rep. Angelica Rubio  
Sen. Sander Rue

**Advisory Members**

Sen. Daniel A. Ivey-Soto (10/18)  
Rep. Patricia Roybal Caballero  
Sen. Mimi Stewart  
Rep. Christine Trujillo (10/18)

Rep. Deborah A. Armstrong  
Sen. William F. Burt  
Rep. Brian Egolf  
Rep. Doreen Y. Gallegos  
Sen. Bill B. O'Neill  
Sen. William H. Payne  
Sen. John Pinto  
Sen. Peter Wirth

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

**Staff**

Celia Ludi, Staff Attorney, Legislative Council Service (LCS)  
Randall Cherry, Staff Attorney, LCS  
Mark Peralta-Silva, Staff Attorney, LCS  
Erin Bond, Research Assistant, LCS

**Guests**

The guest list is in the meeting file.

**Handouts**

Copies of all handouts are in the meeting file.

**Thursday, October 18****Welcome and Introductions**

Senator Martinez welcomed the committee, and members introduced themselves. Garnett S. Stokes, president, UNM, introduced herself to the committee as the new president of UNM. She stated that in the first year of her presidency, she has focused on understanding the UNM campus, the Albuquerque community and the state as a whole. Dr. Stokes recently completed a statewide listening tour, in which she visited all 33 counties and 38 cities across the state.

As a result of the tour, Dr. Stokes has developed new goals for the university. UNM will strive to respond to communities' unique needs by expanding health care education, engaging with tribal communities and supporting vulnerable student populations. The needs and concerns, such as institutional transparency and campus safety, of UNM alumni, who comprise approximately eight percent of New Mexico's total population, will be addressed. Dr. Stokes noted that UNM has requested \$11 million in capital outlay funds for safety and infrastructure.

In response to questions from the committee, Dr. Stokes explained that due to a significant decline in enrollment, UNM faces major revenue loss. While UNM has low tuition rates compared to national standards, many of UNM's potential students come from low-income backgrounds. Offering need-based scholarships could boost enrollment rates, she said. Other reasons for low enrollment include competition from out-of-state universities, a poor public image due to campus safety issues and plentiful current job opportunities for individuals without college degrees. Members of the committee expressed concern that UNM does not seem to have a clear plan to make up the revenue loss or to provide programs that might increase enrollment. Committee members also expressed concern about the recent turnover in the president's office and said that they hope Dr. Stokes will remain in the office long term.

**New Mexico Elections and Voting Update**

Maggie Toulouse Oliver, secretary of state, addressed the committee on election administration and campaign finance priorities for the next legislative session.

Secretary Toulouse Oliver listed the following election administration priorities:

- funding the Office of the Secretary of State and election-related expenses — the Office of the Secretary of State will need full funding for fiscal year 2020 and supplemental funding for fiscal year 2019 to pay for expenses associated with the 2018 general election. The Public Election Fund must be replenished, and funding gaps for the Local Election Act (LEA) must be filled. Elections will be held every

- fiscal year, and Secretary Toulouse Oliver requested that a regular, sustainable funding source be found for elections;
- updating the Election Code, including fixes to the LEA; as the LEA is implemented for the first time in 2019, problems will arise. Stakeholders have already identified issues that will need to be addressed before implementation;
  - codifying and expanding automatic voter registration; while the Motor Vehicle Division (MVD) of the Taxation and Revenue Department provides all customers who are identified as U.S. citizens an opportunity to register or update their registrations at the beginning of a transaction, the program is only administratively created by the secretary of state. Secretary Toulouse Oliver would like to codify the program and expand it to other state agencies;
  - allowing same-day voter registration; New Mexico has one of the earliest voter registration deadlines in the country. Secretary Toulouse Oliver stated that this disenfranchises voters who move at the "wrong" time. New technology allows for safe and secure instant registration, which in turn allows for same-day registration and voting. Same-day registration will also assist in keeping voter registration databases up to date;
  - shifting to open primaries; New Mexico is one of the few remaining states with closed primaries. Secretary Toulouse Oliver stated that primaries are paid for by all taxpayers, regardless of their eligibility to vote in them. Closed primaries in which only a single party has candidates running can disenfranchise non-major party or unaffiliated voters. A variety of approaches is available for open primaries, and Secretary Toulouse Oliver would like to start the discussion;
  - creating electronic signature verification; ballot access laws in New Mexico require that a candidate obtain signatures from voters of their party and in their area of representation. Secretary Toulouse Oliver explained that implementing electronic signature verification, which allows candidates to collect and validate signatures electronically, could immediately notify a collector if the signer is qualified to sign the petition. This would help reduce post-filing-day litigation and increase voter confidence in the accuracy of signatures;
  - establishing penalties and legal remedies for candidates and elected officials who reside outside their districts; current law requires candidates to reside within their districts. However, New Mexico statute provides only a 10-day period after the filing deadline in which a candidate's residency can be challenged. Secretary Toulouse Oliver hopes that an enforcement method beyond the 10-day period might be provided in the 2019 legislative session;
  - defining transparency exemptions for sensitive election-security-related documents; transparency and safety are both top priorities for the secretary of state. Secretary Toulouse Oliver explained that her office will seek narrowly defined exemptions to the Inspection of Public Records Act for documents that might reveal voter information or expose vulnerabilities in election security and cybersecurity; and
  - fixing the Confidential Address Program (CAP) to allow for confidential voting; the CAP allows survivors of domestic violence and stalking to receive mail at a confidential address. A previous attempt to allow CAP participants to register and

vote confidentially was vetoed, but Secretary Toulouse Oliver will support reintroduction of the bill in 2019.

Secretary Toulouse Oliver stated that her office will also work toward campaign finance changes, including corrections to the Campaign Reporting Act and the Voter Action Act. Enforcement mechanisms for Public Regulation Commission-related campaign reporting requirements will also be created in the Campaign Reporting Act.

Other efforts by the Office of the Secretary of State will include allowing permanent absentee ballot listing, expanding tribal polling locations and meeting election security requirements.

The committee and Secretary Toulouse Oliver discussed possible difficulties surrounding open elections, including concerns that voters of other parties might flood a primary and the possible disenfranchisement of individuals who decline to state their party affiliations at registration. Members proposed that only unaffiliated or independent voters be eligible for open primaries. Blanket open primaries and same-day registration were also considered as possible solutions to disenfranchisement. A member noted that open primaries may increase voter participation and reduce hostility between opposing parties.

Secretary Toulouse Oliver explained the process of updating voter rolls. Voters can be asked to update their information at the MVD, and the information is then provided to the secretary of state. The multistate Electronic Registration Information Center (ERIC) helps identify people who have moved and registered to vote in another state, while the Social Security Administration provides data on deaths of voters. The secretary of state or a county clerk may also be notified when official election mail is returned undeliverable. A voter will then be sent a postcard requesting that the voter contact the secretary of state, vote or update the voter's registration. If the voter does not respond, the voter will be removed from the voter rolls. Secretary Toulouse Oliver stated that the costs of updating voter rolls is largely already included in the budget. She noted that, by statute, an individual must be registered to vote where the individual resides or intends to return.

Members discussed the possibility of including biometrics in voter identification, although it was noted that matching a photograph to a corresponding individual is difficult, even when photographs are up to date. Electronic signatures can face similar difficulties if not updated occasionally.

In response to questions, Secretary Toulouse Oliver informed the committee that one-time funding needs include restoring various funds, updating software and hardware to meet current population and security needs and providing education resources on the LEA.

### **Redistricting**

Dick Mason, vice president and action co-chair, League of Women Voters of New Mexico (LWVNM), and Meredith Machen, executive committee member, LWVNM, gave a

presentation on the redistricting procedure used in Iowa and the need for using a similar procedure in New Mexico.

Ms. Machen provided a brief history of redistricting in New Mexico. From the 1960 redistricting cycle to 1995, the U.S. Department of Justice vetted the maps approved by the legislature, and the governor complied with federal standards for fair representation. In the 2000 and 2010 redistricting cycles, the maps created for the New Mexico House of Representatives and the New Mexico Senate were the subject of litigation, and the New Mexico Supreme Court ultimately drew district lines. The New Mexico Legislative Council has adopted guidelines that meet federal criteria and state standards and that allow the process to consider incumbents. However, litigation still occurs, costing millions of dollars and reducing public confidence in the state legislature. Ms. Machen stated that the legislature has essentially ceded its redistricting authority to the courts under the current redistricting policy.

Mr. Mason explained that in Iowa, the Legislative Services Agency (LSA) creates maps based on federal and state criteria, which require that districts not be drawn to favor political parties or incumbency. The LSA is assisted by a Temporary Redistricting Advisory Commission, composed of appointments from the majority and minority leaders of both chambers as well as one member picked by the appointed four members. This commission provides guidance to the LSA if questions arise, and it holds public meetings for public input. The public input is then reported to the legislature. The legislature has three opportunities to adopt a map. After the first and second attempts, the LSA will create a new map. The third map may be amended slightly, but if it is not adopted, the maps go directly to the Supreme Court of Iowa. If the map is signed by the governor, it then becomes law. If the map is vetoed, it will go directly to the Iowa Supreme Court. Since this process was first used in 1981, the LSA's map has been adopted and no litigation has occurred.

Mr. Mason stated that the LWVNM has worked with the LCS to draft legislation to adapt the Iowa redistricting process for New Mexico, particularly for the house of representatives and senate. The league believes that allowing legislators to select their districts in redistricting is not conducive to democracy, and Iowa's incumbency statutes should be adopted in New Mexico.

In response to a member's question, Mr. Mason explained that Iowa is unique in its redistricting process; other states could also be considered. Mr. Mason stated that an independent redistricting commission does not have legislative support in New Mexico. Ms. Machen noted that sending redistricting litigation straight to the New Mexico Supreme Court could reduce litigation costs as a short-term solution. The LWVNM hopes to have the changes passed before the 2020 redistricting cycle begins.

Members of the committee noted that incumbents often come to understand their district's needs, and constituents in changed districts can be confused by altered districts. They discussed the use of independent redistricting commissions and public concerns of gerrymandering.

## **Election and Voting Trends in Other States**

Wendy Underhill, director, elections and redistricting, National Conference of State Legislatures (NCSL), presented a national perspective on election laws. The NCSL's election team provides state legislatures answers on elections, redistricting and campaign finance laws. It also tracks legislation and publishes as a newsletter called "The Canvass".

Ms. Underhill stated that during 2017 and 2018, more than 2,500 bills relating to elections were introduced in 48 states. Of those, 338 were enacted in 45 states, and 26 bills were vetoed in 10 states. Legislation relating to elections typically fits within four areas: voting, voter registration, election security and redistricting.

Regulations on voting include identification requirements, absentee voting, all-mail voting and restoring voting rights to ex-felons. Thirty-four states have laws requesting or requiring voters to show some form of identification at the polls, although Ms. Underhill noted that this number could rise with the advent of biometric identification. In 37 states (including three that mail ballots to all voters) and the District of Columbia, a qualified voter may cast a ballot in person during a designated period prior to Election Day. No excuse or justification is required. Thirteen states do not allow early voting and require an excuse, such as overseas military service, to request an absentee ballot.

Washington, Oregon and Colorado conduct all elections by mail. A ballot is automatically mailed to every registered voter in advance of Election Day, and traditional in-person voting precincts are not available. However, these states still provide one or more locations for voters to return mail ballots, vote in person and receive other voter services. Ms. Underhill reminded the committee that all special elections in New Mexico are conducted by mail. She acknowledged that questions of ballot integrity or voter fraud can arise in an all-mail system.

Vote centers, where voters may cast their ballots on Election Day at any vote center in the jurisdiction regardless of residential address, are allowed in 13 states, including New Mexico. These states are primarily in the western United States, and vote centers can be more convenient for some voters. This can be more difficult for rural voters, who may need to travel farther to vote.

Restoring voting rights to ex-felons has crept onto states' radars in recent decades. In Maine and Vermont, felons never lose their right to vote, even while incarcerated. Fourteen states and the District of Columbia provide automatic restoration of voting rights upon release. Twenty-one states, including New Mexico, provide automatic restoration upon completion of the sentence, including probation and parole. In the remaining 13 states, voting rights are lost indefinitely, require a governor's pardon for restoration or can be restored after an additional waiting period after the completion of a sentence. Ms. Underhill pointed out that Florida has a measure on its ballot to restore voting rights for people convicted of felonies who have completed their sentences, although convictions for murder or felony sex offenses are excluded.



Some current legislative proposals on voter registration include allowing teenagers to preregister, offering same-day registration and matching voter data between states. Seventeen states, including New Mexico, and the District of Columbia allow those who will be 18 by the general election to register and vote in the primary election. All but 12 states allow online voter registration, while 15 states currently allow Election Day registration. Thirteen states plus the District of Columbia have automated registration, where the MVD equivalent transfers records to voter registration. Ms. Underhill stated that she will add New Mexico to the list, as the secretary of state's administrative program fits the criteria. New Mexico is also one of 25 states that utilize ERIC to identify duplicate voter registrations between states.

Legislation on election security typically deals with the safety of voter registration rolls and the integrity of votes. In 2016, 21 states' voter registration systems were targeted by "bad actors". While no registration data appear to have been altered, voter records and data were viewed in Illinois, while a phishing email was used to gain access to voter information in Arizona. No votes or vote totals were likely altered in the 2016 elections because the majority of voting machines were not connected to the internet and one-third of all voters submitted ballots before Election Day. Some ballots were transmitted as PDFs attached to emails, which is a potentially insecure method.

The 2016 elections were primarily influenced by incorrect information in three categories:

- (1) disinformation, which is false information deliberately created to cause harm;
- (2) misinformation, which is false information but is not created with the intent to cause harm; and
- (3) malinformation, which is information that has a basis in reality and is used to inflict harm.

The sources of these types of information vary, but they typically come from malicious actors, including foreign nations, criminals and terrorists. Motives can include creating social division, subverting political opposition and undermining trust in democracy. Elections administrators should build secure cyber cultures and upgrade or fortify their systems. Legislators can combat bad actors by mandating the reporting of election results, posting election audits, requiring the use of paper ballots and creating election task forces. Ms. Underhill explained that task forces provide an opportunity for stakeholders to meet and hear from each other in a collegial manner.

Additional resources to evaluate elections include the Elections Performance Index from the Massachusetts Institute of Technology Election and Data Science Lab and the Center for American Progress.

Ms. Underhill explained that redistricting can be performed by the legislature or by commissions and boards. State legislative plans are created by the legislature in 37 states, while

commissions or boards create state legislative plans in 13 states. Congressional plans are created by the legislature in 43 states, while seven states use a commission or board. Other variations include redistricting in special sessions, bypassing the executive office or requiring more than a majority vote to pass redistricting bills. Iowa in particular is unique, Ms. Underhill reiterated, in that nonpartisan staff draw the maps and do not use political data in their plans. States that use commissions also have variations, including the number and qualifications of members and whether the commission has primary, advisory or backup responsibility for redistricting.

Redistricting reform has gained public attention in 2018. Utah, Missouri and Michigan have citizens' initiatives on the ballot, while Colorado has two legislative referrals on the ballot. Ohio passed a legislative referral in May 2018.

In response to questions from the committee, Ms. Underhill acknowledged that all-mail elections can be difficult for those experiencing homelessness or for those without a permanent address. Colorado provides voter services centers, which could alleviate some of the problems, but Oregon and Washington do not currently offer an alternative. Postage may be paid by the voter; alternatively, special non-postal secure drop boxes may be provided. Ms. Underhill stated that Colorado allows same-day registration for voters who reside in the state for eight days.

Members of the committee discussed early and absentee voting. Early voting locations vary by county needs and resources but must meet state requirements. Absentee ballots can be mailed in, placed in a secure drop box or returned directly to a county clerk's office or polling location. Secretary Toulouse Oliver stated that postage for ballots with missing postage will be paid by the county clerk's office, but the ballots may not be delivered on time.

Ms. Underhill and members discussed the need for properly training poll workers. Ms. Underhill stated that poll workers are human and can be inconsistent, but providing scripts and testing can reduce errors.

In response to a member's questions, Ms. Underhill explained that fairness is not a criterion for many redistricting processes. Federal and state standards must be met, but fair redistricting could have many definitions to different people and parties.

### **Public Comment**

George Richman, member, League of Women Voters of Central New Mexico, spoke in favor of same-day registration, open primaries and all-mail elections. He expressed hope that open primaries might encourage candidates to be more bipartisan to appeal to more voters.

### **Council of State Governments (CSG) Justice Reinvestment Initiative Update**

Carl Reynolds, senior legal and policy advisor, CSG Justice Center, and Michelle Rodriguez, policy analyst, State Initiatives, CSG Justice Center, updated committee members on progress on the CSG's recommendations for criminal justice reform.

Mr. Reynolds stated that CSG recommendations focus on issues with statewide impact, including expanding law enforcement and other criminal justice authorities' ability to divert certain criminal offenders, such as those engaged in drug-related crimes or who have obvious mental health issues, into treatment or other programs. He noted that additional behavioral health resources will be necessary to implement this strategy.

Mr. Reynolds discussed a peculiarity with regard to crime victim compensation in reference to slide 12 of his presentation. He noted that despite the availability of federal and state funds, CSG research indicates that crime victims' requests for compensation are often denied. Mr. Reynolds has not identified the cause, but he will research the issue.

Mr. Reynolds discussed data gathering, agreeing with Edward L. Chavez, retired justice, New Mexico Supreme Court, that obtaining accurate fingerprints and other data is crucial. He suggested that the state may need to establish a team of experts to travel to rural communities to provide training and support. He also noted the importance of reviewing data on a regular basis to ensure that the data are being obtained and are accurate.

Mr. Reynolds also agreed with Justice Chavez that the availability of effective behavioral health care is crucial to improving the criminal justice system and outcomes in New Mexico. Ms. Rodriguez noted that North Dakota, which shares many of New Mexico's geographic and demographic challenges, has implemented a grant program that rewards positive outcomes in rural treatment programs. The program is showing positive results, and the state hopes that the program will attract additional treatment professionals to expand rural services.

As to whether there is a connection between the reduction in mental health services and crime rates in Bernalillo County, Mr. Reynolds noted that there appears to be a correlation. He also pointed out that there is no statistical evidence of a correlation between the increased crime rates and the amendments to Article 2, Section 13 of the Constitution of New Mexico regarding bail.

Mr. Reynolds observed that there is generally a strong correlation between trauma experiences and female and juvenile involvement in the criminal justice system. He also observed that New Mexico has done a very good job of increasing the proportion of violent offenders as compared to others in its prisons. He noted, however, that an unusually large number of parole-eligible prison inmates have not been released. Other inmates are being released with no support or supervision, which increases the risk of recidivism. It appears that a significant part of the problem is that those inmates simply have no place to go. Currently, 30 percent of inmates in New Mexico prisons are there because of parole violations, and 80 percent of that 30 percent were originally convicted for drug violations.

Mr. Reynolds noted that research has shown that intensive outpatient treatment in the community has the highest success in deterring crime and that increasing penalties is not an effective deterrent.

In response to a question, Mr. Reynolds cautioned against using California's approach to prison reform. California reduced its prison population by sending people to county jails instead of state prisons. A member proposed closing a state prison and using the savings to fund behavioral health facilities.

### **The Alternatives to Violence Project in New Mexico Prisons and Program Evaluation Activities**

Harbert Rice, Alternatives to Violence Project of Northern New Mexico (AVP-NNM), and Linda Freeman, executive director, New Mexico Sentencing Commission (NMSC), informed the committee that the AVP-NNM serves New Mexico prisons and is working with the NMSC to develop a survey and recidivism study of the program.

Mr. Rice explained that the AVP-NNM is part of an international nonprofit, the Alternatives to Violence Project (AVP), which provides prison workshop programs in 34 states and more than 20 countries. The AVP-NNM has offered workshops in New Mexico prisons since 2005. Workshops are offered at the Penitentiary of New Mexico, Springer Correctional Center and Western New Mexico Correctional Facility. In 2017, the AVP-NNM conducted 21 workshops across the facilities and trained 221 inmate participants. The workshops were facilitated by nine outside volunteers and 23 trained inmate facilitators.

A workshop is typically held over two to three days and lasts 17 to 21 hours. Participation is voluntary for both inmates and facilitators. The AVP offers three workshop levels. The basic workshop focuses on respect for oneself and others, as well as communication skills and cooperation. The advanced workshop provides an opportunity to go deeper into conflict issues. The training for facilitators workshop allows for personal development by allowing inmates to be part of a facilitating team. Mr. Rice stated that inmate facilitators often have more influence with their fellow inmates and thus increase workshop effectiveness.

Gatherings, experiential exercises and "light and livelies" are the three main components of AVP workshops. Gatherings allow participants to share their experiences, while experiential exercises help develop interpersonal skills. Teams develop open-ended role-playing to act out problems an individual may face upon release and reentry. Discussion following the role-playing analyzes the dialogue and looks for alternatives to violence. "Light and livelies" are cooperative games designed to relieve tension and raise the group's energy level.

Mr. Rice stated that the AVP receives feedback from inmate participants via written evaluations that are completed at the end of a workshop. AVP facilitators also provide observations and reports on workshops. Studies on the long-term outcomes, such as recidivism rates, have also been completed by some states, including Delaware. Results often include increased self-respect and self-awareness, as well as increased motivation to change. Studies on the Delaware correctional facilities saw a reduction in write-ups one year after inmates completed AVP workshops, as well as reduced three-year recidivism rates for AVP participants.

The AVP-NNM is currently working with the NMSC to measure the effects of AVP workshops in New Mexico. The AVP-NNM has provided the NMSC with 12 years of participant evaluations, which include information on personal learning and how the workshop changed a participant's view on violence. Mr. Rice hopes that the NMSC study will provide insight into shifts in attitude and behavior. The study will also feed into a recidivism study.

Ms. Freeman added that the NMSC will create a report showing what inmates believe is most useful in the workshops, as well as any changes over time. She noted that surveys before and after the workshops would improve data quality, while inmates must consent to having their progress tracked after the program.

In response to a question, Mr. Rice explained that the high turnover rate in county jails makes AVP workshops difficult because inmate facilitators frequently leave. However, prison officers have used the program with some success.

### **Public Comment**

Joyce Victor, lead facilitator, AVP-NNM, stated that she facilitates at the Penitentiary of New Mexico but has also assisted at other facilities, including in solitary confinement. She spoke in favor of the AVP workshops because the format allows inmates to help each other.

### **Recess**

The committee recessed at 3:44 p.m.

## **Friday, October 19**

### **Reconvene and Introductions**

The meeting was reconvened by Senator Martinez at 9:19 a.m. Members introduced themselves.

### **Report and Recommendations of House Joint Memorial (HJM) 16 (2018) Criminal Justice and Public Safety Task Force (Task Force)**

Justice Chavez, Task Force chair, and Representative Daymon Ely, Task Force member, discussed the recommendations in "HJM16 Criminal Justice and Public Safety Task Force, Report and Recommendations to the Legislature". Justice Chavez stated that while the task force is not authorized to make funding recommendations, adequate funding is necessary for all stakeholders in the criminal justice system. Coordinating councils, such as the Bernalillo County Criminal Justice Coordinating Council (BCCJCC), could be used to analyze where and how funding could be used most effectively.

Justice Chavez discussed the 13 key recommendations of the task force, including:

- requiring a unique biometric identifier for criminal justice participants to be used by all criminal justice partners so that different crimes committed by the same individual may be identified. The state and federal crime databases are based on fingerprints.

While many county jails have fingerprint machines, some machines are broken, are out of date or lack people trained to use them, resulting in the use of paper fingerprinting. Funding the purchase of and training on fingerprint machines at all county jails is essential to maximizing the utility of the automated fingerprint identification system;

- designing a statewide framework to encourage information sharing among criminal justice partners. Information sharing would support data-driven policing, evidence-based public policy decisions and real-time evaluation of programs;
- amending behavioral health confidentiality laws to allow access to mental health information needed to continue the care of a criminal justice participant. De-identified information should also be shared for research that evaluates the efficacy of programs associated with the criminal justice system;
- requiring stakeholders in the criminal justice system to use evidence-based best practices performance measures;
- considering a neutral, independent oversight body to monitor performance and assist with data analytics for program evaluation. Justice Chavez suggested that the NMSC is the logical choice, but he noted that the organization would need more resources;
- allowing for more pretrial discretion and law enforcement diversion programs. Eliminating fees for such programs would likely be less costly to the state than the jail costs for program participants;
- supporting the funding of reentry programs such as halfway houses or transitional homes;
- expanding loan forgiveness programs to recruit and maintain the workforce associated with criminal justice. Justice Chavez explained that managing student loan debt on a current public servant salary is difficult, if not impossible;
- devising methods to encourage delayed retirement or a return to work after retirement for those in the criminal justice workforce;
- developing and expanding pretrial service programs. Representative Ely recognized the importance of evaluating program efficacy and funding efficient programs; and
- funding classes that wish to use the PAX Good Behavior Game initiative, which is a set of techniques designed to help students gain life skills.

Members of the committee discussed the use of a state identification number (SIN) using biometric information. The SIN would follow an individual throughout all aspects of the criminal justice system. Representative Ely recognized that there is a potential for misuse but that when paired with data analytics, such abuses would be easily detectable. Members expressed concern over how biometric SINs might affect juvenile justice and the expungement of criminal records.

In response to questions from the committee, Justice Chavez said that evening diversion courses have increased in attendance. He noted that Law Enforcement Assisted Diversion (LEAD) programs are gaining traction around the state. Santa Fe and Rio Arriba counties have obtained grants for their LEAD programs, but Bernalillo County still lacks \$400,000.

Members of the committee expressed concern that members of the public may not want halfway houses or transitional living facilities in their neighborhoods. It was noted that the City of Albuquerque's attempt to establish a tiny-house community for people experiencing homelessness is unpopular in many neighborhoods. Representative Ely and Justice Chavez said that they hope that community outreach and messaging would convince the public to support similar endeavors for the criminal justice system.

Members of the committee spoke in favor of growing the criminal justice workforce in New Mexico but expressed concern over so-called "return-to-work" legislation for retirees. A member noted that the Public Employees Retirement Association has stated that individuals who draw a pension while working are stressing the system in an unsustainable fashion. Representative Ely stated that allowing retirees to return to work without losing their pensions could grow the workforce in rural areas without drastically increasing salaries. A member stated that counties should levy the full gross receipts tax on their residents before requesting extra funding from the state to hire county officials. A member noted that current law enforcement officers who have returned to work and not suspended their pensions are paying member contributions but not accruing service credit, so they are actually supporting the system.

Grace Philips, general counsel, New Mexico Counties, expressed concern that pretrial services do not truly save money but, instead, transfer the costs around the criminal justice system.

In response to the committee's concerns, Representative Ely reiterated that involvement in the PAX Good Behavior Game would be on a voluntary basis and that performance measures would be necessary to ensure efficacy.

Justice Chavez informed the committee that federal grants may be available for some of the recommendations, although stakeholders may need grant writers to obtain such funding.

The committee expressed its appreciation for the work done by Justice Chavez and the Task Force.

### **Review of Data Collection, Analysis and Application in the Second Judicial District**

Jon Courtney, Ph.D., program evaluation manager, Legislative Finance Committee (LFC), and Travis McIntyre, Ph.D., program evaluator, LFC, provided an update on data use in the Second Judicial District.

Dr. Courtney reminded the committee of the LFC's evaluation of the criminal justice system in Bernalillo County, which concludes that worsening economic and social conditions in Bernalillo County have contributed to the rise in crime rates, while the criminal justice system has failed to hold offenders accountable or address root causes. He noted that crime trends vary across the state, but when Albuquerque is not included in the data, crime in New Mexico has decreased overall. Unfortunately, some communities have higher crime rates than Albuquerque, including Espanola, Belen, Gallup and Taos.

The LFC encourages the legislature to continue its support of evidence-based policymaking, in which program evaluations and oversight ensure that programs produce the necessary outcomes. Evidence-based policymaking is needed to establish system-wide goals for the criminal justice system in Bernalillo County, reduce the number of data and information silos in the state and remove obstacles to data sharing. Dr. Courtney stated that funding and staffing the BCCJCC would help stakeholders meet and develop evidence-based programs, as well as establish performance metrics to track system performance and coordinate efforts in data analytics.

Dr. McIntyre explained that data silos in Bernalillo County have created problems in the collection and completeness of evidence and have strained limited human and other resources. To address these problems, the legislature could require state and local government agencies to use a common identification numbering system, expand the powers of the NMSC to obtain and report data and develop data-reporting requirements. The LFC also recommends that silos be merged and goals for data analytics be developed. Caution is needed to ensure that data are used ethically and efficiently.

Dr. Courtney stated that since the program evaluation on Bernalillo County's criminal justice system was published, progress has been made. Law enforcement has increased its use of evidence-based policing, stakeholders have begun researching data-integration solutions and the BCCJCC has established a data and technology subcommittee. The BCCJCC, however, continues to suffer from attendance issues. System-wide strategic planning and performance management are necessary to reduce crime rates in Bernalillo County and in New Mexico.

Dr. Courtney stated that no official estimates have been provided from companies offering data analytics programs. Dr. McIntyre emphasized the need for oversight over and in-depth progress reports from any vendors with which the state may contract to develop a data analytics system.

### **Adjournment**

There being no further business before the committee, the sixth meeting of the CCJ adjourned at 1:06 p.m.

### **Tour**

Committee and staff members toured the City of Albuquerque's Real Time Crime Center and the Second Judicial District Attorney's Office Crime Strategy Unit.



Revised: November 28, 2018

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

**November 29-30, 2018  
State Capitol, Room 322  
Santa Fe**

**Thursday, November 29**

- 9:00 a.m.           **Call to Order and Introductions**  
—Representative Gail Chasey, Co-Chair  
—Senator Richard C. Martinez, Co-Chair
- Action Item: Approval of Minutes of September 24-25 and October 18-19 Meetings*
- 9:15 a.m.           (1) **Report, Recommendations and Proposed Legislation of the Criminal Justice Reform Subcommittee (CJRS)**  
—Representative Antonio Maestas, Co-Chair, CJRS  
—Senator Sander Rue, Co-Chair, CJRS
- 10:45 a.m.           (2) **Proposed Legislation of the House Joint Memorial 16 (2018) Criminal Justice and Public Safety Task Force**  
—The Honorable Edward L. Chavez, Former Justice and Chief Justice (Retired), New Mexico Supreme Court  
—Representative Daymon Ely, Member, Criminal Justice and Public Safety Task Force
- 12:15 p.m.           **Lunch**
- 1:30 p.m.           (3) **Report of the Council of State Governments (CSG) New Mexico Justice Reinvestment Initiative**  
—Carl Reynolds, Senior Legal and Policy Advisor, CSG Justice Center  
—Michelle Rodriguez, Policy Analyst, State Initiatives, CSG Justice Center
- 2:30 p.m.           (4) **Legislative Finance Committee (LFC) Program Evaluation: Corrections Department — Prison Staffing, Oversight of Medical and Behavioral Health Care and Implementation Status of Evidence-Based Programing**  
—Travis McIntyre, Ph.D., Program Evaluator, LFC  
—Theresa Edwards, Fiscal Analyst, LFC

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

4:45 p.m.           **Recess**

**Friday, November 30**

9:00 a.m.           **Reconvene and Introductions**

9:15 a.m.       (5)   **[Report on House Memorial \(HM\) 89/Senate Memorial \(SM\) 92 \(2018\), Services for Victims of Human Trafficking](#)**

—Susan Loubet, Executive Director, New Mexico Women's Agenda

—Frank Zubia, Director, Crime Victims Reparation Commission

10:00 a.m.       (6)   **[Report on SM 98/HM 104 \(2018\), Study Law Enforcement Body Camera Issues](#)**

—Tania Maestas, Chief Deputy Attorney General, Office of the Attorney General

11:00 a.m.       (7)   **[Report of the Ethics Commission Working Group](#)**

—Senator Linda M. Lopez, Co-Chair, Ethics Commission Working Group

—Representative Jim Dines, Co-Chair, Ethics Commission Working Group

12:00 noon       **Lunch**

1:30 p.m.       (8)   **[2019 Priorities of the New Mexico Criminal Defense Lawyers Association \(NMCDLA\)](#)**

—TBD, Legislative Committee Member, NMCDLA

—Rikki-Lee G. Chavez, Legislative Coordinator, NMCDLA

2:30 p.m.       (9)   **[Judicial Branch Legislation for the 2019 Session](#)**

—The Honorable Judith K. Nakamura, Chief Justice, New Mexico Supreme Court

—Arthur W. Pepin, Director, Administrative Office of the Courts

• .211185.2SA, Constitutional Amendment, Judicial Election After One Year in Office

• .211220.4SA, Constitutional Amendment, Option to Transfer Probate Courts to State Courts

• .211187.2SA, Option to Transfer Municipal Courts to State Courts

• .211289.1SA, On-Record Appeals From Metropolitan Court

• .211188.1SA, Remove Affidavit Requirement for Jurors Over 75

• .211183.1SA, Sex Offender Probation Review

3:30 p.m.           **Public Comment**

3:45 p.m.           **Adjourn**

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

**November 29-30, 2018  
State Capitol, Room 322  
Santa Fe**

The seventh meeting of the Courts, Corrections and Justice Committee (CCJ) was called to order by Representative Gail Chasey, co-chair, on November 29 at 9:24 a.m. in Room 322 of the State Capitol in Santa Fe.

**Present**

Rep. Gail Chasey, Co-Chair  
Sen. Richard C. Martinez, Co-Chair  
Rep. Eliseo Lee Alcon  
Sen. Gregory A. Baca  
Rep. Zachary J. Cook (11/29)  
Rep. Jim Dines  
Sen. Linda M. Lopez  
Rep. Antonio Maestas  
Rep. Sarah Maestas Barnes (11/30)  
Sen. Cisco McSorley (11/29)  
Sen. Sander Rue

**Advisory Members**

Sen. Daniel A. Ivey-Soto (11/30)  
Sen. Bill B. O'Neill  
Rep. Patricia Roybal Caballero  
Rep. Christine Trujillo  
Sen. Peter Wirth (11/30)

**Absent**

Sen. Jacob R. Candelaria  
Rep. Javier Martínez  
Rep. William "Bill" R. Rehm  
Rep. Angelica Rubio

Rep. Deborah A. Armstrong  
Sen. William F. Burt  
Rep. Brian Egolf  
Rep. Doreen Y. Gallegos  
Sen. William H. Payne  
Sen. John Pinto  
Sen. Mimi Stewart

**Guest Legislator**

Sen. Joseph Cervantes (11/29)

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

**Staff**

Celia Ludi, Staff Attorney, Legislative Council Service (LCS)  
Randall Cherry, Staff Attorney, LCS  
Mark Peralta-Silva, Staff Attorney, LCS  
Erin Bond, Research Assistant, LCS

## **Minutes Approval**

Because the committee's final meeting on December 4, 2018 is so close in time to this meeting, the minutes for this meeting could not be completed in time and have not been officially approved by the committee.

## **Guests**

The guest list is in the meeting file.

## **Handouts**

Handouts and other written testimony are in the meeting file.

## **Thursday, November 29**

### **Call to Order and Introductions**

Representative Chasey welcomed the committee and the audience. Members and staff introduced themselves.

### **Report, Recommendations and Proposed Legislation of the Criminal Justice Reform Subcommittee (CJRS)**

The co-chairs of the CJRS, Representative Maestas and Senator Rue, presented a summary of the CJRS's conclusions from the interim. Representative Maestas noted that the CJRS has been in place for six years and that it proposes to present at least one package of bills related to criminal justice reform in the 2019 legislative session. Representative Maestas explained that the bills to be considered by the CJRS have come from a variety of sources, including best practices from other states and recommendations from the Council of State Governments (CSG) Justice Reinvestment Initiative (JRI). Senator Rue stated that some of the proposed bills had already been passed by the legislature with bipartisan support but were subsequently vetoed.

Members of the committee clarified that a committee endorsement of a bill is not synonymous with its inclusion in a criminal justice reform legislation package. Members of the committee expressed concern that individual components of a legislation package may not receive the same levels of attention that they might receive if introduced as standalone bills. Representative Maestas, Senator Rue and members of the committee expressed hope that the criminal justice reform package would primarily contain legislation with bipartisan and unanimous support in both chambers. Members also recognized the importance of ensuring that sponsors of previously introduced legislation are amenable to that legislation's inclusion in a package.

### **Consideration of Legislation for Endorsement**

The following bills were presented for endorsement.

.210861 — Uniform Collateral Consequences of Conviction Act

Senator Cervantes, who sponsored Senate Bill (SB) 292 in the 2017 legislative session, explained the bill. He stated that the Uniform Law Commission creates acts that provide uniform laws between states. The Uniform Collateral Consequences of Conviction Act would require the state to research and compile all collateral consequences of a conviction. The bill would require that individuals be notified of these consequences before the individual enters a plea deal or is convicted.

Senator Cervantes explained that the bill was most recently passed in 2017 with near unanimous approval but was vetoed. Senator Cervantes agreed with committee members that the bill would not be part of a legislation package due to its technical nature. The committee voted to endorse this bill.

Fair-Chance Hiring (Ban the Box) for Private Employers

Representative Maestas explained that the bill would prevent private employers from asking about an individual's criminal history on a job application. Senator O'Neill and Representative Alonzo Baldonado sponsored SB 78 in the 2017 session. Senator Rue noted that employers would still be permitted to ask about convictions at other stages of the interview process.

.211494 — Geriatric and Medical Parole

Representative Maestas explained that Senator Gerald Ortiz y Pino sponsored the 2017 version of the bill but Senator McSorley is sponsoring the current bill. While current statutes allow for geriatric and medical parole, few prisoners are released. Senator McSorley explained that the bill would more clearly define eligibility requirements for inmates, as well as set in place a process for geriatric and medical parole. Representative Maestas stated that holding terminally ill, permanently incapacitated or elderly inmates is costly for the state, particularly when those individuals are eligible for Medicare or Medicaid. The committee voted to endorse this bill.

.211495 — Parole Board Procedures Reform

Senator McSorley stated that the bill would provide the Parole Board with more direction on how and when to parole inmates, including individuals convicted of taking a life. After discussion, the committee voted to endorse this bill.

.211714 — Expansion of the Good Samaritan Law to Probationers and Parolees

Representative Maestas explained that by providing limited liability protections as described in Section 24-10C-7 NMSA 1978, known as the Good Samaritan Law, a person who seeks medical assistance for someone experiencing a drug overdose shall not be charged or prosecuted for possession of controlled substances discovered in connection with the assistance response. Senator Martinez stated that the proposed bill would include protections against prosecution for the violation of probation and parole, as well as possession of drug paraphernalia. The committee voted to endorse this bill.

.211715 — Fiscal Impact Statements for Changes in Criminal Sentences

Representative Maestas stated that the bill would require the New Mexico Sentencing Commission (NMSC) to prepare fiscal impact statements for legislation increasing, decreasing or creating criminal penalties. Members of the committee noted the need for fiscal responsibility in sentencing. The committee voted to endorse this bill.

.211468 — Crime Victims Reparation

Representative Maestas explained that the CSG JRI recommended that victims rights and reparations be included in criminal justice reform endeavors. Under current statute, for reparation, the Crime Victims Reparation Commission (CVRC) requires that a police report has been filed and that the victim or claimant cooperates fully with the CVRC and all law enforcement agencies. Cooperation includes a willingness to help in the prosecution of the offender.

Ms. Ludi explained that the bill would require law enforcement and district attorneys to notify crime victims that reparations may be available through the CVRC. The bill also makes reparations available to claimants or victims who acted reasonably under the circumstances, despite not fully cooperating with law enforcement. A member of the committee noted that the Crime Victims Reparation Fund may require an appropriation or fee collection to maintain solvency. The committee voted to endorse this bill.

.211506 — Accurate Eyewitness Identification Act

Representative Maestas stated that the bill would set standards for law enforcement to improve the accuracy of eyewitness identifications. Senator McSorley noted that the bill is a duplicate of a bill he sponsored in the 2013 legislative session that passed unanimously but was subsequently pocket vetoed. The committee voted to endorse this bill.

.211489 — Post-Conviction Consideration of DNA Evidence

Representative Maestas explained that the bill would require timely DNA testing for people with convictions who believe that they might be cleared of those convictions by DNA evidence. The DNA samples would also be entered into the Federal Bureau of Investigation's National DNA Index System. In response to some concerns raised by committee members, Senator McSorley explained that the language of the bill was intended to give the petitions for DNA testing priority in court. The committee voted to endorse this bill.

.211078 — Nonviolent Offenders Interventions

Representative Maestas stated that the bill would require the Behavioral Health Services Division of the Human Services Department to implement and evaluate programs to address the behavioral health needs of incarcerated individuals, both while incarcerated and immediately upon release. The committee voted to endorse this bill.

.211435 — Probation and Parole Best Practices

Representative Maestas noted that the bill was proposed by the CSG JRI. The bill would help reduce the technical parole violations that make up the majority of parole revocations in New Mexico. The committee voted to endorse this bill.

.211415 — Preprosecution Diversion Reform

Representative Maestas explained that the bill would allow district attorneys more discretion to place individuals in preprosecution diversion programs. The CSG JRI recommends the bill. A similar measure was also supported by the House Joint Memorial (HJM) 16 (2018) Criminal Justice and Public Safety Task Force. The committee voted to endorse this bill.

.211486 — No Mandatory Parole for Certain Sentences

Representative Maestas explained that individuals who are sentenced to less than one year in prison have been incarcerated for longer periods because a parole plan could not be created quickly enough. The bill would remove mandatory parole requirements for individuals sentenced to one year or less in prison. The committee voted to endorse this bill.

**Proposed Legislation of the HJM 16 (2018) Criminal Justice and Public Safety Task Force**

Representative Daymon Ely described the creation of the Criminal Justice and Public Safety Task Force as an effort to open communication between the many stakeholders of criminal justice and public safety. The task force researched ways to reduce recidivism, decrease prison populations and increase public safety. The task force agreed on a variety of recommendations, which are available in the task force's report. Representative Ely explained that some of the recommendations have been withdrawn or delayed upon discussion with the CCJ and CJRS. Proposals include increasing the use of biometric data, establishing a framework and central repository for criminal justice and public safety data and using more evidence-based best practices.

.211420 — Crime Reduction Fund

Representative Ely stated that the bill would require each judicial district to establish criminal justice coordinating councils. Councils would be composed of criminal justice stakeholders from the counties, municipalities and tribes within the judicial district. The councils could apply to the NMSC for distributions from the Crime Reduction Fund, which is created in the bill. Funding would be contingent upon the councils collecting and sharing information with the NMSC. The information could then be used in analyses of criminal justice and behavioral health operations within and among the districts.

Representative Ely informed the committee of the possibility that the appropriation in the bill could not be simply transferred to the NMSC, and members suggested that session committees could propose to amend the bill, if necessary. Some members suggested that both the coordinating councils and the criminal justice system as a whole may require funding aside from the funding used for data collection. The committee voted to endorse this bill.

.211192 — Central Data Repository

Representative Ely explained that the bill would authorize the NMSC to serve as a central criminal justice data repository, to monitor and report on the flow of data and the effectiveness of data sharing between criminal justice stakeholders and to provide data analysis as requested. The bill would also require a booking facility to collect biometric information from an arrested person and to create an arrest record with a state arrest tracking number. An arrest record would include a state-issued personal tracking number unique to an individual that would be provided to all appropriate government agencies; the personal tracking number would help trace the number of times a person is arrested at various locations. The committee voted to endorse this bill with added language on page 3, line 11, of "and substance abuse".

.211461 — Loan Repayment for Law Enforcement and Corrections Officers

In response to members' concerns, Representative Ely chose to withdraw the bill from the committee's consideration for endorsement.

**Report of the CSG JRI**

Michelle Rodriguez, policy analyst, State Initiatives, CSG Justice Center, updated the committee on work that CSG Justice Center staff members have completed in New Mexico. Ms. Rodriguez explained that justice reinvestment focuses on increasing public safety by reducing recidivism, repairing harm, preventing crime and building trust.

In New Mexico, reducing recidivism focuses particularly on the probation population, which makes up 46 percent of the correctional control population. To develop New Mexico-specific policies, Ms. Rodriguez stated that she and her colleagues have completed interviews with regional directors of the Adult Probation and Parole Division of the Corrections Department (CD), the director of the Behavioral Health Services Division of the Human Services Department, treatment providers and many other state agencies. In the future, Ms. Rodriguez hopes to complete a survey of probation officers and analyze data provided by the Administrative Office of the District Attorneys and the Legislative Finance Committee (LFC).

The CSG JRI approach to public safety emphasizes the need for victims' voices to be heard. Ms. Rodriguez stated that recommendations include expanding the category of professionals to whom crime victims may report being victimized in order to receive compensation and appropriating funds to the Crime Victims Reparation Fund. CSG JRI staff members have completed interviews with the CVRC and the Administrative Office of the Courts (AOC). Next steps include data analysis and meetings with Native American stakeholders.

Ms. Rodriguez explained that crime prevention in New Mexico could greatly benefit from the use of data analytics. Data analytics could be used to identify specific offenses that drive increases in crime and to determine areas in need of hot spot policing while maintaining appropriate levels of privacy and fairness. CSG JRI staff members have completed interviews with the attorney general, the Santa Fe sheriff-elect and members of the Albuquerque Police



Department (APD) and would like to interview the secretary of public safety and meet with interested parties on the governance or management of data.

Ms. Rodriguez said that public trust and confidence in public safety in New Mexico can be increased by using data to monitor and promote systemic equity and fairness, as well as by including more communities in policy development. CSG JRI staff have met with the Tribal-State Judicial Consortium, the American Civil Liberties Union and various state cabinet secretaries. Ms. Rodriguez said that she also hopes to meet with representatives of the business community.

Ms. Rodriguez explained that the first CSG JRI working group meeting will be held December 14, 2018 at the State Capitol and the second and final meeting will likely be in January. At those meetings, members and CSG JRI staff plan to create a concrete policy package for the legislature's consideration.

In response to a question from the committee, Ms. Rodriguez stated that crime victims in New Mexico are required to report crimes to law enforcement to be eligible for compensation. Victims need other options, Ms. Rodriguez said, because many do not find a police station to be a safe space. The CVRC has data on applications, eligibility and payouts for crime victims but has not yet provided them to CSG JRI staff.

Ms. Rodriguez discussed the difficulties of locating appropriate behavioral health providers for victims and parolees. She highlighted discrepancies in the philosophies that drive treatment providers and corrections officers, such as privacy concerns and supervision requirements. North Dakota, for example, has mitigated some of these concerns by allowing providers to make weekly updates on treatment and creating clear expectations for providers.

Ms. Rodriguez informed the committee that no meeting between the transition team for the governor-elect and CSG JRI staff had been planned but that CSG JRI staff would welcome a meeting.

#### **LFC Program Evaluation: CD, Prison Staffing and Overview of Medical Services**

Travis McIntyre, Ph.D., program evaluator, and Theresa Edwards, fiscal analyst, LFC, presented on the status of programs that the CD offers to reduce recidivism, as well as an overview of medical services provided by the CD.

Dr. McIntyre stated that recidivism in New Mexico is rising, reaching 50 percent in 2018. Parole revocations for technical violations related to drug use contribute to one-half of the recidivism rate, although technical violations are not considered new crimes. Revoking inmates' parole and placing parolees in prison instead of using enhanced community supervision costs the state \$40 million per year. Dr. McIntyre noted that, while the CD offers some behavioral health services, performance measures in the medical contracts do not show whether conditions are

being adequately managed or cured. Thus, inmates with revoked parole may not receive treatment that would reduce their chances of recidivism.

In-custody recidivism reduction programs offered by the CD are evidence-based but need to be tracked for utilization and effectiveness. Dr. McIntyre explained that the CD spends approximately \$8.4 million on 26 evidence-based programs. While the CD has increased its evidence-based programs and administered a validated risk-needs assessment to all inmates upon intake in fiscal year 2017, a gap analysis of needs assessed versus services provided would ensure that inmates with revoked parole receive the appropriate services in an efficient manner. Dr. McIntyre noted that substance use drives recidivism rates among parolees but that the CD does not track parolees' use of treatment programs, either in or out of prison. The CD also funds five halfway houses.

Dr. McIntyre stated that the number of parole revocations due to technical violations could be reduced with appropriate tools and strategies. The California Department of Corrections' Division of Adult Parole Operations uses a reward and sanction system to reward or discipline parolees. Parole violations and compliance are met with a graduated sanction or reward applied consistently and swiftly. Examples of rewards for positive behavior include gift cards and affirmations and reductions in drug testing and office visit requirements. The most notable sanction for technical violations is known as flash incarceration, or a confinement period of up to ten days. Dr. McIntyre noted that CD policy allows for graduated sanctions, but the policy has not been used since February 2016.

Ms. Edwards informed the committee that prisons are constitutionally required to provide adequate health care for inmates. The CD contracts with Centurion Managed Care, Boswell and MHM Correctional Services, Inc., to provide medical care for inmates. In fiscal year 2018, expenditures across the three contracts totaled \$50.3 million for approximately 7,300 inmates. While the current health care contracts are based on best practices, Ms. Edwards noted that medical positions are frequently understaffed, threatening the quality of care provided. An independent audit of the contract with Centurion Managed Care showed inconsistent inmate intake assessments, missing tests for tuberculosis and pregnancy and late delivery of medication.

Ms. Edwards stated that the CD also struggles to provide identifiable data to track inmate health outcomes or receipt of services in a timely manner. She explained that neither the CD nor the contractors have electronic health records, instead storing all inmate health information on paper. Files are then stored in a dedicated warehouse at the Central New Mexico Correctional Facility in Los Lunas. Ms. Edwards stated that the prevalence of paper records makes data analysis difficult and time-consuming. The paper records also subject inmates' data to physical damage, loss and delays in transfer. The LFC recommends that the CD and the Department of Health establish electronic health records. The Department of Health included a new system as the second priority in its information technologies request for fiscal year 2020.

Ms. Edwards noted that New Mexico has strong medical and geriatric parole rules that are underused. Aging prison populations increase prison costs due to medical conditions and treatment, and those costs would be covered by Medicare and Medicaid if the individuals were granted medical or geriatric parole.

Based on the LFC's research, Dr. McIntyre stated that several actions could be taken. The LFC recommends that the legislature expand funding for transitional living programs that use evidence-based programs and amend the geriatric and medical parole statutes to require release of eligible individuals. The legislature could also consider appropriating funding for recidivism reduction programs as a separate line item in the CD's budget. All CD contracts could use performance-based funding to encourage the use of recidivism-reducing programs, and electronic health records could be developed to help track inmates and their participation in such programs. Intermediate or graduated sanctions could be used to reduce the continued or subsequent incarceration of parolees for technical violations.

### **Recess**

The committee recessed at 3:59 p.m.

### **Friday, November 30**

#### **Report on Services for Victims of Human Trafficking — House Memorial (HM) 89 (2018)/Senate Memorial (SM) 92 (2018)**

Susan Loubet, executive director, New Mexico Women's Agenda; Frank Zubia, director, CVRC; Michael DeBernardi, clinical psychologist, The Life Link; and Lynn Sanchez, program director, The Life Link, presented on the memorials and the work of the New Mexico Human Trafficking Task Force. The task force is co-chaired by Ms. Sanchez of The Life Link and Anthony Maes of the Office of the Attorney General (OAG).

The Life Link and the OAG make up the core team of the task force, and, as such, secured a grant from the United States Department of Justice in 2015. The grant lasted for three years, and the task force has reapplied and received an additional grant. The task force was created to foster collaboration between law enforcement and service providers and find common ground. Additionally, the task force co-sponsors an annual conference with the OAG. The purpose of the presentation was to identify concerns and seek the legislature's help in addressing those concerns.

Ms. Loubet noted that the needs of sex trafficking victims are different than the needs of domestic violence victims. She stressed that certain needs may not seem important on the surface but are crucial for victims of sex trafficking. For example, providing a private cell phone to victims helps the victims by giving them safe alternatives to using cell phones provided by sex traffickers.

Mr. Zubia noted that the CVRC created a fund to provide services to sex trafficking victims. The CVRC contracts with five different organizations in different parts of the state,

including Las Cruces, Albuquerque, Farmington and Santa Fe, to provide services to victims. The CVRC also serves as the flow-through entity for crime victim funding from the federal government. Nevertheless, Mr. Zubia explained, there is a lack of funding for certain services.

Ms. Loubet highlighted that transportation is another important issue. For example, using public buses exposes victims to traffickers. She noted a possibility of working with Uber, the New Mexico State Fair and truckers. Also, the Children, Youth and Families Department is considering funding shelters for trafficking victims. Ms. Loubet urged the committee to consider increasing the sentences associated with trafficking. She shared a story from a federal Department of Homeland Security official who explained that prosecution against traffickers is done primarily through federal law, which reinforced her belief that state laws should be amended so that the federal system is not burdened.

Dr. DeBernardi noted that, typically, younger victims are not candidates for foster care because some of their issues are too severe for even the most empathic and compassionate of foster care providers. He stressed that these victims are part of a niche population and that a startling number of Native American girls are trafficked. He explained that these victims are essentially enslaved. He also noted that the federal government has recognized New Mexico as a leader in addressing these issues but that the recognition exists because of the prevalence of trafficking in the state.

In response to a member's question, Ms. Sanchez explained that trafficking is prevalent in New Mexico because the laws around the issue are relatively lax and there is a lack of prosecutors who focus on these crimes. Ms. Sanchez noted that the prosecutions by the OAG are effective and that the OAG prosecutors manage to address other crimes in addition to trafficking. A committee member noted that part of the problem is the difficulty of building a case against the trafficker. Ms. Sanchez suggested putting stiffer penalties in place to help the victim feel comfortable testifying against the perpetrator.

In response to a member's question, Mr. Zubia noted that the CVRC received \$145,000 for human trafficking victims and that the CVRC also receives funds for victims who cooperate with law enforcement and other qualifying victims. These appropriations were also used for emergency crisis stabilization. Mr. Zubia noted that some of the money was earmarked for public relations but the emphasis has been on emergency stabilization.

In response to another committee member's question, committee members were informed that there will be presentations at the New Mexico State Fair to educate individuals on the danger of trafficking. Dr. DeBernardi stated that the task force has made education and public outreach a priority. Presentations have been made at pueblos, and stickers, posters and informational materials are being shared with the public. In response to a member's question, it was explained that the CVRC also uses federal Victims of Crime Act of 1984 funding for outreach and that it is primarily used for direct services.

In response to another committee member's question, Mr. Zubia explained that the task force meets quarterly. He highlighted that the task force wants to enhance the services provided to victims, allowing the CVRC to provide reparations to victims if they are receiving services from a mental health provider. New Mexico would be the sixth state in the nation to pass legislation of this kind. In response to a member's question, the presenters could not answer whether New Mexico appellate courts have decided on the constitutionality of stacking charges in an indictment including human trafficking. The member reiterated the lack of resources devoted to trafficking and emphasized that swiftness and certainty of prosecution is a stronger deterrent than the mere prospect of a lengthy sentence. The member also stressed that there is an important distinction between victim advocates that are prosecution-oriented versus victim-oriented. In response to the member's comments, Dr. DeBernardi encouraged the committee to consider all trafficking to be a first degree felony.

In response to another member's question, Ms. Loubet stated that 2013 was the last year that the legislature considered a revision to trafficking statutes. In response to the member's question, she responded that The Life Link provides services throughout the state and First Nations in Albuquerque works primarily with Native American victims.

#### **Amendment of September 24-25, 2018 CCJ Minutes**

Upon a motion and a second of that motion, the minutes of the meeting on September 24 and September 25 were amended to note that a proposed December 4 meeting was discussed.

#### **Report on the Study of Law Enforcement Body Camera Issues — SM 98 (2018)/HM 104 (2018)**

Tania Maestas, chief deputy attorney general, OAG; Sharon Pino, chief deputy attorney general, Criminal Affairs, OAG; and Jerri Mares, advocate, Policy and Public Affairs and Consumer and Family Advocacy Services, OAG, presented their report on law enforcement body camera issues.

They explained that the OAG convened a group of stakeholders from 17 different entities to study and make recommendations for policy and legislation incorporating best practices on several law enforcement issues related to body-worn cameras (BWCs). The group of stakeholders met five times and realized the issues were so varied that three groups were created: 1) the best practices group; 2) the crime victims group; and 3) the mental and physical health group.

The best practices group stressed that retention of BWC footage is a significant issue. The APD has infrastructure in place for retention of footage, but rural areas of the state do not have the same infrastructure. The group identified creation, collection and retention of BWC footage as primary concerns. Additionally, New Mexico Counties and the Bernalillo County Sheriff's Office are wary of a statewide unfunded mandate.

The crime victims group discussed the revictimization that may occur for victims if BWC footage is release to the public. Similar to the best practices group, the crime victims group expressed concern over the rural-urban divide. A majority of the crime victims group members agreed that sexual assault, domestic violence and child victims should be protected, but the group did not agree on how best to protect these populations.

They emphasized that the mental and physical health group meetings were productive despite the group's inability to reach consensus on any recommendations. For example, the mental and physical health group identified three related issues: when to redact footage because of a "behavioral health interaction"; who decides what constitutes a "behavioral health interaction"; and how to define a "behavioral health interaction" without frustrating law enforcement efforts.

In response to a committee member's question, Ms. Maestas explained that if the APD retains BWC footage, it may become a public record unless the recording took place at a hospital or health care facility because those facilities are able to claim protection from release. The committee member expressed concern that the practices around BWCs are not uniform across the state and that the public may be able to acquire the information through an Inspection of Public Records Act request.

A committee member expressed appreciation to the task force for remembering to consider the dignity of the individuals recorded and how playback of the recording may retraumatize a victim. In response to another member's question, Ms. Maestas explained that if the recordings cannot be stored, the recordings are deleted. Ms. Maestas also explained that the New Mexico State Police does not record BWC footage partly due to the inability to store the footage. Another issue for rural law enforcement is the cost of redacting footage. For example, the APD reported that it spends approximately \$1 million a year for storage and redaction.

A member raised questions about the actual cost for the APD to store BWC footage, noting that storage is relatively affordable.

In response to a question, Ms. Pino explained that videos flagged for use in a criminal case are retained until there is a disposition in the case. In response to another member's question, Ms. Maestas stated that there is a clear benefit to victims and law enforcement from the use of BWCs. She also added that the recordings are useful in helping the APD to be proactive in working with officers who may engage in inappropriate or unlawful practices.

### **Report on the Ethics Commission Working Group**

Senator Lopez and Representative Dines, co-chairs, Ethics Commission Working Group, updated the committee on the group's work.

Representative Dines informed the committee that the constitutional amendment to create the State Ethics Commission passed overwhelmingly, by a nearly three-to-one margin. The

document before the committee is not the final recommendation from the working group, and Tony Ortiz, retired deputy director, NMSC, and Douglas Carver, deputy director, NMSC, helped with drafting the document. Representative Dines highlighted two areas that need to be addressed: transparency and jurisdiction. For instance, once a complaint is filed, should the complaint be made publicly available? Representative Dines stated that the constitutional amendment specifies how the members of the State Ethics Commission are selected and that the commission has subpoena power, but there are outstanding questions.

Senator Lopez informed the committee that the group will present on the Ethics Commission Working Group's activities at the State Bar of New Mexico on December 5 and December 10 from 10:00 a.m. to 2:00 p.m. Senator Lopez stressed that the Ethics Commission is nonpartisan. Senator Lopez also noted that the governor's office needs to be included in the conversation because the commission includes the governor and the governor's staff. Senator Lopez stated that she hopes to have a bill ready for introduction by the start of session.

Representative Dines stressed that there will likely be many bills. Senator Lopez informed the committee that there is a line-item appropriation of \$1 million for the commission. Senator Lopez explained that jurisdiction is important because it is unclear who is covered by the ethics commission.

A committee member noted her appreciation of the jurisdiction consideration because who determines ethical violations is a serious and important issue. In response to a member's question, she replied that the working group is still discussing the mechanics of the ethics commission's work and who is covered by the ethics commission.

Representative Dines stressed the value of advisory opinions and of requiring the ethics commission to educate government officials on what constitutes ethics violations. Another member expressed support for advisory opinions. In response to the member's question, Representative Dines said that the State Ethics Commission may initiate complaints and adjudicate those complaints.

In response to a member's question, Representative Dines stated that, without public awareness of the complaint and investigation, an ethics commission is "toothless". He noted that when there is secrecy attached to complaints against judges, the public needs to know what is happening and how complaints are resolved. A member expressed concern over whether a public complaint process will be abused for political purposes. Representative Dines stressed that while there is a balance between abuse and transparency, the presumption should be toward transparency.

In response to another member's question, Representative Dines noted that if a case is established, a fine could be imposed and that some discussion is still needed to determine what happens to certain government officials. Senator Lopez expressed that, depending on the criminality of the official's conduct, a case can be referred to a district attorney or the OAG.

In response to another member's question, it was explained that there is no one-size-fits-all approach to a governmental ethics commission. The member noted that each state decides how to balance the relevant values, e.g., abuse and transparency. Representative Dines stated that there is a process that the public can use to file complaints with the secretary of state.

Another member suggested that there need to be provisions to allow a complainant to move for the removal of a commissioner.

### **2019 Priorities of the New Mexico Criminal Defense Lawyers Association (NMCDLA)**

Rikki-Lee G. Chavez, legislative coordinator, NMCDLA; Ramona Martinez, legislative committee member, NMCDLA; and Brett Phelps, legislative committee member, NMCDLA, presented to the committee. Mr. Phelps began by explaining the defense attorney's constitutional role. In the legislature, the defense attorney educates policymakers about the effects of legislative action, provides anecdotal examples of the criminal justice system, discusses how the criminal process works and provides data-driven evidence about reform initiatives. Mr. Phelps explained that the goal of the NMCDLA's 2019 legislative priorities is positive criminal justice reform. He noted that the goal encompasses five proposals, as follows:

1. expungement of records to help remove some of the collateral consequences of conviction;
2. decriminalization of possession of cannabis;
3. adequate funding for the Law Offices of the Public Defender (LOPD);
4. limiting the use of solitary confinement; and
5. disallowing use of drug possession for habitual enhancement.

Ms. Martinez noted that the NMCDLA supports efforts that are evidence-based and address homelessness, mental health and behavioral health concerns. Specifically, the NMCDLA supports the use of drug courts, inpatient treatment, outpatient treatment, counseling, workforce training, continuing education, probation, increased mental health services and increased access to Medicaid. Ms. Martinez explained that the NMCDLA works with New Mexico SAFE and New Mexico SAFE's efforts to evaluate proposed legislation.

In response to a member's question, Ms. Chavez noted that prosecutors may overcharge defendants to pressure defendants into plea deals. Ms. Chavez explained that criminal trials take precedence over civil trials because defendants have the right to a speedy trial. She suggested that the criminal law sections of the State Bar of New Mexico would benefit from educating policymakers of these rules and of the number of criminal cases each year. She stated that prosecutors charge defendants who happen to have behavioral or mental health issues rather than directing them to treatment. Ms. Martinez suggested the use of preprosecution diversion programs. Mr. Phelps echoed Ms. Martinez's concerns, noting that on a system level, reducing the number of defendants would reduce the number of cases. A member reiterated that because of the priority of criminal cases, civil litigants wait longer to receive decisions in their cases.



Another member emphasized the usefulness and necessity of educating policymakers on the effects of legislation. In response to a member's question, the NMCDLA suggested a change to the language of its third legislative proposal, changing phrasing to reference "equitable funding" for the LOPD. Ms. Chavez also noted that many private firms are able to pull quality state attorneys away from government service because they can offer higher salaries. Ms. Chavez also stated that the NMCDLA would welcome the elimination of the use of solitary confinement.

In response to another member's question, Bennett J. Baur, chief public defender, LOPD, noted that the LOPD has instituted a case review process to determine if an attorney provides a professional service to indigent defendants.

Another member noted that a recent Supreme Court case, *State v. Martinez*, held that, while lawful, competent and relevant evidence is required in grand jury proceedings, a district court cannot review whether the evidence provided in a grand jury proceeding meets that standard. Ms. Martinez informed the committee that contract attorneys and public defenders are assigned after a grand jury proceeding, and they have little time to file a *Jones* letter, which is the extent of their participation in grand jury proceedings. In response to the member's question, Ms. Chavez indicated that the NMCDLA will include grand jury proceedings as a legislative priority.

Another member expressed that the grand jury process may raise federal due process concerns when some individuals can afford counsel and others cannot.

### **Judicial Branch Legislation for the 2019 Session**

The Honorable Judith K. Nakamura, chief justice, New Mexico Supreme Court, and Arthur W. Pepin, director, AOC, presented the judiciary's legislative priorities for the upcoming session.

#### .211185.2SA — Constitutional Amendment, Judicial Election After One Year in Office

This proposal would allow an appointed judge to stay for a full year before the judge would be considered for retention at a general election. The joint resolution would not apply to magistrate, metropolitan or municipal court judges. The committee voted to endorse this joint resolution.

#### .211220.5SA — Constitutional Amendment, Option to Transfer Probate Courts to Magistrate Courts

Chief Justice Nakamura explained that there are times when magistrate or municipal courts can hear cases when a probate court cannot or there is no probate judge, but the law does not allow for magistrate or metropolitan courts to hear probate matters. In response to a member's question, it was stated that the AOC could train magistrate courts on non-contested probate matters. The committee voted to endorse this joint resolution.

.211187.2SA — Option to Transfer Municipal Courts to Magistrate Courts

In response to a member's question, Chief Justice Nakamura said that a municipality does not need to have a municipal court if the municipality's population numbers fewer than 1,500. Chief Justice Nakamura noted that this proposal would allow the magistrate court of the county in which the municipality is located to exercise jurisdiction over municipal ordinances upon agreement between the Supreme Court and the municipality. In response to another member's question, Chief Justice Nakamura explained that this change to existing law would allow a municipality to opt in to transferring jurisdiction, but no municipality is required to participate. In response to another member's question, she explained that the municipality would pay for the costs of detention if the conviction is under municipal ordinance.

William F. Fulginiti, executive director, New Mexico Municipal League, expressed that New Mexico Municipal League members voted to oppose this bill and that the New Mexico Municipal League Board of Directors also opposes this bill. Another committee member expressed support of this bill and another member's idea to make some municipal judges part-time employees so that they are paid accordingly for a caseload that is relatively light. The committee voted to endorse this bill.

.211289 — On-Record Appeals from Metropolitan Court

Mr. Pepin noted that this bill follows the approval of the constitutional amendment in the recent November election, allowing the legislature to provide for appellate jurisdiction of magistrate, metropolitan and municipal courts. The committee voted to endorse this bill.

.211188 — Affidavit Exemption for Jurors Over 75 Years of Age

Mr. Pepin noted that the state has a robust jury system that is able to determine the age of individuals. Some of the members discussed concerns over requiring candidates for jury duty who are over 75 years of age to submit an affidavit to be exempt from jury duty. The committee voted to endorse this bill.

.211183 — Sex Offender Probation Review

This bill would make technical changes to sex offender probation review. A member expressed concern over the current bill draft and suggested inserting a period after "record" on page 3, line 22, and striking "and". The committee voted to endorse this bill, with suggested changes.

In response to a member's question, Chief Justice Nakamura informed the committee that Justice Barbara Vigil will head a commission tasked with decreasing the civil case backlog. The State Judicial Institute will be working with the AOC to help resolve this backlog. By July 1, 2019, the AOC will be able to determine the cost and the number of staff members that will be needed to resolve the civil case backlog. Chief Justice Nakamura explained that none of the legislative proposals considered today address the civil case backlog because the AOC is using rules and working with district courts to resolve the backlog.

In response to another member's question, Chief Justice Nakamura informed the CCJ that the magistrate courts will report administrative problems to the district court in which they sit, and in these cases, the district courts will control the budgets of the magistrate courts. Currently, district courts manage their own budgets; therefore, overseeing a court's budget is not an unusual task. Allowing district courts to oversee the administrative functions and budget of magistrate courts will allow the AOC to focus on education and analysis of the courts and develop policies to streamline judicial processes.

### **Adjournment**

There being no further business before the committee, the seventh meeting of the CCJ adjourned at 4:11 p.m.



Revised: December 3, 2018

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

**December 4, 2018  
State Capitol, Room 322  
Santa Fe**

**Tuesday, December 4**

- 10:00 a.m.           **Call to Order and Introductions**  
—Representative Gail Chasey, Co-Chair  
—Senator Richard C. Martinez, Co-Chair
- 10:15 a.m.           **Consent Calendar: Proposed Legislation Previously Heard in  
Committee for Which Endorsement Is Requested**
- (1)    [.210975.1, Representative Daymon Ely, Extreme Risk Orders of  
Protection](#)
- (2)    [.210889, Representative William "Bill" R. Rehm, Reserve Police  
Officer Act](#)
- (3)    [.211233, Representative Gail Chasey, Ending Prosecution of Trafficked  
Minors](#)
- 10:30 a.m.           **Proposed Legislation for Which Endorsement Is Requested**
- (4)    [.211252, Senator Bill B. O'Neill and Representative Alonzo Baldonado,  
Ban the Box for Private Employers](#)
- (5)    [.210974, Representative Bill McCamley, Limit Expenditures for Private  
Prisons](#)
- (6)    [.211317, Representative William "Bill" R. Rehm, Remove Law  
Enforcement In-Service Requirements](#)
- (7)    [.211047.2, Representative Antonio Maestas, Law Enforcement  
Protection Fund](#)
- (8)    [.211031.1, Representative Antonio Maestas, Expungement](#)

- (9) [.211720.2, Representative Antonio Maestas, Decriminalize Certain Offenses](#)
- (10) [.211086.1, Representative Antonio Maestas, Solitary Confinement Reform](#)
- (11) [.211794.1SA, Administrative Office of the Courts, Restrict Firearms in Courthouses](#)
- (12) [.211839.1, Representative Gail Chasey, Restore Ex-Felon Voting Rights](#)

12:30 p.m.           **Lunch**

1:30 p.m.           (13) [Discussion of Criminal Justice Reform Package](#)

2:30 p.m.           **Public Comment**

2:45 p.m.           **Adjourn**

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

**December 4, 2018  
State Capitol, Room 322  
Santa Fe**

The eighth meeting of the Courts, Corrections and Justice Committee was called to order by Representative Gail Chasey, co-chair, on December 4, 2018 at 10:19 a.m. in Room 322 of the State Capitol in Santa Fe.

**Present**

Rep. Gail Chasey, Co-Chair  
Sen. Richard C. Martinez, Co-Chair  
Rep. Eliseo Lee Alcon  
Sen. Gregory A. Baca  
Rep. Zachary J. Cook  
Rep. Jim Dines  
Sen. Linda M. Lopez  
Rep. Antonio Maestas  
Rep. Sarah Maestas Barnes  
Rep. William "Bill" R. Rehm  
Sen. Sander Rue

**Advisory Members**

Sen. Bill B. O'Neill  
Sen. Peter Wirth

**Guest Legislators**

Rep. Alonzo Baldonado  
Rep. Bill McCamley

**Absent**

Sen. Jacob R. Candelaria  
Rep. Javier Martínez  
Sen. Cisco McSorley  
Rep. Angelica Rubio

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

**Staff**

Celia Ludi, Staff Attorney, Legislative Council Service (LCS)

Randall Cherry, Staff Attorney, LCS

Mark Peralta-Silva, Staff Attorney, LCS

Erin Bond, Research Assistant, LCS

**Minutes Approval**

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

**Guests**

The guest list is in the meeting file.

**Handouts**

Handouts and other written testimony are in the meeting file.

**Tuesday, December 4****Call to Order and Introductions**

Representative Chasey welcomed the committee and the audience. Members and staff introduced themselves.

**Consent Calendar: Proposed Legislation Previously Heard in Committee for Which Endorsement is Requested**

The committee considered legislation for endorsement as follows.

**.210975.2 — Extreme Risk Orders of Protection**

Committee members discussed several concerns, including due process issues that might arise with respect to violations being heard in magistrate and metropolitan courts. A member suggested that it would be worthwhile to find out what the Uniform Law Commission (ULC) proposes. Another member stated that the time lines for the ULC to propose legislation could be lengthy. Another member expressed support of the bill as a measure to prevent mass shootings. The committee voted to not endorse this bill.

**.210889.4 — Reserve Police Officer Act**

Representative Rehm reviewed this bill and stated that there are no current requirements regarding training and supervision of reserve police officers. He said that this bill would give the New Mexico Law Enforcement Academy (NMLEA) oversight of reserve police officers. In response to a committee member's question, Representative Rehm said that this bill would require a reserve police officer to be licensed by the NMLEA. The committee voted to endorse this bill.



.211233.1 — Excluding Prostitution as a Delinquent Act

Representative Chasey explained to the committee that this bill does not allow a minor to be prosecuted for prostitution as an adult and that the bill removes prostitution as a delinquent act. April Land, professor, University of New Mexico School of Law, testified that the bill would provide family services to minors who are subject to human trafficking. The committee voted to endorse this bill.

**Proposed Legislation for Which Endorsement is Requested**

The committee considered additional legislation for endorsement as follows.

.211252.1 — Ban the Box for Private Employers

Representative Baldonado addressed the committee and said that this bill would prohibit private employers from asking on a written employment application whether the applicant has a criminal conviction. A committee member noted that this bill would not preclude an employer from obtaining a background check of an employee or an applicant. The committee voted to endorse this bill.

.210974.1 — Limit Expenditures for Private Prisons

Representative McCamley provided the committee with data and findings on private prisons in New Mexico. He presented a bill that would prohibit the state from contracting with private prisons, except for state and local agencies that contract with work-release centers or for ancillary services. Representative McCamley said that private prisons pose negative economic and social problems that warrant the state to not contract with them, but he also noted that the bill needs a grandfather clause to avoid impairing current contracts.

In response to a committee member's question, Representative McCamley stated that a change in the law that prevents state and local agencies from contracting with private prisons will not necessarily affect current contracts. The member expressed concern regarding the use of private prisons. In response to a question, Representative McCamley explained how a grandfather clause for current contracts would allow state and local agencies to maintain those contracts until the contracts expire and would allow the agencies time to determine how and where to house inmates who would have to be moved from private prisons. Another member stressed the importance of considering the transfer of prisoners from private prisons.

A committee member noted that the Legislative Finance Committee recommended that private prisons follow evidence-based performance measures. The member also noted that some of the prisons are not owned by a corporation. For example, the Clayton facility is owned by the Town of Clayton.

Representative McCamley stressed that other states have acted on reducing contracts with private prisons, and he asserted that evidence points toward discontinuing and prohibiting those contracts.

In response to a member's question, Representative McCamley noted that the state could save money by closing private prisons and housing the inmates in state facilities.

Another committee member noted that closing private prisons would affect guards and correctional officers. The member stated that guards and correctional officers who become state employees might not receive as much money as they did when working with private prisons. In response to the member's question, Representative McCamley noted that if the bill passed and became law, incoming Corrections Department leaders would need to consider how to transition from private prison facilities to public prisons and how to accommodate inmates in public prisons. A committee member suggested that this legislation may not be necessary because the governor could refuse to contract with private prisons in the future. The committee did not vote on this bill.

#### .211317.1 — Remove Law Enforcement In-Service Training Requirements

Representative Rehm stated that the legislature has mandated in-service training for law enforcement officers. He also stated that it would be beneficial for officers if the NMLEA were allowed to update its curriculum. A committee member noted that the legislature intended for law enforcement to undergo training. In response to a member's question, Representative Rehm noted that any changes to training could be amended in the future. A committee member said that the legislature has an interest in determining the training of law enforcement officers.

Brian Coss, deputy director, NMLEA, told the committee that the NMLEA training curriculum is inflexible and static. Current law does not allow for in-service training to be updated in accordance with developments at the NMLEA. In response to a committee member's question, it was noted that the NMLEA is responsible for the training of 5,600 officers across the state. The training requirement requires the chief of police to take the same training as an officer. Mr. Coss expressed difficulty with keeping up with mandated training.

A committee member expressed support for flexibility in training. The member stated that it is important for the training to be dynamic and consistent with developments in law enforcement. In response to a member's question, Mr. Coss explained that the NMLEA board promulgates rules under the New Mexico Administrative Code. Mr. Coss also explained that statutory requirements cannot be changed administratively, whereas administrative rules may be changed on a quarterly basis. He asserted that less legislative structure would allow for flexible and modern changes to training. A committee member stressed that who decides the training is important.

A committee member expressed concern that removing time requirements for training would result in a lack of education on certain topics. Representative Rehm stated that no other professions have mandated, specified training every two years. The committee voted to endorse this bill.

.211047.3 — Law Enforcement Protection Fund

At the invitation of the committee, law enforcement officers in the audience introduced themselves, including Sammy Trujillo, police chief, Taos Ski Valley; John Ross, chief of staff, Albuquerque Police Department (APD); Josh Brown, lieutenant, APD; Harold Medina, deputy chief of police, APD; Martin Trujillo, undersheriff, Rio Arriba County Sheriff's Office; Paul Rogers, deputy police chief, Rio Rancho Police Department; Ron Vigil, captain, Rio Rancho Police Department; Chris Williams, lieutenant, Portales Police Department; Pat Gallegos, chief of police, Portales Police Department; Pat Salazar, chief of police, Milan Police Department; Brian Peete, chief of police, Alamogordo Police Department; Robert Vasquez, administration deputy chief of police, Santa Fe Police Department; and Javier Guerra, chief of police, Sunland Park Police Department.

Representative Maestas and Representative Rehm explained that the bill changes the transfers and distributions of the Law Enforcement Protection Fund. The goal of the bill is to prevent the fund from being swept in the future. The bill also increases the distribution to municipal and university police departments and county sheriff's offices to \$1,000 per officer per office. In response to a question, Representative Rehm explained that the money is used for training and equipment. In response to another question, Representative Rehm stated that money could be used for bonuses. In response to a member's question, Representative Maestas noted that offices are spending the money appropriated to them but that there is money remaining in the fund.

In response to a member's question, Representative Rehm and Representative Maestas stated that tribes have memoranda of understanding to bring charges or citations in metropolitan court. Tribes and tribal officers receive funds from the Law Enforcement Protection Fund. The committee voted to endorse this bill.

.211031.1 — Expungement

Representative Maestas explained that this bill addresses expungement of criminal records, specifically expungement of records involving identity theft or wrongful arrest, expungement of records upon release without conviction and expungement of records upon conviction. Representative Maestas noted that the bill would allow a defendant to pursue expungement through a civil action in district court and allow the Administrative Office of the Courts and the Department of Public Safety to develop rules and procedures for those actions.

In response to a committee member's question, Representative Maestas noted that this bill would allow nonviolent felony convictions to be expunged after 10 years. In response to the member's question, Representative Maestas explained that it will likely be necessary to amend this bill if criminal sentencing is amended in the upcoming legislative session.

In response to member's question, Representative Maestas stated that the bill would not affect newspapers or media that report on alleged criminal activity or conviction. Representative Maestas explained that the information in the New Mexico Courts Case Lookup system would be

expunged but information in district attorney and law enforcement in-house systems would remain. A member expressed concern over how public records would be affected by this bill. The committee did not vote on this bill.

#### .211720.2 — Decriminalize Certain Offenses

Representative Maestas noted that this bill would prohibit the suspension of a driver's license for failure to attend a court hearing. He stated that this bill reduces some crimes from a misdemeanor to a penalty assessment misdemeanor. Representative Maestas noted that other jurisdictions have found constitutional concerns with punishing people essentially because they are poor.

In response to a committee member's question, Representative Maestas stated that this bill would not affect a court's ability to issue a bench warrant for failure to attend a court hearing or pay a fine. Representative Maestas clarified that an arrest warrant could not be issued for failure to attend a court hearing but a summons warrant could be issued. The committee member expressed concern over people not paying fines or showing up at court because no arrest warrant would be issued. A committee member suggested making changes to the statute that addresses driving while a license is suspended.

A member expressed that revoking or suspending driver's licenses is not good policy because people who are not allowed to drive may have trouble maintaining jobs. For example, the member noted that failure to pay child support can result in suspending a driver's license, which makes it more difficult to earn income to pay child support.

Another member said that the state should use technology to help inform individuals of their court dates and of when their licenses may be suspended. The committee did not vote on this bill.

#### .211086.1 — Solitary Confinement Reform

Representative Maestas presented this bill, which prohibits solitary confinement for inmates who are pregnant, are juveniles or have a serious mental disability.

In response to a committee member's question, Representative Maestas noted that this bill is identical to a bill previously vetoed by the governor. The committee member noted that determining whether the individual has a serious mental disability places an onerous burden on correctional facilities. The committee voted to endorse this bill.

#### .211794.1SA — Restrict Firearms in Courthouses

At the invitation of the committee, Celina Jones, general counsel, Administrative Office of the Courts, presented this bill to the committee. Ms. Jones noted that this bill would prohibit carrying loaded or unloaded firearms in courts, unless authorized to do so by the Supreme Court. In response to a member's question, Ms. Jones noted that there is a patchwork of policies across

the state, with some courts prohibiting firearms. She also noted that there is a statute that prohibits concealed carry firearms in courts.

In response to a member's question, Ms. Jones stated that administrative rules are needed to ensure that requests to bring a weapon to a court are addressed in a timely and fair fashion. In response to a member's question, Ms. Jones said that this legislation is motivated by a concern that an incident involving firearms may occur. However, Ms. Jones also noted that there have been no prior incidents. In response to a member's question, she highlighted that one of the recommendations of the National Center for State Courts is instituting a statewide approach to policies governing firearms in courts. The member commented that the bill places authority with the Supreme Court over who gets to carry a firearm, rather than with law enforcement agencies. In response to the member's question, Ms. Jones noted that additional consideration may be required to determine if a penalty should be imposed if an unauthorized person brings a firearm into a court.

Another member expressed concern that a law enforcement officer may not be able to carry a firearm in a court if the officer is not authorized by the Supreme Court. The member also expressed concern over the Supreme Court determining authorization. The committee did not vote on the bill.

#### .211839.1 — Restore Ex-Felon Voting Rights

Representative Chasey discussed a proposal to restore voting rights to individuals with felony convictions. She explained that it is currently procedurally difficult for an individual with a felony conviction to seek restoration of voting rights after serving a sentence. Representative Chasey noted that other countries do not take away an individual's voting rights because of a criminal conviction.

In response to a committee member's question, Representative Chasey explained that this proposal would allow inmates to vote while in prison. In response to another member's question, Representative Chasey said that Maine and Vermont do not take away or suspend an individual's right to vote upon a felony conviction.

#### **Discussion of Criminal Justice Reform Package**

Members of the committee considered which bills should become part of a criminal justice reform package. The members agreed to include 13 bills in an omnibus bill addressing the following topics:

- geriatric and medical parole;
- parole board procedures reform;
- expansion of the "Good Samaritan" law to probationers and parolees;
- fiscal impact assessments of new or changes to criminal sentences;
- crime victims reparation;
- accuracy of eyewitness procedures;

- post-conviction DNA testing;
- nonviolent offender interventions;
- probation and parole best practices;
- preprosecution diversion;
- no mandatory parole for certain sentences;
- a criminal justice data repository in the New Mexico Sentencing Commission; and
- the establishment of the Crime Reduction Fund.

### **Public Comment**

Kathleen Burke, associate director, Street Safe New Mexico, and member of the Human Trafficking Task Force, commented that 86% of homeless women are survivors and victims of sex trafficking and many of these women were trafficked at a young age. She stated that in her opinion, trafficking in New Mexico is exacerbated by relatively relaxed penalties compared to the penalties imposed in other states. Ms. Burke also thanked the committee for its endorsement of the bill removing prostitution as a delinquent act.

### **Adjournment**

There being no further business, the committee adjourned at 3:30 p.m.

CRIMINAL JUSTICE REFORM SUBCOMMITTEE  
AGENDAS AND MINUTES





Revised: July 6, 2018

**TENTATIVE AGENDA  
for the  
FIRST MEETING  
of the  
CRIMINAL JUSTICE REFORM SUBCOMMITTEE**

**July 18, 2018  
State Bar Center  
5121 Masthead Street NE  
Albuquerque**

**Wednesday, July 18**

- 9:00 a.m.           **Call to Order and Introductions**  
—Representative Antonio Maestas, Co-Chair  
—Senator Sander Rue, Co-Chair
- 9:15 a.m.       (1)   **Collateral Consequences of Conviction**  
—Paul Haidle, Senior Policy Strategist, American Civil Liberties Union of  
New Mexico
- 11:15 a.m.       (2)   **Uniform Collateral Consequences of Conviction**  
—Jack Burton, Commissioner, Uniform Law Commission
- 12:00 noon       **Lunch**
- 1:00 p.m.       (3)   **Criminal Record Clearance**  
—Representative Antonio Maestas, Co-Chair
- 1:45 p.m.       (4)   **Court Fees Assessed to Criminal Defendants**  
—Cynthia Pacheco, Manager, Warrant Enforcement Program,  
Administrative Office of the Courts
- 2:15 p.m.       (5)   **Parole Costs Assessed to Criminal Defendants**  
—Daniel Barela, Acting Probation/Parole Director, Corrections Department
- 2:45 p.m.       **Public Comment**
- 3:00 p.m.       **Adjourn**



**MINUTES  
of the  
FIRST MEETING  
of the  
CRIMINAL JUSTICE REFORM SUBCOMMITTEE**

**July 18, 2018  
State Bar Center  
5121 Masthead Street NE  
Albuquerque**

The first meeting of the Criminal Justice Reform Subcommittee was called to order by Senator Sander Rue, co-chair, on July 18, 2018 at 9:14 a.m. at the State Bar Center in Albuquerque.

**Present**

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

**Absent**

Rep. Zachary J. Cook

**Guest Legislator**

Sen. Bill B. O'Neill

**Staff**

Celia Ludi, Staff Attorney, Legislative Council Service (LCS)  
Randall Cherry, Staff Attorney, LCS  
Erin Bond, Research Assistant, LCS

**Guests**

The guest list is in the meeting file.

**Handouts**

Handouts and other written materials are in the meeting file.

**Wednesday, July 18**

**Call to Order and Introductions**

Senator Rue and Representative Maestas welcomed everyone to the meeting, and the subcommittee members, staff and public introduced themselves. Senator Rue expressed an intent for the subcommittee to produce a package of legislative proposals during the interim.

## **Collateral Consequences of Conviction**

Paul Haidle, senior policy strategist, American Civil Liberties Union of New Mexico, guided the subcommittee through a true/false quiz on the collateral consequences of the crime in New Mexico (Item 1). Mr. Haidle explained that the National Inventory of the Collateral Consequences of Conviction has determined that New Mexico has 680 collateral consequences in its statutes and rules. These consequences can stem from arrests or convictions because even arrests that do not result in conviction may be reported on commercial background checks for seven years. He added that one-half of the Federal Bureau of Investigation's (FBI's) background checks are inaccurate or out of date. Individuals who successfully complete a conditional discharge in New Mexico do not have a criminal conviction by law; however, Mr. Haidle noted, this can be inaccurately reflected on a background check. An individual may also be led to believe that he or she has a conviction when none exists. Mr. Haidle explained that when using background checks in pre-employment screenings, employers should make individualized determinations for applicants rather than use bright-line rules.

Mr. Haidle stated that New Mexico has the highest proportion of imprisoned Latinos in the nation, while black adults are imprisoned at over six times the rate of white adults. By age 23, approximately one-third of Americans will have been arrested. Mr. Haidle noted that New Mexico is one of 12 states with a prison population that grew between 1999 and 2015. The number of women in prison increased by 587% from 1980 to 2011, and 10% of New Mexico children have had a parent incarcerated. One in four people in New Mexico prisons is treated for a serious mental illness on any given day, and 85% of people imprisoned in New Mexico suffer from substance abuse problems.

Working through his presentation at Item 1, Mr. Haidle explained several commonly used terms in collateral consequences discussions. "Criminal record" includes anything from arrest to conviction and can also include conditional discharges, deferred sentences, probation and jail or prison time. Mr. Haidle defined "repository" as a location where records are kept and described who has access to them, including arresting agencies, the FBI, district attorneys, courts and the National Crime Information Center.

Mr. Haidle informed the subcommittee that background checks come in several varieties. A consumer reporting agency's background check is based on an applicant's name and date of birth, which can be problematic for individuals with common names. Consumer reporting agencies must follow the federal Fair Credit Reporting Act (FCRA) so individuals can correct errors in reports. Mr. Haidle explained that the New Mexico Court Case Lookup provides free online access to New Mexico court data to the public, and the Department of Public Safety (DPS) can provide a New Mexico-specific record of arrests and prosecutions (RAP) sheet for \$15.00. The FBI also performs background checks for security clearances using fingerprints.

Mr. Haidle explained that laws at every level of government can influence collateral consequences. At a federal level, the FCRA and the federal Civil Rights Act of 1964 have the greatest impact. Agencies such as the Equal Employment Opportunity Commission (EEOC) and

the state's Human Rights Commission have also worked on collateral consequences. In New Mexico, the "Ban the Box" law removed a question on public job applications asking if a person has ever been convicted of a crime. Mr. Haidle stated that a similar bill for the private sector was introduced and passed in the 2017 legislative session but was vetoed by the governor. Under the Criminal Offender Employment Act, a conviction may not be an automatic bar to licensure or public employment. New Mexico also allows limited expungement of criminal records. Cities and counties may also develop ordinances for their jurisdictions.

Mr. Haidle repeated that New Mexico has 680 collateral consequences of conviction, and he highlighted several of the most common. He explained that an individual can regain voting rights after probation or parole by presenting the secretary of state with a certificate of completion. However, the certificate is complicated, and county clerks may not understand what is needed from the certificate, leading an individual to give up on the process. Regarding voting rights of persons convicted of crimes, New Mexico falls somewhere between states such as Florida, where a conviction means an individual may never vote again, and Vermont, where an incarcerated person can vote.

Mr. Haidle told the subcommittee that a person with a conviction may believe that he or she cannot obtain subsidized housing, but only convictions for drug manufacturing in public housing and sex offender convictions are barriers to obtaining public housing. While a local public housing authority can set rules requiring that convicts must wait several years before they are eligible for subsidized housing, Mr. Haidle said that private landlords can and do reject potential tenants for arrests and convictions for fear of troublesome tenants.

Mr. Haidle mentioned the commonly held belief that an individual with a criminal record cannot obtain financial aid, especially for education. He stated that the only permanent barrier to obtaining financial aid is a conviction for manufacturing drugs while receiving financial aid.

Mr. Haidle discussed collateral consequences in private employment. He stated that under the FCRA, regular employers can see convictions that are not sealed or expunged as well as arrests from the past seven years on a commercial background check. Mr. Haidle said that an employer could choose to research more by sending staff to a courthouse to examine public records, but this is often expensive. He commented that under the Civil Rights Act of 1964 and EEOC rules, employers should make individual determinations on applicants with convictions. These determinations should be based upon whether the conviction has a bearing on the job, as well as the circumstances around the conviction. Applicants may bring supporting information to their interviews. However, Mr. Haidle continued, enforcement of the policy is difficult. He said that corporations have paid millions of dollars for employment lawsuits stemming from policies barring individuals with any criminal record from employment.

Mr. Haidle informed the subcommittee that specialized employers dealing with vulnerable populations or security clearances often have statutory requirements for background checks. He provided examples of employers that may be restricted from hiring people with past

convictions, such as schools that require FBI background checks and medical positions that require security clearances. He stated that individuals should be informed of these restrictions before they pursue such positions via an application or education. Mr. Haidle reiterated that in New Mexico, a criminal background cannot be the sole reason an occupational license is denied.

Mr. Haidle stated that it is important to know one's rights regarding background checks because background checks are often wrong. He stated that an applicant must be given a copy of a background check that results in adverse action so that the applicant may challenge it. Under the FCRA, a consumer reporting agency is required to fix an incorrect background check. He also stated that a free background check may be requested once a year under the FCRA. FBI background checks can also be requested, and the New Mexico Court Case Lookup can be utilized freely.

Mr. Haidle explained that because people of color are arrested and convicted more often, they often suffer more from collateral consequences. The Civil Rights Act of 1964 and the theory of disparate impact have been used in court cases against large corporations that preclude people of color from jobs because of convictions. Mr. Haidle said that major employers are now aware of such behaviors, but smaller employers may not yet be aware of the changes.

Mr. Haidle concluded his presentation by encouraging the legislature to continue its work in reducing collateral consequences of conviction.

In response to a question, Mr. Haidle explained that correcting an FBI background check can be difficult because the FBI compiles information reported by criminal justice agencies. Challenging and correcting such a report would require correcting the reporting agency, which must then update the FBI. Upon further inquiry, Mr. Haidle stated that information found on the internet can also be difficult to combat if it comes from a newspaper or private citizen. A libel or slander lawsuit is the only known recourse. Mr. Haidle also stated that the internet is primarily a concern in high-profile cases and that attempting to remove headlines and newspaper articles could be seen as infringing upon the First Amendment.

At the request of a subcommittee member, Mr. Haidle discussed efforts to reduce collateral consequences in other states and at a federal level. He stated that approximately 15 states have "banned the box" for private employment. Expungement and viewing collateral consequences as violations of human rights vary widely by state. No uniform process is set for expungement of criminal records, and some states view the denial of a job based on a mere arrest to be a human rights violation, as arrests can be wrongfully made. He informed the subcommittee that the Council of State Governments Justice Center (CSGJC) has compiled an inventory of expungement laws by state. Mr. Haidle stated that there is bipartisan support for criminal justice reform on a federal level; however, the work done at a federal level is more related to sentencing.

In response to a question, Mr. Haidle discussed expungement as a way of growing a labor force and reducing recidivism by allowing skilled workers to reenter the workforce. A member of the subcommittee reiterated the need for expungement for victims of identity theft, as well as the need to reduce collateral consequences for individuals who were convicted several decades ago and have never reoffended. Members of the subcommittee expressed concern that expungement and other criminal justice reform efforts might be seen by the public as being soft on crime or lacking evidence.

### **Proposed Uniform Collateral Consequences of Conviction Act**

Jack Burton, commissioner, Uniform Law Commission (ULC), discussed efforts to pass the Uniform Collateral Consequences of Conviction Act. Mr. Burton informed the subcommittee that the ULC drafting committee for the bill includes current and former judges, as well as assistant attorneys general. The aim of the bill is to help offenders to reintegrate into society by informing defendants of the collateral consequences that would apply to them and providing a process to mitigate some of those consequences.

Mr. Burton provided a brief history of the bill creating the Uniform Collateral Consequences of Conviction Act in New Mexico, stating that the first iteration of the bill passed both chambers and was vetoed with a message on desired alterations. The changes were made, but the second version of the bill was vetoed entirely. The third and most recent draft was pocket vetoed. Mr. Burton expressed hope that the next administration might be more amenable to the bill.

Mr. Burton explained that the bill would require a defendant's lawyer to provide written notification that if the individual pleads guilty or no contest or is convicted for an offense, certain consequences besides jail or prison, probation, parole and fines will likely occur. The bill also establishes a process whereby an individual may petition for relief from collateral consequences. Mr. Burton elaborated that the individual must prove that the need for relief meets certain terms, providing that the relief would not harm the public or any victims. Certain consequences are not eligible for relief, such as requirements imposed by the Sex Offender Registration and Notification Act or the possession of firearms. Victims may participate in the proceedings in the method set out in the Victims of Crime Act.

Mr. Burton expressed his continued support for the bill and his belief that relief from collateral consequences is needed.

In response to a question, Mr. Burton explained that prior to the veto message, the bill required the court to notify a defendant of collateral consequences. In response to the veto message, a defendant's lawyer was given the responsibility. He also explained that the Public Defender Department has expressed concern that the requirement could increase the burden of already overworked public defenders. Mr. Burton stated that an individual could be given written notification and told to research the consequences in an inventory developed by the New Mexico Sentencing Commission (NMSC).

At the request of a subcommittee member, Mr. Burton explained the time frame during which a relief petition could be made. At sentencing, the defendant can ask that consequences be relieved and that he or she be granted a court order showing such. The Parole Board is unlikely to have the time or human resources to hear such petitions. Members of the subcommittee expressed concern that individuals might only become cognizant of some consequences at a much later date and have no way to petition for relief.

In response to a inquiry from the subcommittee, Douglas Carver, deputy director, NMSC, explained that the NMSC, which is the identification agency named in the bill, would use the CSGJC inventory of collateral consequences in creating a collection of New Mexico's collateral consequences.

### **Court Fees Assessed to Criminal Defendants**

Cynthia Pacheco, manager, Warrant Enforcement Program, Administrative Office of the Courts (AOC), informed the subcommittee that the Warrant Enforcement Program is funded by warrant fees of \$100 every time a warrant is issued.

Ms. Pacheco told the subcommittee that the New Mexico Supreme Court has adopted new rules on the payment of fines, fees and costs. The court will evaluate a defendant's ability to pay fines, fees and costs at the time of sentencing. Those who are found able to pay must do so in accordance with the court's sentence. Defendants who are unable to pay will be permitted to perform community service instead. Ms. Pacheco stated that under the previous rules, defendants first had to fail to pay before community service was considered.

Ms. Pacheco explained that the rules were also changed to require that a summons to appear be issued before a warrant for failure to pay be issued. At the hearing, the court may alter the payment agreement or convert the payment to community service. If jail is to be imposed, adequate procedural due process must be allowed.

Ms. Pacheco stated that her office has several ongoing and developing projects to reach out to people more effectively. Individuals and communities can be engaged and contacted through postcards, social media and text messaging, as well as more traditional methods such as telephone calls and letters. "Safe Surrender" events are also held periodically throughout New Mexico. These events are coordinated with a specific court and are designed to help defendants with compliance before they are contacted by law enforcement. A recent event was held in Albuquerque with the Bernalillo County Metropolitan Court and was attended by approximately 600 individuals.

Ms. Pacheco described the development of a customer call center. The call center will assist defendants with routine questions about criminal case processing; it will also issue phone calls and text messages reminding defendants about upcoming deadlines, including hearings, payments and other compliance matters. Ms. Pacheco stated that the AOC hopes to reduce the number of fee-funded positions in the courts and will be asking the legislature for money to



move at least one-half of the positions funded by warrant fees to positions funded by the General Fund.

Ms. Pacheco also referred subcommittee members to her handout (Item 4), which provides a summary of fees by court type.

In response to a question from the subcommittee, Ms. Pacheco explained that while 600 people attended the Albuquerque Safe Surrender event, there are approximately 100,000 cases in which individuals are not in compliance. Roughly one-half of those individuals are believed to be out of state and unlikely to become compliant. In New Mexico, an average individual without court experience might be concerned that an appearance in court will lead to an arrest. This, when compounded with the transient nature of society, can make it difficult to contact people and convince them to make an appearance. A member of the subcommittee noted that individuals in rural parts of the state may not receive notifications if the notifications are sent to a physical address rather than a mailing address, but this problem should be resolved since driver's licenses now include both physical and mailing addresses. The member added that rural courts often have limited hours and payment methods, which may discourage individuals who wish to be compliant. Ms. Pacheco stated that multiple payment types, including cash and credit or debit cards, are now accepted to meet the needs of a diverse population.

At a member's request, Ms. Pacheco explained that the AOC does not view the new rules and Safe Surrender events as amnesty because amnesty encourages noncompliance. She stated that the 600 individuals who attended the Albuquerque event were processed on Saturday and Sunday. She provided an example of the process, stating that an individual with a failure to appear warrant could attend the Safe Surrender event and be arraigned by a judge. The judge will then provide the individual with a new appearance date.

In response to a question, Ms. Pacheco stated that fees collected by the courts are not retained by the collecting court as part of the unified budget but, instead, are primarily sent to other agencies, and a small portion of those fees is delivered to the General Fund.

Upon questioning, Ms. Pacheco informed the subcommittee that the courts have several methods of obtaining addresses for noncompliant individuals, including skip tracing, law enforcement and social media. Tax returns can also be intercepted to pay fees. However, the courts shall not use addresses and personal information from tax returns to locate individuals.

In response to inquiries on warrants, Ms. Pacheco informed the subcommittee that the AOC can have a court issue a summons. If an individual does not pay or respond, then a warrant may be issued. She recognized that if an individual cannot pay the initial fine, it is unlikely that he or she would be able to pay the \$100 warrant fee. The AOC can consolidate warrant fees or waive the fee, if needed. Ms. Pacheco also informed the subcommittee that a central warrant team could identify outstanding warrants and that not all warrants require an individual to go before a judge.

In response to a question, Ms. Pacheco told the subcommittee that the call center is still under development but that the first phase should be complete by September 1. The call center will allow the AOC to be proactive, as reminders will be sent before an individual becomes noncompliant.

### **Criminal Record Clearance**

Representative Maestas discussed expungement legislation from 2009 that was vetoed. He informed the subcommittee that the State of Kentucky passed a law allowing low-level felony expungement in 2016. The bill was supported by the Kentucky Chamber of Commerce, which helped promote expungement as an economic issue because criminal records keep many out of work. He stated that a similar bill for nonviolent felonies could grow New Mexico's labor force and reduce recidivism.

Representative Maestas provided a brief history of expungement bills in the New Mexico Legislature, stating that several bills have been introduced since 2007 but that any bills that were sent to the governor were vetoed. These bills have differed in details such as the period of time between conviction and expungement, but all have sought to establish a basic framework for the expungement of criminal records.

In response to a question, Representative Maestas explained that the AOC and the DPS would create rules on the process of expungement. He informed the subcommittee that a nonconviction, including a nonconviction due to identity theft, could be expunged anytime.

The subcommittee discussed similar measures in other states. It was noted that felonies and misdemeanors vary by state, which can make a true comparison difficult. Representative Maestas added that some states developed their expungement laws prior to the rise of the internet, when misdemeanors did not carry the same weight and felonies were the primary focus of expungement.

The subcommittee also discussed the public's reaction to expungement legislation. It was noted that the term "expungement" may have negative connotations to some constituents, while others may view it as an opportunity to reduce recidivism and grow the economy. Representative Maestas stated that the Greater Albuquerque Chamber of Commerce (GACC) and the *Albuquerque Journal* have opposed the bill in the past; however, the executive director of the GACC is a member of the new Criminal Justice and Public Safety Task Force. Representative Maestas expressed hope that the GACC may alter its policy to a more neutral stance. A member of the subcommittee noted that the Koch brothers have publicly supported expungement, which may encourage more bipartisan support of the initiative. A member of the subcommittee expressed concern that expungement could harm public records and reduce government transparency. The member also questioned if the hearings on expungement would be included in the public record.

In response to an inquiry, Representative Maestas explained that in the proposed legislation, multiple convictions could be expunged under one incident because sometimes the same incident results in multiple charges. He also explained that the court may have discretion in granting expungement to allow for personal circumstances. Upon further questioning, Representative Maestas noted that an expunged or sealed record would allow an individual to state that he or she had not been convicted of crime without committing perjury.

### **Parole Costs Assessed to Criminal Defendants**

Daniel Barela, acting probation/parole director, Corrections Department (NMCD), referred the subcommittee to his handout (Item 5). He stated that individuals on parole or probation are assessed a \$35.00 monthly fee to be paid to the NMCD. Two million five hundred thousand dollars of the NMCD's operating budget should come from these fees; however, in fiscal year 2018, only \$2.18 million was collected.

Mr. Barela informed the subcommittee that the NMCD also collects fees to be distributed outside of the department. These include restitution payments, DNA fees and court fines. Restitution is always paid first if payments to multiple recipients are required. Fees are collected monthly as cashier's checks or money orders and are processed by two full-time employees. Mr. Barela stated that nonpayment of the required costs is a violation of parole or probation, but many individuals do not have jobs and, thus, have no source of income from which to pay fees and fines. Probation and parole officers encourage individuals to pay what they are able; the officers are responsible for assessing a person's ability to pay. Officers can request a waiver or modification to fees or restitution agreements.

Mr. Barela explained that individuals who have not fully paid their restitution amounts before supervision ends are expected to sign a promissory note. A copy of the promissory note is placed in an individual's file and sent to the victim. If an individual refuses to sign the promissory note, the matter will proceed to court.

Mr. Barela told the subcommittee that the NMCD also collects a monthly fee of \$35.00 from individuals involved in community corrections. He stated that numerous individuals participate in specialized programs through community corrections and that the fee supports those programs.

In response to questions from the subcommittee, Mr. Barela said that approximately 17,000 individuals are on probation or parole. While New Mexico statutes state that the NMCD can impose parole and probation fees of between \$25.00 and \$150, increasing the cost would not significantly increase the amount of money collected. Mr. Barela stated that more than one-half of the individuals involved lack social and family support, including housing and jobs, which can make fee collection difficult. He noted that approximately one-half of the population in question have issues with substance abuse and job skills and that the NMCD offers mental health services to offenders, but participation is low. He also stated that mental health resources are limited in the southern portion of the state because there are few providers available.

In response to a member's inquiry on programs offered by other states or by the federal government, Mr. Barela said that what has worked elsewhere may not work in New Mexico because of limited resources and a lack of data. He noted that the NMCD recently implemented the Correctional Offender Management Profiling for Alternative Sanctions (COMPAS) risk and needs assessment tool, which will provide data for comparison with other states in approximately three years. The NMCD has also partnered with the Pew Research Center to create an inventory of programming. The subcommittee member requested that Mr. Barela look into programs that might work for New Mexico and provide a contact for the program, as well as a possible cost.

In response to a question, Mr. Barela explained that about one-half of the individuals required to pay probation or parole fees are noncompliant. He stated that there are no meaningful consequences for noncompliance, but he expressed a belief that a law allowing fees to be based on a sliding scale might be more effective than a flat fee rate.

The subcommittee discussed possible topics and schedules for later meetings.

### **Adjournment**

There being no further business before the Criminal Justice Reform Subcommittee, the subcommittee adjourned at 3:36 p.m.

**TENTATIVE AGENDA  
for the  
SECOND MEETING  
of the  
CRIMINAL JUSTICE REFORM SUBCOMMITTEE**

**August 10, 2018  
State Bar Center  
5121 Masthead NE  
Albuquerque**

**Friday, August 10**

- 9:30 a.m.           **Call to Order and Introductions**  
—Senator Sander Rue, Co-Chair  
—Representative Antonio Maestas, Co-Chair
- Action Item: Approval of Minutes of July 18 Meeting*
- 9:45 a.m.       (1)    **[Using Data Analytics to Improve New Mexico's Public Safety and Criminal Justice Outcomes](#)**  
—M. Murat Ozer, Ph.D., University of Cincinnati Institute of Crime Science (UCISC)  
—Jamie Newsome, Ph.D., UCISC  
—Daniel Gerard, M.S., UCISC
- 11:00 a.m.       (2)    **[Draft Uniform Criminal Records Accuracy Act](#)**  
—John P. Burton, Attorney, Rodey, Dickason, Sloan, Akin & Robb, P.A.;  
Commissioner, Uniform Law Commission
- 12:00 noon       **Lunch**
- 1:15 p.m.       (3)    **[Chart of Crimes and Penalties](#)**  
—Celia Ludi, Staff Attorney, Legislative Council Service (LCS)  
—Magdalena Kephart, Law Student Intern, LCS
- 1:30 p.m.       **Discussion of Possible Legislation**
- 2:30 p.m.       **Public Comment**
- 2:45 p.m.       **Adjourn**



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

**August 10, 2018  
State Bar Center  
5121 Masthead Street NE  
Albuquerque**

The second meeting of the Criminal Justice Reform Subcommittee of the Courts, Corrections and Justice Committee was called to order by Representative Antonio Maestas, co-chair, on August 10, 2018 at 9:37 a.m. at the State Bar Center in Albuquerque.

**Present**

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

**Absent**

Sen. Richard C. Martinez

**Guest Legislator**

Sen. Bill B. O'Neill

**Staff**

Celia Ludi, Staff Attorney, Legislative Council Service (LCS)  
Randall Cherry, Staff Attorney, LCS  
Erin Bond, Research Assistant, LCS  
Magdalena Kephart, Law Student Intern, LCS

**Guests**

The guest list is in the meeting file.

**Handouts**

Handouts and other written materials are in the meeting file.

**Friday, August 10**

**Call to Order and Introductions**

Representative Maestas welcomed everyone to the meeting, and the subcommittee members and staff introduced themselves. Representative Maestas also recognized retired New Mexico Supreme Court Justice Edward L. Chavez in the audience.

**Using Data Analytics to Improve New Mexico's Public Safety and Criminal Justice Outcomes**

Daniel Gerard, M.S., director of operations, Institute of Crime Science (ICS), University of Cincinnati, was joined by M. Murat Ozer, Ph.D., research associate, ICS, and Jamie Newsome, Ph.D., research associate, ICS. Mr. Gerard introduced himself and his colleagues, stating that he recently retired from the Cincinnati Police Department (CPD), where he served as a district commander and was directly responsible for police operations in a 20-square-mile area with more than 85,000 residents in 14 neighborhoods. Mr. Gerard stated that Dr. Ozer is from Turkey, where he developed counterterrorism programs, and that Dr. Newsome previously worked in a community-based correctional facility and conducted research on the causes of crime and delinquency. Dr. Newsome added that the ICS was developed to support agencies in developing research-oriented programs.

Mr. Gerard observed that most stakeholders in the criminal justice system want the system to be effective, efficient and equitable. The system must be able to effectively deal with emotionally charged events, efficiently use limited resources to solve problems and equitably serve all people in a transparent manner.

Mr. Gerard explained that researchers and governments traditionally look at large areas, such as precincts and districts or cities and counties. This makes the specific underlying causative factors of increased criminal justice system activity more challenging to analyze. Thus, criminal justice systems often treat symptoms and do not address the underlying problems.

Mr. Gerard informed the subcommittee that crime is not randomly distributed, citing as an example a "hot spot" study of Minneapolis that concluded that 3% of the city's addresses generated 50% of calls for service to the police and that a small number of serious chronic offenders account for an overwhelming majority of crimes. Mr. Gerard added that 10% of men account for around 66% of the crimes committed by men, while 10% of women account for 59% of crimes committed by women.

Mr. Gerard commented that most shooting victims and suspects shared characteristics, including low levels of education, poor social skills and fractured families, noting that the effects of street life compound over time for both individuals and families and are exacerbated by the lack of legal economic opportunities, causing individuals to turn to illegal activities, such as drug dealing.



Mr. Gerard informed the subcommittee that in 2015, 50% of gun homicides in the United States occurred in just 127 cities and towns, even though those cities and towns collectively contain less than 25% of the population, and the individual neighborhoods where these homicides occurred make up an area only 42 miles wide by 42 miles long. In comparison, the contiguous United States is 2,802 miles wide by 1,650 miles long.

Mr. Gerard explained how data analytics programs developed by Dr. Ozer allowed the CPD to identify specific neighborhoods where particular crime rates are higher and, further, to identify the individuals involved. Turning criminal justice data into actionable intelligence can be difficult, however. Raw data is produced by many criminal justice system players, including police officers, prosecutors, judges and magistrates, correctional officers and post-release authorities, and may be housed in many individual databases that are maintained by different agencies and are not linked. Analytical approaches collect and condense the data from different sources and make patterns easier to identify. The ICS data visualization program has the ability to link people and places using information from a variety of sources and can process an unlimited number of records. The program can clearly display analyzed information in an easily actionable format. To implement a similar program in New Mexico, the ICS would need data and a memorandum of understanding for future data access. A process would also need to be in place to allow the ICS to remotely acquire agency data at regular intervals.

Dr. Ozer then demonstrated the ICS analytics program using a density map that displayed all of the crimes reported in Cincinnati in the previous 60 days. The density map uses data that autopopulates nightly from police databases. The map can center on areas of interest, such as neighborhoods, streets and buildings; a specific incident may also be selected to display details from applicable reports. In addition to the current data, the program also contains information derived from reports on every police contact in the area in the past five years. The data can be sorted to display demographic groups or to identify common contacts between individuals to create degrees of separation diagrams. These diagrams can be used to determine who is at the center of a criminal organization and who might be an effective informant.

The diagrams have also been used by overdose response teams to reach out to friends and acquaintances of people who have suffered drug overdoses. This allows law enforcement officers to proactively identify and offer services to individuals who might also be at risk for a drug overdose in the future. Mr. Gerard observed that in situations without analytics, an individual may have to overdose before police know that intervention is needed. He noted that the program also allows local law enforcement to track and predict the movement of drug overdoses and violence throughout the city and state, and areas in the likely path of a crime wave could be given time to train and warn the public and officers. For example, the data analytics program has shown that Cincinnati typically runs eight days behind a crime wave in Louisville, Kentucky, while Ross County, Ohio, has been observed to trail Cincinnati by two weeks. This knowledge, and the sharing of information, allows Cincinnati and Ross County to prepare more effectively to prevent similar crimes.

Mr. Gerard pointed out that the analytics program can also be used in correctional facilities to track patterns of violence. For example, staff could not understand the reason for sudden regular spikes in violent incidents among juveniles residing in a facility of the Ohio Department of Youth Services. Application of the analytics program determined that the violence coincided with the release of educational programs, times when individuals who would not otherwise be permitted to interact encountered each other in hallways. In another instance, the program's social network analysis showed that a juvenile bystander who witnessed but was not directly involved in approximately 20 violent incidents was, in fact, the leader of the group instigating violence. He was transferred to another location, and the violence rates decreased. The program also identified times of understaffing and dangerous locations within the facilities.

In adult facilities, Mr. Gerard continued, the ICS analytics program has been used to study behavioral health needs. Recidivism rates for treatment programs can be tracked to determine the best practices. Average recidivism rates can be produced for a specific treatment modality as well.

Mr. Gerard concluded that the power of data analytics is the ability to focus on the people committing crimes, rather than waste resources on surveillance of whole communities of generally law-abiding people. Instead of targeting entire neighborhoods because of high crime rates, the knowledge that most residents were not only not involved but were likely to be victims, and that most of the crimes were committed by a few people who could be identified and removed, allowed police to focus their resources on wrongdoers and made the neighborhoods safer and their residents more trusting of police. Mr. Gerard remarked that, in approximately three and one-half years of applying data analytics in Cincinnati's District 3, there had been a significant reduction in violent crimes because police attention was focused on the appropriate targets, rather than the community at large, and the public became allies of the police instead of adversaries in the fight against crime.

In response to questions from the subcommittee, Mr. Gerard explained that the analytics program's data begins with reports filed by law enforcement officers. Every report that officers produce is deposited nightly to the program. Other criminal justice system agencies add data as cases proceed through the system. Implementing the program on a statewide basis in New Mexico would likely require criminal justice data from the last five years from many criminal justice agencies. If the ICS were engaged to implement the program in New Mexico, the ICS team would assist with training and programming, and the program could immediately produce maps and analyses of the data. Ideally, a central data repository would be established and housed in a politically neutral entity. Agencies would be responsible for providing data to the repository, and the repository would provide training in return. Mr. Gerard affirmed that the program is reliant upon good data and trained users, and he noted that the program was designed with that in mind. He cautioned that statewide implementation in Ohio has been difficult because law enforcement agencies are often reluctant to share data with perceived outsiders. However, he has observed that New Mexico agencies seem to be more receptive to information sharing than their Ohio counterparts. Mr. Gerard remarked that, compared to similar programs used in San

Francisco, the ICS analytics program is more affordable and more focused on state data rather than international crime.

In reply to an inquiry, Mr. Gerard explained that completely eliminating drug abuse would be difficult because a new substance inevitably emerges while the previous problem drug is being dealt with. In addition, reasons for drug abuse are often complex; for example, underserved dental areas often have high rates of opiate abuse because painkillers such as Percocet may be repeatedly prescribed in place of dental surgery because a person lacks dental care insurance. While there is a correlation between drug use and crime, Mr. Gerard said he believes that efforts to eliminate drug use may not be the most efficient method of reducing crime.

In response to questions, Mr. Gerard discussed the use of data analytics in the courtroom. Judges must be educated to understand and use the program but seem receptive. Reactions from defense attorneys have been mixed, but there is a feeling that defendants have labeled themselves as violent offenders by their actions; data analytics has simply consolidated those actions into data points. Anecdotally, potential witnesses are more likely to come forward when they see that law enforcement is targeting the perceived threat and not the community at large.

Mr. Gerard informed the subcommittee that his team has already met with many New Mexico stakeholders, including the Albuquerque Police Department, the Criminal Justice and Public Safety Task Force, the Corrections Department and the Greater Albuquerque Chamber of Commerce safety committee. He noted that his team has been invited to return for a meeting with Tim Keller, mayor of Albuquerque.

### **Draft Uniform Criminal Records Accuracy Act**

Representative Maestas introduced Jack Burton, commissioner, Uniform Law Commission (ULC), stating that the ULC drafts and proposes specific statutes in areas of the law where uniformity between the states is desirable.

Mr. Burton informed the subcommittee that several legislators are also members of the ULC: Representative Cook, Representative Maestas, Senator McSorley and Senator William H. Payne. Not all of the bills that the ULC drafts are meant for every state, and experts in New Mexico are currently evaluating whether the Uniform Criminal Records Accuracy Act is appropriate for New Mexico to improve the accuracy of criminal records for both law enforcement and civil purposes such as employment or housing background checks.

Mr. Burton stated that the act consists of the following eight articles:

- Article 1 establishes definitions and could be tailored to meet New Mexico's laws regarding criminal records.
- Article 2 requires contributing justice agencies, such as police departments and courts, that discover they possess inaccurate criminal history records to correct their records,

- notify the central repository of the necessary correction and notify any other contributing justice agencies of the necessary correction.
- Article 3 establishes and sets out the responsibilities of the central repository.
  - Article 4 contains provisions that allow individuals to correct their erroneous criminal history records, which are more detailed than those under existing New Mexico law.
  - Article 5 establishes a mistaken identity prevention registry designed to prevent mistakes such as the inaccurate modification of criminal history records and confusion of an individual with another individual. The registry would allow an individual with a common name or a stolen identity to obtain a certificate that the individual is not a specified individual with a similar name or identifying characteristic who is the subject of criminal history record information.
  - Article 6 requires the central repository to establish procedures related to systems security. It also requires the state auditor to conduct annual audits of a sample of contributing justice agencies and triennial audits of the central repository.
  - Article 7 provides a method of enforcement and implementation, including damages to subjects injured by an intentional or reckless violation of the act.
  - Article 8 consists of miscellaneous provisions, such as repeals and severability.

Mr. Burton suggested three possible courses of action for the legislature. First, the act could be adopted in its entirety or piecemeal, in a form most appropriate for New Mexico. Second, because the act is new and has yet to be adopted by other states, New Mexico could wait and study other states' courses of action. Third, the legislature could decide that no action is needed.

Philip Larragoite, deputy chief public defender, Law Offices of the Public Defender, who is also a ULC commissioner, remarked that the draft is less than one month old and has not yet been adopted by any state. He suggested that it should be carefully studied to ensure that it does not conflict with existing law, such as the Inspection of Public Records Act. He recognized that the integrity of data is key and suggested that New Mexico does not need to be the first state to adopt the Uniform Criminal Records Accuracy Act.

In response to a question, Mr. Burton stated that while the use of a single identification number for people in the criminal justice system to reduce misidentification was studied by the drafting committee, it was not included in the act. Mr. Burton noted that because some states recover criminal justice costs by selling information to employers for background checks, the bill was drafted to allow the central repository to provide corrected information to employers and landlords free of cost.

Members of the subcommittee supported the need for a process to correct errors in criminal records but stressed that any legislation must fit New Mexico's needs. More study of the legal and governmental ramifications of the draft, including its fiscal impact, is needed.

Paul Haidle, senior policy strategist, American Civil Liberties Union of New Mexico (ACLU-NM), informed the subcommittee that the federal Fair Credit Reporting Act governs background checks on a federal level and requires a credit reporting agency to correct an individual's background check if inaccurate data is reported. Mr. Haidle stated that he believes the proposed act would allow an individual to repair the mistake at the source, rather than needing to correct each erroneous background check individually. Mr. Larragoite noted that having a certificate of correction would limit confusion if internet searches yield incorrect results after correction at an agency level.

### **Chart of Crimes and Penalties**

Ms. Ludi and Ms. Kephart presented a chart of the crimes and penalties listed in Chapter 30 NMSA 1978. Ms. Ludi explained that Ms. Kephart reviewed the entire compilation of statutes to identify offenses that carry a criminal penalty, and she noted whether an offense was violent or nonviolent. The chart for Chapter 30 NMSA 1978 has been through the LCS's internal proofreading process; the remainder of the compilation is still in process. The completed work will be made available through the LCS. Ms. Ludi pointed out the notation "Draft" at the top of every page, adding that while every effort has been made to ensure accuracy, it cannot be guaranteed that there are no errors and any errors are inadvertent and not purposeful.

In response to questions from the subcommittee, Ms. Kephart stated that violent and nonviolent crime determinations were made based upon the behavior as described in statute. Some crimes are listed as violent or nonviolent due to vague language in the statutes. Ms. Kephart noted that there is no definition of a violent crime in Chapter 30 NMSA 1978, but Section 33-2-34 NMSA 1978 lists crimes considered serious violent offenses that would restrict a prisoner from earning meritorious deductions.

At a member's request, Ms. Kephart explained that some chapters, such as the Motor Vehicle Code and Department of Game and Fish regulations, have their own penalties, while some offenses have unique penalties. Some unique penalties are based on the amount of money involved, such as money laundering. She noted that unique penalties, as well as habitual offender sentencing, can be confusing for the public to understand. Mr. Haidle commented that unique penalties and discrepancies in penalties in the same tier are not unusual. Douglas Carver, deputy director, New Mexico Sentencing Commission (NMSC), agreed, adding that ad hoc criminal codes are problematic nationwide.

### **Discussion of Possible Legislation**

Members of the subcommittee discussed possible approaches to legislative criminal justice reform. Topics included:

- the need for more standard and parallel penalties for offenses;
- the need for penalties to be established on consistent standards;
- judicial discretion in sentencing;
- comparing statutes with jury instructions created by the New Mexico Supreme Court;

- whether piecemeal or comprehensive reforms are most suitable for New Mexico;
- the study of penalties as effective deterrents;
- the public's opinion of criminal justice reform; and
- the need for up to four additional subcommittee meeting days and one additional meeting day for the Courts, Corrections and Justice Committee to discuss a criminal justice reform legislative package.

Mr. Carver noted that the NMSC could be requested, via letter, to research topics related to sentencing.

### **Public Comment**

Bill Zonko informed the subcommittee that he moved to New Mexico in 2002, after he retired. Before retirement, Mr. Zonko developed treatment centers in New Jersey. He expressed concern that the criminal justice system in New Mexico seems to focus on imprisonment and does not recognize that many individuals suffer from mental illnesses that require treatment. Mr. Zonko believes that treatment and rehabilitation are superior alternatives to imprisonment and expressed support for substituting treatment for incarceration.

Mr. Haidle spoke on behalf of the ACLU-NM, expressing concern that algorithms used in data analytics and crime prediction are often biased based on race and poverty. He referred to the example of Chicago, which was an early adopter of "big data" analysis. Chicago used the social media accounts of gang members to identify other possible members. The database wrongly identified many individuals, who then had a harder time landing jobs and were often targets of police harassment. Because the database was internal, disputing incorrect labels was difficult, if not impossible. Mr. Haidle stated that systems using big data analysis will need accountability and transparency to avoid abuse. He also noted that big data companies often use trademark law to support secrecy and stated that intellectual property protection should not creep into criminal law.

Denicia Cadena, policy director, Young Women United, addressed the Human Service Department's (HSD's) "HHS 2020" initiative, an effort to integrate access to public benefits offered through the HSD and other agencies. The program would use data from New Mexico residents and students, but it is unclear if the data would be used for analytics. The HSD believes that improving technology will save money and simplify governmental services.

### **Adjournment**

There being no further business before the subcommittee, the second meeting of the Criminal Justice Reform Subcommittee adjourned at 3:30 p.m.

Revised: August 23, 2018

**TENTATIVE AGENDA  
for the  
THIRD MEETING  
of the  
CRIMINAL JUSTICE REFORM SUBCOMMITTEE**

**August 24, 2018  
Albuquerque City Hall  
City Council Committee Room 9081  
1 Civic Plaza NW  
Albuquerque**

**Friday, August 24**

- 9:00 a.m.           **Call to Order and Introductions**  
—Senator Sander Rue, Co-Chair  
—Representative Antonio Maestas, Co-Chair
- Action Item: Approval of Minutes of July 18 and August 10 Meetings*
- 9:30 a.m.           (1) **[Review of Bernalillo County Criminal Justice System](#)**  
—Jon Courtney, Ph.D., Program Evaluation Manager, Legislative Finance  
Committee (LFC)  
—Travis McIntyre, Ph.D., Program Evaluator, LFC
- 10:30 a.m.           (2) **[City of Albuquerque \(CABQ\) Updates](#)**  
—Harold Medina, Deputy Chief, Albuquerque Police Department (APD)  
—John Ross, Chief of Staff, APD  
—Eric Garcia, Deputy Chief, APD  
—Jeremy Schmehl, Assistant City Attorney, CABQ  
—Lindsay Van Meter, Assistant City Attorney, CABQ
- 12:00 noon           **Lunch**
- 1:30 p.m.           (3) **[Bernalillo County Behavioral Health Initiative](#)**  
—Julie Morgas Baca, County Manager, Bernalillo County  
—Katrina Hotrum-Lopez, Behavioral Health Director, Bernalillo County
- 2:00 p.m.           (4) **[Update from the Second Judicial District Attorney's Office](#)**  
—Raúl Torrez, District Attorney, Second Judicial District
- 3:00 p.m.           (5) **[Update from Second Judicial District Court \(SJDC\) Regarding  
Elimination of Grand Jury in Favor of Preliminary Hearings](#)**  
—The Honorable Nan Nash, Chief Judge, SJDC  
—The Honorable Charles Brown, Presiding Criminal Court Judge, SJDC
- 4:00 p.m.           **Public Comment**
- 4:30 p.m.           **Adjourn**





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

**August 24, 2018  
Albuquerque City Hall  
City Council Room 9081  
1 Civic Plaza NW  
Albuquerque**

The third meeting of the Criminal Justice Reform Subcommittee of the Courts, Corrections and Justice Committee was called to order by Senator Sander Rue, co-chair, on August 24, 2018 at 9:05 a.m. at Albuquerque City Hall.

**Present**

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

**Absent**

Rep. Zachary J. Cook  
Rep. Jim Dines

**Guest Legislators**

Sen. Jacob R. Candelaria  
Rep. Dennis J. Roch

**Staff**

Celia Ludi, Staff Attorney, Legislative Council Service (LCS)  
Randall Cherry, Staff Attorney, LCS  
Erin Bond, Research Assistant, LCS

**Guests**

The guest list is in the meeting file.

**Handouts**

Handouts and other written materials are in the meeting file.

**Friday, August 24**

**Call to Order and Introductions**

Senator Rue and Representative Maestas welcomed everyone to the meeting, and the subcommittee members, staff and public introduced themselves. Senator Rue noted that KUNM was livestreaming the event on its Facebook page.

**Review of the Bernalillo County Criminal Justice System**

Jon Courtney, Ph.D., program evaluation manager, Legislative Finance Committee (LFC), and Travis McIntyre, Ph.D., program evaluator, LFC, presented the LFC's review of the criminal justice system in Bernalillo County, which was completed on July 19, 2018 (Item 1). Dr. Courtney informed the subcommittee that crime is expensive and that the high incidence of crime in Bernalillo County, and the state as a whole, prompted the courts and criminal justice agencies to seek significant funding increases during the 2018 legislative session. Albuquerque has gone from experiencing the lowest crime rates in its history in 2010 to its highest historical crime rates in 2017. Crime in similar cities and nationwide decreased during that same time period. In response to a request from the Second Judicial District, the LFC launched a comprehensive evaluation of the Bernalillo County criminal justice system.

Dr. Courtney stated that Albuquerque reports the largest number of crimes of any city in the state; however, Belen, Taos, Gallup and Espanola have experienced higher total crime rates than Albuquerque. Dr. Courtney noted that reported crime is an underrepresentation of total crime because many crimes go unreported. Certain crimes, such as motor vehicle theft, are more likely to be reported, most likely for insurance purposes. Other crimes, such as rape or larceny, may go unreported, so Albuquerque's total crime rate is likely higher than reported crime data might imply.

Dr. Courtney noted that the Bernalillo County criminal justice system has not kept pace with increased crime, particularly in and after 2015. As crime began to increase in 2010 and continued to rise through 2017, indictments and convictions actually decreased. The system was further burdened by slow case processing times in the courts and a period of overcrowding at the jail.

More than 25 shootings, many fatal, and other high-profile uses of force by Albuquerque Police Department (APD) officers led the U.S. Department of Justice (DOJ) to begin an investigation of the APD in 2012. After a two-year investigation, the DOJ found that the APD had a pattern or practice of unconstitutional use of excessive force. The city and the DOJ signed a court-approved settlement agreement (CASA) in November 2014 that requires reforms in the APD, including instituting and following better internal controls and accountability, revising training regarding the use of force and using a community policing approach. While the APD has worked on meeting the terms of the agreement, it still lacks sufficient staffing to effectively implement some requirements. A 2015 study concluded that adequate staffing would require

1,000 sworn personnel. In 2017, the APD was 140 officers below the study's recommendations; working toward compliance with the CASA may require additional officers.

Improving staffing, Dr. Courtney continued, may also improve the APD's case clearance rate. In 2010, 90 percent of murders were cleared and the APD homicide caseload was five cases per detective. In 2017, 50 percent of murders were cleared and the APD homicide caseload was 14 cases per detective. More officers would allow for smaller caseloads and more time to be proactive using community policing methods.

Crime increased after the consent decree was signed in 2014, although the experience of other cities under DOJ consent decrees shows that such an increase is common in the first year or two after the consent decree is signed. Albuquerque matched the national trend by seeing a decrease in crime rates two years later. The reason for the increase after a consent decree is signed is not clear, but it may be due to staff learning new processes and systems or the public reporting more crimes.

Dr. Courtney explained that in addition to the APD reforms mandated by the CASA, the Bernalillo County criminal justice system as a whole has undergone a number of reforms and significant events since 2010. Most of these reforms occurred years after the rise in the crime rate began, and there is little evidence that these reforms increased the crime rate. Despite reformation efforts, problems still exist. Police are not implementing evidence-based practices, data-driven management or prevention efforts consistently. The legal system has not committed to the swift resolution of cases and has not fully used programs aimed at addressing root causes, such as drug court. Jails and prisons have not adequately prepared inmates for reentry into the community, which has increased recidivism rates. Overall, there has been little coordination across the criminal justice system. Dr. Courtney noted that the Bernalillo County Criminal Justice Coordinating Council (BCCJCC) has existed in various forms since 2013, but various members have not until recently consistently attended meetings.

Dr. Courtney explained that the combined criminal justice system in Bernalillo County consists of more than a dozen independent federal, state and local law enforcement, jurisprudence and incarceration agencies and 10 boards, councils, committees and consortiums that provide oversight and advice. Various components of the criminal justice system in Bernalillo County have received increased funding in recent years. In fiscal year 2018, local and state governments spent nearly \$500 million on criminal justice system agencies in Bernalillo County. Approximately 50 percent of the total funding went to law enforcement, 38 percent to incarceration and 12 percent to the judiciary, with local government providing 60 percent and state government providing 40 percent of the funding.

Determining the causality of crime is challenging, but deteriorating social conditions after the Great Recession in 2008 are likely contributors to the increase in Bernalillo County crime. While the poverty rate since 2010 for families has only risen a few percentage points for the entire county, some neighborhoods in Albuquerque have experienced enormous changes. The

highest crime area in the state, Census Tract 21 in Albuquerque, has seen the largest increase in families living in poverty. Poverty and working-poverty rates in Albuquerque are consistently higher than national averages. The rise in crime has coincided with increasing levels of unemployment, poverty, homelessness, income inequality, drug use and gun use.

However, Dr. Courtney expressed hope for the situation. Reported crime in Albuquerque peaked in August 2017 and is now trending downward. In June 2018, Albuquerque saw the lowest levels of crime since February 2016. Crime began to decrease in November 2017, around the time Albuquerque's unemployment rate dropped to 5.2 percent, which is considered "full employment" by the Federal Reserve System. Dr. Courtney cautioned that the potential for failure remains if reform efforts do not continue.

The LFC recommended four evidence-based crime reduction strategies for law enforcement. First, police should be proactive, and not reactive, in the prevention of crimes. Second, police should focus on places, not solely on people. Third, police actions should be tailored to identifiable problems. Fourth, police should facilitate civilian trust and confidence.

Dr. Courtney provided models that use these strategies, including Law Enforcement Assisted Diversion (LEAD) programs, community policing and hot-spot policing. LEAD diverts low-level offenders away from costly jail and prosecution into case management and treatment services. Community policing is the systemic use of partnerships to proactively address public safety issues through problem-solving techniques. Trust is built as officer downtime is used to strengthen relationships via community meetings and personal follow-up visits. Hot-spot policing focuses on small geographic areas and groups of people among which there is a high concentration of crime. These programs are not mutually exclusive, Dr. Courtney continued, but can be challenging to implement and are dependent on adequate staffing and training.

Dr. McIntyre discussed problems and possible improvements in the Bernalillo County legal system. Starting in 2009, felony prosecution outcomes in the Second Judicial District Court (SJDC) significantly lagged behind the rest of the state and national standards. The time to dispose of felony cases in the Second Judicial District was more than 11 months; the national standard is six months.

In February 2015, to align the SJDC more closely with national standards, the New Mexico Supreme Court adopted a case management order (CMO) with strict time requirements for each stage of legal proceedings after a case is filed in court. The CMO has reduced the time to dispose of felony cases to five months, but it may have also created new problems. Up to 438 dismissals in 2016 could be attributed to failure to comply with the CMO. The New Mexico Supreme Court has since revised the CMO to relax some deadlines.

Timeliness and overall efficiency could also be improved if more preliminary examinations were used instead of grand juries at the beginning of a case. The majority of cases can be disposed of by a plea at a preliminary examination instead of requiring several subsequent

court appearances after a grand jury indictment, thus saving the resources of the court, the prosecutor and the defense. However, because of the district attorney's preference to rely on grand jury proceedings instead of preliminary examinations, the transition could create challenging shifts in the district attorney's workload.

In addition to the improvements to timeliness of case dispositions, Dr. McIntyre reviewed other court system reforms that can have positive impacts on criminal justice and public safety in Bernalillo County. Specialty courts, such as drug court, can help address the root causes of problems and produce low recidivism rates, but participation has plummeted in recent years.

Reducing reliance on pretrial detention also reduces recidivism, as the likelihood of incurring a new felony arrest consistently increases for each day spent in jail, until it levels off after five days. Pretrial detention can also result in the loss of an individual's stability-providing structures, such as employment, housing and relationships, which can also increase the likelihood of an individual committing new crimes. Successful pretrial release, however, is dependent on evidence-based pretrial services that meet best-practices standards. A 2014 study by the New Mexico Sentencing Commission (NMSC) concluded that the SJDC's Pretrial Services Division did not employ best practices consistently. Since then, the court has made significant changes in accordance with NMSC recommendations.

Dr. McIntyre stated that relatively few individuals are responsible for the majority of felony arrests. Individuals with several arrests make up a small percentage of total individuals involved in the justice system but are responsible for a larger percentage of all arrests. The vast majority of multiple felony offenders are sent to prison, but it often takes several alleged offenses before an individual is fully prosecuted and convicted. When convictions do occur, a greater percentage of violent felons are indicted and convicted than nonviolent offenders.

An increase in felony indictments occurred when the APD and the second judicial district attorney hired paralegals to compile evidence substantiating the police reports for the district attorney's office. Improvements were also seen as the district attorney's office prioritized more cases. Dr. McIntyre noted that the changes were too recent to analyze differences in rates of conviction.

Dr. McIntyre stated that the Metropolitan Detention Center (MDC) and the Corrections Department have both seen a decrease in their inmate populations due to reforms, although their budgets and staffing have not decreased. Dr. McIntyre also stated, however, that the MDC often releases inmates during non-business hours and does not connect inmates with services in the community. Reasons for the release times include awaiting shift changes and associated lockdown times. Reforms have been instituted, including the Resource Reentry Center (RRC), which connects inmates to services and other resources.

Dr. Courtney reviewed the LFC's key recommendations.

- The legislature should consider legislation that minimizes the financial burden for specialty court participants; establishes basic requirements for pretrial services, including the use of best practices; and encourages sharing criminal justice data between agencies while still complying with federal law.
- Law enforcement agencies should direct officers to spend downtime to focus on people, hot spots and problems identified by the Real Time Crime Center (RTCC); study and improve staffing goals; and use the RTCC more consistently to map crime and identify hot spots.
- The courts should implement pretrial services and increase use of specialty courts.
- Incarceration agencies should implement reliable risk and needs assessments that are transmitted to the RRC for use upon release; increase the number of inmates released during business hours; and ensure that key RRC staff members are available around the clock.
- Bernalillo County and the City of Albuquerque should invest in the BCCJCC, which in turn should develop metrics to measure criminal justice system performance, foster the use of evidence-based practices and coordinate the use of resources between agencies.

In response to a question from the subcommittee, Dr. Courtney confirmed that stakeholders have been made aware of the study's findings and that the LFC has specifically met with the district attorney's office. He noted that agency responses from the APD, the second judicial district attorney, the SJDC and Bernalillo County are included as appendices to the report.

Members of the subcommittee recognized that the economic hardships following the Great Recession had a large impact on the increase of crime in Bernalillo County, both for residents and for agencies with reduced budgets. They acknowledged the need for both short-term and long-term goals to address the problem and expressed hope that standing committees in both chambers would examine criminal justice reform in the 2019 legislative session.

Responding to a member's question, Dr. McIntyre and Dr. Courtney explained that the use of data analytics in New Mexico for criminal justice purposes is still in the early stages. Dr. McIntyre commented that criminal justice data predating 1985 is often unavailable, but efforts to collect data from agencies involved in all aspects of the criminal justice system are under way to improve the basis for using data analytics programs. He added that the RTCC does use data from social media sites, such as Facebook, to supplement its data. Dr. Courtney observed that the RTCC has goals similar to the University of Cincinnati's data analytics program and that Bernalillo County is studying how to automate and analyze more data.

### **City of Albuquerque Updates**

Eric Garcia, deputy chief, APD, updated the subcommittee on the changes at the APD under Chief Mike Geier, including adjusting the staff organization to be less top heavy; realigning executive positions to use employee talents; creating the Compliance Bureau; and

increasing internal accountability. The top priorities of the new administration are crime prevention and reduction through recruitment and retention of well-trained staff, community policing and implementing the CASA. Challenges have included low morale, high crime rates, understaffing and poor relationships both within the department and with the community.

Deputy Chief Garcia stated that he leads the Compliance Bureau, which was established to bring the APD into compliance with the CASA. The independent monitor for the CASA, Dr. James D. Ginger, identified six areas in which the APD was in deliberate noncompliance with the CASA. In response, the Compliance Bureau created a compliance plan with a deadline of June 2018. The APD has met 88 of the 91 tasks. The remainder will be entered in a new compliance plan and identified as continued priorities.

Deputy Chief Garcia explained that one of the greatest changes was in the policy regarding the use of force. The previous policy procedures were difficult for officers and supervisors to understand. Training was inconsistent, and it varied among each class of cadets. The updated policy established three levels of use of force, which is more stringent than other nationwide policies. Level one force is simple use of force. It is not considered "force" in most parts of the country and includes actions such as physically pulling an individual's hands for handcuffing during an arrest. Level one force is reviewed and documented, but it will not typically be investigated. Level two force causes injury. Level three force results in serious injuries or fatalities. Use of both level two and level three force will be investigated by use-of-force investigation teams from the Compliance Bureau. Previously, use-of-force investigations were conducted by supervisors, requiring many hours of office work. Under the new investigation procedure, an independent bureau will investigate and supervisors will be out with their teams. They will be held accountable for officers' actions and for ensuring that their officers are appropriately trained.

Deputy Chief Garcia commented that changing the APD's culture is the most difficult challenge. Rank-and-file officers were included in the policy revision decision-making process, but they must understand and embrace the changes, rather than deny that problems exist. Clear expectations must be set so that officers feel secure in doing their jobs. Other efforts will include training officers and using data analytics to improve day-to-day policing.

Harold Medina, deputy chief, APD, further explained the APD's reform efforts. He observed that when the CASA was signed, Albuquerque was suffering from high crime rates. As of June, significant reductions have been made, especially in auto theft and residential theft. Despite other reductions in crime, however, homicides have not decreased. He emphasized the need to invest resources in the appropriate areas, especially the areas identified by the RTCC. By looking at data in new ways via the RTCC, it was discovered that individuals who are arrested for automobile theft often had other unrelated outstanding warrants. Another reform is centralizing all investigation units, which ensures that efforts are not duplicated. This has also improved relations with the courts, as one case file can be submitted by the APD rather than many files. The APD has also hired six paralegals to collect evidence supporting officers' reports

and to prepare discovery for cases. Officers often do not have the skills or time to fully build a court case. With increased communication and the use of paralegals, fewer felony cases have been dismissed and officers are able to return to the field. Another change is that rather than engage in high-speed chases with potentially dangerous individuals, the APD is now able to track stolen vehicles via air surveillance, and when a vehicle is abandoned, officers can pursue the suspect on foot. Additional progress can be made by focusing on reducing domestic violence and treating narcotic abuse and behavioral health issues without criminalizing them.

Deputy Chief Medina stated that recruitment and retention continue to be a top priority for the department. While the 2015 staffing study indicated that 1,000 officers would be required, current trends indicate that even more officers will be necessary. The budgeted hires should be filled by January 2019, but the APD will request funding to hire an additional 50 officers by July 2019. The APD would like to hire 100 new officers every year for the next four years. In addition, all of the public safety aide (PSA) positions are currently filled and 30 applicants are currently waitlisted at the APD academy. The APD is working with Central New Mexico Community College (CNM) to establish a satellite academy in an effort to move officer training to colleges. To help with retention, the APD has added career development paths and created three levels of street police officers.

Deputy Chief Medina explained that community policing, in contrast to simple public relations, requires long-term communication and relationship-building. The goal of community policing is to build healthy communities by identifying the needs of an area and tailoring police responses accordingly. As problems such as homelessness and lack of youth engagement are solved, crime will decrease and neighborhoods will be safer. One initial step in establishing the community policing approach is developing a program that assigns one officer to each city block so that residents will come to associate the assigned officer with the neighborhood and develop positive relationships with that officer. The APD has also expanded its social media presence to increase public awareness.

In response to questions from the subcommittee, Deputy Chief Medina explained that the APD currently has 850 officers, approximately 400 of whom are uniformed officers on the street. Other officers are assigned to the tactical section or as detectives, or they work in the Compliance Bureau. There are 35 cadets currently in the police academy and 29 recent lateral hires. Another lateral class will begin in November, and there has also been enough lateral interest to staff another class in the academy. There are typically two basic classes a year, but CNM's academy could increase the number of classes. The waitlisted PSA applicants have passed their background checks and are waiting for positions to open or be created. Deputy Chief Medina explained that PSAs are often 18 to 20 years old. They are interested in becoming officers but are also attending school. The position costs approximately one-half the cost of an officer and is often referred to as "an administrative aide on wheels".

Members of the subcommittee expressed concern that lateral hiring is taking officers from other communities around the state rather than bringing in new people. Deputy Chief



Medina recognized the concern and said that the APD encourages more local youth to consider law enforcement as a career.

In response to subcommittee members' questions, Deputy Chief Medina explained that the APD's use-of-force policy is not dissimilar to nationwide policies. However, the APD previously had difficulties in documentation and review. The new policy helps the department use force only when necessary and requires scrutiny of level 2 and 3 uses of force.

Deputy Chief Medina agreed with a subcommittee member that a front license plate could help in the identification of stolen vehicles. He commented that crime prevention does not have a single-item solution, and many small items can help.

Jeremy Schmehl, assistant city attorney, City of Albuquerque, acknowledged that there are systemic issues that must be addressed at every level, and he expressed hope that collaborative, thoughtful work could improve the criminal justice system.

Mr. Schmehl reviewed three stages of changes made in response to the CASA: (1) policy development; (2) training; and (3) operation. Dr. Ginger created the methodology and set compliance thresholds. The City of Albuquerque and the APD developed policies to meet those thresholds. In November 2017, however, at a public hearing before a judge, Dr. Ginger revealed areas of deliberate noncompliance by the APD, primarily in regard to training at the police academy and the use of force. Dr. Ginger also found that the APD has a problem with "invisible" use of force; that is, uses of force that are not reported and reviewed appropriately. Dr. Ginger devised "a way forward" compliance plan, and Albuquerque's efforts since then have been guided by that plan. The eighth reporting period under the CASA recently concluded, and Dr. Ginger's report will be published in November.

Mr. Schmehl explained that the use-of-force general policy was clarified and raises the bar for when an officer can use force, with the standard at every level being the minimal use of force necessary. Each incident of use of force will be reviewed to determine whether the use of force was objectively reasonable under the circumstances; necessary with no reasonable alternatives; and proportional to the totality of the circumstances. Officers are also being trained on how to de-escalate situations to decrease the use of force required.

Lindsay Van Meter, assistant city attorney, City of Albuquerque, reported that in March 2017, the City of Albuquerque had settled its portion of the *McClendon vs. City of Albuquerque* class action lawsuit filed in 1995, which primarily involved allegations of poor jail conditions, including overcrowding, as well as issues related to arrests and arrest procedures. As part of the settlement, the city agreed to continue to use jail diversion strategies for nonviolent misdemeanor offenses, especially for persons with psychiatric conditions, mental illnesses or developmental disabilities. Citations and summons are to be issued rather than arresting the individual. The city also agreed to reduce jail overcrowding and evaluate whether the APD detains and arrests individuals with mental illnesses or developmental disabilities for the sole purpose of sweeping

them from the streets. In accordance with the settlement, Albuquerque reviewed its efforts and issued a final report on July 30, 2018, which is available on the city's website.

In response to a member's question, Mr. Schmehl explained that the CASA will be concluded when the independent monitor states that the necessary standards have been met or if a petition from the city shows that the standards have been met. Ms. Van Meter stated that the *McClendon* settlement will be completed when the city submits a petition showing substantial compliance.

A member of the subcommittee recognized that the policy changes are difficult and that human nature often leads to rebellion rather than compliance. The member stated that officers have improved morale because their leadership and training have set clear expectations. Several members expressed hope that the city attorney would implement a program similar to the LEAD program in Santa Fe.

Ms. Van Meter clarified that the city no longer operates the jail. However, the city has agreed to certain terms to assist individuals suffering from mental health problems. She recognized that the situation is complicated, but the city has found that 54 percent of crisis intervention team (CIT)-related calls for service have resulted in minimal or no law enforcement action needed, and 42 percent of CIT-related calls for service have resulted in individuals being transported to hospitals. Approximately four percent of calls result in an arrest, citation or summons.

### **Approval of Minutes**

The subcommittee approved the minutes of its July 18, 2018 meeting with no amendments.

The subcommittee approved the minutes of its August 10, 2018 meeting with an amendment to add the following item to the bulleted list "Discussion of Possible Legislation": "The need for up to four additional subcommittee meeting days and one additional meeting day for the Courts, Corrections and Justice Committee to discuss a criminal justice reform legislative package".

### **Bernalillo County Behavioral Health Initiative**

Julie Morgas Baca, county manager, Bernalillo County, and Katrina Hotrum-Lopez, behavioral health director, Bernalillo County, updated the subcommittee on the Bernalillo County Behavioral Health Initiative (BHI). Ms. Morgas Baca commented that there is an intersection between the criminal justice system and the behavioral health system, and the jail is often considered the largest psychiatric facility in Albuquerque. On December 8, 2017, the MDC's psychiatric services unit had 623 individuals on its caseload, or 53.5 percent of the total jail population. The Bernalillo County Sheriff's Office (BCSO) and the APD receive more than 13,000 behavioral health calls per year. Ms. Morgas Baca believes that the public recognizes the

problem, and thus, 69 percent of voters in 2014 supported a tax to create a BHI. That tax generates between \$17 million and \$20 million per year.

Ms. Morgas Baca explained that the MDC's costs have remained stable while the inmate population has decreased because significant portions of the MDC's budget are contributed to court initiatives such as the Bernalillo County Metropolitan Court drug court; public defender paralegal services; and district attorneys. While these services are not part of the prison system, they directly affect the jail's services. However, Ms. Morgas Baca stated, the spending was not sustainable and Bernalillo County and New Mexico Counties will request the state's support in funding these services in the 2019 legislative session.

Ms. Morgas Baca stated that the University of New Mexico (UNM) hospitals and Bernalillo County are working together to establish a crisis triage center that will function as a place for law enforcement officers to take people suffering from a mental health breakdown instead of taking them to jail. The center will be housed in the UNM Psychiatric Center on Marble Avenue, and the county will provide the capital funding for the project.

Ms. Hotrum-Lopez said that the BHI is meant to act as a safety net for the community. Early in the planning of the BHI, it was decided that the money raised by the tax would not be used to fund existing services, even if those services are underfunded. Instead, the money would be used to develop a continuum of care not otherwise funded in New Mexico that will increase public safety and result in cost savings, decreases in unnecessary emergency room visits and reduced negative interactions between law enforcement and individuals living with mental illnesses. Tax revenue was not spent quickly, which drew criticism from those looking for immediate payouts, but the BHI wants to ensure that any programs developed would be long term, meaningful and have a positive impact on the community. Programs are vetted by subcommittees composed of people with firsthand experience in behavioral health, such as patients, experts or family members. The BHI also has a contract with UNM's Institute for Social Research to evaluate programs and compile deliverables to ensure that BHI proposals and programs are evidence-based.

Ms. Hotrum-Lopez stated that the BHI has created 14 projects and has earmarked more than 65 percent of its annual tax dollars. Ms. Hotrum-Lopez and Ms. Morgas Baca highlighted new initiatives, including:

- the Re-entry Resource Center, which provides the MDC a location to release individuals suffering from mental illnesses or substance abuse disorders. The center serves approximately 70 former inmates per day and connects them to a network of services;
- Community Connections Re-entry Supportive Housing, which provides high-quality intensive services, case management and housing subsidies to homeless or precariously housed individuals with mental illnesses and criminal justice system involvement;

- the Bernalillo County LEAD program, which will divert individuals with mental illnesses who commit low-level crimes from the criminal justice system to health and social services instead;
- inmates would also be provided with up to 90 days of prescriptions to last until a medical appointment;
- mobile crisis teams, which respond to individuals experiencing a nonviolent behavioral health crisis that necessitates an emergency call. Since its implementation in February 2018, more than 700 calls have been peacefully resolved; and
- youth transitional living, which provides transitional housing and services for clients who are not part of a third-party-funded program. It will also provide a housing bridge for youth who would otherwise be held in youth detention centers due to a lack of housing.

In response to questions from the subcommittee, Ms. Hotrum-Lopez stated that the BHI has approximately \$30 million in reserves but 65 percent is earmarked for programs. The BHI is also working with Pew Research Center and the LFC to analyze cost savings and program efficiency. Members of the subcommittee noted that the data will be necessary when requesting money from the state budget.

Ms. Morgas Baca and Ms. Hotrum-Lopez clarified program details. Ms. Morgas Baca explained that the county was committed to releasing inmates during daylight hours and connecting them to the re-entry center, which is expected to have case management staff available 24 hours a day in the future. She stated that the crisis triage center would act as a mental health emergency room. Ms. Hotrum-Lopez reported that the request for proposals on youth transitional living specifically requested details on LGBTQ+ youth served. She added that school-based health centers are allowed to submit proposals to add components for which centers are not currently reimbursed. Ms. Hotrum-Lopez stated that obtaining and analyzing medical data on clients can be difficult due to state and federal regulations, and she expressed hope that legislation may be passed allowing access to limited behavioral health data in accordance with federal law.

#### **Update from the Second Judicial District Attorney's Office**

Raúl Torrez, district attorney, Second Judicial District, noted that the most encouraging fact in the LFC's report was the drop in total crime that occurred in early fall 2017.

Mr. Torrez reviewed the uses of the additional funding his office received after the 2018 legislative session. The office hired 17 regular employees and three contract attorneys, some of whom will work on the backlog of cases. His office created a new crime strategies unit to work with the APD and BCSO to develop hot-spot policing to reduce gun crime and contracted with the New Mexico Institute of Mining and Technology to provide data analytics services for the new crime strategies unit.

Mr. Torrez expressed concern that the SJDC's decision to reduce its use of grand jury panels by 70 percent and increase the use of preliminary hearings would negatively impact the progress made thus far by reducing the number of indictments. He appreciated that implementation of the decision has been delayed from its original October 1 start date and will instead be phased in. However, due to understaffing at the APD and inexperienced attorneys at the Second Judicial District Attorney's Office, Mr. Torrez felt that such a change on the court's side would negatively affect the criminal justice system and the public.

Mr. Torrez explained that a district attorney's main crime-reduction strategy is deterrence. He stated that effective criminal deterrence has three primary components: (1) speed; (2) certainty; and (3) severity. The public — and, thus, the legislature — are often preoccupied with the severity of the consequence, as it is the easiest component to understand. Speed and certainty of apprehension, however, are more likely to affect criminal behavior. If an individual believes in the speed and certainty of apprehension by law enforcement, he or she is less likely to commit a crime. Correspondingly, if an individual believes that he or she will quickly face a court and receive a guilty verdict, he or she is also less likely to commit a crime. Mr. Torrez stated that the Second Judicial District Attorney's Office has aimed to improve the speed and certainty aspect of the courts.

Mr. Torrez stated that his office receives approximately 10,000 case referrals per year, but 30 percent to 40 percent are declined. While some of the declinations are appropriate, national declination rates tend to be much lower. Mr. Torrez noted that if an individual commits a crime and is investigated by the police but not charged or brought to court, the person may feel that he or she can get away with other crimes. The certainty component is not present. Mr. Torrez believes that simply filing a case and obtaining an indictment acts as a deterrent because the individual knows that he or she is under suspicion.

Mr. Torrez stated that the Bernalillo County Metropolitan Court uses preliminary hearings for low-end offenders, and he recognizes that there is a chance for an earlier resolution because the defendant is present at the proceedings and may choose to accept a plea deal. However, 64 percent of preliminary hearings fail upon the first attempt. He stated that approximately one-half of the failures result from a defendant who does not show up. Currently, New Mexico rules require that all parties must be present at a preliminary hearing. Mr. Torrez expressed concern that a victim must take time off work to wait in court, only to be told that the defendant failed to appear and must be apprehended before the process can resume. In other cases, if the appropriate law enforcement officer is unable to appear, the case is dismissed without prejudice due to the state's unreadiness.

In contrast, Mr. Torrez continued, the grand jury process has a failure rate of less than 10 percent because only the prosecutor is required to be present, although law enforcement officers or victims may also be present. As his office has used grand juries and nearly doubled the number of cases brought to court, the crime rate has dropped significantly. Mr. Torrez disputed

claims that cases using grand juries are not properly vetted. He said that only 3.4 percent of indictments ultimately fail due to lack of probable cause.

Mr. Torrez offered two alternate solutions to the grand jury versus preliminary hearing issue: (1) the state could invest more money in the criminal justice system to ensure adequate staffing and training at all levels and not just in the district attorney's office; or (2) the state could adopt the Federal Rules of Criminal Procedure for preliminary hearings, which allow for certain parties to be absent from preliminary hearings and may reduce the dismissal rate due to failure to appear. Mr. Torrez asserted that his office is open to change, but he wishes to have a comprehensive discussion on the impacts to the entire criminal justice system before those changes are put into place.

In response to a question, Mr. Torrez explained that a district attorney's office selects which cases will go to grand juries. Criteria include the violence of the crime, the complexity of charges and the danger of retraumatizing victims. Individuals who have seen cases dismissed but are charged with another crime are also eligible for grand juries.

A member of the subcommittee expressed concern that victim rights have not been considered in the discussion. The member stated that the legislature must be a part of the conversation, as legislators act as advocates for their constituents.

In response to a member's inquiry, Mr. Torrez explained that his office has not included in next year's budget the additional resources required by a shift from grand juries to preliminary hearings. He emphasized that the budget after that will include additional money to address the impact of increased preliminary hearings, and he recommended that other agencies also increase their budgets. Mr. Torrez speculated that increased law enforcement staffing and budgets would also be necessary because police officers will be in court for preliminary hearings rather than on patrol, and court attorneys and public defenders would also suffer from increased caseloads.

In response to a question on the benefits of preliminary hearings, Mr. Torrez explained that when all parties are present, preliminary hearings can result in a quick resolution when the defendant understands the case against him or her and the prosecutor has adequate leverage for a plea bargain. However, he cautioned that this can be difficult to achieve. Mr. Torrez also noted that prosecutors can identify unreliable witnesses. Despite some positive aspects, Mr. Torrez stated, a preliminary hearing structure is not compatible with Albuquerque's unique urban needs.

### **Update from SJDC Regarding the Elimination of Grand Jury in Favor of Preliminary Hearing**

Nan Nash, chief judge, SJDC, introduced Charles Brown, presiding criminal court judge, SJDC, and Judges Stan Whitaker, Alisa Hart and Brett Loveless, who were in the audience.

Judge Nash expressed concern that Mr. Torrez implied that only the front end of criminal cases matter, and she suggested that conviction rates are more important than indictment rates, since convictions actually get criminals off the streets and make communities safer.

Judge Nash informed the members that the SJDC had worked closely with the BCCJCC since its creation to develop reforms in the SJDC. The BCCJCC meets monthly, and many SJDC judges attend regularly, although not all BCCJCC members attended regularly until recently. The meetings are public, and legislators are welcome to attend. The reforms undertaken by the SJDC were favorably addressed by the LFC in its report, including a remodeling of pretrial services and supervision and risk assessment implementations like the Laura and John Arnold Foundation's public safety assessment tool in response to constitutional bail reform. Judge Nash noted that the foundation chose the SJDC to use one of the most validated and protected tools because of the SJDC's reformation work, which has been done with no additional resources from the state.

Judge Nash observed that the 2015 case management order, which required that the MDC's population be decreased and criminal case processing be completed more quickly, has done what it is supposed to. At the same time, the SJDC has also maintained its criminal caseload, worked on backlogged cases and run specialty courts. She emphasized that the LFC found that the court-initiated reforms follow best practices and have not caused the crime increase.

Addressing the issue of reducing the use of grand juries and increasing the use of preliminary hearings, Judge Nash explained that grand juries have fallen out of favor both nationally and statewide, and some judicial districts in New Mexico use grand juries very rarely, relying instead on preliminary hearings to manage cases most efficiently and cost effectively for all parties from the beginning. In addition, the National Center for State Courts' 2009, 2013 and 2015 evaluations of the SJDC strongly advised the SJDC to use more preliminary hearings and fewer grand juries. Other New Mexico district courts have not seen an increase in crime or decrease in cases brought to court since reducing the use of grand juries. The SJDC does not intend to cut out grand juries completely; judges recognize that some cases, such as domestic violence cases or cases with multiple witnesses, are more effectively initiated by a grand jury proceeding. The BCCJCC has discussed reducing grand juries many times prior to the court adopting its new policy. In 2016, Judge Nash remarked, Mr. Torrez was elected district attorney and agreed to use more preliminary hearings. The SJDC released its plan in a July 20, 2018 letter, which is available on the court's website. The SJDC specifically timed the change to occur after the Second Judicial District Attorney's Office received money to increase staffing. Judge Nash agreed with Mr. Torrez that, of the few strategies that deter crime, speed and certainty of apprehension and disposition are among the most effective. According to the LFC, preliminary hearings usually close a case within 60 days, she said.

Judge Nash acknowledged that the court's procedures affect other agencies in addition to the prosecutors. Accordingly, the SJDC reached out to the APD and the New Mexico State

Police to discuss staffing and training concerns vis-a-vis the shift from grand juries to preliminary hearings, and it adjusted the plan to address law enforcement's needs. The change will be phased in after the balloon fiesta to minimize the demands on a limited number of officers already required to work overtime. The SJDC will also schedule preliminary hearings around police schedules.

Judge Nash pointed out that grand juries are expensive, both directly and indirectly. The SJDC spends \$600 a day on grand juries. Direct expenses that are paid by the courts include grand jurors' per diem and parking. Indirect expenses for courts include staff time required to organize grand juries, as well as subsequent hearings. Other agencies also incur direct and indirect expenses both before and after indictment, such as discovery, witness interviews and law enforcement time.

Judge Nash appreciated the desire to allocate more resources to criminal justice but was skeptical that New Mexico would ever have adequate resources to meet all the needs of the state. Therefore, the SJDC must find ways to meet its obligations with available resources. She reminded the subcommittee that unlike the district attorneys, the courts do not unilaterally set their budgets; rather, each court's budget is included in the judiciary's unified budget, which is controlled by the supreme court.

Regarding Mr. Torrez's suggestion that the legislature adopt the Federal Rules of Criminal Procedure for the courts, Judge Nash reminded the subcommittee that the courts are a separate branch of government, and the rules for the judiciary are set by the New Mexico Supreme Court, not the legislature.

Judge Nash acknowledged that change is hard in a system that moves slowly, but it is the SJDC's responsibility to increase public safety, meet constitutional requirements and use the money allocated to it wisely.

In response to a member's questions, Judge Brown stated that defendants have a constitutional right to face their accusers, which is not afforded in a grand jury proceeding. That right is only exercised in a hearing. He added that grand juries can prove wasteful if victims do not wish to press charges, and preliminary hearings allow victims' voices to be heard in a public setting.

At the subcommittee's invitation, APD Detective Shaun Willoughby, president, Albuquerque Police Officers Association, expressed concern that the change from grand juries to preliminary hearings might negatively affect police officers and the city by requiring officers to spend more time in court than on the streets. He commented that grand juries are often more convenient for officers.



## **Public Comment**

Vidalia Chavez, judge, Bernalillo County Metropolitan Court, stated that the grand jury system has been critiqued by scholars, but an overnight change to preliminary hearings could negatively affect metropolitan court cases. She stated that she is drafting a letter to Judge Nash on possible problems.

Michelle Aldana, director of forensic services, All Faiths Children's Advocacy Center, stated that New Mexico has seen an increase in the number of child victims every year since 1996. She expressed concern that preliminary hearings would intimidate or retraumatize children.

Thomas J. Clear III, chair, Public Defender Commission, stated that the Law Offices of the Public Defender (LOPD) is prepared to transition to preliminary hearings. He stated that preliminary hearings provide public defenders more time to prepare cases with their clients. Mr. Clear noted that public defenders are already required to participate in preliminary hearings around the state. More public defenders would be preferable, but preliminary hearings will also provide earlier resolutions, which will ease workloads.

Terri Cole, president and chief executive officer, Greater Albuquerque Chamber of Commerce, stated that crime and community safety are the chamber's most pressing issue. She expressed concern that officers would not be present in communities if preliminary hearings were used more.

Andres Valdez, executive director, Vecinos Unidos Neighbors United, asserted the need for transparency in the criminal justice system and stated that public preliminary hearings would help meet that need.

Ben Baur, chief public defender, LOPD, stated that the speed of case resolution is more important than speed of indictment. He also felt that the BCCJCC was the best forum for further discussion of issues specific to Bernalillo County.

Deirdre Ewing, assistant public defender, LOPD, who practices in the Fifth Judicial District (Chaves, Lea and Eddy counties), stated that the Fifth Judicial District routinely only has preliminary hearings and that the crime rate has not increased because of it. She expressed a belief that preliminary hearings would allow for faster and more knowledgeable case resolutions. Ms. Ewing added that grand juries still exist for difficult cases with child victims or multiple witnesses.

Christopher Dodd, public defender, LOPD, stated that grand juries create more work for public defenders in interviews and arraignments, but preliminary hearings allow for early plea bargains and therefore reduce time to disposition.

April McClellan, crisis response advocate, Rape Crisis Center of Central New Mexico, stated that rape victims often prefer grand juries because of the smaller audience. She expressed concern that the transition to preliminary hearings would bottleneck the system.

Teresa D'Anza, executive director, Albuquerque Sexual Assault Nurse Examiners Collaborative, stated that preliminary hearings are difficult for rape victims because they must face their rapist again. She reiterated that grand juries have limited audiences, which can help protect the victims from re-traumatization.

Jonathan Ibarra, assistant public defender, LOPD, stated that one-half of the cases that are indicted by a grand jury are ultimately dismissed because the state cannot prove its case. He felt that grand juries are appropriate in cases of sexual assault. Mr. Ibarra noted that preliminary hearings cost approximately the same as grand juries.

### **Adjournment**

There being no further business before the subcommittee, the third meeting of the Criminal Justice Reform Subcommittee adjourned at 5:29 p.m.

Revised: September 27, 2018

**TENTATIVE AGENDA  
for the  
FOURTH MEETING  
of the  
CRIMINAL JUSTICE REFORM SUBCOMMITTEE**

**September 26, 2018  
State Bar Center  
5121 Masthead NE  
Albuquerque**

**September 27, 2018  
State Capitol, Room 322  
Santa Fe**

**Wednesday, September 26 — State Bar Center**

9:30 a.m.           **Call to Order and Introductions**  
—Representative Antonio Maestas, Co-Chair  
—Senator Sander Rue, Co-Chair

*Action Item: Approval of Minutes of August 24, 2018 Meeting*

9:40 a.m.       (1)   **Crime Prevention and Early Childhood Experiences**  
—Dr. Wayne Lindstrom, Director, Behavioral Health Services Division,  
Human Services Department; Chief Executive Officer, Interagency  
Behavioral Health Purchasing Collaborative  
—Bryce Pittenger, Director, Behavioral Health Services Division, Children,  
Youth and Families Department

10:45 a.m.       (2)   **Juvenile Sentencing**  
—James Dold, Advocacy Director and Chief Strategy Officer, the Campaign  
for the Fair Sentencing of Youth  
—Eric Alexander, Member, Incarcerated Children's Advocacy Network  
—Francesca Duran-Lopez, Member, Incarcerated Children's Advocacy  
Network

11:30 a.m.       (3)   **Alternatives to Juvenile Detention**  
—Craig Sparks, Director, Bernalillo County Youth Services Center

12:00 noon       **Lunch**

- 1:15 p.m. (4) [New Mexico Sentencing Commission \(NMSC\) Evaluation of Santa Fe Law Enforcement Assisted Diversion \(LEAD\) Program](#)  
—Linda Freeman, Executive Director, NMSC
- 2:15 p.m. (5) [LEAD Programs in Other Jurisdictions](#)  
—Emily Kaltenbach, Member, Santa Fe LEAD Policy Coordinating Committee; New Mexico State Director, Drug Policy Alliance

3:00 p.m. **Public Comment**

3:15 p.m. **Recess**

**Thursday, September 27 — State Capitol, Room 322**

9:00 a.m. **Reconvene**

- 9:15 a.m. (6) [Discussion of Criminal Justice and Public Safety Data Collection, Analysis and Application](#)

**Discussion Participants:**

- Linda Freeman, Executive Director, NMSC  
—The Honorable Edward L. Chavez, Retired Justice, New Mexico Supreme Court; Chair, Criminal Justice and Public Safety Task Force (CJPSTF)  
—Representative Damon Ely, Member, CJPSTF  
—Arthur W. Pepin, Director, Administrative Office of the Courts  
—Henry Valdez, Director, Administrative Office of the District Attorneys (AODA)  
—Damion Bradford, Director of Information Technology, AODA  
—Filemon Gonzalez, Chief Financial Officer, AODA  
—Adolfo J. Mendez II, Chief of Policy and Planning, Office of the Second Judicial District Attorney  
—Bennett J. Baur, Chief Public Defender, Law Offices of the Public Defender (LOPD)  
—Matthew Bevington, Information Systems Administrator, LOPD  
—Steve Kopelman, Executive Director, New Mexico Counties  
—William F. Fulginiti, Executive Director, New Mexico Municipal League (NMML)  
—Regina Romero, Intergovernmental Relations Director, NMML  
—Michael Rael, Sr., Municipal Judge, Questa; Former President, New Mexico Municipal Judge's Association (NMMJA); Member, Board of Directors, NMML  
—Chris McCall, Chief of Police, City of Hobbs; President, Municipal Police Chiefs Association  
—Elise Larsen, Municipal Judge, City of Grants; President, NMMJA  
—Alan S. Kirk, Municipal Judge, Los Alamos County; Past President, New Mexico Association of Police Chiefs; Former Chair, NMMJA

- Scott Weaver, Secretary, Department of Public Safety (DPS)
- Melvin Lee, Chief Information Officer (CIO), DPS
- Herman Lovato, Deputy Director, Technical Support Division, DPS
- Regina Chacon, Clearinghouse Supervisor, DPS
- German Franco, Director, Adult Prison Division, Corrections Department (CD)
- Tim Oakeley, CIO, CD
- Jerry Brinegar, Deputy CIO, CD
- Rachel Druckhammer, Senior Research Associate, Council of State Governments Justice Center
- Jennifer Ramo, Executive Director, New Mexico Appleseed
- Meghan Mead, Staff Attorney, New Mexico Appleseed
- Major Juan Colon, Principal Industry Consultant, National Director of Opioids and Illicit Drug Solutions, SAS Institute

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|------------|---|
| 12:00 noon | <b>Lunch</b>                              |
| 1:15 p.m.  | <b>Discussion of Possible Legislation</b> |
| 3:15 p.m.  | <b>Public Comment</b>                     |
| 3:45 p.m.  | <b>Adjourn</b>                            |



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

**September 26, 2018  
State Bar Center  
5121 Masthead NE  
Albuquerque**

**September 27, 2018  
State Capitol, Room 322  
Santa Fe**

The fourth meeting of the Criminal Justice Reform Subcommittee of the Courts, Corrections and Justice Committee was called to order by Senator Sander Rue, co-chair, on September 26, 2018 at 9:49 a.m. at the State Bar Center in Albuquerque.

**Present**

Rep. Antonio Maestas, Co-Chair  
Sen. Sander Rue, Co-Chair  
Sen. Gregory A. Baca  
Rep. Gail Chasey  
Rep. Jim Dines (9/26)  
Sen. Richard C. Martinez  
Sen. Cisco McSorley

**Absent**

Rep. Zachary J. Cook

**Guest Legislators**

Rep. Daymon Ely (9/27)  
Sen. Bill B. O'Neill (9/26)

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

**Staff**

Celia Ludi, Staff Attorney, Legislative Council Service (LCS)  
Randall Cherry, Staff Attorney, LCS  
Erin Bond, Research Assistant, LCS

**Guests**

The guest list is in the meeting file.

## **Handouts**

Handouts and other written materials are in the meeting file.

## **Wednesday, September 26**

### **Call to Order and Introductions**

Senator Rue welcomed everyone to the meeting, and subcommittee and staff members introduced themselves.

### **Crime Prevention and Early Childhood Experiences**

Bryce Pittenger, licensed professional clinical mental health counselor, director, Behavioral Health Services Division, Children, Youth and Families Department (CYFD), announced that the Interagency Behavioral Health Purchasing Collaborative launched its initial forum on September 25, 2018. The collaborative, composed of representatives from the CYFD, the Department of Health, the Human Services Department (HSD) and other interested agencies, including the Public Education Department, will coordinate relevant government and private entities' efforts to develop a trauma-informed human services system to meet the needs of New Mexico children.

Ms. Pittenger discussed her slide presentation, titled "Children's Behavioral Health Focus on Diversion by Becoming a Trauma Responsive System". She noted that New Mexico is ranked fiftieth among the states with regard to overall childhood conditions based upon the social determinants of health: economic stability; neighborhood and physical environment; education; food; community and social context; and health care.

Ms. Pittenger described the mechanisms by which adverse childhood experiences (ACEs) influence health and well-being throughout the human lifespan. ACEs include sexual abuse, physical abuse, emotional abuse, neglect and witnessing family violence. She noted that four or more ACEs can have dramatic long-term consequences by disrupting neurodevelopment, leading to social, emotional and cognitive impairment; significantly increasing the risk of chronic health problems, including substance abuse and addictions, as well as involvement in the criminal justice system; and often leading to early death. New Mexico has the highest rate in the country of children experiencing between three and eight ACEs. A recent study showed that 12.5 percent of the general population in New Mexico, including 62 percent of parents and 69 percent of infants, have four or more ACEs.

Ms. Pittenger described how the CYFD is moving toward a trauma-informed approach to serve high-needs populations and how ACEs analysis is utilized by the CYFD to allocate its limited resources to focus on these needs. She noted the large number of children in New Mexico with high needs and reported the phenomenon of "crossover youth", which are children involved in child protective services who often end up in the juvenile justice system.



She noted that children and parents require similar services and that the CYFD is developing programs to provide children with the most serious and complex needs with "wrap-around" services. She described wrap-around services as a social model composed of a team of providers who work with both the child and the family to address the child's individualized needs. She reported that the model has shown significant success both nationally and internationally and is being piloted in Lea County and Portales.

Ms. Pittenger noted those districts and counties with the highest needs and described the programs currently available and the challenges facing the state. She reported that the CYFD is providing and developing programming to meet these challenges, including prevention through family interventions with home visits and parenting programs.

She also described a new youth support program wherein young adults from 18 to 30 years old provide peer support to younger people from 14 to 26 years old. The program is based on a successful adult peer support model and is designed to help youth and young adults transition to adulthood.

Ms. Pittenger listed among the state's challenges a limited provider workforce and a need for better evaluation of client needs, better access to services and better data collection. She noted the elements that the CYFD believes are necessary to meet the state's challenges, including a trauma services system responsive to the needs of priority populations, statewide access to high-quality services and coordination of efforts.

Dr. Wayne Lindstrom, director, Behavioral Health Services Division, HSD, and chief executive officer, Interagency Behavioral Health Purchasing Collaborative, discussed certain current services and programs provided by the division.

Dr. Lindstrom discussed the PAX Good Behavior Game Initiative (PAX). He explained that PAX is not a "game" but is an educational approach that develops self-regulation in children.

Dr. Lindstrom noted that teachers often "burn out" because they spend a great amount of time managing students instead of teaching them. PAX is a behavioral development method designed to reduce the need to manage students. He noted that PAX is 50 years old this year and has proven extremely successful, both nationally and internationally, at achieving this goal.

PAX was piloted in the Ruidoso and Farmington municipal school districts in 2012. Currently, 11 districts have implemented PAX in 46 schools. Dr. Lindstrom noted that research indicates PAX's significant success, including lower rates of classroom disruption, increased attendance, higher grades, higher graduation rates and higher college attendance. He also noted improvements in social competency among students and lower burn-out rates among teachers.

Dr. Lindstrom stated that the rate of return on investment in the program is approximately \$60.00 for every \$1.00 spent. Assuming its application to 12,000 students, PAX could render a

\$156 million overall cost savings in health, criminal justice and other social services over the students' combined lifetimes, he said.

Dr. Lindstrom also noted that the division is expanding its parent home visit services. Its efforts are being focused on pilot projects in Bernalillo, Curry and Roosevelt counties, with a fourth county as yet undetermined. He said that Medicare/Medicaid funds are supporting this effort. Finally, the division plans to expand services to infants.

Members asked Dr. Lindstrom why PAX was not implemented long ago if it is 50 years old and so successful. He responded that research shows that evidence-based tools like PAX take approximately 17 years to achieve broad adoption. Further, PAX's originator has admitted that he failed to adequately promote his program. Also, there was limited funding for implementation in New Mexico. Dr. Lindstrom did not know the cost to implement PAX statewide, but he noted that the Santa Fe Public School District has implemented PAX with a sustaining cost of \$200,000 per year.

Regarding the selection process for participating schools and districts, Dr. Lindstrom stated that when the PAX program was first introduced, applications were sent to all school districts in the state. Few responded to the original offer, but now the division is being contacted regularly by interested districts. He also noted that the Albuquerque Public School District is looking at PAX but has not implemented it yet.

He noted that PAX training is provided to teachers through a private third-party contractor. The initial training takes two days, and participating teachers receive continuing support.

A member asked Ms. Pittenger to discuss provider needs in the state. She noted that there is a lack of providers. The state lost 700 to 900 clinicians in recent years who transferred from being practitioners to care coordinators. She also warned of the need for increased numbers of providers to provide wrap-around services and noted that only infant mental health practitioners require a professional license.

Discussing how clients are identified, Ms. Pittenger explained that it depends on the child and the need. Some children may be identified when they are in custody or under investigation. Clients who receive wrap-around services must meet criteria indicating high needs. Life skills and youth support are available to any child. Infant mental health clients come from child protective services or community member referrals.

Dr. Lindstrom and Ms. Pittenger explained that there is a severe shortage of service providers, both statewide and nationally. Dr. Lindstrom noted that there is little incentive or support for students in the field. He said that there is a lack of scholarships and fellowships and that wages are low.

Dr. Lindstrom explained that the PAX program currently engages children in first through third grades, but the division is considering implementing PAX in preschool programs. He described PAX as reinforcing positive behaviors through a reward system for the entire class. Children begin to support each other in good behaviors to promote success for the entire class. He also noted that there has been great support from all of the teachers who have been exposed to the program.

### **Juvenile Sentencing**

James Dold, advocacy director and chief strategy officer, Campaign for the Fair Sentencing of Youth, presented on the topic of charging and punishing children as adults. Mr. Dold discussed his slide presentation, titled "Kids Are Different: Creating More Fair and Age-Appropriate Sentences for Children in New Mexico".

Mr. Dold noted that while a juvenile offender may be sentenced in New Mexico as an adult for first degree murder (Section 31-18-15.3 NMSA 1978), including life without parole (Section 31-18-14 NMSA 1978), New Mexico is one of five states that does not impose life without parole on children. However, Mr. Dold recommended that New Mexico amend the relevant statutes to outright prohibit imposing life without parole on a juvenile offender to remove that option.

Mr. Dold explained that states began charging children as adults in the 1980s and 1990s in response to a number of high-profile crimes. However, brain research has since revealed that the human brain does not fully mature until approximately age 25. Therefore, preteens who commit crimes are not acting with fully functioning brains.

The United States Supreme Court has recognized this reality and has struck down as unconstitutional a number of state laws dealing with this subject. In 2005, the court outlawed the death penalty for juvenile offenders. (*See Roper v. Simmons*, 543 U.S. 551, 125 S.Ct. 1183, 161 L.Ed.2d 1 (2005)). In 2010, the court determined that life without parole was unconstitutional for non-homicide cases. (*See Graham v. Florida*, 560 U.S. 48, 130 S.Ct. 2011, 176 L.Ed. 2d 825 (2010)). In 2012, the court continued to narrow acceptable sentencing, deeming unconstitutional a sentence of life without parole unless the court engaged in a review of the specific circumstances of the crime. (*See Miller v. Alabama*, 567 U.S. 460, 132 S.Ct. 2455, 183 L.Ed. 2d 407 (2012)). Finally, in 2016, the court clarified a number of issues it raised in *Miller*, including noting that a state can remedy a *Miller* violation if it extends parole eligibility to juvenile offenders. (*See Montgomery v. Louisiana*, \_\_\_ U.S. \_\_\_ 136 S.Ct. 718, 193 L.Ed. 2d 599 (2016)).

Mr. Dold provided recommendations for model language to prohibit imposing life without parole on juvenile offenders, and he introduced two witnesses who discussed their experiences as juveniles sentenced as adults. Both were sentenced to long prison terms, but they were able to obtain release on parole. Both became high-functioning and contributing citizens.

Members asked what the solution was for New Mexico, and they discussed the language offered by Mr. Dold. Mr. Dold suggested that a parole review should be mandatory after 15 to 20 years. A member argued that this was too long for a juvenile. The members also discussed the services available to females within the juvenile system, which a witness suggested should be expanded.

### **Alternatives to Juvenile Detention**

Craig Sparks, director, Bernalillo County Youth Services Center, discussed promising trends in juvenile justice.

Mr. Sparks noted that the Youth Diagnostic and Development Center (YDDC) currently has 78 beds, down from 111. He noted that this reduction began when an Annie E. Casey Foundation (Casey Foundation) study revealed that 80 percent of inmates are incarcerated for misdemeanors or probation violations. Instead of incarcerating nonviolent juvenile offenders, the juvenile justice system now employs alternatives to detention based on the Juvenile Detention Alternatives Initiative (JDAI) created by the Casey Foundation.

Mr. Sparks noted that New Mexico adopted the eight JDAI core strategies in 2003: (1) collaboration among agencies; (2) reducing racial disparities; (3) improving conditions of confinement; (4) recognizing special populations; (5) improving case processing; (6) making data-driven decisions; (7) developing alternatives to detention; and (8) developing objective standards for admission. In 2005, the state became a national model site for Casey Foundation juvenile justice reform efforts. In 2007, the legislature created the Juvenile Justice Continuum Grant Fund (Section 9-2A-14.1 NMSA 1978), which authorizes local and tribal authorities to seek grants to support implementation of services and nonsecure alternatives for juvenile offenders. Currently, 22 counties have continuum programs.

Mr. Sparks explained that the programs are working, but he noted that there is a need for additional programming. He explained that the fund was designed to encourage innovation to meet local needs. Requiring evidence-based programs is problematic, as needs in New Mexico are diverse and require flexibility. History has shown that evidence-based programs that work in other states may not work in New Mexico.

Mr. Sparks also noted that Bernalillo County is currently experiencing the lowest juvenile crime rate in its recorded history.

A member asked why referrals to the continuum program in Bernalillo County had dropped from approximately 10,000 per year to approximately 2,200. Mr. Sparks responded that there have been significant reductions in technical referrals from schools, both in Bernalillo County and statewide. He explained that several years ago, as a result of national and local news coverage of violence in schools, most schools engaged in a "zero tolerance" approach to any altercation. He used the example of a fight between two students that might result in the arrest of bystanders who were not involved in the actual fight. He said schools and law enforcement now

take a more reasoned approach, resulting in significantly fewer detentions. Mr. Sparks also pointed to lower recidivism. He noted that incarceration costs \$326 per day, while supervision costs only \$33.00 per day, and that supervision has resulted in lower recidivism rates.

In response to questions, Mr. Sparks explained that recidivism rates are not broken down to allow a comparison between children who received detention and those in a diversion program. However, he said that national studies indicate that with or without treatment, approximately 70 percent of children never reoffend, but the remaining 30 percent need treatment, and their offenses may escalate in violence. There is, however, little evidence of any pattern, except it appears that the earlier the age of the first offense, the higher the likelihood of reoffending.

Mr. Sparks noted that the University of New Mexico has piloted the ADOBE Program (Averting Disparities in Outcomes by Building Engagement) in Bernalillo County, which is showing great promise. The program intervenes with children in the YDDC who have had two or more referrals within one year. An ADOBE representative meets with a child in the YDDC and continues to meet with the child in the home. The program addresses the educational, health and legal needs of the child.

#### **New Mexico Sentencing Commission (NMSC) Evaluation of Santa Fe Law Enforcement Assisted Diversion (LEAD) Program**

Linda Freeman, executive director, NMSC, and Emily Kaltenbach, member, Santa Fe LEAD Policy Coordinating Committee, and New Mexico state director, Drug Policy Alliance, discussed the Santa Fe LEAD Program.

Ms. Freeman discussed her handout, titled "A Discussion of LEAD Santa Fe and the Development of LEAD Programs in other NM Jurisdictions" (report). She explained that the NMSC was retained to review the Santa Fe LEAD Program, and she gave a brief description of the program's history and purpose.

Ms. Freeman stated that the Santa Fe LEAD Program is a pretrial diversion program. It allows an officer to refer low-level offenders involved in criminal behaviors as a result of opioid dependency directly to programming instead of making an arrest. Launched in 2014, LEAD treats opioid-related offenses as a public health, rather than a criminal justice, issue. Santa Fe was the second site in the nation to implement the program, following Seattle, Washington. There are currently 35 active programs nationwide.

The presenters described the program goals and principles and explained the entry and services process. Clients can join the program through a police contact or social referral.

Ms. Freeman described the findings in the report, noting that research was difficult because the NMSC began its evaluation late in the process and it was impossible to contact some

of the clients. Further, LEAD is a harm-reduction model, so there is no end to the services. This makes success difficult to evaluate.

The report nevertheless reached a number of positive conclusions (see page 3 of the report), including a 48 percent reduction in client-related emergency medical services calls and increases in the number of client days worked and clients' access to permanent housing.

Ms. Freeman also noted a decrease in post-diversion arrests, but she pointed out that the improvements do not last longer than six months post-diversion. She could not explain this phenomenon, noting that the NMSC would need more data to reach a conclusion.

The presenters summarized the conclusions, noting that the evaluation was limited because of the lack of data, but they noted indications of success and the broad support from stakeholders. They informed the subcommittee that with federal funding, the program will soon be implemented in Bernalillo, Dona Ana and Rio Arriba counties.

In response to questions, Ms. Kaltenbach stated that there tends to be a reduction in case management needs after around four years, but she noted that recovery is a long process, perhaps eight years on average, and may be ongoing. She also noted that the providers review the client service plans every six months.

In response to questions, Ms. Freeman suggested that the program might be improved by not limiting it to opioid users. A subcommittee member agreed. Ms. Kaltenbach explained that local stakeholders decide the program parameters. Those stakeholders include the district attorney, city attorney, public defender and law enforcement.

Ms. Kaltenbach explained in response to questions that the decision to exclude from participation persons promoting prostitution and violent offenders was a stakeholder policy decision. Burglars are also excluded, but having a past burglary arrest or conviction does not disqualify a client.

Ms. Freeman also discussed police involvement. She said that she could not reach any statistical conclusions because of limited data, but she has conducted police officer interviews. She reported that high turnover is a problem, that ongoing training is provided and that there is strong support for the program at the leadership level. While there is generally good support at the officer level, a small group of officers still provide most of the referrals. A member suggested requiring LEAD training at the New Mexico Law Enforcement Academy.

### **Public Comment**

William Zunkel read his handout, titled "In Holland the Prisons Have Curtains".

**Thursday, September 27**

**Call to Order and Introductions**

Representative Maestas welcomed everyone to the meeting, and subcommittee members and staff members introduced themselves.

**Discussion of Criminal Justice and Public Safety Data Collection, Analysis and Application**

Representative Maestas explained that the subcommittee convened this special meeting in an effort to improve data sharing and communication in the criminal justice system.

Ms. Freeman discussed the processes by which the NMSC receives data. She also observed that much of the progress achieved between 2005 and 2010, such as the "consolidated offender query" developed by the NMSC in cooperation with numerous other agencies, was lost because of the loss of funding to maintain and improve data systems.

Ms. Freeman noted that the NMSC uses a broad array of data from many sources pursuant to its authority under statute and rule. She explained the process using an example contained in her handout, titled "NMSC Criminal Justice Reform Subcommittee Presentation". She noted that the data on an individual can vary significantly depending on the agency and the individual involved in obtaining or recording the information.

In Ms. Freeman's example, a female is arrested. The officer enters information in his or her report. The female is then taken to a detention center, where a new person enters information, including fingerprint information. Ms. Freeman noted that fingerprint information resides at the Department of Public Safety (DPS), but the sophistication of the fingerprint equipment can vary widely depending on the local agency. The detention center will share information by hard copy with the court and may also provide a hard copy to the district attorney.

In a real-life example, officers saw a person loading a car. When they approached, the person threw away what the officers determined to be heroin and a pipe. They witnessed the act and made an arrest. They charged the person with drug possession, tampering with evidence, possession of drug paraphernalia and evading arrest. The case was filed in magistrate court.

The defendant's record turned out to include 36 arrests and 69 charges. She had a hyphenated last name, and a data-entry person had misspelled the first name. The Federal Bureau of Investigation (FBI) and the DPS's Special Investigations Unit (SIU) numbers were the same in every record. She explained that those numbers are biometrically related to the individual via fingerprint.

Ms. Freeman noted that New Mexico has a unique number for each individual because of the SIU and FBI numbers. She explained that the SIU number changes by state, but the FBI number is the same nationwide. She stated that, as researchers, the NMSC depends on the SIU

and FBI numbers. Names are not relevant for the NMSC, but she pointed out that mistakes in identification by other agencies can result in significant problems.

Ms. Freeman observed that a significant opportunity for confusion arises when the data-entry technician at a detention center enters charges into the data system. Law enforcement enters its charges at the time of arrest, but the detention center converts those charges to codes obtained from a charge code table maintained by the Administrative Office of the Courts (AOC). The table contains approximately 6,000 codes, which are often confused and result in inconsistent charging records for the same individual.

Ms. Freeman referred to her first example, noting that the charges were inconsistent when comparing the arrest record to the DPS record and complaint. She also noted that the magistrate court also enters data, adding another opportunity for data-entry errors.

Ms. Freeman concluded that multiple people enter data in the system. This offers many opportunities for error. She also noted that while the correct FBI and SIU numbers were entered in her first example, allowing for verification of the female's identity, this is not always the case. She suggested that the state needs to implement parallel systems to ensure consistent data across those systems.

In response to questions, Ms. Freeman clarified that the SIU number is the only data point created in New Mexico that is tied to a fingerprint. Thus, it makes sense to include the SIU number in every record in every system.

A member agreed that the state already has a unique identifier — the SIU number — but it is not used consistently. For example, there should be one computer screen that shows everything about a person's criminal history when the person is delivered to prison. The member also noted that a court needs to see the same information for sentencing.

A member asked whether district attorneys (DAs) use the SIU number. Ms. Freeman did not know, but she noted that there are a large number of redundancies in the current system that are mostly paper-driven. A member explained that DAs create their own numbers for their cases.

There was discussion regarding how an identity is established at a stop when the person does not have identification and uses another name, perhaps that of a family member. A member explained that it may not be resolved until a warrant is issued for the wrong person and that person proves that he or she is not the arrestee.

As to a solution, Ms. Freeman suggested that the state should build its capacity to share data among agencies and that the NMSC should have access to and monitor the data to ensure quality. As to whether a statutory mandate is necessary, she stated that the key is to have rules regarding what data agencies can collect and how they can share and use the information. She agreed that there should be a central repository that receives and maintains a broad range of data.



The discussion touched on a number of miscellaneous topics. Ms. Freeman noted that social security numbers are still used by the courts for some purposes but are limited in public-facing documents. With regard to the charge code table, Ms. Freeman noted that the AOC maintains and updates the table and that it is difficult for booking officials to input the correct charge because they have little time and expertise, which results in inconsistent records.

Ms. Freeman explained that the NMSC does not evaluate demographic information such as race or ethnicity because it cannot be verified. That is, the information is inconsistent. It is unclear who makes the determination in each individual incident. Is it the arrestee, the officer or someone else? A member responded that it is important to find out if there are disparities in real criminal justice reform. He suggested that the NMSC provide a recommendation on how to obtain that information.

A member asked how DNA and fingerprints are obtained upon a felony arrest. DPS representatives responded that fingerprints are generally collected by live-scan systems that connect to the DPS records center at the local detention center. DNA swabs are collected at the same time.

Adolfo Mendez of the Second Judicial District Attorney's Office gave a slide presentation on recent efforts to improve data collection and analytics in the Second Judicial District. He noted that public safety is the ultimate goal and that the philosophy is that swiftness and certainty are keys to drive down crime.

To that end, the Second Judicial District has partnered with the New Mexico Institute of Mining and Technology (NM Tech), New York University, the University of Cincinnati and private entities to develop a computer-based analytical system that will allow the office to analyze criminal activities in Bernalillo County using innovative techniques. The system is still under development but is already showing good results.

Analyses indicate that a relatively small number of offenders are responsible for a disproportionately high number of crimes and arrests. Mr. Mendez noted that no DA has the resources to prosecute every offense. Thus, his office must focus its resources on those individuals who present the highest risk. The system will give the office the data it needs to do that.

He noted that the system reveals connections between crimes and offenders and shows clusters of offenses by location. As a result, patterns and needs can be detected. This not only assists the DA in determining how to focus its prosecutions, but it will allow the city and county to focus its limited law enforcement and social resources on the highest-risk individuals and areas. A member noted that this is an important point — the system should be used to enhance the delivery of all social services, not just criminal justice.

Mr. Mendez stated that when the system is fully developed, his office intends to offer the system to other DA offices in the state.

In response to questions, Mr. Mendez stated that his office has been working on the system conceptually since the beginning of 2018 but began actual development and implementation when funding became available on July 1, 2018. He noted that the system will be able to interface with other agencies and databases with proper software.

There was discussion that the criminal justice system must ensure the correct identity of individuals across agencies. Mr. Mendez stated that his office's system checks a broad range of databases and compiles and compares the information obtained, including court and Motor Vehicle Division records. If a positive identification cannot be made, the case is dismissed.

Representatives from the Administrative Office of the District Attorneys (AODA) stated that the AODA already maintains a data system for the DAs that maintains and compares SIU numbers, FBI numbers, National Crime Information Center records, dates of birth and different names for each case. When a new case is filed, the system reviews all records related to the data to see if the person is already in the system. A new record is created only if there are no matches of existing data. The AODA provides training constantly to different DA offices to teach administrative staff how to use the system. The representatives explained that when the DPS receives an arrest record, it is not shared with the DAs. Also, some jails do not have an automated fingerprinting system and do not always use the FBI and SIU numbers.

Bennett J. Baur, chief public defender, Law Office of the Public Defender, noted that his agency creates and checks data points, and he emphasized the need to cross-check and verify records. He said that it is not unusual for a DA and a public defender to have conflicting records regarding convictions. He recommended that criminal justice data should be maintained in a neutral location.

A member asked whether and how an individual can correct an error in a record. An audience member responded that much of the data in the process is created and maintained by law enforcement and is not available to the public until charges are filed with a court. The member agreed that the key is the person who inputs the data. The systems can speed up the processing and improve analysis, but the data must be accurate at the time of input.

In response to a question, Mr. Mendez explained that his office will contract with the University of Cincinnati to use some of its algorithms and that his office is using federal funds for some of the project. It has also contracted with NM Tech for much of the project and is using open-source software as well. He could not estimate the total cost of the project in dollars or labor hours.

A member noted that Albuquerque is ranked fifth in the state in crime and suggested that the system be shared with other districts as soon as possible. He also asked what other offices

would need to use the system. Mr. Mendez responded that his office has three full-time employees working on the project.

In response to questions, an AODA representative stated that the AODA has the capability for, and would be willing to host, the data site under discussion.

A representative from the SAS Institute for Advanced Analytics stated that the institute has been working with the Second Judicial District Attorney's Office since the beginning of the year; based on its review, SAS believes that the necessary data exist, but a comprehensive system must be developed to house and share data. She said that SAS has a platform that will work.

A number of audience members agreed that a lot of data are captured and that most agencies would benefit from better data sharing. The AODA representatives noted that the AODA already gathers and shares a large amount of data. The AODA also provides victim and interested party notifications regarding a change in status of any criminal case. The AODA's system also provides access to electronic case records to the defense bar. He stated that the AODA is willing to share all data in its possession, subject to legal constraints.

A member of law enforcement pointed out that part of the problem for law enforcement is that each local agency has invested in proprietary information technology (IT) systems, and the information cannot be shared with an incompatible system.

A DPS representative reminded subcommittee members that it is the state repository for most criminal justice data. He stated that the data are available, and the DPS is willing to share the data with any agency to the extent lawfully possible. Also, the DPS has the IT platforms ready to share the information. The only problem is the lack of funds to implement the system. He estimated that it would cost between \$750,000 and \$1 million to solve the problem.

A representative from NM Tech noted that his team is working on developing statewide implementation in its work with the Second Judicial District. It is reviewing existing platforms to determine whether a new platform must be developed. He also noted that NM Tech has worked with the U.S. Department of Defense (DOD) for 17 years and uses the DOD's standards to prevent hacking.

A member summed up the discussion, noting that the goals going forward should be to determine how much information is needed, to create consistent data records among all agencies and to determine the best platform, whether new or existing, to share the data among agencies.

### **Discussion of Possible Legislation**

Subcommittee members discussed plans for the remainder of the interim, noting that they would like to maximize participation among current members and also invite input from other interested legislators. They agreed to meet in Santa Fe on October 25 and to cancel the meeting

scheduled for October 26. They will also consider hearing topics scheduled for October 15 on October 25.

A member pointed out that many of the bills vetoed by the governor going back to 2014 had bipartisan support in both houses. The members agreed to review those and older bills and consider them for reintroduction. There was discussion about combining a number of the popular bills but running the more controversial bills independently, e.g., expungement, solitary confinement, geriatric release and "ban-the-box" legislation.

A member suggested that the other members review the recommendations contained in the four-volume treatise, "Reforming Criminal Justice", a report by the Academy for Justice at Arizona State University's Sandra Day O'Connor College of Law. He noted that bills have already been introduced that address virtually all of the recommendations but suggested that the members review each of the recommendations.

Representative Maestas suggested that all individuals should submit any proposed legislation to staff by October 17, noting that other agencies will likely present their bills for endorsement to the full Courts, Corrections and Justice Committee.

There was discussion with Carl Reynolds from the Council of State Governments on what his group will propose and how to coordinate efforts. He said that his proposals are still in development but noted that probation and parole are underfunded and resources will be needed for the transition to the new administration.

There was also broad discussion on whether the state should build new prisons or refurbish existing ones. Members noted that the prison system has been underfunded for an extended period and that the current estimated cost for updates is \$300 million. They also discussed the need for additional treatment and reentry facilities and the difficulty of providing those services in rural areas where prisons are located in an effort to encourage economic growth. They noted that the system depends on private entities to provide these services, and it is difficult for those entities to locate in rural locations.

### **Public Comment**

An audience member noted that in the 1990s, Los Angeles introduced a program involving gangs to address neighborhood violence. The city met with gang leaders and encouraged them to continue meeting to discuss how to improve safety. He said that they created a system of block captains in high-crime neighborhoods that worked very well. He said the program also improved relations between law enforcement and the public.

An audience member asked the subcommittee to consider children and gender-specific needs when addressing criminal justice issues.

An audience member commented that she is working to complete a master's degree in social work and that most of her classmates are considering leaving New Mexico because of the lack of jobs and low salaries.

**Adjournment**

There being no further business before the subcommittee, the fourth meeting of the Criminal Justice Reform Subcommittee adjourned at 2:45 p.m.



Revised: October 15, 2018

**TENTATIVE AGENDA  
for the  
FIFTH MEETING  
of the  
CRIMINAL JUSTICE REFORM SUBCOMMITTEE**

**October 17, 2018  
State Bar Center  
5121 Masthead NE  
Albuquerque**

**Wednesday, October 17**

- 9:00 a.m.           **Call to Order and Introductions**  
—Senator Sander Rue, Co-Chair  
—Representative Antonio Maestas, Co-Chair
- Action Item: Approval of Minutes of August 24, 2018 Meeting*
- 9:15 a.m.       (1) **[Report and Recommendations of the House Joint Memorial 16 \(2018\)  
Criminal Justice and Public Safety Task Force \(CJPSTF\)](#)**  
—The Honorable Edward L. Chavez, Retired Justice, New Mexico Supreme  
Court; Chair, CJPSTF
- 11:15 a.m.       (2) **[Council of State Governments \(CSG\) Justice Reinvestment Initiative  
Update](#)**  
—Carl Reynolds, Senior Legal and Policy Advisor, CSG Justice Center  
—Michelle Rodriguez, Policy Analyst, State Initiatives, CSG Justice Center
- 12:45 p.m.       **Lunch**
- 1:15 p.m.       (3) **[Justice Reform Across the Country and in New Mexico: Trends and  
Next Steps](#)**  
—Jenna Moll, Deputy Director, Justice Action Network
- 2:15 p.m.       (4) **[Report and Recommendations of New Mexico SAFE](#)**  
—Emily Kaltenbach, New Mexico State Director, Drug Policy Alliance  
—Kim Chavez Cook, Assistant Appellate Defender, Law Offices of the  
Public Defender  
—Barron Jones, Smart Justice Coordinator, American Civil Liberties Union  
of New Mexico
- 3:45 p.m.       **Public Comment**
- 4:45 p.m.       **Adjourn**





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

**October 17, 2018  
State Bar Center  
5121 Masthead NE  
Albuquerque**

The fifth meeting of the Criminal Justice Reform Subcommittee of the Courts, Corrections and Justice Committee was called to order by Representative Antonio Maestas, co-chair, on October 17, 2018 at 9:14 a.m. at the State Bar Center in Albuquerque.

**Present**

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

**Absent**

**Guest Legislators**

Sen. Jacob R. Candelaria  
Sen. Linda M. Lopez  
Sen. Bill B. O'Neill

**Staff**

Celia Ludi, Staff Attorney, Legislative Council Service (LCS)  
Randall Cherry, Staff Attorney, LCS  
Mark Peralta-Silva, Staff Attorney, LCS  
Erin Bond, Research Assistant, LCS

**Guests**

The guest list is in the meeting file.

**Handouts**

Handouts and other written materials are in the meeting file.

**Wednesday, October 17**

**Call to Order and Introductions**

Representative Maestas welcomed everyone to the meeting, and subcommittee and staff members introduced themselves.

**Report and Recommendations of the House Joint Memorial (HJM) 16 (2018) Criminal Justice and Public Safety Task Force (CJPSTF)**

Retired Justice Edward Chavez and Representative Daymon Ely discussed the recommendations contained the handout, titled "HJM16 Criminal Justice and Public Safety Task Force, Report and Recommendations to the Legislature", dated October 15, 2018 (report). In his overview, Justice Chavez gave a brief history of the task force and its process in reaching its conclusions. He also noted the importance of discussions outside the formal meetings among various members, which helped the group work through some of the issues.

He noted that while the task force is not authorized to make funding recommendations, sufficient funding to support all of the recommendations and each of the stakeholders in the criminal justice system equitably is crucial to success. He suggested that it would be helpful if the various stakeholders would coordinate their budget requests to ensure equitable funding. Justice Chavez cited as an example the goal of ensuring speedy trials. He noted that achieving this goal would ultimately improve public safety, but it will require additional funds. To succeed, all of the agencies involved, including the crime laboratories, would need to coordinate their efforts, including coordinating efforts when requesting funding.

Justice Chavez specifically recommended that the legislature fund staffing for local justice coordinating councils, which would encourage the coordination of these efforts. He then summarized the seven task force recommendations, which are discussed in detail in the report. Referring to the topics discussed, he emphasized the need to create a uniform state identifier (SID) to ensure the quick and accurate identification of defendants. As an example, he said that the Bernalillo County Metropolitan Court must search seven different databases to establish a person's identity. He said that the consistent use of an SID would enhance the ability of the various stakeholders to share accurate data, which is another task force recommendation.

Justice Chavez discussed the importance of data sharing and noted that the task force discovered that the Administrative Office of the District Attorneys (AODA) already has a robust information system that works very well and contains much of the data that the component agencies of the criminal justice system are seeking. Thus, New Mexico is well-situated to solve the problem of collecting and sharing data, provided that the issues of governance and data use are resolved. The task force recommends that the data be housed with the New Mexico Sentencing Commission (NMSC) and that a board, similar to that governing the collection and use of DNA, be created and also housed with the NMSC to monitor data collection and use.

Another major concern raised by the task force is the need for additional behavioral health resources. He noted that the task force recommendations regarding the disposition of persons in the criminal justice system require the availability of treatment programs. This is particularly problematic in rural areas. The task force made number of recommendations to address this, including school loan forgiveness.

In response to questions, Justice Chavez noted that fingerprinting is generally done in local jails, but not all jails are sufficiently equipped, and they may not use the equipment they have. Thus, while he supports leaving fingerprinting to the jails, obtaining consistent fingerprint records will require additional funding, training and support. He also noted that, to his knowledge, the actual fingerprinting process meets current scientific standards.

With regard to funding, Justice Chavez noted that the cost of a fingerprinting machine can vary from \$900 to \$12,000. It is not clear which is best, but New Mexico Counties is reviewing the matter.

With regard to data sharing, the presenters also discussed the topic of data-driven, evidenced-based policing. Justice Chavez noted that the University of Cincinnati did a presentation on this topic, which indicated verifiable success at increasing efficiencies in using law enforcement resources and increasing public safety. Members noted that the New Mexico Institute of Mining and Technology (NMIMT) has significant experience and expertise in the area of data analytics and that they support the NMIMT's involvement in developing this technology. There was general consensus that the data-sharing effort should move forward rapidly and that governance over the information is paramount to ensure accuracy and confidentiality.

In response to further questions, Justice Chavez noted that the district attorneys suggested expanding pretrial diversion programs to increase their flexibility to deal with their caseloads. He said that challenges to this effort include the lack of availability of behavioral health care and that the treatment costs that must be borne by the participant can be prohibitive. There was also discussion of where pretrial services should be housed, including whether pretrial services should be housed with the courts.

There was discussion of the need for experienced personnel among all of the stakeholders. Justice Chavez noted that numerous retired professionals from relevant fields are available to fill this need, but a number of issues would need to be addressed to allow this, including that their return to the workforce might impact the upward mobility of younger staffers. This would impact hiring and retention. Also, statutory limitations on employing retirees and the impact on Public Employees Retirement Association pension funds must be considered.

In response to a question about how to calculate the ideal number of law enforcement officers for a community, Justice Chavez noted that a range of one to 2.4 officers per 1,000

residents is a relatively arbitrary number and that an accurate estimate would require a complex workload evaluation.

### **Council of State Governments (CSG) Justice Reinvestment Initiative Update**

Carl Reynolds, senior legal and policy advisor, CSG Justice Center, and Michelle Rodriguez, policy analyst, State Initiatives, CSG Justice Center, updated the members on progress on the CSG's recommendations for criminal justice reform.

Mr. Reynolds discussed his slide presentation, titled "New Mexico Justice Reinvestment", and highlighted certain topics. CSG recommendations would focus on issues with statewide impact, including expanding law enforcement and other criminal justice authorities' ability to divert certain criminal offenders, such as those engaged in drug-related crimes or who have obvious mental health issues, into treatment or other programs. He noted that additional behavioral health resources would be necessary to implement this strategy.

Mr. Reynolds discussed a peculiarity with regard to crime victim compensation in reference to slide 12. He noted that despite the availability of federal and state funds, CSG research indicates that crime victim requests for compensation are often denied. Mr. Reynolds has not identified the cause, but he will research the issue. In response to a question, he elaborated that part of the problem may be that while a victim compensation fee is required by statute, the fee is not consistently imposed.

A member noted that when the death penalty was abolished in New Mexico, a portion of the projected savings was intended to go to victims, but those funds were redirected to other areas of government when the economy slowed after 2009. The funds and purpose were never reinstated. Another member suggested that the compensation system should be reviewed to determine whether or how well it is working.

Mr. Reynolds discussed data gathering, agreeing with Justice Chavez that obtaining accurate fingerprints and other data is crucial. He suggested that the state may need to establish a team of experts to travel to rural communities to provide training and support. He also noted the importance of reviewing data on a regular basis to ensure that the data are being obtained and that the data are accurate.

Mr. Reynolds also agreed with Justice Chavez that the availability of effective behavioral health care is crucial to improving the criminal justice system and outcomes in New Mexico. A member noted that Bernalillo County was granted authority to increase its gross receipts taxes, which has resulted in \$40 million in additional funds to address public safety issues, but there appears to be no coordinated use of those funds. A member added that the mental health system in New Mexico was largely dismantled statewide in 2011 and 2012.

Ms. Rodriguez noted that North Dakota, which shares many of New Mexico's geographic and demographic challenges, has implemented a grant program that rewards positive outcomes in

rural treatment programs. The program is showing positive results, and the state hopes the program will attract additional treatment professionals to expand rural services.

As to whether there is a connection between the reduction in mental health services and crime rates in Bernalillo County, Mr. Reynolds noted that there appears to be a correlation. He also pointed out that there is no statistical evidence of a correlation between the increased crime rates and the amendments to Article 2, Section 13 of the Constitution of New Mexico regarding bail.

Mr. Reynolds observed that there is generally a strong correlation between trauma experiences and female and juvenile involvement in the criminal justice system. He also observed that New Mexico has done a very good job of increasing the proportion of violent offenders as compared to others in its prisons. He noted, however, that an unusually large number of parole-eligible prison inmates have not been released. Other inmates are being released with no support or supervision, which increases the risk of recidivism. It appears that a significant part of the problem is that those inmates simply have no place to go. In response to questions, a representative from the LCS elaborated on the prison population discussion, noting that, currently, 30 percent of inmates in New Mexico prisons are there because of parole violations and 80 percent of that 30 percent were originally convicted for drug violations.

Mr. Reynolds noted that research has shown that intensive outpatient treatment in the community has the highest success in deterring crime and that increasing penalties is not an effective deterrent. The members agreed and engaged in a discussion of how to educate the public to understand these facts and support criminal justice reform.

### **Justice Reform Across the Country and in New Mexico: Trends and Next Steps**

Jenna Moll, deputy director, Justice Action Network, discussed the work of the network. Ms. Moll noted that the network is three years old and composed of a bipartisan group of private entities that support criminal justice reform across the nation. The network includes a diverse membership, including businesses, athletes and religious groups.

Ms. Moll stated that the network lobbies in 15 states and at the federal level, and it holds media events and provides media strategies to support reforms. The network's research indicates that voters are more supportive of reforms than legislators are — 85 percent to 90 percent support reforms, including no mandatory minimums.

The network supports evidence-based programs and changes. It combines research with the practical experience of professionals in the relevant fields and public opinion. Its focus is on genuine reform, not simply lowering sentences. It supports accountability, but Ms. Moll suggested that this can be achieved in different and more effective ways.

Ms. Moll summarized some of the relevant research. She noted that prisons do not reduce recidivism. In fact, being in prison tends to increase recidivism among nonviolent

inmates. Research indicates that the best results come from behavioral changes driven by positive incentives as opposed to penalty-based incentives. Further, the offender's basic needs must be met, including housing, employment and substance abuse treatment, if warranted.

Ms. Moll noted that Texas has experienced great success since implementing its reform program, including closing seven prisons. This has resulted in approximately \$2 billion in savings, while reducing crime overall.

Ms. Moll noted that other states are engaged in reform efforts, and she offered examples of some of those reforms. Utah, for example, has reduced penalties for misdemeanors to make them noncriminal offenses. It also changed its penalties for drug possession from a felony to a misdemeanor to allow offenders to enter treatment. Also, Mississippi now bases its drug penalties on the weight of the drug to more effectively differentiate between simple users and distributors.

On an encouraging note, Ms. Moll pointed out that New Mexico leads the nation in providing criminal history information to its judges, particularly in the Second Judicial District. The network recommends that this program be monitored, supported and replicated in all of the districts. She also noted the success of the district in innovative efforts to avoid pretrial detention, pointing out that research indicates that recidivism rates rise, both pretrial and post-detention, in proportion to the time spent in pretrial detention.

Ms. Moll noted that technical violations of parole or probation should not result in a return to prison. They should be addressed immediately, but a range of sanctions should be available, not simply parole revocation. She also noted the increasing female prison population in New Mexico and recommended taking immediate steps to research causes and solutions to this problem. The network also recommends expanding specialty courts. Finally, the network supports sealing or expunging criminal records under certain conditions to provide incentives for offenders. She noted that many states have done so, and some have created liability shields for employers such that the offender and not the employer is liable if the offender recidivates while employed.

Subcommittee members engaged in discussion on a broad range of topics, including how to determine an ideal number of probation and parole officers. Ms. Moll said she is not aware of a formula, but best practices suggest that the number is dependent upon the nature of the offender. For example, a sex offender may require intense supervision, so the supervisor would require a small caseload. She also suggested specialized supervisors for specific offender types, including sex offenders.

Members discussed the risk and needs assessments used to determine the progress of offenders. Ms. Moll stated that this tool can be helpful and should be used regularly throughout the period of probation or parole.

In response to a question, Ms. Moll noted that the apparent largest single contributor to Texas' success was effective drug treatment. She recommended expanded treatment in New Mexico, but she cautioned that any programs should be constantly evaluated for success.

Asked whether parole and probation supervision should be part of the Corrections Department or housed with the courts, Ms. Moll responded that states have done it both ways successfully. The key is a cultural change from an attitude of "lock em' up" to one of supporting success, which generally requires a change in leadership.

In response to questions about juveniles, Ms. Moll noted that research indicates that placing juveniles in residential detention significantly increases recidivism. She also noted that early intervention and drug and alcohol treatment improve outcomes. As to the root causes arising from a dysfunctional home and family, she suggested that family therapy has shown success addressing the needs in the home and is cheaper than residential placement. There was discussion regarding the treatment and support of juveniles, generally, and a recognition that fundamental change takes a long time and requires flexibility. Ms. Moll pointed out that research has shown that it may take several attempts at drug treatment to achieve success and that incarceration should be a last resort.

### **Report and Recommendations of New Mexico SAFE**

Emily Kaltenbach, New Mexico state director, Drug Policy Alliance; Kim Chavez Cook, assistant appellate defender, Law Offices of the Public Defender; and Barron Jones, Smart Justice coordinator, American Civil Liberties Union of New Mexico, presented a report and recommendations to improve public safety in New Mexico.

Ms. Kaltenbach described the origin of the New Mexico SAFE coalition, noting that it was founded two years ago, when a number of leaders of entities within the criminal justice system came together to discuss problems and solutions. This included a review of how to institute rehabilitation of offenders with a focus on keeping families together but safe. The coalition now includes more than 30 organizations. Its approach is to focus on holistic solutions to address issues.

One of New Mexico SAFE's efforts is to issue "report cards" on proposed legislation. Ms. Kaltenbach explained that its grading system is based on the "SAFE" acronym, which she said represents the following.

- S: will the proposal make society safer?
- A: is the proposal apolitical?
- F: is the proposal financially responsible?
- E: is the proposal evidence-based?

Ms. Kaltenbach noted that the coalition will continue the report card program going forward.

Mr. Jones discussed the slide presentation, titled "Latino Decisions/New Mexico SAFE New Mexico Public Safety Poll". He noted that the poll was conducted on August 22 through 29, 2018 and included registered voters matching statewide demographics. He summarized the findings, noting that public safety is a high priority for the voters polled and that most believe that crime has increased over recent years and that the criminal justice system is broken. He also noted that the majority of respondents agree that incarceration is not the solution but that, rather, offenders should receive rehabilitation and training, particularly those with substance abuse and mental health issues. His discussion coincided closely with the slides, and he concluded by noting that a strong take away from the poll is a sense of urgency on the part of the respondents.

Ms. Cook described a group of legislative proposals that New Mexico SAFE recommends to improve the criminal justice system. These include a process for expungement or sealing of criminal records. Polling indicates that 72 percent of respondents support improvements to the reentry process for convicted offenders. Respondents believe that the community is safer if offenders are allowed to obtain gainful employment, which expungement may support, and they support additional changes, including informing offenders of the collateral consequences of agreeing to plea bargains, such as loss of state licensure, including professional licenses and driver's licenses. On that point, they support exemptions from license revocation or ineligibility for offenders if the exemption is fair and does not involve risk to the community. They also support banning the requirement for disclosure of criminal history on job applications for both public and private employers.

Respondents also indicated that they support a number of reforms to the prison system, including banning the use of solitary confinement. Ms. Cook noted that research indicates that solitary confinement makes it more difficult for offenders to reintegrate into society upon release. Respondents support early release for offenders for geriatric and medical reasons. Finally, respondents support reversing the standard of evidence for parole hearings so that a parolee is presumed to be eligible for parole rather than the current presumption, which is that the offender must prove that he or she deserves to be granted parole.

Respondents indicated that they support drug and alcohol abuse treatment instead of incarceration. They support expanding the good Samaritan law to protect persons on probation and parole from criminal liability when they attempt to provide aid to a person who, for example, is suffering from a drug overdose. They also support reducing simple possession of any drug to a misdemeanor. Ms. Cook explained that many offenders end up in prison for long sentences because, although they have been arrested with very small amounts of drugs, they are addicts and may be arrested several times. Thus, they are subject to enhanced sentences even though they present no risk of violence.

Respondents also supported requiring consideration of the fiscal impact of every proposed criminal bill prior to passage. Ms. Cook noted that this has been done for the past two years, but it is not currently required. Finally, the respondents supported a broad review of all



criminal statutes with a focus on reducing the penalty for low-level, nonviolent crimes to simple civil infractions.

There was general discussion regarding the topics. A member suggested that the question regarding expungement or sealing of records should be discussed in the context of whether a record should be withdrawn from public access. The member also asked whether the victim assistance process needs to be simplified. Finally, he asked if the business community was consulted on the question of whether asking about someone's criminal history should be banned on job applications. The panel responded that New Mexico SAFE does not currently include members of the business community, but it will try to engage that group. A member suggested that the coalition should also include local government entities.

### **Public Comment**

Bill Cass recommended that juveniles should never be subject to criminal sanctions for substance abuse; they should be referred to treatment instead. He noted that Bernalillo County has implemented this approach, and he also noted that the Children, Youth and Families Department has likewise implemented a standard, statewide probation agreement that accomplishes the same end, thus preventing children from being incarcerated for technical violations.

William Zunkel proposed introduction of a memorial to study the feasibility of dedicating a prison facility to substance abuse treatment and to study programs that divert substance abusers.

### **Adjournment**

There being no further business before the subcommittee, the fifth meeting of the Criminal Justice Reform Subcommittee adjourned at 4:11 p.m.



Revised: October 26, 2018

**TENTATIVE AGENDA  
for the  
SIXTH MEETING  
of the  
CRIMINAL JUSTICE REFORM SUBCOMMITTEE**

**October 25, 2018  
State Capitol, Room 322  
Santa Fe**

**Thursday, October 25**

- 9:00 a.m.           **Call to Order and Introductions**  
—Representative Antonio Maestas, Co-Chair  
—Senator Sander Rue, Co-Chair
- 9:15 a.m.       (1)   **[Review of Legislative Finance Committee \(LFC\) Criminal Justice System Analyses and Recommendations](#)**  
—Theresa Edwards, Fiscal Analyst, LFC  
—Ismael Torres, Fiscal Analyst, LFC  
—Jon Courtney, Ph.D., Program Evaluation Manager, LFC
- 11:45 a.m.       **Lunch**
- 1:15 p.m.       (2)   **[Discussion of Possible Legislation](#)**
- 3:00 p.m.       **Public Comment**
- 3:30 p.m.       **Recess**



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

**October 25, 2018  
State Capitol, Room 322  
Santa Fe**

The sixth meeting of the Criminal Justice Reform Subcommittee (CJRS) of the Courts, Corrections and Justice Committee (CCJ) was called to order by Senator Sander Rue, co-chair, on October 25, 2018 at 9:15 a.m. in Room 322 of the State Capitol in Santa Fe.

**Present**

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

**Absent**

Rep. Zachary J. Cook

**Staff**

Celia Ludi, Staff Attorney, Legislative Council Service (LCS)  
Randall Cherry, Staff Attorney, LCS  
Mark Peralta-Silva, Staff Attorney, LCS  
Erin Bond, Research Assistant, LCS

**Guests**

The guest list is in the meeting file.

**Handouts**

Handouts and other written materials are in the meeting file.

**Thursday, October 25**

**Call to Order and Introductions**

Senator Rue and Representative Maestas welcomed everyone to the meeting, and the subcommittee members, staff and public introduced themselves.

## **Review of Legislative Finance Committee (LFC) Criminal Justice System Analyses and Recommendations**

Jon Courtney, Ph.D., program evaluation manager, LFC, Theresa Edwards, fiscal analyst, LFC, and Ismael Torres, fiscal analyst, LFC, presented a review of LFC reports relating to public safety issues, going back to 2012 (Item 1). Dr. Courtney informed the subcommittee that the reports considered statewide crime rates, prison population, recidivism rates, the crime pipeline and more general system-wide issues, including capital outlay and data systems.

Regarding violent crime and property crime, Dr. Courtney noted that while the crime rate has decreased nationally, New Mexico has experienced an increase in its crime rate. For example, New Mexico saw a 12.2% increase in violent crime in 2016 and 2017, as opposed to a .2% decrease nationwide. Dr. Courtney explained that the violent crime increase was driven by crime in Albuquerque and that if Albuquerque is taken out of the equation, crime is generally down in the state.

Similarly, while the prison population nationally has started to decline, New Mexico's prison population is growing. Ms. Edwards explained that other states have seen their prison populations decline because of justice reinvestment and sentencing reform initiatives. Ms. Edwards noted that New Mexico's prison population grew 12% from fiscal year (FY) 2010 through FY 2018. Additionally, New Mexico imprisons more people in private prisons proportionally than any other state in the nation, with 51% of New Mexico prisoners held in private prisons. Contributing to an increasing prison population is the fact that New Mexico's recidivism rates are higher than most states, with the increase driven by technical parole revocations for drug use violations and absentee violations. These parole revocations cost the state about \$40 million a year. New Mexico has the eleventh-highest recidivism rate in the country, but Ms. Edwards cautions that comparing recidivism rates among the states is difficult due to how the rates are calculated.

Dr. Courtney explained that risk factors explain criminal outcomes and substance use disorders in New Mexico. He noted that poverty and adverse childhood experiences (ACEs) correspond with crime. While 11% of children nationwide experience three or more ACEs, 18% of New Mexico children experience three or more ACEs.

Dr. Courtney said that New Mexico is one of the poorest states in the nation, with 27% of children in poverty in FY 2017, and New Mexico children experience more ACEs than children in almost any other state. Further, New Mexico has seen a higher death rate attributable to alcohol and drug use than what is seen nationwide, and while amphetamine overdose death rates are increasing nationwide, New Mexico is experiencing an increase at a greater rate.

Generally, Dr. Courtney explained, children with ACEs engage in low-level crime. Low-level crime is often not addressed with swiftness and certainty, nor with diversion to address root causes. In turn, low-level offenders may then graduate to violent crime, which leads to them being incarcerated in prisons that fail to address root causes. A possible solution would be to

improve swiftness and certainty in prosecuting low-level offenses and address root causes to reduce criminal behavior and provide better outcomes.

Dr. Courtney recommended using evidence-based programming with two steps: 1) high-level policymakers adopting broad and general policies that authorize and drive administrative actions; and 2) agency management and frontline staff implementing evidence into practice and monitoring progress. As to the first step, the legislature could decide to invest more money in evidence-based programming. The second step anticipates receiving feedback from executive agencies and then accordingly appropriating funds through House Bill (HB) 2. As an example, Dr. Courtney highlighted the LFC's work with the Pew-MacArthur Results First Initiative, providing benefit-to-cost ratios from the LFC's 2013 Results First report.

According to Dr. Courtney, contributing to the crime pipeline is the fact that most system money is dedicated to the "back end" of the system with little money dedicated to prevention and early intervention. For example, New Mexico's Children, Youth and Families Department spends less money on preventive services than any state except South Carolina. Dr. Courtney recommended several evidence-based prevention programs proven to have a long-term link to crime: alternative response; home visiting or nurse-family partnerships; good behavior games; certain types of therapy, including multisystemic therapy; and family preservation services.

Expanding on these concerns, Mr. Torres noted that a significant proportion of the defendant population suffers from addiction or behavioral health issues, and incarceration is typically the least-effective method of treating those issues. Mr. Torres explained that the average cost of drug court is \$23.00 per person per day, whereas the average cost of incarceration is \$104 per person per day. The recidivism rate at drug courts is 21% versus 49% at the Corrections Department. Drug courts also have a high return on investment (ROI). Mr. Torres reported that New Mexico has recently seen a decline in the use of drug courts and graduation from drug courts, with a slight increase in recidivism. Mr. Torres recommended expanding evidence-based programs, such as the Law Enforcement Assisted Diversion (LEAD) Program and preprosecution diversion programs, and also requiring agencies to use data to ensure that specialty courts are utilized and delivering good outcomes. Mr. Torres noted that defendants sometimes have difficulty using preprosecution diversion programs because of the costs of participation; therefore, lowering or waiving the costs would help those who are indigent.

Regarding pretrial detention and supervision, Mr. Torres explained that the longer that a defendant is held in jail awaiting trial, the greater the likelihood of recidivism, suggesting that addressing pretrial detention may result in an increase in public safety. Mr. Torres noted that in Dona Ana County, there has been a decrease in jail population and an increase in cost savings due to implementation of pretrial supervision. Nevertheless, Mr. Torres highlighted significant issues in pretrial detention, with opportunities for pretrial supervision lacking in certain areas of the state and many rural areas left with either releasing defendants on their recognizance or detaining defendants. While organizing data statewide would be helpful, another concern is that some areas are not collecting data on pretrial detention or supervision. To address these

concerns, the Administrative Office of the Courts is requesting funding for a pretrial services statewide coordinator to work with rural counties to help managing pretrial service programs. Mr. Torres also recommended the use of valid risk assessments to match defendants with an appropriate pretrial service program.

Dr. Courtney informed the subcommittee that the LFC just completed a study of the Corrections Department, finding that the LFC knows less about corrections than it did in FY 2011. The LFC realized that the Corrections Department does not have outcome data for some of its programs. For example, the LFC does not know the gap between services available in prison and services needed. Furthermore, because substance abuse goes untreated, offenders with substance abuse issues tend to recidivate because they fail to receive the services they need. Dr. Courtney also noted the incarceration of geriatric and medically fragile inmates who show low risks of recidivating and would qualify for Medicaid. Recommendations include valid risk needs scores to match offenders with programming proven to work; a gap study, which the LFC is working on; performance funding for private prisons; using the geriatric parole statutes; legislation to define evidence-based programs and require collection of basic data, which Senator Rue is familiar with because of Senate Bill (SB) 71 (2017); and pulling programming out of HB 2 as line items.

Dr. Courtney explained that the LFC does not know how many people are participating in community corrections programs. In contrast, in FY 2011, Dr. Courtney could explain how many people were participating in community corrections programs and how much the state was spending and produce a unit cost. Related to community corrections programs, Dr. Courtney noted that post-incarceration intensive supervision paired with treatment is shown to be effective for preventing recidivism; however, there is no statutory requirement to pair supervision with treatment. Dr. Courtney recommended that agencies use valid risk and needs assessments to match former inmates with appropriate programs and perform a gap analysis and that legislation be introduced to require basic data collection, require treatment with intensive supervision and allow low-risk inmates to attend transitional living facilities with programming. Dr. Courtney noted that many of these recommendations are the same across the board because they are best practices.

Ms. Edwards reminded the subcommittee of the massive amount of money that the Corrections Department needs to bring its facilities up to speed. Ms. Edwards informed the subcommittee that the Corrections Department requested \$52 million to address immediate needs. In FY 2011, the Corrections Department requested \$26 million for repairs and remodels of state prisons. One solution would be for the state to build new housing units at public prisons, which could save millions of dollars. A member asked whether the requests were the same for purposes of making a fair comparison. In response to the member's question, Ms. Edwards explained that, over the years, the Corrections Department has requested additional money for largely similar repairs and items. Dr. Courtney noted that in 2014, the LFC did a cost-benefit analysis considering three scenarios: 1) the cost of doing nothing, which is not feasible; 2) the cost of business as usual or the current situation and deferred maintenance; and 3) the cost of



building a new medium-sized housing unit by building new housing units with 183 beds, designed to be more efficient than current buildings, taking into account inflation. Dr. Courtney explained that this analysis demonstrated that the state would make its money back quickly by building new housing units; within 10 years, the state would see a cost savings of \$2 million and within 20 years, the state would see a cost savings of up to \$20 million. Ms. Edwards said that the goal would not be to create new prisons as much as to supplant the beds at the current facilities. Ms. Edwards also noted that the cost of beds is not cheap, citing the construction of a 4,000-bed facility in Utah in 2015, with each bed costing about \$137,000, and the construction of a 2,000-bed facility in Kansas by CoreCivic, a private prison contractor, for \$100,000 per bed.

A member expressed approval of more front-end programs and is worried about talk of closing prisons and how the public will receive that information.

With regard to criminal justice data, Ms. Edwards noted that numerous data silos create additional workloads and issues with gathering information and that there are obstacles to data sharing, a lack of coordination within the system and a lack of system-wide goals and performance management. Ms. Edwards recommended requiring state and local government agencies to use a common identification numbering system; developing reporting standards and requirements for data; bringing state law into agreement with federal law and other states, specifically regarding behavioral health data; increasing data use and data sharing; and making the New Mexico Sentencing Commission the repository for this information and requiring that it analyze this information. Ms. Edwards said that the New Mexico Sentencing Commission requested a \$150,000 expansion to hire new employees.

A member asked about reentry and the feasibility of a joint hearing at the beginning of the session of the judiciary and finance committees of both houses for a presentation on criminal justice reform. Dr. Courtney stated that it would be helpful to speak to the committees for a total request of money for criminal justice reform. Other members expressed interest in a presentation from the LFC. Dr. Courtney mentioned that such a presentation would be helpful, in addition to fiscal impact reports on specific bills. A member noted that a joint hearing could be held on the second Tuesday of the session, January 22.

A member asked what the LFC believes is the primary cause of recidivism. Dr. Courtney explained that based on the LFC's study, drug use and drug possession appear to be a significant cause of recidivism; technical drug use violations bring many formerly incarcerated individuals back to prison. A member asked Dr. Courtney whether treatment reduces recidivism, mentioning a long-term inpatient treatment center. Dr. Courtney referred to his presentation, specifically data from the LFC's Results First report that showed that treatment programs have positive ROI, contrasting these positive results with intensive supervision alone, which has no positive ROI.

A member expressed concern over the time it took for stakeholders to have this conversation and consternation over the lack of attention paid to children with ACEs and the high number of parole revocations for drug tests and missed appointments.

A member asked Representative Daymon Ely, co-chair of the Criminal Justice and Public Safety Task Force created by 2018 House Joint Memorial (HJM) 16 (Task Force), about the Task Force's recommendations and how they overlap with the LFC's recommendations. Representative Ely confirmed that many of the Task Force's recommendations parallel the LFC's recommendations. A member also asked what proportion of the total prison population is in prison for technical violations. Dr. Courtney could not recall those numbers offhand but stated that he would get them to the subcommittee. A member commented that if the member recalled correctly, the number in prison for technical violations is about one-half of the prison population, and the member said that removing technical violations could mean shutting down a prison or two.

A member asked Dr. Courtney for the costs of intensive supervision; pretrial services; hiring behavioral health workers, social workers and probation and parole officers; and transitional housing. Dr. Courtney can pull from the reports to provide costs for particular legislative proposals. He can also provide a per-unit cost for certain programs, such as the LEAD Program, but there are some gaps that make it difficult to provide accurate costs for all statewide programs.

In response to a member's question, Dr. Courtney mentioned that, nationally, the recidivism rate for individuals age 55 and older is 3.2%. On the other hand, the rate of recidivism for individuals between ages 18 and 29 is 45%.

A member mentioned that other states have saved significant costs; for example, North Carolina saved money by closing a prison.

A member also asked how to verify a pretrial release tool. Dr. Courtney answered that a pretrial release study would likely cost a few hundred thousand dollars and could be done in six months.

A member asked which prisons would be the most cost-effective to close. Dr. Courtney could not recall the information offhand but said that there is an answer.

A member highlighted that the Corrections Department budget has increased while other state agencies have pared down. A member inquired about the recommendation to pull programming from the Corrections Department budget. Dr. Courtney noted that the current budget asks for programs generally but does not specify exactly which programs. Dr. Courtney confirmed that building new housing units is more cost-effective than deferred maintenance.

A member expressed concern over running too fast into full-scale criminal justice reform.

### **Discussion of Possible Legislation**

Representative Maestas summarized a handout titled "Criminal Justice Reform Bills, 2015 Session". Five criminal justice reform bills were passed and signed in 2015: SB 83, Senate

Floor Substitute for SB 95, SB 107, Senate Judiciary Committee Substitute for SB 42, Senate Joint Memorial 4 and HB 85. Three criminal justice reform bills passed and were pocket vetoed in 2015: SB 358, HB 89 and SB 106. Seven criminal justice reform bills were not introduced, and the remainder of the bills died.

Representative Maestas then moved on to a handout titled "Vetoed Criminal Justice Reform Bills 2011-2018". There were dozens of criminal justice reform bills that had bicameral, bipartisan support and were vetoed by Governor Susana Martinez.

Representative Maestas noted that Senator Jacob R. Candelaria may introduce a bill to defelonize simple possession of all controlled substances and drug paraphernalia. In response to a member's question, Representative Maestas said that he does not believe that any state has taken possession of a small quantity of a controlled substance off the books. Representative Maestas also noted that Senator Candelaria wants to introduce a bill abolishing a "gay or trans panic defense" to murder and other violent crimes, which other members of the subcommittee supported.

Members requested that the vote tallies and the governor's message, if available, be included when discussing bills to help in determining the political feasibility of reintroduction. A member noted that victims feel lost in the process and that the omnibus bill should consider how to involve the victims in the criminal process.

A member expressed that feasibility of expungement depends on details and scope of proposal. Another member expressed concern on the erasing of history by expungement, noting that details of convictions can exist in newspaper articles. Yet another member brought up the notion of expungement by sealing a conviction. A member expressed concern over selling certain elements to the public, specifically defelonization of simple possession of all controlled substances.

A member suggested waiting to see what the appellate courts do with the bail issue before addressing it with legislation.

The members discussed the New Mexico SAFE 2019 Legislative Roadmap and other possible requests for legislation that might be included in an omnibus bill.

The members acknowledged concerns about possible "logrolling" in an omnibus bill and directed staff to notify them if any questions arise.

Representative Maestas stated that he plans to introducing a bill on the Law Enforcement Protection Fund to prevent it from being swept by providing more money to law enforcement. Representative Maestas plans to allocate money to other public safety agencies, including the district attorneys and public defenders.

Ms. Ludi summarized a handout titled "HJM 16 Task Force Legislative Proposals". The bills include: creating a unique biometric identifier; mandating data collection, sharing and analysis; increasing prosecutorial discretion for preprosecution programs and diversion; creating a recidivism reduction grant fund; loan repayment programs for criminal justice system workers; rewards for criminal justice workers who are eligible to retire or have retired; and supplemental funding of the PAX Good Behavior Game Initiative. The recidivism reduction grant fund would have enumerated purposes. A member recommended that the enacting legislation for the fund require attendance at the district coordinating councils. Several members provided suggestions on name changes for the fund. A member suggested that the fund have \$150 million, with \$50 million to spend each year for next three years.

A member inquired about what some terms mean, such as "overcriminalization". Representative Maestas mentioned that there has been a move to decriminalize certain activity. Mr. Reynolds mentioned that there has also been a push to include a mens rea requirement. Representative Maestas also noted that, historically, a blanket mens rea has been considered but faced opposition from district attorneys and public defenders.

Ms. Ludi reminded the subcommittee that there have been three groups working on criminal justice reform: the CCJ, the CJRS and the Task Force, as well as the Council of State Governments Justice Reinvestment Initiative. Representative Ely and Justice Chavez expressed the Task Force's preference to work with the CJRS on an omnibus bill.

Going forward, the plan is to review all of the proposals and determine on November 13 which bills will be in the omnibus bill and which bills will stand alone.

On November 16, the CJRS will finalize its proposals and recommendations for the final CCJ meeting.

### **Public Comment**

Bill Zunkel has attended many committee and subcommittee meetings. Mr. Zunkel finds this subcommittee's conversation timely considering the opioid epidemic, and he believes in the benefit of treatment and applauds the subcommittee's approach.

Tom Starke is a physicist who retired from Los Alamos National Laboratory. Mr. Starke complimented the efforts of the subcommittee. Mr. Starke has been involved with addiction nonprofit organizations and is familiar with the issues confronting the state. He noted the importance of ACEs and reminded the subcommittee to remember the family and children affected by policing and incarceration. For example, one out of 10 children has an incarcerated or formerly incarcerated parent, and having an incarcerated parent constitutes an ACE.

Mr. Starke voiced support for the notion of not overcharging a defendant, and he asked the subcommittee to consider how the state can step up for children when it is penalizing parents with incarceration.

Additionally, he asked the subcommittee to consider child support payments accruing for those in prison even though they do not make money that would allow them to satisfy those payments.

Finally, Mr. Starke noted that the number of prisoners who are lesbian, gay, bisexual, transgender or queer (LGBTQ) is disproportionate to the general population, and prisons are not built for LGBTQ individuals. This issue is particularly salient for the female population, 47% of whom identify as LGBTQ, he said.

### **Adjournment**

There being no further business before the subcommittee, the sixth meeting of the CJRS adjourned at 3:00 p.m.

Revised: November 9, 2018

**TENTATIVE AGENDA  
for the  
SEVENTH MEETING  
of the  
CRIMINAL JUSTICE REFORM SUBCOMMITTEE**

**November 13, 2018  
Ladera Banquet Room, Ladera Golf Course  
3401 Ladera Drive NW  
Albuquerque**

**Tuesday, November 13**

9:00 a.m.           **Call to Order and Introductions**  
—Representative Antonio Maestas, Co-Chair  
—Senator Sander Rue, Co-Chair

*Action Item: Approval of Minutes of September 26-27, 2018 and October 17, 2018 Meetings*

9:15 a.m.       (1)   **Council of State Governments (CSG) Justice Center — Justice Reinvestment Initiative Update and Discussion of Possible Legislation**  
—Carl Reynolds, Senior Legal and Policy Advisor, CSG Justice Center

10:45 a.m.       (2)   **Discussion of Proposed Legislation**  
.211435, Probation and Parole Best Practices  
.211468, Crime Victim Reparation  
  
.211415, Pre-Prosecution Diversion (CSG)  
.211366, Pre-Prosecution Diversion (Task Force)  
  
.211192, Create Central Criminal Justice Data Repository in the New Mexico Sentencing Commission  
.211420, Create Crime Reduction Fund  
.211461, Loan Repayment for Law Enforcement and Corrections Officers  
  
.211486, No Mandatory Parole for Certain Sentences (2013 House Bill (HB) 438, Stewart)  
.211488, Reduce Probation Time for Good Behavior (2015 HB 332, Maestas)  
.211494, Medical or Geriatric Parole (2017 Senate Bill (SB) 116, Ortiz y Pino)  
.211495, Parole Board Procedures (2017 SB 216, O'Neill)

.211489, Post-Conviction DNA Testing Act (2013 SB 491, McSorley)  
.211492, Halfway House and Transitional Facility Act (2015 SB 358,  
Touraco)  
.211506, Accuracy of Eyewitness Procedures (2013 SB 490, McSorley)  
.211483, Safe House Act (2011 SB 438, Ortiz y Pino)  
.211484, Behavioral Health Investment Zones (2015 HB 108, Lundstrom)

11:45 a.m.

**Lunch**

1:15 p.m.

**Discussion of Proposed Legislation (Continued)**

3:00 p.m.

**Public Comment**

3:30 p.m.

**Adjourn**





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

**November 13, 2018  
Ladera Banquet Room, Ladera Golf Course  
3401 Ladera Drive NW  
Albuquerque**

The seventh meeting of the Criminal Justice Reform Subcommittee of the Courts, Corrections and Justice Committee was called to order by Representative Antonio Maestas, co-chair, on November 13, 2018 at 9:18 a.m. at the Ladera Banquet Room at the Ladera Golf Course in Albuquerque.

**Present**

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

**Absent**

Rep. Zachary J. Cook

**Guest Legislators**

Rep. Daymon Ely  
Rep. Sheryl Williams Stapleton

**Staff**

Celia Ludi, Staff Attorney, Legislative Council Service (LCS)  
Randall Cherry, Staff Attorney, LCS  
Mark Peralta-Silva, Staff Attorney, LCS  
Erin Bond, Research Assistant, LCS

**Guests**

The guest list is in the meeting file.

**Handouts**

Handouts and other written materials are in the meeting file.

**Tuesday, November 13**

**Introductions and Approval of Minutes**

Representative Maestas welcomed everyone to the meeting, and the subcommittee members and staff introduced themselves. The subcommittee then approved the minutes for the September 26-27, 2018 and October 17, 2018 meetings.

**Council of State Governments (CSG) Justice Center — Justice Reinvestment Initiative Update and Discussion of Proposed Legislation**

Carl Reynolds, senior legal and policy advisor, CSG Justice Center, discussed his PowerPoint presentation entitled "New Mexico Justice Reinvestment, November 13, 2018". Mr. Reynolds updated the subcommittee on the CSG's activities and plans. He noted that, unlike most of the states that the CSG serves, New Mexico has been engaged in criminal justice reform for some time. As a result, the subcommittee will have a number of bills for presentation to the full Courts, Corrections and Justice Committee for endorsement on December 4, 2018. However, while the CSG team has assisted on some of those bills, it will not have bills available for consideration at that time.

Mr. Reynolds explained that New Mexico has an unusually large amount of information available from the Administrative Office of the District Attorneys, Corrections Department (CD) and others. The CSG is in the process of collecting and analyzing this information, but this process will take more time.

Mr. Reynolds said that the CSG has convened a working group composed of senior executives from the relevant agencies in the executive and judiciary branches. He wants to ensure that the members have had an opportunity to review and comment on each bill that the CSG would propose prior to its being offered to the legislature. He nevertheless believes that the CSG's legislative recommendations will be available on or before the date that the legislative session convenes in January 2019.

Mr. Reynolds explained that the CSG serves two roles: providing advice; and recommending policy options and proposed legislation. The process requires stakeholder engagement. To that end, the CSG plans to engage in numerous meetings with these stakeholders. CSG members have already visited probation and parole offices around the state and will meet with the working group on December 14, 2018.

Mr. Reynolds' presentation was largely consistent with his slide presentation with a few notable highlights. He noted that New Mexico legislators have introduced a number of bills on a range of topics related to criminal justice reform over the past several years. The CSG will review those bills and may offer recommendations based on its data analysis.

Mr. Reynolds observed that, in general, criminal justice reform efforts should be balanced. Addressing recidivism is crucial, but other issues are as important, including repairing

harm and prevention. On repairing harm, he noted, for example, that expanding the types of professionals to whom a victim can report in order to receive compensation might be helpful as victims may not be comfortable reporting crimes to law enforcement or similar authorities. Those victims nevertheless need services. He also noted that victim advocates and other service providers in New Mexico appear to need additional training. He does not believe that statutory changes are needed in this area at this time.

With regard to prevention, Mr. Reynolds noted that the CSG is not typically involved in this issue, but he observed that New Mexico has taken significant steps toward addressing prevention. The CSG will offer advice on this issue to the extent possible.

Mr. Reynolds noted that the CSG agrees with the common observation that additional and improved behavioral health services are crucial, and he also noted that this is a national problem. The CSG has discussed this with leaders in the field in New Mexico and plans further discussions. He suggested that, subject to the availability of behavioral health services, the CSG may recommend expanding diversion programs, noting the high cost of incarceration and the lack of services in county jails. On a related topic, Mr. Reynolds also noted that he has discussed the possibility of expanding specialty courts with the chief justice of the New Mexico Supreme Court and the Administrative Office of the Courts.

Mr. Reynolds stated that he had recently met with tribal leaders on criminal justice reform issues. He discovered that the federal government is currently engaged in a similar process nationwide with regard to Native Americans. He plans to explore further opportunities for funding and coordination of efforts in this area.

Mr. Reynolds made a number of general observations, including that data and data sharing are important to the success of the reform process; that privacy issues should be carefully considered; that reform requires the confidence of the public and stakeholders, which requires communication, data and good data analysis; and that New Mexico has a disproportionately high number of females incarcerated, as compared to other states. The CSG plans to meet with the American Civil Liberties Union and Crossroads for Women on the last topic.

In response to questions, Mr. Reynolds stated that he plans to be available during the upcoming legislative session to review and assist in drafting and to testify on bills. He is registered as a lobbyist.

Mr. Reynolds noted that much of the information and many of the contacts that the CSG has obtained relate to urban centers, but he agreed to expand his efforts to include rural stakeholders. He also agreed that restorative justice programs have promise, but he noted that the CSG has not engaged in significant efforts in this area. He agreed to explore this issue further.

A subcommittee member noted that the Legislative Finance Committee (LFC) has recommended that private prison contracts should tie funding to recidivism rates, noting that

private prisons actually benefit from high rates of recidivism, as those return inmates fill beds. He asked if other states have addressed this. Mr. Reynolds responded that Pennsylvania has taken that approach to funding halfway houses and other services. However, he was not aware of any state that has tied funding to recidivism rates with regard to private prisons.

In response to a question, Mr. Reynolds noted that the CD and the Bernalillo County courts use a risk/needs assessment tool. The CSG supports the use of risk/needs assessment tools, but it does not endorse any particular tool. He agreed to provide general advice on issues to consider in the choice of these tools.

Mr. Reynolds responded to a question on Native Americans in prison, noting that New Mexico has a lower number of Native Americans in prison in proportion to the general population as compared to other states. While the Native American population comprises 11 percent of the total population in New Mexico, Native Americans comprise only seven percent of the prison population. This is lower than the national average.

The member observed that this may reflect New Mexico's efforts to allow tribal courts to address crimes and punishments on tribal and pueblo lands.

Members asked advice on how to build public trust in the criminal justice reform process. Mr. Reynolds responded that the public safety wheel on Slide 5 is the best way to address this. It requires a balanced and honest discussion showing real data. He recommended long meetings with the media and providing lots of information and honest answers to every question. The members must show the advantages of what is being proposed.

A subcommittee member noted that all public questions were directed to a single contact within the governor's office when the state was engaged in juvenile justice reform efforts. There was discussion regarding who an appropriate point of contact might be in the future. Mr. Reynolds responded that Texas convenes a meeting of all stakeholders when a dramatic event occurs. The stakeholders try to determine what went wrong and how the event could be prevented in the future. He offered to provide recommendations on this issue.

In response to questions, Mr. Reynolds explained that he will request that he be allowed to continue to staff the CSG team in New Mexico after the legislative session and through the implementation process of whatever legislation is passed.

The members also discussed achievements over the past eight years, including Medicaid expansion; making Bernalillo County crime a statewide issue; and recent improvements in the county. They also discussed and applauded the LFC's efforts to analyze criminal justice issues.

### **Discussion of Proposed Legislation**

#### **.211435 — Probation and Parole Best Practices**

Mr. Reynolds presented the bill. In response to questions, he stated that the CSG

recommends that the CD should be required to implement a system of sanctions for technical violations that does not result in the offender being sent back to prison. The bill allows for administrative sanctions instead of sending the matter to a court. He noted that this is consistent with most states that do not revoke parole except for a new crime or for a serious violation, such as carrying a weapon or violating a protective order. He noted that "absconding" is not currently defined in statute, so it is defined in the bill.

A member noted that it is often difficult for an offender to obtain release from work to attend a hearing; can this be addressed? Mr. Reynolds responded that it is impossible to address every contingency. Success in the process depends on the cooperation and good faith of the participants, including the parole officer.

A member of the public noted that a hearing is required within 10 days of a violation. Most retail jobs have 14-day or longer schedules, so extending the deadline would enable better compliance.

Mr. Reynolds noted that the proposed bill would increase probation and parole supervision costs but would reduce court costs and reduce the need for expensive prison beds.

#### .211468 — Crime Victims Reparation

Mr. Reynolds explained that the general intent of the bill is to expand victim access to services. In response to a question, Mr. Reynolds explained that the Crime Victims Reparation Commission determines whether a person has been the victim of a crime through its investigators. This is current law and the system has worked well. However, the CSG has not reviewed the process closely and will likely recommend additional amendments.

#### .211415 and .211366 — Pre-Prosecution Diversion

These bills are similar and were discussed together. Each would expand the ability of a district attorney (DA) to divert an offender to a pre-prosecution diversion program but would allow the DA broad discretion whether to do so. This discretion recognizes that necessary services may not be available to allow diversion.

A key difference between the bills is that document .211415 does not allow a DA to impose the costs of a program on the offender. This recognizes that offenders may not have the funds to pay the costs. It also allows better tracking of costs because the funds would come out of the annual budget of the DA.

The members discussed deletion of language regarding controlled substances. A member noted that the language was removed because it is consistent with the purpose of the bill to allow the DA to determine whether a person should go to diversion. A member suggested that removing the provision would render its application inconsistent.

The members endorsed .211415 "for discussion" because it deletes the requirement that the offender pay for services, and they will leave the issue of controlled substances for later debate.

.211192 — Create Central Criminal Justice Data Repository in the New Mexico Sentencing Commission (NMSC)

Representative Ely explained the bill, noting that it is intended to address two major problems — entities that do not communicate with each other and poor recordkeeping. The bill requires the assignment of a consistent statewide identifying number (ID) for certain arrestees and establishes the NMSC as the data repository. The NMSC is designated because it is the only entity in the justice system that is entirely neutral. The NMSC would have the authority and duty to collect and ensure good data. He stated that the New Mexico Institute of Mining and Technology (NM Tech) and other entities will do the actual data analysis. NM Tech will contract with stakeholders as needed.

A member asked when and where the ID would be assigned. He suggested that it should be done at the time and place of fingerprinting. He also suggested that this should be in statute, not left to rule. A member noted that this could be difficult because not all counties have the necessary resources. The subcommittee discussed the need for sufficient funding and incentives to ensure that the counties comply.

.211420 — Create a Crime Reduction Fund

Representative Ely explained the bill. The bill would create a criminal justice coordinating council in each judicial district. The bill would formalize and make mandatory a program that has been informally and successfully instituted by the New Mexico Supreme Court. The bill also provides for funding criminal justice programs requested by local entities. Representative Ely explained that mandates from the legislature often fail. This bill would grant communities the flexibility to determine their needs, thus ensuring local support, and would also allow for program review.

A member noted that designating councils using judicial districts instead of counties may be problematic, as some districts contain counties with diverse needs. Representative Ely agreed it would be useful to discuss this issue with stakeholders. He also noted that the council members should include line staff and not just senior officials, as the former are aware of the practical problems that must be addressed.

The members discussed the funding issue extensively. A member noted that the proposed fund is recurring and does not revert to the General Fund. There was concern that, as drafted, the proposed fund could grow without limitation. Further, the General Fund is the only source of funding; creating a new fund is unnecessary. A member suggested that the proposed fund be limited to five years to assist passage. The proposed fund could be reconstituted later, prior to expiration.

A member noted that the proposed funds necessary to meet all of the actual needs are probably between \$40 million and \$50 million. The members discussed this estimate, noting the necessity to present a reliable estimate to the Senate Finance Committee. The discussion included an observation that the investment would be returned in lower prison costs but that would take four to five years. A member also noted that trained behavioral health professionals may not be available in rural areas to provide services, regardless of funding, and the members discussed the need to engage with universities and consider school loan forgiveness to encourage professionals to remain in or return to the state and rural areas.

The members discussed the technical problems with biometric machines and internet availability. Steve Kopelman, executive director, New Mexico Counties, stated that the organization conducted a survey on this issue. The survey revealed a number of problems, including that some counties do not have personnel who know how to operate the machines and that each jail has its own different information technology system. New Mexico Counties is working with each county to fix the problems, but it will take time. Mr. Kopelman noted that high-population counties do not have these problems and deal with the bulk of the offenders.

In response to a question regarding confidentiality, Representative Ely explained that the bill allows increased access to behavioral health records but only in the aggregate for the purposes of research.

Douglas Carver, deputy director, NMSC, suggested giving the NMSC monitoring authority to allow the NMSC to confirm compliance with the data-sharing requirements.

.211461 — Loan Repayment for Law Enforcement and Corrections Officers

Representative Ely summarized the bill, but noted that the bill is not ready for consideration.

. 211078 — Resources for Nonviolent Offenders with Behavioral Health Diagnoses

Representative Stapleton and Mr. Kopelman explained the bill. The bill would allow counties to modify services to meet local needs and to apply for funds. Mr. Kopelman noted that the bill is a high priority for counties, explaining that behavioral health issues are a significant challenge for counties and the state and are driving the high operating costs of jails. Offenders get little or no treatment as there are few or no professionals in rural communities. This bill would authorize treatment before offenders are released from jail. It also provides housing, job training and other services.

A member argued that the counties should maximize their use of gross receipts tax revenue before they are allowed to obtain funding from the legislature. Otherwise, poorer counties that have maxed out their gross receipts tax increments essentially subsidize the richer counties that have not.

Mr. Kopelman observed that the lack of providers, not lack of money, is often the issue. The bill would require the Human Services Department to help provide professionals.

.211486 — No Mandatory Parole for Certain Sentences

Representative Maestas explained the bill. A member suggested the bill should require parole for a firearm enhancement.

.211488 — Reduce Probation Time for Good Behavior

Representative Maestas explained the bill, noting that the national standard for caseloads for probation officers is 80. That standard is regularly exceeded in New Mexico. The bill would remove low-risk offenders from these caseloads and allow officers to focus on the most dangerous offenders.

.211494 — Medical or Geriatric Parole

Senator McSorley explained the bill. A member suggested that the CD should be required to assist offenders who lack the skills to complete the application process. Members also agreed that "incapacity" should be defined.

.211495 — Parole Board Procedures

Senator McSorley explained the bill. The bill would offer the Parole Board more flexibility to grant paroles. A member noted that the determining factor should not be what the offender did in the past, but whether the offender presents a public safety risk today. He suggested that the board should provide written findings justifying refusal. A member suggested that the bill should be shared with victim advocacy groups and the Parole Board.

.211489 — Post-Conviction DNA Testing Act

Senator McSorley explained the bill. He noted that the bill would allow convicted felons to petition a court to perform DNA tests to seek exculpatory evidence. He noted that there would be few cases, as DNA testing has been common over the past 20 years.

The members generally agreed to delete the requirement for a "full, fair and prompt" hearing, as judges are presumed to act accordingly.

.211492 — Halfway House and Transitional Facility Act

Senator McSorley explained the bill. He noted that the CD has contracted with facilities that provide no support services. The bill would require support services, such as education and job training.

.211506 — Accuracy of Eyewitness Procedures

Senator McSorley explained the bill. He explained that research has shown that eyewitness evidence is often unreliable. The bill includes national standards for increasing reliability. He noted that no law enforcement agency opposed the bill and that the procedures are not mandatory.



.211483 — Safe House Act

Senator McSorley explained the bill. A member noted that changing an individual's behavior is a slow process and relapse is part of the treatment process. He said that the treatment process should not be piecemeal and must address the overall needs of the offender. A member also noted that, currently, an individual who needs assistance may need to commit a crime to obtain services.

.211484 — Behavioral Health Investment Zones

Senator McSorley explained the bill. He noted that the bill supports non-Medicaid assistance, but he observed that the bill may not represent current best practices. A member suggested that the subcommittee might consider compiling a group of bills that specifically address behavioral health issues. Another member warned that the bills must be carefully coordinated, otherwise they will not work together.

**Public Comment**

Mr. Carver noted that the discussion did not include a bill addressing collateral consequences. Studies have shown that collateral consequences can cause high barriers to reintegration and affect recidivism. The members agreed that the issue should be considered in the future.

William Zunkel discussed a proposed memorial to consider converting a prison facility to a treatment center that would include incarceration. He said that the CD and other agencies support the concept.

**Adjournment**

There being no further business before the subcommittee, the seventh meeting of the Criminal Justice Reform Subcommittee adjourned at 3:45 p.m.



**TENTATIVE AGENDA  
for the  
EIGHTH MEETING  
of the  
CRIMINAL JUSTICE REFORM SUBCOMMITTEE**

**November 16, 2018  
State Capitol, Room 311  
Santa Fe**

**Friday, November 16**

- 10:00 a.m.           **Call to Order and Introductions**  
—Senator Sander Rue, Co-Chair  
—Representative Antonio Maestas, Co-Chair
- Action Item: Approval of Minutes of October 25, 2018 and November 13, 2018 Meetings*
- 10:15 a.m.           **Finalization of Proposed Criminal Justice Reform Legislation**
- 12:30 p.m.           **Lunch**
- 1:30 p.m.           **Finalization of Proposed Criminal Justice Reform Legislation  
(Continued)**
- 2:45 p.m.           **Public Comment**
- 3:00 p.m.           **Adjourn**



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

**November 16, 2018  
State Capitol, Room 311  
Santa Fe**

The eighth meeting of the Criminal Justice Reform Subcommittee (CJRS) of the Courts, Corrections and Justice Committee (CCJ) was called to order by Representative Antonio Maestas, co-chair, on November 16, 2018 at 10:25 a.m. in Room 311 of the State Capitol in Santa Fe.

**Present**

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

**Absent**

**Guest Legislator**

Sen. Bill B. O'Neill

**Staff**

Celia Ludi, Staff Attorney, Legislative Council Service (LCS)  
Randall Cherry, Staff Attorney, LCS  
Mark Peralta-Silva, Staff Attorney, LCS  
Erin Bond, Research Assistant, LCS

**Minutes Approval**

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

**Guests**

The guest list is in the meeting file.

**Handouts**

Handouts and other written materials are in the meeting file.

## **Friday, November 16**

### **Introductions and Minutes Approval**

Representative Maestas welcomed everyone to the meeting, and subcommittee members and staff introduced themselves. The subcommittee then approved the minutes for the October 25, 2018 and November 13, 2018 meetings.

### **Finalization of Proposed Criminal Justice Reform Legislation**

Subcommittee members began the meeting by considering bills for recommendation for endorsement by the CCJ. Members also discussed whether bills should be considered for inclusion in a criminal justice reform legislation package.

### **Legislative Recommendations from New Mexico SAFE**

It was noted that the list of recommendations from New Mexico SAFE can be accessed under Item 2 of the handouts for the October 25, 2018 meeting of the subcommittee. The subcommittee considered the following recommendations.

#### **.211031 — Expungement of Criminal Record**

This recommendation has been considered previously in House Bill (HB) 505 (2017), Senate Bill (SB) 294 (2013), SB 2 (2012) and SB 649 (2009). A subcommittee member stated a preference for this bill to be a standalone bill. Another subcommittee member agreed. SB 649 (2009), which passed both houses but was vetoed by the governor, proposed to expunge nonviolent felonies after 10 years, misdemeanors after five years and nonviolent charges after two years.

#### **.210861 — Uniform Collateral Consequences of Conviction Act**

This recommendation was considered previously in Senate Bill 292 (2017). The proposed bill provides for notification to defendants of the collateral consequences of conviction when a defendant pleads guilty to a crime.

#### **Fair-Chance Hiring (Ban the Box) for Private Employers**

While there was no bill before the subcommittee, the proposal for the 2019 legislative session is similar to SB 78, which was considered in the 2017 legislative session. The proposal bans private employers from asking a job applicant if the applicant is a felon. Some members noted that they would like to hear from business entities and other groups to gauge the business community's support for the proposal. Another member shared that the member voted against this proposal in the past but would support it now. In response to a member's question, another member stated that the New Mexico Association of Commerce and Industry, the Greater Albuquerque Chamber of Commerce and the Albuquerque Hispano Chamber of Commerce support the proposal.

#### .211086 — Solitary Confinement Reform

This recommendation was considered in HB 175 (2017). A subcommittee member noted that this bill mostly applies to prisons, not to county and local jails, because there is a great deal of turnover in county and local jails. It was noted that a subcommittee member and Senator Mary Kay Papen will sponsor this bill separately. The members agreed that the bill should be a standalone bill.

#### .211494 — Medical and Geriatric Parole Reform

Reform of medical and geriatric parole was first considered in SB 116 (2017). This bill amends current law. A member asked why the 2017 bill died in the Senate Judiciary Committee. Another member noted that it is unlikely for an inmate to recidivate after reaching 65 years of age.

#### .211495 — Parole Board Procedures Reform

This recommendation was considered in SB 216 (2017) and changes Parole Board procedures. In response to a member's question, another member noted that the bill does not provide an attorney for a parolee. Another member expressed support for the bill because it allows inmates sentenced to life imprisonment an opportunity to receive a fair hearing.

#### .211714 — Expansion of Good Samaritan Law to Probationers and Parolees Reporting a Drug Overdose

This proposal was considered in Senate Bill 47 (2017) and extends limited liability protections, known as the Good Samaritan Law, to probationers and parolees. This bill incentivizes probationers and parolees to call emergency services or law enforcement when a person is thought to be overdosing on illegal drugs. A member noted that the liability protections in the bill should extend to drug paraphernalia found at the scene as well.

#### Legalization of Marijuana

While there was no bill before the subcommittee, the proposal was similar in intent to Senate Joint Resolution 4 (2018). This proposal allows legalization of possession and personal use of marijuana. Members agreed that the proposal should be a standalone bill.

#### Reducing the Penalty for Simple Possession of Marijuana to a Misdemeanor

There was no bill before the subcommittee, but a member noted sponsorship of a bill that would allow judges to take simple possession of marijuana charges under advisement. A member stated that Senator Joseph Cervantes is sponsoring a bill that focuses only on marijuana, but the member suggested that the bill should include narcotics as well.

#### .211715 — Fiscal Impact Statements for Changes in Criminal Sentences

This proposal was considered in SB 263 (2017) and requires the New Mexico Sentencing Commission to provide fiscal impact statements, if information is available, for bills that create new crimes; repeal, increase or decrease periods of imprisonment; or impose or remove mandatory minimum sentences.

.211720 — Decriminalization of Certain Offenses

These recommendations were considered in the 2018 legislative session. HB 271 (2018) was combined with HB 19 (2018). This bill decriminalizes certain offenses. A member noted that this bill received wide support in the 2018 legislative session. HB 19 passed both houses and was signed by the governor with line-item vetoes of specific provisions.

**Vetoed Criminal Justice Reform Bills from 2011 through 2018**

It was noted that the full list of vetoed legislation from 2011 through 2018 can be accessed under Item 2 of the handouts for the October 25, 2018 meeting. The recommendations considered by the subcommittee are as follows.

.211078 — Nonviolent Offender Interventions

This recommendation was considered in HB 160 (2018). This bill requires the Human Services Department to create, implement and evaluate the effectiveness of interventions for inmates with behavioral health diagnoses. The bill also connects inmates with resources and services upon release from a correctional facility.

.211488 — Reduce Probation Time for Good Behavior

This recommendation passed both houses in 2015 with HB 332, but it was vetoed by the governor. This bill decreases the amount of time that a probationer would spend on supervised release if the probationer practices good behavior during the supervised period. Specifically, if a probationer sentenced to five years probation spent three years on supervised release without any infractions, then the probationer would spend the remaining two years on unsupervised release. A member expressed concern that this bill would take sentencing discretion away from the judge. In response to a question, a member noted that the Parole Board may provide some relief to probationers, but the bill does not remove the requirement that probationers serve a period of supervised release. A member suggested that the bill proceed as a standalone bill.

.211489 — Post-Conviction Consideration of DNA Evidence

SB 491 (2013) contained these recommendations and passed both houses but was pocket vetoed by the governor. These recommendations had more relevance when routine DNA testing was less prevalent. The recommendations existed to provide those convicted of a crime with an opportunity for DNA testing and for a hearing.

.211506 — Accurate Eyewitness Identification Act

SB 490 (2013) contained these recommendations and passed both houses but was pocket vetoed by the governor. This bill requires law enforcement agencies to establish written policies for using an eyewitness to identify a suspect. The bill also requires law enforcement agencies to provide copies of their written policies to the secretary of public safety.



## **Legislative Proposals from the Criminal Justice and Public Safety Task Force Created by House Joint Memorial 16 (2018)**

It was noted that bills discussed by the subcommittee can be accessed under Item 2 of the handouts for the November 13, 2018 meeting. At the invitation of the subcommittee, Representative Damon Ely and Retired Justice Edward Chavez addressed the committee.

Ms. Ludi noted that 13 bill ideas were proposed by the Criminal Justice and Public Safety Task Force. Of those 13 ideas, two were removed from consideration by the subcommittee — return-to-work for district attorneys, public defenders and law enforcement officers under certain circumstances and PAX Good Behavior Games. Four bills resulted from the work of the task force, including a data collection, sharing and analysis bill (.211192); a crime reduction fund bill (.211420); a bill increasing prosecutorial discretion (.211415); and a bill amending existing student loan repayment law (.211461).

Ms. Ludi discussed how one of the ideas generated a crime reduction fund bill that creates coordinating councils in each judicial district that would map onto the Supreme Court's criminal justice coordinating councils that exist in each district. This bill provides funds to the coordinating councils to incentivize the staff of the coordinating councils to attend meetings. Additionally, the New Mexico Sentencing Commission would manage the coordinating councils.

Regarding behavioral health changes in the data analysis bill, a member noted concern. The member suggested that Justice Chavez and Representative Ely reach out to legislators about the behavioral health changes. In response to a question, Representative Ely confirmed that the New Mexico Sentencing Commission needs the behavioral health data to perform complete analyses of the criminal justice system.

Another member noted approval for prioritizing data analysis and data sharing but also noted a concern regarding infrastructure and getting stakeholders to provide the data. The member noted that if the data analysis bill goes forward, there needs to be assurance that the infrastructure is in place for the data collection to work and that people will participate in data sharing.

A member noted that the subcommittee should not recommend unfunded mandates. The member highlighted that the intent of the legislature is to create evidence-based programs that allow the appropriate agencies to analyze information in real time so that the legislature can react to issues and problems as soon as possible.

In response to a member's concern regarding behavioral health, Representative Ely stated that the bill brings in a behavioral health expert to the New Mexico Sentencing Commission. Representative Ely noted that the amount of money needed for data collection, for retaining and hiring law enforcement officers and for rebuilding behavioral health infrastructure could be approximately \$15 million.

A member expressed support for an increased appropriation. Representative Ely stated that he is working with Travis McIntyre, Ph.D., Legislative Finance Committee, on concrete numbers for task force proposals. The member also expressed support for including a recurring appropriation rather than a nonreverting fund.

Regarding a preprosecution diversion program, some members expressed apprehension over allowing those with possession of narcotics charges to participate in the program.

### **Council of State Governments Legislative Proposals**

The following Council of State Governments proposals can be accessed under Item 2 of the handouts for the November 13, 2018 meeting. The subcommittee considered the following proposals.

#### .211435 — Probation and Parole Best Practices

Among other things, this bill defines "technical" and "non-technical" violations and creates an informal hearing process for technical violations. The bill also addresses issues with the number of individuals who return to prison or jail for technical violations of parole or probation.

#### .211468 — Crime Victims Reparation

This bill adds a requirement to the Crime Victims Reparation Act that would require district attorneys to inform victims that reparations may be available through the Crime Victims Reparation Commission. The bill also allows for victims to receive reparations if they acted reasonably under the circumstances.

### **Recap and Final Thoughts**

A member highlighted support for two bills — a bill raising the penalty for second degree murder and a bill lifting the statute of limitations on second degree murder.

In response to a question about sentencing, members noted that they would prefer to address issues of criminal sentencing next year. A member highlighted how driving while intoxicated is a distinct crime, and various crimes and theories of punishment require careful attention.

A member highlighted work with law enforcement agencies to present legislation that would prevent the Law Enforcement Protection Fund from being swept and would instead protect the fund so that it can be disbursed for hiring and retaining law enforcement.

### **Review of Proposed Subcommittee Legislation**

The following bills were recommended for endorsement by the CCJ and possible inclusion in a criminal justice reform package.

- .211078, Nonviolent Offender Interventions;

- .210861, Uniform Collateral Consequences of Conviction Act;
- .211252, Fair-Chance Hiring (Ban the Box) for Private Employers;
- .211468, Crime Victims Reparation;
- .211489, Post-Conviction Consideration of DNA evidence;
- .211494, Medical and Geriatric Parole Reform;
- .211495, Parole Board Procedures Reform;
- .211506, Accurate Eyewitness Identification Act;
- .211714, Expansion of Good Samaritan Law to Probationers and Parolees Reporting a Drug Overdose;
- .211715, Fiscal Impact Statements for Changes in Criminal Sentences; and
- .211720, Decriminalization of Certain Offenses.

The following bills were considered as additional candidates for inclusion in a criminal justice reform package.

- .211192, Create a Central Criminal Justice Data Repository in the New Mexico Sentencing Commission;
- .211415, Preprosecution Diversion Reform;
- .211420, Crime Reduction Fund Act;
- .211435, Probation and Parole Best Practices;
- .211461, Loan Repayment for Law Enforcement and Corrections Officers; and
- .211486, No Mandatory Parole for Certain Sentences.

The following bills dealt with criminal justice reform topics that, because of their controversial or technical nature, were not recommended for endorsement or inclusion in a criminal justice reform package.

- .211031, Expungement of Criminal Records;
- .211086, Solitary Confinement Reform;
- .211483, Safe House Act;
- .211484, Behavioral Health Investment Zones;
- .211488, Reduce Probation Time for Good Behavior;
- .211492, Halfway House and Residential Facility Act;
- Legalization of Marijuana (no file open); and
- Reducing the Penalty for Simple Possession of Marijuana to a Misdemeanor (no file open).

### **Public Comment**

Dan Nickelson, Board of Directors, National Alliance on Mental Illness Santa Fe (NAMI), said that he attended the meeting to talk about NAMI's concerns and that he believes the subcommittee is talking about the right issues. Mr. Nickelson stressed the importance of addressing an individual's underlying illness. He explained that there are no avenues to help people live successful lives after prison and specifically noted the lack of halfway houses.

**Adjournment**

There being no further business before the subcommittee, the eighth meeting of the CJRS adjourned at 2:30 p.m.

## ENDORSED LEGISLATION



1 SENATE JOINT RESOLUTION

2 **54TH LEGISLATURE - STATE OF NEW MEXICO - FIRST SESSION, 2019**

3 INTRODUCED BY

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8 ENDORSED BY THE COURTS, CORRECTIONS AND JUSTICE COMMITTEE

9  
10 A JOINT RESOLUTION

11 PROPOSING TO AMEND ARTICLE 6, SECTION 35 OF THE CONSTITUTION OF  
12 NEW MEXICO TO PROVIDE THAT AN APPOINTED APPELLATE JUDGE SERVE  
13 AT LEAST ONE YEAR BEFORE A GENERAL ELECTION IS HELD FOR THE  
14 OFFICE TO WHICH THE JUDGE WAS APPOINTED.

15  
16 BE IT RESOLVED BY THE LEGISLATURE OF THE STATE OF NEW MEXICO:

17 SECTION 1. It is proposed to amend Article 6, Section 35  
18 of the constitution of New Mexico to read:

19 "There is created the "appellate judges nominating  
20 commission", consisting of: the chief justice of the supreme  
21 court or the chief justice's designee from the supreme court;  
22 two judges of the court of appeals appointed by the chief judge  
23 of the court of appeals; the governor, the speaker of the house  
24 of representatives and the president pro tempore of the senate  
25 shall each appoint two persons, one of whom shall be an

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1 attorney licensed to practice law in this state and the other  
2 who shall be a citizen who is not licensed to practice law in  
3 any state; the dean of the university of New Mexico school of  
4 law, who shall serve as [~~chairman~~] chair of the commission and  
5 shall vote only in the event of a tie vote; four members of the  
6 state bar of New Mexico, representing civil and criminal  
7 prosecution and defense, appointed by the president of the  
8 state bar and the judges on [~~this committee~~] the commission.

9 The appointments shall be made in such manner that each of the  
10 two largest major political parties, as defined by the Election  
11 Code, shall be equally represented on the commission. If  
12 necessary, the president of the state bar and the judges on  
13 [~~this committee~~] the commission shall make the minimum number  
14 of additional appointments of members of the state bar as is  
15 necessary to make each of the two largest major political  
16 parties be equally represented on the commission. These  
17 additional members of the state bar shall be appointed such  
18 that the diverse interests of the state bar are represented.

19 The dean of the university of New Mexico school of law shall be  
20 the final arbiter of whether such diverse interests are  
21 represented. Members of the commission shall be appointed for  
22 terms as may be provided by law. If a position on the  
23 commission becomes vacant for any reason, the successor shall  
24 be selected by the original appointing authority in the same  
25 manner as the original appointment was made and shall serve for

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1 the remainder of the term vacated.

2 The commission shall actively solicit, accept and evaluate  
3 applications from qualified lawyers for the position of justice  
4 of the supreme court or judge of the court of appeals and may  
5 require an applicant to submit any information it deems  
6 relevant to the consideration of ~~[his]~~ the application.

7 Upon the occurrence of an actual vacancy in the office of  
8 justice of the supreme court or judge of the court of appeals,  
9 the commission shall meet within thirty days and within that  
10 period submit to the governor the names of persons qualified  
11 for the judicial office and recommended for appointment to that  
12 office by a majority of the commission.

13 Immediately after receiving the commission nominations,  
14 the governor may make one request of the commission for  
15 submission of additional names, and the commission shall  
16 promptly submit such additional names if a majority of the  
17 commission finds that additional persons would be qualified and  
18 recommends those persons for appointment to the judicial  
19 office. The governor shall fill a vacancy or appoint a  
20 successor to fill an impending vacancy in the office of justice  
21 of the supreme court or judge of the court of appeals within  
22 thirty days after receiving final nominations from the  
23 commission by appointing one of the persons nominated by the  
24 commission for appointment to that office. If the governor  
25 fails to make the appointment within that period or from those

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1 nominations, the appointment shall be made from those  
2 nominations by the chief justice or the acting chief justice of  
3 the supreme court. ~~[Any]~~ The person appointed shall serve  
4 until the ~~[next]~~ first general election ~~[That person's]~~  
5 following one year after appointment. The appointee's  
6 successor shall be chosen at such election and shall hold the  
7 office until the expiration of the ~~[original]~~ term in effect at  
8 the time of election."

9 SECTION 2. The amendment proposed by this resolution  
10 shall be submitted to the people for their approval or  
11 rejection at the next general election or at any special  
12 election prior to that date that may be called for that  
13 purpose.

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1 SENATE JOINT RESOLUTION

2 **54TH LEGISLATURE - STATE OF NEW MEXICO - FIRST SESSION, 2019**

3 INTRODUCED BY

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8 ENDORSED BY THE COURTS, CORRECTIONS AND JUSTICE COMMITTEE

9  
10 A JOINT RESOLUTION

11 PROPOSING TO AMEND ARTICLE 6, SECTION 23 OF THE CONSTITUTION OF  
12 NEW MEXICO TO ALLOW THE LEGISLATURE TO PROVIDE COUNTY  
13 COMMISSIONS THE OPTION TO TRANSFER PROBATE JURISDICTION TO A  
14 STATE COURT UPON APPROVAL OF THE SUPREME COURT.

15  
16 BE IT RESOLVED BY THE LEGISLATURE OF THE STATE OF NEW MEXICO:

17 SECTION 1. It is proposed to amend Article 6, Section 23  
18 of the constitution of New Mexico to read:

19 "A probate court is hereby established for each county,  
20 which shall be a court of record, and, until otherwise provided  
21 by law, shall have the same jurisdiction as heretofore  
22 exercised by the probate courts of New Mexico and shall also  
23 have jurisdiction to determine heirship with respect to real  
24 property in all proceedings for the administration of  
25 decedents' estates. The legislature may provide county

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1 commissions the authority to close a probate court of the  
2 county and transfer its jurisdiction to a state court upon  
3 approval of the supreme court. The legislature shall have  
4 power from time to time to confer upon the probate court in any  
5 county in this state jurisdiction to determine heirship in all  
6 probate proceedings, and shall have power also from time to  
7 time to confer upon the probate court in any county in this  
8 state general civil jurisdiction coextensive with the county;  
9 provided, however, that such court shall not have jurisdiction  
10 in civil causes in which the matter in controversy shall exceed  
11 in value three thousand dollars [~~(\$3,000.00)~~] (\$3,000)  
12 exclusive of interest and cost; nor in any action for malicious  
13 prosecution, slander and libel; nor in any action against  
14 officers for misconduct in office; nor in any action for the  
15 specific performance of contracts for the sale of real estate;  
16 nor in any action for the possession of land; nor in any matter  
17 wherein the title or boundaries of land may be in dispute or  
18 drawn in question, except as title to real property may be  
19 affected by the determination of heirship; nor to grant writs  
20 of injunction, habeas corpus or extraordinary writs.  
21 Jurisdiction may be conferred upon the judges of said court to  
22 act as examining and committing magistrates in criminal cases,  
23 and upon said courts for the trial of misdemeanors in which the  
24 punishment cannot be imprisonment in the penitentiary, or in  
25 which the fine cannot be in excess of one thousand dollars

.211220.5SA

1 (\$1,000). A jury for the trial of such cases shall consist of  
2 six ~~men~~ persons. The legislature shall prescribe the  
3 qualifications and fix the compensation of probate judges."

4 SECTION 2. The amendment proposed by this resolution  
5 shall be submitted to the people for their approval or  
6 rejection at the next general election or at any special  
7 election prior to that date that may be called for that  
8 purpose.

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SENATE BILL

**54TH LEGISLATURE - STATE OF NEW MEXICO - FIRST SESSION, 2019**

INTRODUCED BY

ENDORSED BY THE COURTS, CORRECTIONS AND JUSTICE COMMITTEE

AN ACT

RELATING TO COURTS; AUTHORIZING MUNICIPALITIES OF ANY SIZE TO  
TRANSFER JURISDICTION OF MUNICIPAL COURTS TO THE MAGISTRATE  
COURT WITH THE AGREEMENT OF THE SUPREME COURT.

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

SECTION 1. Section 35-14-1 NMSA 1978 (being Laws 1961,  
Chapter 208, Section 1, as amended) is amended to read:

"35-14-1. MUNICIPAL COURT--CREATION.--

A. Except for municipalities with a population of  
[~~less~~] fewer than two thousand five hundred or more than five  
thousand persons in the [~~1980~~] most recent federal decennial  
census lying within the boundaries of a class A county with a  
population of more than two hundred thousand persons in the  
[~~last~~] most recent federal decennial census and municipalities  
[~~which~~] that have adopted an effective ordinance pursuant to

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1 Subsection B of this section, there is established a municipal  
2 court in each incorporated municipality. The municipal courts  
3 shall be presided over by municipal judges. As used in Chapter  
4 35, Articles 14 and 15 NMSA 1978, "municipality" includes H  
5 class counties.

6 B. The governing body of a municipality [~~with a~~  
7 ~~population of one thousand five hundred persons or less in the~~  
8 ~~last federal decennial census~~] may designate the magistrate  
9 court of the county in which the municipality is located as the  
10 court having jurisdiction over municipal ordinances upon  
11 agreement between the supreme court and the municipality. The  
12 designation shall be by adopted ordinance [~~which~~] that shall  
13 not be effective until the expiration of the term of any  
14 incumbent municipal judge. Within five days after the  
15 effective date of the ordinance, the governing body of the  
16 municipality shall:

17 (1) forward a copy of the ordinance to the  
18 magistrate court and to the administrative office of the  
19 courts; and

20 (2) provide to the magistrate court copies of  
21 all municipal ordinances over which the magistrate court will  
22 have jurisdiction.

23 C. A magistrate court designated pursuant to  
24 Subsection B of this section shall, with respect to ordinances  
25 of the municipality:

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(1) follow the rules of procedure for the  
municipal courts and the procedures provided by Chapter 35,  
Article 15 NMSA 1978;

(2) impose no fine or sentence greater than  
that permitted for municipalities; and

(3) remit monthly to the state all funds  
collected as a result of enforcement of municipal ordinances."



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HOUSE BILL

**54TH LEGISLATURE - STATE OF NEW MEXICO - FIRST SESSION, 2019**

INTRODUCED BY

ENDORSED BY THE COURTS, CORRECTIONS AND JUSTICE COMMITTEE

AN ACT

RELATING TO COURTS; PROVIDING THAT ON-RECORD PROCEEDINGS IN METROPOLITAN COURTS MAY BE APPEALED DIRECTLY TO THE COURT OF APPEALS.

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

SECTION 1. Section 34-8A-6 NMSA 1978 (being Laws 1979, Chapter 346, Section 6, as amended) is amended to read:

"34-8A-6. METROPOLITAN COURT--RULES--APPEAL.--

A. The supreme court shall adopt separate rules of procedure for the metropolitan courts. The rules shall provide simple procedures for the just, speedy and inexpensive determination of any metropolitan court action.

B. The metropolitan court is a court of record for civil actions. Any party aggrieved by a judgment rendered by the metropolitan court in a civil action may appeal to the

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1 ~~[district court of the county in which the metropolitan court~~  
2 ~~is located within fifteen days after the judgment was rendered]~~  
3 court of appeals. The manner and method for the appeal shall  
4 be set forth by supreme court rule.

5 C. The metropolitan court is a court of record for  
6 criminal actions involving driving while under the influence of  
7 intoxicating ~~[liquors]~~ liquor or drugs or involving domestic  
8 violence. A criminal action involving domestic violence means  
9 an assault or battery under any state law or municipal or  
10 county ordinance in which the alleged victim is a household  
11 member as defined in the Family Violence Protection Act. Any  
12 party aggrieved by a judgment rendered by the metropolitan  
13 court in a criminal action involving driving while under the  
14 influence of intoxicating ~~[liquors]~~ liquor or drugs or  
15 involving domestic violence may appeal to the ~~[district court~~  
16 ~~of the county in which the metropolitan court is located within~~  
17 ~~fifteen days after the judgment was rendered]~~ court of appeals.  
18 The manner and method of appeal shall be set forth by supreme  
19 court rule.

20 D. The metropolitan court is not a court of record  
21 for criminal actions other than driving while under the  
22 influence of intoxicating ~~[liquors]~~ liquor or drugs or domestic  
23 violence actions. Any party aggrieved by a judgment rendered  
24 by the metropolitan court in a criminal action, other than  
25 driving while under the influence of intoxicating ~~[liquors]~~

.211289.1SA

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1 liquor or drugs or domestic violence action, may appeal to the  
2 district court of the county in which the metropolitan court is  
3 located within fifteen days after the judgment was rendered.  
4 The appeal shall be de novo.

5 E. All judgments rendered in civil actions in the  
6 metropolitan court shall be subject to the same provisions of  
7 law as those rendered in district court."

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SENATE BILL

**54TH LEGISLATURE - STATE OF NEW MEXICO - FIRST SESSION, 2019**

INTRODUCED BY

AN ACT

RELATING TO COURTS; ALLOWING PERSONS SEVENTY-FIVE YEARS OF AGE OR OLDER TO BE EXEMPTED FROM JURY SERVICE WITHOUT REQUIRING AN AFFIDAVIT.

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

**SECTION 1.** Section 38-5-2 NMSA 1978 (being Laws 1973, Chapter 150, Section 1, as amended) is amended to read:

"38-5-2. EXEMPTION FROM JURY SERVICE--EXCUSALS--SERVICE OF DISQUALIFIED JUROR.--

A. A person who has served as a member of a petit jury panel or a grand jury in either state or federal courts within the preceding thirty-six months shall be exempt from sitting or serving as a juror in a court of this state when the person requests to be exempted from service by reason of the exemption granted by this subsection.

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1           B. A person who is seventy-five years of age or  
2 older who [~~files an affidavit requesting an~~] requests exemption  
3 from jury service with a local court shall be permanently  
4 exempt from jury service.

5           C. A person may be excused from jury service at the  
6 discretion of the judge or the judge's designee, with or  
7 without the person's personal attendance upon the court, if:

8                   (1) jury service would cause undue or extreme  
9 physical or financial hardship to the prospective juror or to a  
10 person under the prospective juror's care or supervision;

11                   (2) the person has an emergency that renders  
12 the person unable to perform jury service; or

13                   (3) the person presents other satisfactory  
14 evidence to the judge or the judge's designee.

15           D. A person requesting an exemption or an excuse  
16 from jury service shall take all necessary action to obtain a  
17 ruling on the request no later than the date on which the  
18 person is scheduled to appear for jury duty.

19           E. The judge, in the judge's discretion, upon  
20 granting any excuse, may disallow the fees and mileage of the  
21 person excused.

22           F. The service upon a jury of a person disqualified  
23 shall, of itself, not vitiate any indictment found or any  
24 verdict rendered by that jury, unless actual injury to the  
25 person complaining of the injury is shown.

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1                   G. As used in this section and Section 38-5-1 NMSA  
2 1978, "undue or extreme physical or financial hardship":

3                   (1) means circumstances in which a person  
4 would:

5                                 (a) be required to abandon another  
6 person under the person's care or supervision due to the  
7 extreme difficulty of obtaining an appropriate substitute  
8 caregiver during the period of jury service;

9                                 (b) incur costs that would have a  
10 substantial adverse impact on the payment of necessary daily  
11 living expenses of the person or the person's dependent; or

12                                 (c) suffer physical hardship that would  
13 result in illness or disease; and

14                   (2) does not exist solely because a  
15 prospective juror will be absent from employment."



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HOUSE BILL

**54TH LEGISLATURE - STATE OF NEW MEXICO - FIRST SESSION, 2019**

INTRODUCED BY

ENDORSED BY THE COURTS, CORRECTIONS AND JUSTICE COMMITTEE

AN ACT

RELATING TO CRIMINAL PROCEDURE; CLARIFYING NOTICE PROCEDURES  
FOR COURT REVIEW OF SEX OFFENDER PROBATION.

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

SECTION 1. Section 31-20-5.2 NMSA 1978 (being Laws 2003  
(1st S.S.), Chapter 1, Section 7) is amended to read:

"31-20-5.2. SEX OFFENDERS--PERIOD OF PROBATION--TERMS AND  
CONDITIONS OF PROBATION.--

~~[A. When a district court defers imposition of a  
sentence for a sex offender, or suspends all or any portion of  
a sentence for a sex offender, the district court shall include  
a provision in the judgment and sentence that specifically  
requires the sex offender to serve an indeterminate period of  
supervised probation for a period of not less than five years  
and not in excess of twenty years. A sex offender's period of~~

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1 ~~supervised probation may be for a period of less than twenty~~  
2 ~~years if, at a review hearing provided for in Subsection B of~~  
3 ~~this section, the state is unable to prove that the sex~~  
4 ~~offender should remain on probation.]~~

5 A. A sex offender shall have the right to counsel  
6 at all probation hearings.

7 B. Prior to placing or continuing a sex offender on  
8 supervised probation, the district court shall conduct a  
9 hearing to determine the terms and conditions of supervised  
10 probation for the sex offender. The district court may  
11 consider any relevant factors, including:

12 (1) the nature and circumstances of the  
13 offense for which the sex offender was convicted or  
14 adjudicated;

15 (2) the nature and circumstances of a prior  
16 sex offense committed by the sex offender;

17 (3) rehabilitation efforts engaged in by the  
18 sex offender, including participation in treatment programs  
19 while incarcerated or elsewhere;

20 (4) the danger to the community posed by the  
21 sex offender; and

22 (5) a risk and needs assessment regarding the  
23 sex offender, developed by the sex offender management board of  
24 the New Mexico sentencing commission or another appropriate  
25 entity, to be used by appropriate district court personnel.

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1                   ~~[B. A district court shall review the terms and~~  
2 ~~conditions of a sex offender's supervised probation at two and~~  
3 ~~one-half year intervals.]~~

4                   C. When a district court defers imposition of a  
5 sentence for a sex offender, or suspends all or any portion of  
6 a sentence for a sex offender, the district court shall include  
7 a provision in the judgment and sentence that specifically  
8 requires the sex offender to serve an indeterminate period of  
9 supervised probation for a period of not less than five years  
10 and not in excess of twenty years.

11                   D. A sex offender's period of supervised probation  
12 may be for a period of less than twenty years if, at a review  
13 hearing provided for in Subsection E of this section, the state  
14 is unable to prove that the sex offender should remain on  
15 supervised probation.

16                   E. When a sex offender has served the initial five  
17 years of supervised probation, the district court shall also  
18 review the duration of the sex offender's supervised probation  
19 at two and one-half year intervals. Prior to the end of the  
20 initial five years, the corrections department shall notify the  
21 district attorney in the district where the sex offender was  
22 sentenced and the sex offender's counsel of record. The  
23 district attorney shall petition the district court for a  
24 review hearing to consider the necessity of extension of  
25 supervised probation.

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1           F. When a sex offender has served the initial five  
2 years of supervised probation, at each review hearing the state  
3 shall bear the burden of proving [~~to a reasonable certainty~~] by  
4 clear and convincing evidence that the sex offender should  
5 remain on supervised probation.

6           G. If the sex offender is still on supervised  
7 probation after five years, the district court shall review the  
8 terms and conditions of the sex offender's supervised probation  
9 at two and one-half year intervals. Prior to the end of each  
10 two and one-half year interval, the corrections department  
11 shall notify the district attorney in the district where the  
12 sex offender was sentenced and the sex offender's counsel of  
13 record, and the district attorney shall petition the district  
14 court for a review hearing to consider the terms and conditions  
15 of supervised probation.

16           [~~G.~~] H. The district court may order a sex offender  
17 placed on supervised probation to abide by reasonable terms and  
18 conditions of probation, including:

19                   (1) being subject to intensive supervision by  
20 a probation officer of the corrections department;

21                   (2) participating in an outpatient or  
22 inpatient sex offender treatment program;

23                   (3) a probationary agreement by the sex  
24 offender not to use alcohol or drugs;

25                   (4) a probationary agreement by the sex

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1 offender not to have contact with certain persons or classes of  
2 persons; and

3 (5) being subject to alcohol testing, drug  
4 testing or polygraph examinations used to determine if the sex  
5 offender is in compliance with the terms and conditions of  
6 [his] probation.

7 ~~[D. The district court shall notify the sex~~  
8 ~~offender's counsel of record of an upcoming probation hearing~~  
9 ~~for a sex offender, and the sex offender's counsel of record~~  
10 ~~shall represent the sex offender at the probation hearing.~~  
11 ~~When a sex offender's counsel of record provides the court with~~  
12 ~~good cause that the counsel of record should not represent the~~  
13 ~~sex offender at the probation hearing and the sex offender is~~  
14 ~~subsequently unable to obtain counsel, the district court shall~~  
15 ~~notify the chief public defender of the upcoming probation~~  
16 ~~hearing and the chief public defender shall make representation~~  
17 ~~available to the sex offender at that hearing.~~

18 ~~E.]~~ I. If the district court finds that a sex  
19 offender has violated the terms and conditions of [his]  
20 probation, the district court may revoke [his] the sex  
21 offender's probation or may order additional terms and  
22 conditions of probation.

23 ~~[F.]~~ J. As used in this section, "sex offender"  
24 means a person who is convicted of, pleads guilty to or pleads  
25 nolo contendere to any one of the following offenses:

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1 (1) kidnapping, as provided in Section 30-4-1  
2 NMSA 1978, when committed with intent to inflict a sexual  
3 offense upon the victim;

4 (2) criminal sexual penetration in the first,  
5 second or third degree, as provided in Section 30-9-11 NMSA  
6 1978;

7 (3) criminal sexual contact of a minor in the  
8 second or third degree, as provided in Section 30-9-13 NMSA  
9 1978;

10 (4) sexual exploitation of children in the  
11 second degree, as provided in Section 30-6A-3 NMSA 1978; or

12 (5) sexual exploitation of children by  
13 prostitution in the first or second degree, as provided in  
14 Section 30-6A-4 NMSA 1978."



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HOUSE BILL

**54TH LEGISLATURE - STATE OF NEW MEXICO - FIRST SESSION, 2019**

INTRODUCED BY

FOR THE COURTS, CORRECTIONS AND JUSTICE COMMITTEE

AN ACT

RELATING TO LAW ENFORCEMENT; ENACTING THE RESERVE POLICE OFFICER ACT; AUTHORIZING GOVERNMENTAL ENTITIES TO COMMISSION RESERVE POLICE OFFICERS TO ASSIST POLICE OFFICERS; DEFINING POWERS AND DUTIES OF RESERVE POLICE OFFICERS; ESTABLISHING QUALIFICATIONS OF RESERVE POLICE OFFICERS; PROVIDING FOR LICENSURE OF RESERVE POLICE OFFICERS; REQUIRING TRAINING; AMENDING SECTIONS OF THE PEACE OFFICERS', NEW MEXICO MOUNTED PATROL MEMBERS' AND RESERVE POLICE OFFICERS' SURVIVORS SUPPLEMENTAL BENEFITS ACT, THE CRIMINAL PROCEDURE ACT, THE TORT CLAIMS ACT AND THE MOTOR VEHICLE CODE TO INCLUDE RESERVE POLICE OFFICERS.

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

SECTION 1. [NEW MATERIAL] SHORT TITLE.--Sections 1 through 8 of this act may be cited as the "Reserve Police .210889.4

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1 Officer Act".

2 SECTION 2. [NEW MATERIAL] DEFINITIONS.--As used in the  
3 Reserve Police Officer Act:

4 A. "board" means the New Mexico law enforcement  
5 academy board;

6 B. "director" means the director of the New Mexico  
7 law enforcement academy; and

8 C. "reserve police officer" means a person who is  
9 licensed as a reserve police officer by the board to assist  
10 police officers.

11 SECTION 3. [NEW MATERIAL] AUTHORIZATION TO COMMISSION  
12 RESERVE POLICE OFFICERS.--A governmental entity as defined in  
13 the Tort Claims Act is authorized to commission reserve police  
14 officers.

15 SECTION 4. [NEW MATERIAL] RESERVE POLICE OFFICER--SCOPE  
16 OF AUTHORITY.--

17 A. A reserve police officer commissioned by a  
18 governmental entity as defined in the Tort Claims Act and  
19 assigned to the prevention and detection of crime and the  
20 general enforcement of the laws of this state shall have the  
21 powers of a police officer when working with supervision from a  
22 full-time salaried on-duty certified police officer.

23 B. The powers and authority of a reserve police  
24 officer extend only for the scope and duration of the reserve  
25 police officer's specific assignment.

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1 SECTION 5. [NEW MATERIAL] QUALIFICATIONS OF RESERVE

2 POLICE OFFICERS--LICENSURE--REPORTS--ROSTER.--

3 A. An applicant for licensure as a reserve police  
4 officer shall provide evidence satisfactory to the board that  
5 the applicant:

- 6 (1) is a citizen of the United States;  
7 (2) has reached the age of majority;  
8 (3) holds a high school diploma or the  
9 equivalent;  
10 (4) holds a valid New Mexico driver's license;  
11 (5) has not been convicted of or pled guilty  
12 to or entered a plea of nolo contendere to:  
13 (a) any felony charge; or  
14 (b) any violation of any federal or  
15 state law or local ordinance relating to aggravated assault,  
16 theft, driving while intoxicated, controlled substances or  
17 other crime involving moral turpitude within the three-year  
18 period immediately preceding the application;  
19 (6) has not been released or discharged under  
20 dishonorable conditions from any of the armed forces of the  
21 United States;  
22 (7) after examination by a licensed physician,  
23 is free of any physical condition that might adversely affect  
24 performance as a reserve police officer;  
25 (8) after examination by a certified

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1 psychologist, is free of any emotional or mental condition that  
2 might adversely affect performance as a reserve police officer;

3 (9) is of good moral character;

4 (10) has been awarded a certificate of  
5 completion attesting to the applicant's completion of a reserve  
6 police officer training program approved by the board; and

7 (11) has met any other requirements for  
8 licensure prescribed by the board pursuant to regulations  
9 adopted by the board.

10 B. The board shall establish different levels of  
11 licensure of reserve police officers, with clearly defined  
12 duties at each level. One level shall require not more than  
13 five hundred total hours of training and provide that the  
14 reserve police officer is qualified to work independently  
15 without completing the training required for certified police  
16 officers.

17 C. A reserve police officer shall not be required  
18 to meet all of the physical fitness and agility requirements  
19 required for certification as a law enforcement officer;  
20 provided that a reserve police officer completes the fitness  
21 tests at fifty percent of what would be required for  
22 certification as a law enforcement officer at the time the  
23 reserve police officer is licensed.

24 D. The director shall waive the law enforcement  
25 training required by the Reserve Police Officer Act for an

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1 applicant who:

2 (1) furnishes evidence of satisfactory  
3 completion of law enforcement training that, in the director's  
4 opinion, is substantially equivalent to the board's law  
5 enforcement training for reserve police officers; or

6 (2) is a retired certified police officer.

7 E. A person commissioned as a reserve police  
8 officer prior to July 1, 2019 may be exempted from the law  
9 enforcement training required by the Reserve Police Officer Act  
10 at the director's discretion.

11 F. A person granted a waiver of law enforcement  
12 training required by the Reserve Police Officer Act shall meet  
13 all other requirements for licensure set forth in the Reserve  
14 Police Officer Act.

15 G. To maintain licensure, reserve police officers  
16 shall complete fewer hours of in-service law enforcement  
17 training courses prescribed by the board every two years than  
18 is required for certified police officers. The first  
19 in-service training course shall commence no later than twelve  
20 months after graduation from the initial law enforcement  
21 training program.

22 H. No later than March 1 of every year, a reserve  
23 police officer, or the governmental entity as defined in the  
24 Tort Claims Act that commissioned the reserve police officer,  
25 shall provide to the director proof of completion of in-service

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1 training for the previous year.

2 I. Every governmental entity as defined in the Tort  
3 Claims Act that has commissioned reserve police officers shall  
4 submit quarterly reports to the director on the status of each  
5 commissioned reserve police officer. The reporting forms and  
6 submission dates shall be prescribed by the director.

7 J. The director shall maintain a roster of all  
8 reserve police officers.

9 SECTION 6. [NEW MATERIAL] TRAINING.--

10 A. The board shall develop and adopt a law  
11 enforcement training program for reserve police officers  
12 tailored to each level of licensure.

13 B. The board shall develop in-service law  
14 enforcement training courses for reserve police officers.

15 C. Training shall be conducted by board-qualified  
16 instructors.

17 D. Domestic abuse incident training and training  
18 for ensuring child safety upon the arrest of a parent or  
19 guardian shall be included in the curriculum of the law  
20 enforcement training program for reserve police officers.

21 E. The director shall provide annual notice to all  
22 reserve police officers regarding in-service training  
23 requirements.

24 SECTION 7. [NEW MATERIAL] REFUSAL, SUSPENSION OR  
25 REVOCATION OF LICENSE.--

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1           A. After consultation with the commissioning  
2 governmental entity as defined in the Tort Claims Act, the  
3 board may refuse to issue or may suspend or revoke a reserve  
4 police officer's license when the board determines that a  
5 person has:

6                   (1) failed to satisfy the qualifications for  
7 licensure set forth in the Reserve Police Officer Act;

8                   (2) committed acts that constitute dishonesty  
9 or fraud;

10                  (3) been convicted of, pled guilty to or  
11 entered a plea of no contest to:

12                           (a) any felony charge; or

13                           (b) any violation of federal or state  
14 law or a local ordinance relating to aggravated assault, theft,  
15 driving while under the influence of intoxicating liquor or  
16 drugs, controlled substances or any law or ordinance involving  
17 moral turpitude; or

18                   (4) knowingly made any false statement in the  
19 person's application for licensure.

20           B. Failure to complete required in-service training  
21 may be grounds for suspension of a reserve police officer's  
22 license.

23           C. A reserve police officer's license may be  
24 reinstated by the board when the reserve police officer, or the  
25 governmental entity as defined in the Tort Claims Act that

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1 commissioned the reserve police officer, provides the board  
2 with evidence of satisfactory completion of required in-service  
3 training.

4 D. The board shall promulgate rules and  
5 administrative procedures for the suspension or revocation of a  
6 reserve police officer's license that include:

7 (1) notice and an opportunity for the affected  
8 reserve police officer to be heard; and

9 (2) procedures for review of the board's  
10 decision.

11 SECTION 8. [NEW MATERIAL] SPECIAL DEPUTY COMMISSIONS.--  
12 Nothing in the Reserve Police Officer Act shall restrict a  
13 sheriff's power to issue special deputy commissions.

14 SECTION 9. Section 29-4A-3 NMSA 1978 (being Laws 1995,  
15 Chapter 59, Section 3, as amended) is amended to read:

16 "29-4A-3. DEFINITIONS.--As used in the Peace Officers',  
17 New Mexico Mounted Patrol Members' and Reserve Police Officers'  
18 Survivors Supplemental Benefits Act:

19 A. "fund" means the peace officers', New Mexico  
20 mounted patrol members' and reserve police officers' survivors  
21 fund;

22 B. "New Mexico mounted patrol" means units or  
23 troops officered and manned to assist with law enforcement  
24 pursuant to the provisions of Sections 29-6-1 and 29-6-4 NMSA  
25 1978, Subsection A of Section 29-6-5 NMSA 1978 and Section

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1 29-6-6 NMSA 1978;

2 C. "peace officer" means any full-time salaried and  
3 commissioned or certified law enforcement officer of a police  
4 or sheriff's department or a conservation officer of the  
5 department of game and fish as used in Chapter 17 NMSA 1978  
6 that is part of or administered by the state or any political  
7 subdivision of the state;

8 D. "reserve police officer" means a ~~[volunteer or a~~  
9 ~~temporary or part-time employee of a state or local law~~  
10 ~~enforcement agency]~~ person who is ~~[accepted by that agency as a~~  
11 ~~reserve law enforcement officer after receiving a background~~  
12 ~~check and training as needed by that agency]~~ licensed as a  
13 reserve police officer by the New Mexico law enforcement  
14 academy board to assist police officers and who is not a member  
15 of the New Mexico mounted patrol; and

16 E. "secretary" means the secretary of public  
17 safety."

18 SECTION 10. Section 31-1-2 NMSA 1978 (being Laws 1972,  
19 Chapter 71, Section 5, as amended) is amended to read:

20 "31-1-2. DEFINITIONS.--Unless a specific meaning is  
21 given, as used in the Criminal Procedure Act:

22 A. "accused" means any person charged with the  
23 violation of any law of this state imposing a criminal penalty;

24 B. "bail bond" is a contract between surety and the  
25 state to the effect that the accused and the surety will appear

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1 in court when required and will comply with all conditions of  
2 the bond;

3 C. "defendant" means any person accused of a  
4 violation of any law of this state imposing a criminal penalty;

5 D. "felony" means any crime so designated by law or  
6 if upon conviction thereof a sentence of death or of  
7 imprisonment for a term of one year or more is authorized;

8 E. "person", unless a contrary intention appears,  
9 means any individual, estate, trust, receiver, cooperative  
10 association, club, corporation, company, firm, partnership,  
11 joint venture, syndicate or other entity;

12 F. "police officer", "law enforcement officer",  
13 "peace officer" or "officer" means ~~any~~ a full-time salaried  
14 ~~or~~ officer, certified part-time salaried officer or  
15 commissioned reserve police officer who by virtue of office or  
16 public employment is vested by law with the duty to maintain  
17 the public peace;

18 G. "recognizance" means any obligation of record  
19 entered into before a court requiring the accused to appear at  
20 all appropriate times or forfeit any bail and be subject to  
21 criminal penalty for failure to appear;

22 H. "release on personal recognizance" or "release  
23 on own recognizance" means the release of a defendant without  
24 bail, bail bond or sureties upon the defendant's promise to  
25 appear at all appropriate times;

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1 I. "rules of civil procedure" means rules of civil  
2 procedure for the district courts of the state of New Mexico,  
3 as may be amended from time to time;

4 J. "rules of criminal procedure" means rules of  
5 criminal procedure for the district courts, magistrate courts  
6 and municipal courts adopted by the New Mexico supreme court,  
7 as may be amended from time to time;

8 K. "misdemeanor" means any offense for which the  
9 authorized penalty upon conviction is imprisonment in excess of  
10 six months but less than one year; and

11 L. "petty misdemeanor" means any offense so  
12 designated by law or if upon conviction a sentence of  
13 imprisonment for six months or less is authorized."

14 SECTION 11. Section 35-6-3 NMSA 1978 (being Laws 1968,  
15 Chapter 62, Section 94, as amended) is amended to read:

16 "35-6-3. MAGISTRATE COSTS--ADVANCE PAYMENT.--

17 A. Except for parties granted free process because  
18 of indigency, any party filing any civil action or requesting  
19 services from the magistrate court shall pay in advance the  
20 costs required by law to be collected by magistrates.

21 B. Any person filing a complaint in a criminal  
22 action in the magistrate court shall pay in advance the costs  
23 required by law to be collected by magistrates, except that no  
24 costs shall be collected from a person filing a complaint in a  
25 criminal action alleging domestic violence or from a campus

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1 security officer, a municipal police officer, an Indian tribal  
2 or pueblo law enforcement officer, a commissioned reserve  
3 police officer or [~~from~~] a full-time, salaried county or state  
4 law enforcement officer filing the complaint."

5 SECTION 12. Section 41-4-1 NMSA 1978 (being Laws 1976,  
6 Chapter 58, Section 1, as amended) is amended to read:

7 "41-4-1. SHORT TITLE.--[~~Sections 41-4-1 through 41-4-27~~]  
8 Chapter 41, Article 4 NMSA 1978 may be cited as the "Tort  
9 Claims Act"."

10 SECTION 13. Section 41-4-3 NMSA 1978 (being Laws 1976,  
11 Chapter 58, Section 3, as amended) is amended to read:

12 "41-4-3. DEFINITIONS.--As used in the Tort Claims Act:

13 A. "board" means the risk management advisory  
14 board;

15 B. "governmental entity" means the state or any  
16 local public body as defined in Subsections C and H of this  
17 section;

18 C. "local public body" means all political  
19 subdivisions of the state and their agencies, instrumentalities  
20 and institutions and all water and natural gas associations  
21 organized pursuant to Chapter 3, Article 28 NMSA 1978;

22 D. "law enforcement officer" means a full-time  
23 salaried public employee of a governmental entity, [~~or~~] a  
24 certified part-time salaried police officer employed by a  
25 governmental entity or a reserve police officer commissioned by

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1 a governmental entity whose principal duties under law are to  
2 hold in custody any person accused of a criminal offense, to  
3 maintain public order or to make arrests for crimes, or members  
4 of the national guard when called to active duty by the  
5 governor;

6 E. "maintenance" does not include:

7 (1) conduct involved in the issuance of a  
8 permit, driver's license or other official authorization to use  
9 the roads or highways of the state in a particular manner; or

10 (2) an activity or event relating to a public  
11 building or public housing project that was not foreseeable;

12 F. "public employee" means an officer, employee or  
13 servant of a governmental entity, excluding independent  
14 contractors except for individuals defined in Paragraphs (7),  
15 (8), (10), (14) and (17) of this subsection, or of a  
16 corporation organized pursuant to the Educational Assistance  
17 Act, the Small Business Investment Act or the Mortgage Finance  
18 Authority Act or a licensed health care provider, who has no  
19 medical liability insurance, providing voluntary services as  
20 defined in Paragraph (16) of this subsection and including:

21 (1) elected or appointed officials;

22 (2) law enforcement officers;

23 (3) persons acting on behalf or in service of  
24 a governmental entity in any official capacity, whether with or  
25 without compensation;

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1 (4) licensed foster parents providing care for  
2 children in the custody of the human services department,  
3 corrections department or department of health, but not  
4 including foster parents certified by a licensed child  
5 placement agency;

6 (5) members of state or local selection panels  
7 established pursuant to the Adult Community Corrections Act;

8 (6) members of state or local selection panels  
9 established pursuant to the Juvenile Community Corrections Act;

10 (7) licensed medical, psychological or dental  
11 arts practitioners providing services to the corrections  
12 department pursuant to contract;

13 (8) members of the board of directors of the  
14 New Mexico medical insurance pool;

15 (9) individuals who are members of medical  
16 review boards, committees or panels established by the  
17 educational retirement board or the retirement board of the  
18 public employees retirement association;

19 (10) licensed medical, psychological or dental  
20 arts practitioners providing services to the children, youth  
21 and families department pursuant to contract;

22 (11) members of the board of directors of the  
23 New Mexico educational assistance foundation;

24 (12) members of the board of directors of the  
25 New Mexico student loan guarantee corporation;

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1 (13) members of the New Mexico mortgage  
2 finance authority;

3 (14) volunteers, employees and board members  
4 of court-appointed special advocate programs;

5 (15) members of the board of directors of the  
6 small business investment corporation;

7 (16) health care providers licensed in New  
8 Mexico who render voluntary health care services without  
9 compensation in accordance with rules promulgated by the  
10 secretary of health. The rules shall include requirements for  
11 the types of locations at which the services are rendered, the  
12 allowed scope of practice and measures to ensure quality of  
13 care;

14 (17) an individual while participating in the  
15 state's adaptive driving program and only while using a  
16 special-use state vehicle for evaluation and training purposes  
17 in that program;

18 (18) the staff and members of the board of  
19 directors of the New Mexico health insurance exchange  
20 established pursuant to the New Mexico Health Insurance  
21 Exchange Act; and

22 (19) members of the insurance nominating  
23 committee;

24 G. "scope of duty" means performing any duties that  
25 a public employee is requested, required or authorized to

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1 perform by the governmental entity, regardless of the time and  
2 place of performance; and

3 H. "state" or "state agency" means the state of New  
4 Mexico or any of its branches, agencies, departments, boards,  
5 instrumentalities or institutions."

6 SECTION 14. Section 66-8-124 NMSA 1978 (being Laws 1961,  
7 Chapter 213, Section 3, as amended) is amended to read:

8 "66-8-124. ARRESTING OFFICER TO BE IN UNIFORM.--

9 A. No person shall be arrested for violating the  
10 Motor Vehicle Code or other law relating to motor vehicles  
11 punishable as a misdemeanor except by a commissioned salaried  
12 peace officer or a commissioned reserve police officer who, at  
13 the time of arrest, is wearing a uniform clearly indicating the  
14 peace officer's official status.

15 B. Notwithstanding the provisions of Subsection A  
16 of this section, a municipality may provide by ordinance that  
17 uniformed private security guards may be commissioned by the  
18 local police agency to issue parking citations for violations  
19 of clearly and properly marked fire zones and access zones for  
20 persons with significant mobility limitation. Prior to the  
21 commissioning of any security guard, the employer of the  
22 security guard shall agree in writing with the local police  
23 agency to the commissioning of the employer's security guard.  
24 The employer of any security guard commissioned under the  
25 provisions of this section shall be liable for the actions of

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1 that security guard in carrying out the security guard's duties  
2 pursuant to that commission. Notwithstanding the provisions of  
3 the Tort Claims Act, private security guards commissioned under  
4 this section shall not be deemed public employees under that  
5 act."

6 SECTION 15. Section 66-8-125 NMSA 1978 (being Laws 1978,  
7 Chapter 35, Section 533) is amended to read:

8 "66-8-125. ARREST WITHOUT WARRANT.--

9 A. Members of the New Mexico state police, sheriffs  
10 and their salaried deputies, [~~and~~] members of any municipal  
11 police force or commissioned reserve police officers may arrest  
12 without warrant any person:

13 (1) present at the scene of a motor vehicle  
14 accident;

15 (2) on a highway when charged with theft of a  
16 motor vehicle; or

17 (3) charged with crime in another  
18 jurisdiction, upon receipt of a message giving the name or a  
19 reasonably accurate description of the person wanted, the crime  
20 alleged and a statement [~~he~~] that the person is likely to flee  
21 the jurisdiction of [~~the~~] this state.

22 B. To arrest without warrant, the arresting officer  
23 must have reasonable grounds, based on personal investigation,  
24 which may include information from eyewitnesses, to believe the  
25 person arrested has committed a crime.

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C. Members of the New Mexico state police, sheriffs and their salaried deputies, ~~[and]~~ members of any municipal police force ~~[may]~~ or commissioned reserve police officers shall not make ~~[arrest]~~ arrests for traffic violations if not in uniform; however, nothing in this section shall be construed to prohibit the arrest, without warrant, by a peace officer of any person when probable cause exists to believe that a felony crime has been committed or in non-traffic cases."

SECTION 16. EFFECTIVE DATE.--The effective date of the provisions of this act is July 1, 2020.

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HOUSE BILL

**54TH LEGISLATURE - STATE OF NEW MEXICO - FIRST SESSION, 2019**

INTRODUCED BY

FOR THE COURTS, CORRECTIONS AND JUSTICE COMMITTEE

AN ACT

RELATING TO CRIME; AMENDING THE DELINQUENCY ACT TO SPECIFICALLY  
EXCLUDE PROSTITUTION AS A DELINQUENT ACT; AMENDING THE FAMILY  
IN NEED OF COURT-ORDERED SERVICES ACT TO CONNECT HUMAN  
TRAFFICKING VICTIMS TO SERVICES.

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

**SECTION 1.** Section 32A-2-3 NMSA 1978 (being Laws 1993,  
Chapter 77, Section 32, as amended) is amended to read:

"32A-2-3. DEFINITIONS.--As used in the Delinquency Act:

A. "delinquent act" means an act committed by a  
child that would be designated as a crime under the law if  
committed by an adult, not including a violation of Section  
30-9-2 NMSA 1978, including the following offenses:

(1) any of the following offenses pursuant to  
municipal traffic codes or the Motor Vehicle Code:

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1 (a) driving while under the influence of  
2 intoxicating liquor or drugs;

3 (b) failure to stop in the event of an  
4 accident causing death, personal injury or damage to property;

5 (c) unlawful taking of a vehicle or  
6 motor vehicle;

7 (d) receiving or transferring of a  
8 stolen vehicle or motor vehicle;

9 (e) homicide by vehicle;

10 (f) injuring or tampering with a  
11 vehicle;

12 (g) altering or changing of an engine  
13 number or other vehicle identification numbers;

14 (h) altering or forging of a driver's  
15 license or permit or any making of a fictitious license or  
16 permit;

17 (i) reckless driving;

18 (j) driving with a suspended or revoked  
19 license; or

20 (k) an offense punishable as a felony;

21 (2) buying, attempting to buy, receiving,  
22 possessing or being served any alcoholic liquor or being  
23 present in a licensed liquor establishment, other than a  
24 restaurant or a licensed retail liquor establishment, except in  
25 the presence of the child's parent, guardian, custodian or

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1 adult spouse. As used in this paragraph, "restaurant" means an  
2 establishment where meals are prepared and served primarily for  
3 on-premises consumption and that has a dining room, a kitchen  
4 and the employees necessary for preparing, cooking and serving  
5 meals. "Restaurant" does not include an establishment, as  
6 defined in regulations promulgated by the director of the  
7 special investigations [~~division~~] unit of the department of  
8 public safety, that serves only hamburgers, sandwiches, salads  
9 and other fast foods;

10 (3) a violation of Section 30-29-2 NMSA 1978,  
11 regarding the illegal use of a glue, aerosol spray product or  
12 other chemical substance;

13 (4) a violation of the Controlled Substances  
14 Act;

15 (5) escape from the custody of a law  
16 enforcement officer or a juvenile probation or parole officer  
17 or from any placement made by the department by a child who has  
18 been adjudicated a delinquent child;

19 (6) a violation of Section 30-15-1.1 NMSA 1978  
20 regarding unauthorized graffiti on personal or real property;  
21 or

22 (7) a violation of an order of protection  
23 issued pursuant to the provisions of the Family Violence  
24 Protection Act;

25 B. "delinquent child" means a child who has

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1 committed a delinquent act;

2 C. "delinquent offender" means a delinquent child  
3 who is subject to juvenile sanctions only and who is not a  
4 youthful offender or a serious youthful offender;

5 D. "detention facility" means a place where a child  
6 may be detained under the Children's Code pending court hearing  
7 and does not include a facility for the care and rehabilitation  
8 of an adjudicated delinquent child;

9 E. "felony" means an act that would be a felony if  
10 committed by an adult;

11 F. "misdemeanor" means an act that would be a  
12 misdemeanor or petty misdemeanor if committed by an adult;

13 G. "restitution" means financial reimbursement by  
14 the child to the victim or community service imposed by the  
15 court and is limited to easily ascertainable damages for injury  
16 to or loss of property, actual expenses incurred for medical,  
17 psychiatric and psychological treatment for injury to a person  
18 and lost wages resulting from physical injury, which are a  
19 direct and proximate result of a delinquent act. "Restitution"  
20 does not include reimbursement for damages for mental anguish,  
21 pain and suffering or other intangible losses. As used in this  
22 subsection, "victim" means a person who is injured or suffers  
23 damage of any kind by an act that is the subject of a complaint  
24 or referral to law enforcement officers or juvenile probation  
25 authorities. Nothing contained in this definition limits or

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1 replaces the provisions of Subsections A and B of Section  
2 32A-2-27 NMSA 1978;

3 H. "serious youthful offender" means an individual  
4 fifteen to eighteen years of age who is charged with and  
5 indicted or bound over for trial for first degree murder. A  
6 "serious youthful offender" is not a delinquent child as  
7 defined pursuant to the provisions of this section;

8 I. "supervised release" means the release of a  
9 juvenile, whose term of commitment has not expired, from a  
10 facility for the care and rehabilitation of adjudicated  
11 delinquent children, with specified conditions to protect  
12 public safety and promote successful transition and  
13 reintegration into the community. A juvenile on supervised  
14 release is subject to monitoring by the department until the  
15 term of commitment has expired and may be returned to custody  
16 for violating conditions of release; and

17 J. "youthful offender" means a delinquent child  
18 subject to adult or juvenile sanctions who is:

19 (1) fourteen to eighteen years of age at the  
20 time of the offense and who is adjudicated for at least one of  
21 the following offenses:

22 (a) second degree murder, as provided in  
23 Section 30-2-1 NMSA 1978;

24 (b) assault with intent to commit a  
25 violent felony, as provided in Section 30-3-3 NMSA 1978;

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1 (c) kidnapping, as provided in Section  
2 30-4-1 NMSA 1978;

3 (d) aggravated battery, as provided in  
4 Subsection C of Section 30-3-5 NMSA 1978;

5 (e) aggravated battery against a  
6 household member, as provided in Subsection C of Section  
7 30-3-16 NMSA 1978;

8 (f) aggravated battery upon a peace  
9 officer, as provided in Subsection C of Section 30-22-25 NMSA  
10 1978;

11 (g) shooting at a dwelling or occupied  
12 building or shooting at or from a motor vehicle, as provided in  
13 Section 30-3-8 NMSA 1978;

14 (h) dangerous use of explosives, as  
15 provided in Section 30-7-5 NMSA 1978;

16 (i) criminal sexual penetration, as  
17 provided in Section 30-9-11 NMSA 1978;

18 (j) robbery, as provided in Section  
19 30-16-2 NMSA 1978;

20 (k) aggravated burglary, as provided in  
21 Section 30-16-4 NMSA 1978;

22 (l) aggravated arson, as provided in  
23 Section 30-17-6 NMSA 1978; or

24 (m) abuse of a child that results in  
25 great bodily harm or death to the child, as provided in Section

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1 30-6-1 NMSA 1978;

2 (2) fourteen to eighteen years of age at the  
3 time of the offense, who is adjudicated for any felony offense  
4 and who has had three prior, separate felony adjudications  
5 within a three-year time period immediately preceding the  
6 instant offense. The felony adjudications relied upon as prior  
7 adjudications shall not have arisen out of the same transaction  
8 or occurrence or series of events related in time and location.  
9 Successful completion of consent decrees [~~are~~] is not  
10 considered a prior adjudication for the purposes of this  
11 paragraph; or

12 (3) fourteen years of age and who is  
13 adjudicated for first degree murder, as provided in Section  
14 30-2-1 NMSA 1978."

15 SECTION 2. Section 32A-3B-2 NMSA 1978 (being Laws 1993,  
16 Chapter 77, Section 74, as amended) is amended to read:

17 "32A-3B-2. DEFINITIONS.--As used in Chapter 32A, Article  
18 3B NMSA 1978, "family in need of court-ordered services" means  
19 the child or the family has refused family services or the  
20 department has exhausted appropriate and available family  
21 services and court intervention is necessary to provide family  
22 services to the child or family and [~~the following~~  
23 ~~circumstances exist~~] it is a family:

24 A. [~~it is a family~~] whose child, subject to  
25 compulsory school attendance, is absent from school without an

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1 authorized excuse more than ten days during a school year;  
2 B. ~~[it is a family]~~ whose child is absent from the  
3 child's place of residence for a time period of twelve hours or  
4 more without consent of the child's parent, guardian or  
5 custodian;

6 C. ~~[it is a family]~~ whose child refuses to return  
7 home and there is good cause to believe that the child will run  
8 away from home if forced to return to the parent, guardian or  
9 custodian; ~~[or]~~

10 D. ~~[it is a family]~~ in which the child's parent,  
11 guardian or custodian refuses to allow the child to return home  
12 and a petition alleging neglect of the child is not in the  
13 child's best interests; or

14 E. whose child is:  
15 (1) alleged to be engaged in an act that would  
16 be designated as prostitution if committed by an adult; or  
17 (2) a victim of human trafficking as defined  
18 in Section 30-52-1 NMSA 1978."

19 SECTION 3. Section 32A-3B-3 NMSA 1978 (being Laws 1993,  
20 Chapter 77, Section 75) is amended to read:

21 "32A-3B-3. PROTECTIVE CUSTODY--INTERFERENCE WITH  
22 PROTECTIVE CUSTODY--PENALTY.--

23 A. A child may be taken into protective custody by  
24 a law enforcement officer without a court order when the  
25 officer has reasonable grounds to believe that the child:

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1 (1) [~~the child~~] has run away from the child's  
2 parent, guardian or custodian;

3 (2) [~~the child~~] without parental supervision  
4 is suffering from illness or injury;

5 (3) [~~the child~~] has been abandoned; [~~or~~]

6 (4) [~~the child~~] is endangered by [~~his~~] the  
7 child's surroundings and removal from those surroundings is  
8 necessary to ensure the child's safety;

9 (5) is engaged in an act that would be  
10 designated as prostitution if committed by an adult; or

11 (6) is a victim of human trafficking as  
12 defined in Section 30-52-1 NMSA 1978.

13 B. A child may be taken into protective custody  
14 pursuant to a court order issued after an agency legally  
15 charged with the supervision of the child has notified a law  
16 enforcement agency that the child has run away from a  
17 placement.

18 C. When a child is taken into protective custody,  
19 the department shall make a reasonable effort to determine  
20 whether the child is an Indian child.

21 D. Any person, other than the child taken into  
22 protective custody, who interferes with placing the child in  
23 protective custody is guilty of a petty misdemeanor and shall  
24 be sentenced pursuant to the provisions of Section 31-19-1 NMSA  
25 1978."

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1           SECTION 4. Section 32A-3B-4 NMSA 1978 (being Laws 1993,  
2 Chapter 77, Section 76, as amended) is amended to read:

3           "32A-3B-4. PROTECTIVE CUSTODY--RESTRICTIONS--TIME  
4 LIMITATIONS.--

5           A. A law enforcement officer who takes a child into  
6 protective custody shall, with all reasonable speed:

7                   (1) inform the child of the reasons for the  
8 protective custody; and

9                   (2) contact the department.

10           B. When the department is contacted by a law  
11 enforcement officer who has taken a child into protective  
12 custody, the department shall refer the child to appropriate  
13 treatment and services and may:

14                   (1) accept custody of the child and designate  
15 an appropriate [~~facility in which to place~~] placement for the  
16 child; or

17                   (2) return the child to the child's parent,  
18 guardian or custodian if the child's safety is assured.

19           C. A child taken into protective custody shall not  
20 be placed in or transported in a law enforcement vehicle or any  
21 other vehicle that contains an adult placed under arrest,  
22 unless circumstances exist in which any delay in transporting  
23 the child to an appropriate facility would be likely to result  
24 in substantial danger to the child's physical safety. When  
25 such circumstances exist, the circumstances shall be described

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1 in writing by the driver of the vehicle and submitted to the  
2 driver's supervisor within two days after the driver  
3 transported the child.

4 D. A child taken into protective custody shall not  
5 be held involuntarily for more than two days, unless a petition  
6 to extend the custody is filed pursuant to the provisions of  
7 the Family in Need of Court-Ordered Services Act or the Abuse  
8 and Neglect Act.

9 E. When a petition is filed or any time thereafter,  
10 the children's court or district court may issue an ex-parte  
11 custody order based upon a sworn written statement of facts  
12 showing that probable cause exists to believe that protective  
13 custody of the child is necessary.

14 F. The protective custody order shall be served on  
15 the respondent by a person authorized to serve arrest warrants  
16 and shall direct the law enforcement officer to take custody of  
17 the child and deliver the child to a place designated by the  
18 court.

19 G. The Rules of Evidence do not apply to the  
20 issuance of an ex-parte custody order."



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SENATE BILL

**54TH LEGISLATURE - STATE OF NEW MEXICO - FIRST SESSION, 2019**

INTRODUCED BY

FOR THE COURTS, CORRECTIONS AND JUSTICE COMMITTEE

AN ACT

RELATING TO EMPLOYMENT OF EX-CONVICTS; PROHIBITING PRIVATE EMPLOYERS FROM INQUIRING ABOUT AN APPLICANT'S CONVICTION ON AN INITIAL EMPLOYMENT APPLICATION.

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

SECTION 1. Section 28-2-1 NMSA 1978 (being Laws 1974, Chapter 78, Section 1) is amended to read:

"28-2-1. SHORT TITLE.--~~[Sections 1 through 6 of this act]~~ Chapter 28, Article 2 NMSA 1978 may be cited as the "Criminal Offender Employment Act"."

SECTION 2. A new section of the Criminal Offender Employment Act is enacted to read:

"[NEW MATERIAL] EMPLOYMENT ELIGIBILITY DETERMINATION-- PRIVATE EMPLOYERS.--If a private employer uses a written or electronic employment application, the employer shall not make

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1 an inquiry regarding an applicant's conviction on the  
2 employment application but may take into consideration an  
3 applicant's conviction after review of the applicant's  
4 application and upon discussion of employment with the  
5 applicant. Nothing in this section shall prohibit an employer  
6 from notifying an applicant that the law or the employer's  
7 policy could disqualify an applicant who has a certain criminal  
8 history from employment in particular positions with that  
9 employer."



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HOUSE BILL

**54TH LEGISLATURE - STATE OF NEW MEXICO - FIRST SESSION, 2019**

INTRODUCED BY

FOR THE COURTS, CORRECTIONS AND JUSTICE COMMITTEE

AN ACT

RELATING TO LAW ENFORCEMENT TRAINING; REMOVING REQUIREMENTS FOR  
LAW ENFORCEMENT IN-SERVICE TRAINING.

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

SECTION 1. Section 29-7-4.1 NMSA 1978 (being Laws 2002,  
Chapter 34, Section 3 and Laws 2002, Chapter 35, Section 3, as  
amended) is amended to read:

"29-7-4.1. DOMESTIC ABUSE INCIDENT TRAINING.--Domestic  
abuse incident training that includes information on  
strangulation shall be included in the curriculum of each basic  
law enforcement training class. [~~Domestic abuse incident  
training shall be included as a component of in-service  
training each year for certified police officers.~~]"

SECTION 2. Section 29-7-4.2 NMSA 1978 (being Laws 2011,  
Chapter 49, Section 1) is amended to read:

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1           "29-7-4.2. CHILD ABUSE INCIDENT TRAINING.--Child abuse  
2 incident training shall be included in the curriculum of each  
3 basic law enforcement training class. [~~Child abuse incident  
4 training shall be included as a component of in-service  
5 training each year for certified police officers.~~]"

6           SECTION 3. Section 29-7-7.3 NMSA 1978 (being Laws 2007,  
7 Chapter 89, Section 1) is amended to read:

8           "29-7-7.3. ENSURING CHILD SAFETY UPON ARREST--TRAINING.--  
9 Training for ensuring child safety upon the arrest of a parent  
10 or guardian shall be included in the curriculum of each basic  
11 law enforcement training class [~~and as a component of in-  
12 service training each year~~] for certified police officers."

13           SECTION 4. Section 29-7-7.4 NMSA 1978 (being Laws 2010,  
14 Chapter 33, Section 1) is amended to read:

15           "29-7-7.4. MISSING PERSON AND AMBER ALERT TRAINING.--A  
16 minimum of four hours of combined missing person and AMBER  
17 alert training shall be included in the curriculum of each  
18 basic law enforcement training class. [~~Missing person and AMBER  
19 alert training shall be included as a component of in-service  
20 training each year for certified police officers.~~]"

21           SECTION 5. Section 29-7-7.5 NMSA 1978 (being Laws 2011,  
22 Chapter 180, Section 1) is amended to read:

23           "29-7-7.5. INTERACTION WITH PERSONS WITH MENTAL  
24 IMPAIRMENTS--TRAINING.--

25           A. A minimum of forty hours of crisis management,

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1 including crisis intervention, confrontation de-escalation  
2 practicum and proper interaction with persons with mental  
3 impairments training, shall be included in the curriculum of  
4 each basic law enforcement training class.

5 ~~[B. A minimum of two hours of crisis management,~~  
6 ~~including crisis intervention, confrontation de-escalation~~  
7 ~~practicum and proper interaction with persons with mental~~  
8 ~~impairments training, shall be included as a component of in-~~  
9 ~~service law enforcement training pursuant to Section 29-7-7.1~~  
10 ~~NMSA 1978.~~

11 ~~G.]~~ B. A pre-recorded course on crisis management,  
12 including crisis intervention, confrontation de-escalation  
13 practicum and proper interaction with persons with mental  
14 impairments training, shall not satisfy the requirements of the  
15 basic law enforcement training class required pursuant to  
16 Subsection A of this section.

17 ~~[D.]~~ C. As used in this section, "mental  
18 impairment" includes a mental illness, developmental  
19 disability, posttraumatic stress disorder, dual diagnosis,  
20 autism, youth in crisis and traumatic brain injury."

21 **SECTION 6.** Section 29-7-7.7 NMSA 1978 (being Laws 2017,  
22 Chapter 35, Section 1) is amended to read:

23 "29-7-7.7. **TOURNIQUET AND TRAUMA KIT TRAINING AND**  
24 **DISTRIBUTION.--**

25 A. Tourniquet and trauma kit training shall be

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1 included in the curriculum of each basic law enforcement  
2 training class [~~and as a component of in-service law~~  
3 ~~enforcement training each year~~] for certified police officers.

4 The academy, in coordination with certified regional law  
5 enforcement training facilities, shall provide a tourniquet and  
6 trauma kit to each cadet who graduates from the academy or from  
7 a certified regional law enforcement training facility and to  
8 each previously certified police officer who attends a  
9 certification-by-waiver course.

10 B. The academy shall provide hands-on tourniquet  
11 and trauma kit training to all officers using tourniquet and  
12 trauma kit equipment designed for training purposes. The  
13 training shall be designed in a manner that will safely  
14 replicate field conditions without the risk of injury in order  
15 for officers to develop the necessary skills to use tourniquets  
16 and trauma kits. In order to supplement the hands-on training,  
17 the academy may produce a training video on the proper use of  
18 tourniquets and trauma kits for use in the academy and  
19 certified regional law enforcement training facilities.

20 C. The academy, in coordination with certified  
21 regional law enforcement training facilities, shall distribute  
22 a tourniquet and trauma kit to each police officer who has been  
23 certified pursuant to the Law Enforcement Training Act."

24 SECTION 7. Section 29-11-5 NMSA 1978 (being Laws 1978,  
25 Chapter 27, Section 5, as amended) is amended to read:

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1 "29-11-5. SEXUAL CRIMES PROSECUTION AND TREATMENT  
2 PROGRAM.--

3 A. The administrator shall develop, with the  
4 cooperation of the [~~criminal justice~~] corrections department,  
5 the New Mexico state police, the New Mexico law enforcement  
6 academy, other authorized law enforcement agencies and existing  
7 community-based victim treatment programs, a statewide  
8 comprehensive plan to train law enforcement officers and  
9 criminal justice and medical personnel in the ability to deal  
10 with sexual crimes; to develop strategies for prevention of  
11 such crimes; to provide assistance in the assembly of evidence  
12 for the facilitation of prosecution of such crimes; and to  
13 provide medical and psychological treatment to victims of such  
14 crimes. This plan shall include, but not be limited to:

15 (1) education and training of law enforcement  
16 officers and criminal justice and medical personnel;

17 (2) collection, processing and analysis of  
18 evidence [~~which~~] that facilitates prosecution of suspects of  
19 sexual crimes; and

20 (3) medical and psychological treatment of  
21 victims of such crimes.

22 B. The comprehensive plan shall be implemented  
23 throughout the state, and the administrator may contract with  
24 appropriate persons, entities, agencies or community-based  
25 programs to provide the services to be rendered pursuant to

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1 Subsection A of this section and may pay a reasonable fee for  
2 [~~such~~] the services.

3 C. Nothing in this section shall be construed to  
4 require criminal prosecution of a suspect of a sexual crime by  
5 the victim to whom services are rendered pursuant to the  
6 provisions of the Sexual Crimes Prosecution and Treatment Act.

7 D. Training for law enforcement officers in the  
8 proper treatment of victims of sexual crimes and collection of  
9 evidence and coordination among agencies shall be incorporated  
10 in the regular training program for recruits by the New Mexico  
11 state police and the basic course taught by the New Mexico law  
12 enforcement academy or by other authorized law enforcement  
13 agencies. [~~Already commissioned officers and sex-crime~~  
14 ~~investigators shall receive advanced training through in-~~  
15 ~~service programs.]"~~

16 SECTION 8. Section 29-20-3 NMSA 1978 (being Laws 2003,  
17 Chapter 260, Section 3) is amended to read:

18 "29-20-3. POLICE TRAINING.--

19 A. No later than December 31, 2004, the New Mexico  
20 law enforcement academy board shall develop and incorporate  
21 into the basic law enforcement training required pursuant to  
22 the Law Enforcement Training Act a course of instruction of at  
23 least sixteen hours concerning the safe initiation and conduct  
24 of high speed pursuits.

25 B. The course of instruction shall emphasize the

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1 importance of protecting the public at all times and the need  
2 to balance the known offense and risk posed by a fleeing  
3 suspect against the danger to law enforcement officers and  
4 other people by initiating a high speed pursuit.

5 C. The course of instruction shall include adequate  
6 consideration of each of the following subjects:

7 (1) when to initiate a high speed pursuit;

8 (2) when to terminate a high speed pursuit;

9 (3) evaluating risks due to conditions of the  
10 vehicle, driver, roadway, weather and traffic during a high  
11 speed pursuit;

12 (4) evaluating dangers to uninvolved motorists  
13 and bystanders during a high speed pursuit;

14 (5) the number of law enforcement units  
15 permitted to participate in the high speed pursuit;

16 (6) the responsibilities of primary, secondary  
17 and supervisory law enforcement units during a high speed  
18 pursuit;

19 (7) proper communication and coordination  
20 procedures when a high speed pursuit enters another law  
21 enforcement agency's jurisdiction, including a tribal  
22 jurisdiction;

23 (8) driving tactics during a high speed  
24 pursuit;

25 (9) communications during a high speed

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1 pursuit;

2 (10) capture of suspects following a high  
3 speed pursuit;

4 (11) supervisory responsibilities during a  
5 high speed pursuit;

6 (12) use of blocking, ramming, boxing and  
7 roadblocks as high speed pursuit tactics;

8 (13) use of alternative methods and  
9 technologies for apprehending suspects during a high speed  
10 pursuit; and

11 (14) preparing a report and evaluation and  
12 analysis of a high speed pursuit after it has concluded.

13 D. The New Mexico law enforcement academy board  
14 shall develop the program of instruction, learning and  
15 performance objectives and standards for training in  
16 conjunction with appropriate groups and individuals that have  
17 an interest in and expertise regarding high speed pursuits,  
18 including law enforcement agencies, law enforcement academy  
19 instructors, experts on the subject and members of the public.

20 ~~[E. In-service law enforcement training, as~~  
21 ~~required pursuant to Section 29-7-7.1 NMSA 1978, shall include~~  
22 ~~at least four hours of instruction that conform with the~~  
23 ~~requirements set forth in Subsection C of this section.~~

24 ~~F.]~~ E. Each certified regional law enforcement  
25 training facility shall incorporate into its basic law

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1 enforcement training [~~and in-service law enforcement training~~]  
2 a course of training in the safe initiation and conduct of high  
3 speed pursuits that is comparable to or exceeds the standards  
4 of the course of instruction developed by the New Mexico law  
5 enforcement academy board."

6 SECTION 9. Section 29-21-3 NMSA 1978 (being Laws 2009,  
7 Chapter 177, Section 3) is amended to read:

8 "29-21-3. POLICIES AND PROCEDURES--REQUIRED.--

9 A. A law enforcement agency shall [~~(1)~~] maintain  
10 written policies and procedures designed to eliminate practices  
11 by its law enforcement officers that violate the provisions of  
12 Section [~~2 of the Prohibition of Profiling Practices Act; and~~

13 ~~(2) provide training to its law enforcement~~  
14 ~~officers, during orientation and at least once every two years,~~  
15 ~~that the law enforcement agency determines will assist its law~~  
16 ~~enforcement officers in adhering to the applicable provisions~~  
17 ~~of the Prohibition of Profiling Practices Act and to the law~~  
18 ~~enforcement agency's policies and procedures] 29-21-2 NMSA  
19 1978.~~

20 B. As part of a law enforcement agency's  
21 administrative complaint procedures, the law enforcement agency  
22 shall, at a minimum:

23 (1) investigate a complaint alleging its law  
24 enforcement officer violated the provisions of Section [~~2 of~~  
25 ~~the Prohibition of Profiling Practices Act]~~ 29-21-2 NMSA 1978;

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1 (2) take appropriate measures to discipline a  
2 law enforcement officer, including facilitating mediation or  
3 other restorative justice measures, when it is determined that  
4 the law enforcement officer violated the provisions of Section  
5 [~~2 of the Prohibition of Profiling Practices Act~~] 29-21-2 NMSA  
6 1978;

7 (3) provide appropriate forms for submitting  
8 the complaint against its law enforcement officer;

9 (4) publish the policies and procedures  
10 designed to eliminate practices that violate the provisions of  
11 Section [~~2 of the Prohibition of Profiling Practices Act~~]  
12 29-21-2 NMSA 1978; and

13 (5) submit a redacted copy of the complaint  
14 and the disposition to the attorney general, which shall  
15 disclose the nature and disposition of the complaint but shall  
16 not disclose personal identifying information of a law  
17 enforcement officer or complainant.

18 C. A law enforcement agency shall establish a time  
19 frame within which a complaint alleging a violation of the  
20 provisions of Section [~~2 of the Prohibition of Profiling~~  
21 ~~Practices Act~~] 29-21-2 NMSA 1978 may be made; provided that in  
22 no event shall the time frame be less than ninety days or  
23 exceed one hundred eighty days after the commission of the  
24 alleged violation of the provisions of Section 2 of the  
25 Prohibition of Profiling Practices Act. A law enforcement

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1 agency shall allow a complaint alleging a violation of the  
2 provisions of Section [~~2 of the Prohibition of Profiling~~  
3 ~~Practices Act]~~ 29-21-2 NMSA 1978 by its law enforcement officer  
4 to be made:

5 (1) in person or in writing sent by mail,  
6 facsimile or electronic mail and signed by the complainant; or

7 (2) by telephone, anonymously or by a third  
8 party; provided that the law enforcement agency shall determine  
9 the complaint to be valid before taking appropriate measures  
10 pursuant to Paragraph (2) of Subsection B of this section and  
11 shall comply with the provisions of Section 29-14-4 NMSA 1978."

12 SECTION 10. EFFECTIVE DATE.--The effective date of the  
13 provisions of this act is July 1, 2019.



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HOUSE BILL

**54TH LEGISLATURE - STATE OF NEW MEXICO - FIRST SESSION, 2019**

INTRODUCED BY

FOR THE COURTS, CORRECTIONS AND JUSTICE COMMITTEE

AN ACT

RELATING TO PUBLIC FINANCE; DISCONTINUING THE ANNUAL TRANSFER OF MONEY FROM THE LAW ENFORCEMENT PROTECTION FUND TO THE GENERAL FUND; CHANGING DISTRIBUTIONS FROM THE LAW ENFORCEMENT PROTECTION FUND.

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

**SECTION 1.** Section 29-13-3 NMSA 1978 (being Laws 1983, Chapter 289, Section 3, as amended) is amended to read:

"29-13-3. DISTRIBUTION OF CERTAIN INSURANCE COLLECTIONS-- LAW ENFORCEMENT PROTECTION FUND CREATED.--There is created in the state treasury the "law enforcement protection fund". Ten percent of all money received for fees, licenses, penalties and taxes from life, general casualty and title insurance business pursuant to the New Mexico Insurance Code, except for money received from the health insurance premium surtax imposed by

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1 Subsection C of Section 59A-6-2 NMSA 1978, shall be paid  
2 monthly to the state treasurer and credited to the fund. [~~On~~  
3 ~~or before June 30 of each year, the state treasurer shall~~  
4 ~~transfer to the general fund any balance in the law enforcement~~  
5 ~~protection fund in excess of one hundred thousand dollars~~  
6 ~~(\$100,000) that is not obligated for expenses in that current~~  
7 ~~fiscal year.] Money in the fund shall not be transferred to the  
8 general fund at the end of a fiscal year."~~

9 SECTION 2. That version of Section 29-13-3 NMSA 1978  
10 (being Laws 1983, Chapter 289, Section 3, as amended) that is  
11 to become effective January 1, 2020 is amended to read:

12 "29-13-3. DISTRIBUTION OF CERTAIN INSURANCE COLLECTIONS--  
13 LAW ENFORCEMENT PROTECTION FUND CREATED.--There is created in  
14 the state treasury the "law enforcement protection fund". Ten  
15 percent of all money received for fees, licenses and penalties  
16 from life, general casualty and title insurance business  
17 pursuant to the New Mexico Insurance Code shall be paid monthly  
18 to the state treasurer and credited to the fund. [~~On or before~~  
19 ~~June 30 of each year, the state treasurer shall transfer to the~~  
20 ~~general fund any balance in the law enforcement protection fund~~  
21 ~~in excess of one hundred thousand dollars (\$100,000) that is~~  
22 ~~not obligated for expenses in that current fiscal year.] Money  
23 in the fund shall not be transferred to the general fund at the  
24 end of a fiscal year."~~

25 SECTION 3. Section 29-13-4 NMSA 1978 (being Laws 1993,

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1 Chapter 179, Section 6, as amended by Laws 2017, Chapter 1,  
2 Section 2 and by Laws 2017, Chapter 35, Section 3) is amended  
3 to read:

4 "29-13-4. DETERMINATION OF NEEDS AND RATE OF  
5 DISTRIBUTION.--

6 A. Annually on or before April 15, the division  
7 shall consider and determine the relative needs as [~~requested~~]  
8 stated by tribal, municipal and university police departments,  
9 county sheriff's [~~departments~~] offices and the academy for  
10 money in the fund in the succeeding fiscal year [~~pursuant to~~  
11 ~~the provisions of Subsection C of this section~~].

12 B. As necessary during the year, the division shall  
13 transfer [~~an amount~~] money from the fund to the peace  
14 officers', New Mexico mounted patrol members' and reserve  
15 police officers' survivors fund so that [~~enables~~] the balance  
16 of the peace officers', New Mexico mounted patrol members' and  
17 reserve police officers' survivors fund [~~to be maintained at a~~  
18 ~~minimum balance of~~] remains at least three hundred fifty  
19 thousand dollars (\$350,000).

20 C. The division shall determine the annual rate of  
21 distribution of money in the fund as follows:

22 (1) all municipal police departments and  
23 county sheriff's [~~departments shall be rated by class pursuant~~  
24 ~~to this paragraph in accordance with populations established by~~  
25 ~~the most recently completed decennial census; provided that the~~

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1 population of any county shall not include the population of  
2 any municipality within that county that has a municipal police  
3 department. The rate of distribution to which a municipal  
4 police or county sheriff's department is entitled is the  
5 following:

6 CLASS	POPULATION	AMOUNT
7 1	0 to 20,000	\$20,000
8 2	20,001 to 160,000	30,000
9 3	160,001 to 1,280,000	40,000]

10 offices are entitled to a distribution of fifty thousand  
11 dollars (\$50,000) each;

12 (2) university police departments [~~shall be~~]  
13 are entitled to a [~~rate of~~] distribution of [~~seventeen thousand~~  
14 ~~dollars (\$17,000)~~] twenty-five thousand dollars (\$25,000) each;

15 (3) the academy [~~shall be~~] is entitled to a  
16 [~~rate of~~] distribution of [~~twenty-four thousand five hundred~~  
17 ~~dollars (\$24,500)~~] fifty thousand dollars (\$50,000) to carry  
18 out the purposes of Section [~~1 of this 2017 act~~] 29-7-7.7 NMSA  
19 1978;

20 (4) except as otherwise provided in this  
21 paragraph and in Subsection D of this section, tribal police  
22 departments [~~shall be~~] are entitled [~~unless allocations are~~  
23 ~~adjusted pursuant to the provisions of Subsection D of this~~  
24 ~~section~~] to [~~six hundred dollars (\$600)~~] one thousand dollars  
25 (\$1,000) for each commissioned peace officer in the tribe. [~~To~~



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1 ~~be counted as a commissioned peace officer~~ For the purposes of  
2 this paragraph, a commissioned peace officer ~~[shall have]~~ is  
3 one who has been assigned to duty and ~~[have]~~ worked in New  
4 Mexico for ~~[no fewer than]~~ at least two hundred days in the  
5 calendar year immediately ~~[prior to]~~ preceding the date of  
6 payment. Payments shall be made ~~[for only those divisions of~~  
7 ~~the]~~ to tribal police departments only for the divisions that  
8 perform services in New Mexico. A tribal police department  
9 ~~[shall not be eligible]~~ is ineligible for ~~[any]~~ a disbursement  
10 ~~[under]~~ from the fund if its commissioned peace officers cite  
11 non-Indians into the tribal court for civil or criminal  
12 citations; and

13 (5) except as otherwise provided in Subsection  
14 D of this section, municipal and university police departments  
15 and county sheriff's ~~[departments shall be]~~ offices are  
16 entitled ~~[unless allocations are adjusted [pursuant to the~~  
17 ~~provisions of Subsection D of this section]~~ to ~~[six hundred~~  
18 ~~dollars (\$600)]~~ one thousand dollars (\$1,000) for each police  
19 officer or sheriff's deputy who is employed full time by ~~[that]~~  
20 the department or office and who has been certified by the  
21 academy, or by a regional law enforcement training facility in  
22 the state certified by the director of the academy, as a police  
23 officer or has been authorized to act as a New Mexico peace  
24 officer ~~[pursuant to the provisions of]~~ under Section 29-1-11  
25 NMSA 1978.

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1                   D. After the amounts of distributions are  
 2 determined in accordance with [~~Subsection~~] Subsections A  
 3 [~~Subsection~~] and B and Paragraphs (1), (2) and (3) of  
 4 Subsection C of this section, if the fund's remaining balance  
 5 [~~in the fund~~] is insufficient to permit the total allocations  
 6 provided by Paragraphs (4) and (5) of Subsection C of this  
 7 section, the division shall proportionately reduce [~~that~~  
 8 ~~allocation to the maximum amount permitted by available money~~]  
 9 those allocations, but only insofar as is necessary to avoid a  
 10 negative fund balance."

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HOUSE BILL

**54TH LEGISLATURE - STATE OF NEW MEXICO - FIRST SESSION, 2019**

INTRODUCED BY

DISCUSSION DRAFT

AN ACT

RELATING TO CORRECTIONS; ENACTING THE RESTRICTED HOUSING ACT;  
PROVIDING RESTRICTIONS ON THE USE OF RESTRICTED HOUSING;  
REQUIRING REPORTING.

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

SECTION 1. [NEW MATERIAL] SHORT TITLE.--This act may be cited as the "Restricted Housing Act".

SECTION 2. [NEW MATERIAL] DEFINITIONS.--As used in the Restricted Housing Act:

A. "correctional facility" means a jail, prison or other detention facility that is used for the confinement of adult or juvenile persons, whether operated by the state or a political subdivision of the state or a private contractor on behalf of the state or a political subdivision of the state;

B. "inmate" means an adult or juvenile person who

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1 is under sentence to or confined in a correctional facility;

2 C. "restricted housing", whether instituted  
3 pursuant to disciplinary, administrative, inmate classification  
4 or other action, means confinement of an inmate locked in a  
5 cell or similar living quarters in a correctional facility for  
6 twenty-two or more hours each day without daily, meaningful and  
7 sustained human interaction; and

8 D. "serious mental disability" means:

9 (1) a serious mental illness, including  
10 schizophrenia, psychosis, major depression and bipolar  
11 disorder; or

12 (2) having a significant functional impairment  
13 along with a brain injury, organic brain syndrome or  
14 intellectual disability.

15 SECTION 3. [NEW MATERIAL] RESTRICTIONS ON THE USE OF  
16 RESTRICTED HOUSING.--

17 A. An inmate who is younger than eighteen years of  
18 age shall not be placed in restricted housing.

19 B. An inmate who is known to be pregnant shall not  
20 be placed in restricted housing after the first five days of  
21 the inmate's confinement.

22 C. An inmate in a facility operated by the  
23 corrections department or its contractors shall not be housed  
24 in restricted housing for more than fifteen consecutive days  
25 and a total of sixty days in a twelve-month period.

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1           SECTION 4. [NEW MATERIAL] RESTRICTIONS ON THE USE OF  
2 RESTRICTED HOUSING--INMATE WITH SERIOUS MENTAL DISABILITY.--An  
3 inmate with a serious mental disability shall not be placed in  
4 restricted housing; provided that:

5           A. the inmate is:

6                   (1) known by the correctional facility to have  
7 been diagnosed by a qualified health care professional as  
8 having a serious mental disability; or

9                   (2) clearly exhibiting self-injurious  
10 behavior, grossly abnormal and irrational behaviors, delusions  
11 or suicidal behavior, unless a health care professional  
12 determines that the individual does not have a serious mental  
13 disability;

14           B. the restriction on placement in restricted  
15 housing shall not apply during the first five consecutive days  
16 of the inmate's confinement in the correctional facility; and

17           C. if a warden, jail administrator or person in  
18 charge of a correctional facility finds that an inmate with a  
19 serious mental disability needs to be placed in restricted  
20 housing to prevent an imminent threat of physical harm to the  
21 inmate or another person, the inmate may be placed in  
22 restricted housing for no longer than forty-eight hours, and  
23 the warden, jail administrator or other person in charge of a  
24 correctional facility shall:

25                   (1) make a written record of the facts and

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1 circumstances that necessitated the inmate's placement in  
2 restricted housing;

3 (2) prepare a written action plan describing  
4 how the facility will transition the inmate out of restricted  
5 housing at the earliest opportunity; and

6 (3) notify the facility's medical professional  
7 in writing that the inmate was placed in restricted housing in  
8 accordance with this subsection.

9 SECTION 5. [NEW MATERIAL] CORRECTIONAL FACILITIES--  
10 TRANSPARENCY AND REPORTING.--Every three months, every  
11 correctional facility shall:

12 A. produce a report that includes:

13 (1) the age, gender and ethnicity of every  
14 inmate who was placed in restricted housing during the previous  
15 three months, including every inmate who is in restricted  
16 housing at the time the report is produced;

17 (2) the reason restricted housing was  
18 instituted for each inmate listed in the report; and

19 (3) the dates on which each inmate was placed  
20 in and released from restricted housing during the previous  
21 three months; and

22 B. submit a report prepared in accordance with  
23 Subsection A of this section to the:

24 (1) legislature, if the correctional facility  
25 is a prison; and

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1 (2) board of county commissioners of the  
2 county in which the correctional facility is located, if the  
3 facility is a jail.

4 SECTION 6. [NEW MATERIAL] PRIVATE CORRECTIONAL  
5 FACILITIES--ANTICORRUPTION AND REPORTING.--Every three months,  
6 every private correctional facility shall submit to the board  
7 of county commissioners of the county in which the private  
8 correctional facility is located and to the legislature a  
9 report of all monetary settlements that were paid to inmates or  
10 former inmates as a result of lawsuits filed by the inmates or  
11 former inmates against the private correctional facility or its  
12 employees related to the use of restricted confinement or any  
13 other reason.

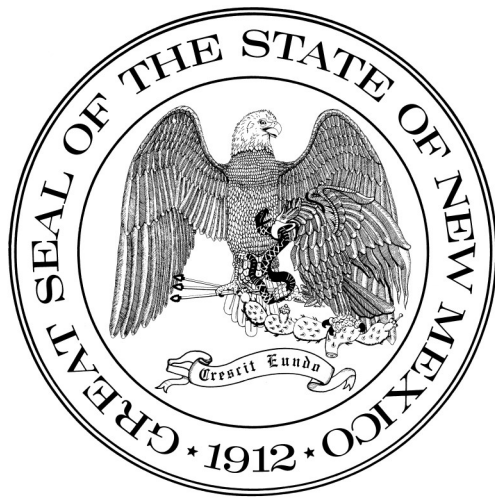
14 SECTION 7. [NEW MATERIAL] REPORTS FILED WITH LEGISLATIVE  
15 LIBRARY.--On the date that a report is submitted to a board of  
16 county commissioners pursuant to Section 5 or 6 of the  
17 Restricted Housing Act, a copy of the report shall be submitted  
18 to the legislative council service library.

19 SECTION 8. EFFECTIVE DATE.--  
20 A. The effective date of the provisions of Sections  
21 1 through 3 and 5 through 7 of this act is July 1, 2019.  
22 B. The effective date of the provisions of Section  
23 4 of this act is July 1, 2020.









LEGISLATIVE COUNCIL SERVICE  
SANTA FE, NEW MEXICO