



New Mexico State Legislature  
**Courts, Corrections and Justice Committee**

**2013**  
**INTERIM REPORT**

Legislative Council Service  
411 State Capitol  
Santa Fe, NM

New Mexico State Legislature  
**Courts, Corrections and Justice Committee**

**2013**  
**INTERIM REPORT**

Legislative Council Service  
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**Courts, Corrections and Justice Committee**  
**2013 Interim Final Report**  
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## **Courts, Corrections and Justice Committee Summary of 2013 Interim**

The legislative interim Courts, Corrections and Justice Committee held six meetings during the 2013 interim. Three meetings were held in the State Capitol in Santa Fe. The remainder of the meetings were held in communities around the state in conjunction with visits to various state correctional facilities. The community had the opportunity to visit the Metropolitan Detention Center, the J. Paul Taylor Center and the New Mexico Women's Correctional Facility. At each of these facilities, the committee had informative and enlightening discussions with facility administrators and staff and, most significantly, were able to interact with incarcerated individuals to hear firsthand of their experiences.

Two overriding themes dominated the 2013 interim: cost-effective programming for criminal justice and criminal justice reform.

In its July meeting, the committee heard an extensive presentation from the director of the Pew-MacArthur Results First Initiative and from staff at the Legislative Finance Committee (LFC). The LFC report that was presented to the committee summarized "the findings of a cost-benefit analysis of New Mexico's adult criminal justice system based on a model developed and supported by The Pew-MacArthur Results First Initiative (Results First). This cutting-edge approach provides policymakers with new information that estimates the long-term costs and benefits of investments in public programs; this report compares options and identifies those that most effectively achieve outcomes at the lowest cost to taxpayers". The committee also heard about the application of Results First to child welfare initiatives at its August meeting. The Results First model became a touchstone for committee discussions throughout the interim.

In its August meeting, the committee heard presentations on criminal justice reform from Right on Crime, an organization of conservatives who advocate for criminal justice reform throughout the country, and the Rio Grande Foundation. Their presentations generated a broad, bipartisan discussion on the policy possibilities inherent in criminal justice reform, and how those possibilities might be realized in New Mexico. The presentation on criminal justice reform dovetailed with the Results First information the committee had already received, resulting in a bipartisan consensus to launch a criminal justice reform initiative in New Mexico.

To that end, the committee petitioned the New Mexico Legislative Council to allow the committee to form the Criminal Justice Reform Subcommittee. The subcommittee requested to meet for the balance of the 2013 interim and reconvene early in the 2014 interim. The council approved the formation of a bipartisan subcommittee, composed of two Democrats and two Republicans from each chamber of the legislature, and co-chairs from the Democratic Party and Republican Party. The subcommittee met once in November and once in December, and will reconvene in April 2014. At its November meeting, the subcommittee heard detailed presentations on criminal justice reform efforts in South Dakota and Texas. At its December meeting, the subcommittee was briefed by the New Mexico Sentencing Commission (NMSC) on the 1999 criminal justice reform effort in the state, and on current criminal justice reform efforts in New Mexico, and it received an overview of the state's prison population. The subcommittee also heard a presentation at the December meeting from the Corrections Department on drivers

for costs in corrections and on entrepreneurial prison programs. (Agendas and minutes for the subcommittee are attached as an appendix to this report.)

During the interim, the committee also heard presentations and discussed the New Mexico Adult Detention Professional Standards Local Government Accreditation Program, an initiative of the New Mexico Association of Counties to raise standards of professionalism at county detention centers; the federal Prison Rape Elimination Act of 2003; a proposal to create a school of public health at the University of New Mexico; the need for increased funding of the DNA identification system; the budgetary needs of the NMSC; issues and concerns regarding female inmates in the state; issues concerning probation and parole, including a proposal to modify parole for sex offenders; the Colorado initiative to legalize marijuana and possible decriminalization of marijuana in New Mexico; the Law Enforcement Assisted Diversion Program that has been launched in Santa Fe; double jeopardy and how it relates to the Forfeiture Act and other statutes; the Southwest Region National Child Prevention Training Center at New Mexico State University; the use of solitary confinement in New Mexico's prisons and jails; the study initiated by House Joint Memorial 17 (2011) on the needs of and available resources for people with mental health disorders in crisis situations; the Pew Charitable Trusts' Electronic Registration Information Center initiative; the needs of human trafficking victims in New Mexico; and the possibility of legislation addressing gun sales at gun shows.

Additionally, the NMSC presented its annual prison population forecast to the committee. The committee had its regular updates from the Corrections Department and from the Children, Youth and Families Department. The committee also had a presentation from the chief justice of the New Mexico Supreme Court and the Administrative Office of the Courts on the judiciary's unified budget and proposed legislation. In addition, the committee heard from the newly formed Public Defender Commission and had the opportunity to meet the new chief public defender, the first chief of the Public Defender Department since that department was established as an independent state agency.

The committee endorsed the following bills for the 2014 legislative session:

1. Relating to courts; creating additional judgeships in the first, second, fifth and thirteenth judicial districts; creating an additional magistrate in the Dona Ana district; making appropriations;
2. relating to court operations; making the Magistrate Courts Operations Fund and fees permanent;
3. relating to the Metropolitan Court Bond Guarantee Fund; including the Administrative Office of the Courts as a recipient of balances in the fund above the reserve amount; making an appropriation; and
4. relating to parental rights; providing for the termination or permanent suspension of parental rights when criminal sexual penetration results in conception of a child; clarifying language in the Adoption Act that consent from the biological father of a child conceived as a result of criminal sexual penetration is not required; providing a penalty.

**2013 APPROVED  
WORK PLAN AND MEETING SCHEDULE  
for the  
COURTS, CORRECTIONS AND JUSTICE COMMITTEE**

**Members**

Rep. Gail Chasey, Co-Chair  
Sen. Richard C. Martinez, Co-Chair  
Rep. Eliseo Lee Alcon  
Sen. Joseph Cervantes  
Rep. Zachary J. Cook  
Rep. Yvette Herrell  
Rep. Emily Kane  
Sen. Linda M. Lopez

Rep. Georgene Louis  
Sen. Cisco McSorley  
Rep. Jane E. Powdrell-Culbert  
Rep. William "Bill" R. Rehm  
Sen. Sander Rue  
Rep. Mimi Stewart  
Sen. Lisa A. Torracco

**Advisory Members**

Rep. Phillip M. Archuleta  
Sen. Craig W. Brandt  
Rep. Cathrynn N. Brown  
Sen. Jacob R. Candelaria  
Rep. Brian F. Egolf, Jr.  
Rep. Kelly K. Fajardo  
Rep. Miguel P. Garcia  
Sen. Daniel A. Ivey-Soto

Rep. Antonio "Moe" Maestas  
Sen. Bill B. O'Neill  
Rep. Paul A. Pacheco  
Sen. William H. Payne  
Sen. John Pinto  
Rep. Patricia Roybal Caballero  
Sen. Michael S. Sanchez  
Rep. Sheryl Williams Stapleton

**Work Plan**

The Courts, Corrections and Justice Committee was created by the New Mexico Legislative Council on April 30, 2013. During the 2013 interim, and as time permits, the committee proposes to address the following general topics, including but not limited to the bulleted items, and, if necessary, recommend appropriate legislation:

- (1) corrections issues:
  1. use of solitary confinement in New Mexico prisons and jails;
  2. federal Prison Rape Elimination Act of 2003 compliance;
  3. tax status of private prison companies;
  4. cost-benefit analysis approaches, such as the Pew-MacArthur Results First Initiative; New Mexico Results First Model; the cost of the criminal justice system; alternative response to abuse and neglect cases; and Legislative Finance Committee program evaluations;
  5. examination of issues surrounding illegal drugs and the criminal justice system;
  6. incarcerated women, including health services for imprisoned women, especially for pregnancy, and services for women and trauma;

7. prison overcrowding and more effective use of prisons, including the use of county prisons by the state; and
  8. updates from the New Mexico Sentencing Commission and consideration of augmentation of the commission's budget;
- (2) county jail issues:
9. New Mexico Association of Counties, including a presentation on what reforms county jails are implementing and an update on mental health issues and law enforcement/detention centers;
  10. authority of county jail administrators to conduct classifications of inmates; and
  11. overview of county misdemeanor compliance programs;
- (3) juvenile issues:
12. examination of issues surrounding juvenile justice, including whether there is a need for changes to the Children's Code;
- (4) civil rights issues:
13. background checks for firearm purchases;
  14. police shootings and possible legislative responses; and
  15. prisoner rights in the state's penal system;
- (5) restorative justice, restitution and bullying:
16. examination of possible legislative responses to bullying;
  17. restorative justice — increase in funding; and
  18. payments of restitution after a crime;
- (6) courts and litigation issues:
19. statutory fixes to requirements for liens;
  20. discussion of the appeals process in civil cases and examination of whether there is a need for reforms or streamlining;
  21. school boards and resolution of small-dollar litigation;
  22. update from the judiciary and the Administrative Office of the Courts; and
  23. issues surrounding the reliability and use of eyewitness identification;
- (7) probation and parole issues:
24. discussion of whether there is a need for restructuring or changing the probation and parole system in New Mexico; and
  25. discussion of indeterminate periods of parole for people convicted of sex offenses;
- (8) tribal issues:
26. discussion of tribal jurisdiction and awarding of full faith and credit to judicial decisions; and

27. cross-deputizing agreements between tribal and pueblo police forces and local law enforcement; and
- (9) other courts, corrections and justice issues:
  28. voter registration and the Electronic Registration Information Center, a multistate registration database;
  29. termination of parental rights for a child conceived through rape (revisiting HB 38 and HB 508, 2013 session);
  30. discussion with the Office of the Attorney General concerning double jeopardy problems posed by the Forfeiture Act and similar laws;
  31. transition of the Public Defender Department to an independent agency;
  32. prostitution and human trafficking;
  33. alternative methods of handling security bonds;
  34. theft of merchandise shells and pallets;
  35. establishing a school of public health at the University of New Mexico, as related to public health issues in the committee's scope of work — specifically child abuse and neglect, addiction problems, etc.;
  36. review the scope of practice in regulated professions; and
  37. review of Texas water lawsuit against New Mexico filed in the U.S. Supreme Court.

**Courts, Corrections and Justice Committee  
2013 Approved Meeting Schedule**

<u>Date</u>	<u>Location</u>
June 13	Santa Fe
July 22-23	Albuquerque
August 22-23	State Capitol, Santa Fe
September 16-17	Las Cruces
October 21-22	Grants and the Pueblo of Acoma
November 21-22	State Capitol, Santa Fe

# **AGENDAS**

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

**June 13, 2013  
Room 307, State Capitol  
Santa Fe**

**Thursday, June 13**

- 10:00 a.m.           **Call to Order**  
—Senator Richard C. Martinez and Representative Gail Chasey,  
                          Co-Chairs
- 10:05 a.m.       (1)   **[Interim Committee Procedures](#)**  
—Raúl E. Burciaga, Director, Legislative Council Service
- 10:20 a.m.       (2)   **[Development of Work Plan and Meeting Schedule for the 2013 Interim](#)**  
—Committee Members and Staff

**Public Comment**

**Adjourn**

Revised: July 19, 2013

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

**July 22-23, 2013  
Science Rotunda, University of New Mexico and  
Metropolitan Detention Center  
Albuquerque, NM**

**Monday, July 22 — Science Rotunda, University of New Mexico (UNM)**

- 9:30 a.m.           **Call to Order and Introductions**  
—Senator Richard C. Martinez and Representative Gail Chasey, Co-Chairs
- 9:45 a.m.           **Welcoming Remarks**  
—David Herring, Dean, School of Law, UNM
- 10:00 a.m.       (1) **New Mexico Results First**  
—Dr. Gary VanLandingham, Director, Pew-MacArthur Results First Initiative  
—Charles Sallee, Deputy Director, Legislative Finance Committee (LFC)  
—Dr. Jon Courtney, Program Evaluator, LFC  
—Tony Ortiz, Executive Director, New Mexico Sentencing Commission (NMSC)  
—Linda Freeman, Deputy Director, NMSC
- Action Item*  
—Approval of Minutes from June 2013 Meeting
- 1:00 p.m.           **Lunch**
- 2:00 p.m.       (2) **New Mexico Adult Detention Professional Standards Local Government Accreditation Program**  
—Grace Philips, Attorney, New Mexico Association of Counties (NMAC)  
—Manuel Romero, Loss Prevention Specialist, NMAC  
—Clay Corn, Interim Administrator, Chaves County Adult and Juvenile Detention Centers
- 2:45 p.m.       (3) **Federal Prison Rape Elimination Act of 2003 — Standards**  
—Grace Philips, Attorney, NMAC  
—Manuel Romero, Loss Prevention Specialist, NMAC  
—Steve Allen, American Civil Liberties Union

3:45 p.m. (4) [School of Public Health at UNM](#)  
—President Robert G. Frank, UNM

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

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

**Tuesday, July 23 — Metropolitan Detention Center**

9:30 a.m. **Call to Order**  
—Senator Richard C. Martinez and Representative Gail Chasey, Co-Chairs

9:35 a.m. (5) [Metropolitan Detention Center \(MDC\)](#)  
—Ramon Rustin, Chief of Corrections, MDC  
—Dr. Paul Guerin, Director, UNM Institute for Social Research

10:30 a.m. (6) [Need for Increase in Funding for DNA Identification System and Update](#)  
—John F. Krebsbach, Administrator, New Mexico DNA Identification System Administrative Center

11:00 a.m. (7) [Budgetary Needs of the NMSC](#)  
—Tony Ortiz, Executive Director, NMSC  
—Linda Freeman, Deputy Director, NMSC

11:30 a.m. **Tour of MDC**

12:30 p.m. **Adjourn**

Revised: August 19, 2013

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

**August 22-23, 2013  
Room 322, State Capitol  
Santa Fe**

**Thursday, August 22**

- 9:30 a.m.           **Call to Order and Introductions**  
—Senator Richard C. Martinez and Representative Gail Chasey, Co-Chairs
- 9:45 a.m.       (1)   **Need for Increase in Funding for the DNA Identification System and Update**  
—John F. Krebsbach, Administrator, New Mexico DNA Identification System Administrative Center
- 10:15 a.m.       (2)   **Budgetary Needs of the New Mexico Sentencing Commission (NMSC)**  
—Tony Ortiz, Executive Director, NMSC  
—Linda Freeman, Deputy Director, NMSC
- 10:45 a.m.       (3)   **NMSC Prison Population Forecast**  
—Tony Ortiz, Executive Director, NMSC  
—Linda Freeman, Deputy Director, NMSC
- 11:15 a.m.       (4)   **Update from the Corrections Department (CD)**  
—Gregg Marcantel, Secretary, CD  
—Aurora B. Sánchez, Deputy Secretary of Administration, CD
- Action item*  
—Approval of Minutes from July 2013 Meeting
- 1:00 p.m.           **Lunch**
- 2:00 p.m.       (5)   **Concerns Regarding Female Inmates in New Mexico**  
—Bette Fleishman, Executive Director, New Mexico Women's Justice Project  
—Susannah Burke, Executive Director, PB&J Family Services

3:00 p.m. (6) **Examination of Issues Surrounding Probation and Parole; Parole and Sex Offenders; Discussion of the Federal Elimination of Parole**  
—Tony Ortiz, Executive Director, NMSC  
—Sherry Stephens, Director, Adult Parole Board, CD  
—Jose Cordova, Director, Adult Probation and Parole Division, CD

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

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

**Friday, August 23**

9:30 a.m. **Call to Order**  
—Senator Richard C. Martinez and Representative Gail Chasey, Co-Chairs

9:35 a.m. (7) **Prioritizing Corrections Resources, Including Discussion of HB 465 (2013) on Decrease of Marijuana Penalties**  
—Jerry Madden, Senior Fellow, Right on Crime  
—Paul J. Gessing, President, Rio Grande Foundation  
—Emily Kaltenbach, State Director, Drug Policy Alliance  
—Representative Emily Kane, Member, Courts, Corrections and Justice Committee

10:30 a.m. (8) **Law Enforcement Assisted Diversion Program-Santa Fe**  
—Emily Kaltenbach, State Director, Drug Policy Alliance  
—Ben Bauer, Public Defender Commission  
—Sergeant Jerome Sanchez, Santa Fe Police Department  
—Joohee Rand, Director of Strategic Initiatives, Santa Fe Community Foundation

11:30 a.m. (9) **Double Jeopardy and Forfeiture**  
—Dave Pederson, General Counsel, Office of the Attorney General

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

**September 16-17, 2013  
New Mexico State University - Pan American Center (Barbara Hubbard Room)  
and  
J. Paul Taylor Center  
Las Cruces**

**Monday, September 16**

- 9:30 a.m.           **Call to Order and Introductions**  
—Senator Richard C. Martinez and Representative Gail Chasey, Co-Chairs
- 9:45 a.m.           **Welcome by New Mexico State University (NMSU)**  
—Garrey E. Carruthers, President, NMSU
- 10:15 a.m.       (1)   **Progress of the Public Defender Commission**  
—Michael Stout, Chair, Public Defender Commission
- 11:15 a.m.       (2)   **Southwest Region National Child Protection Training Center, NMSU**  
—Shelly A. Bucher, L.M.S.W., Programs Operations Director
- Action item*  
—Approval of minutes from August 2013 meeting
- 12:30 p.m.       **Lunch**
- 1:30 p.m.       (3)   **Results First and Child Welfare in New Mexico**  
—Charles Sallee, Deputy Director, Legislative Finance Committee  
—Jack Tweedie, National Conference of State Legislatures (NCSL)  
—Nina Williams-Mbengue, NCSL
- 3:00 p.m.       (4)   **Update from the Children, Youth and Families Department (CYFD)**  
—Yolanda Berumen-Deines, Secretary, CYFD  
—Jennifer Padgett, Deputy Secretary, CYFD  
—Sandra Stewart, Director, Juvenile Justice Services Division, CYFD
- 5:00 p.m.       **Public Comment**
- 5:30 p.m.       **Recess**

**Tuesday, September 17**

- 9:30 a.m.           **Call to Order**  
—Senator Richard C. Martinez and Representative Gail Chasey, Co-Chairs
- 9:35 a.m.           **Presentation on and Tour of the J. Paul Taylor Center**  
—Jeanne H. Quintero, Superintendent, J. Paul Taylor Center

Revised: October 23, 2013

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

**October 21-22, 2013  
Piñon Room, Sky City Casino Hotel  
Pueblo of Acoma  
and  
New Mexico Women's Correctional Facility  
Grants**

**Monday, October 21**

- 9:30 a.m.           **Call to Order and Introductions**  
—Senator Richard C. Martinez and Representative Gail Chasey, Co-Chairs
- 9:45 a.m.       (1)   **Welcoming Statement and Presentation of Issues**  
—Governor Gregg P. Shutiva, Pueblo of Acoma
- 10:45 a.m.       (2)   **Termination of Parental Rights Bill**  
—Representative Alonzo Baldonado  
—Representative Georgene Louis  
—Professor Antoinette Sedillo Lopez, University of New Mexico School of  
Law
- 11:30 a.m.       (3)   **Trauma and Victimization of Female Inmates**  
—Linda Freeman, Deputy Director, New Mexico Sentencing Commission  
—Dr. Betty Caponera, Director, New Mexico Interpersonal Violence Data  
Central Repository
- Action Item*  
—Approval of Minutes from September 2013 Meeting
- 12:30 p.m.       **Lunch**
- 1:30 p.m.       (4)   **Use of Solitary Confinement in New Mexico's Prisons**  
—Steve Allen, American Civil Liberties Union-New Mexico  
—Gail Evans, New Mexico Center on Law and Poverty
- 2:30 p.m.       (5)   **Report from the Judiciary: Unified Budget and Proposed Legislation**  
—Petra Jimenez Maes, Chief Justice, New Mexico Supreme Court  
—Arthur W. Pepin, Director, Administrative Office of the Courts

4:30 p.m. (6) [Suspension of Medicaid Benefits \(SB 65, 2013\)](#)  
—New Mexico Association of Counties  
—Senator Gerald Ortiz y Pino

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

5:30 p.m. **Recess**

**Tuesday, October 22**

9:30 a.m. **Reconvene**  
—Senator Richard C. Martinez and Representative Gail Chasey, Co-Chairs

9:35 a.m. (7) [Tour of New Mexico Women's Correctional Facility](#)  
—Arlene Hickson, Warden, New Mexico Women's Correctional Facility

Revised: November 21, 2013

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

**November 21-22, 2013  
Room 322, State Capitol  
Santa Fe**

**Thursday, November 21**

- 9:30 a.m.           **Call to Order and Introductions**  
—Senator Richard C. Martinez and Representative Gail Chasey, Co-Chairs
- 9:45 a.m.       (1)   **HJM 17 (2011) — Study of the Needs of and Available Resources for People with Mental Health Disorders in Crisis Situations**  
—Representative Rick Miera  
—Grace Philips, Attorney, New Mexico Association of Counties (NMAC)  
—Lindsay Branine, New Mexico Crisis and Access Line  
—Daphne Rood-Hopkins, Director, Community Outreach and Behavioral Health, Children, Youth and Families Department  
—Chris Tokarski, Executive Director, Mental Health Resources, Inc.  
—Veronica Sanchez, M.S.W., L.I.S.W., Taos County Crisis Systems of Care Alliance  
—Kevin Burns, Patrol Sergeant, San Juan County Sheriff's Office
- 11:00 a.m.       (2)   **Double Jeopardy and Forfeiture**  
—R. Dave Pederson, General Counsel, Office of the Attorney General
- Action Item*  
—Approval of Minutes from October 2013 Meeting
- 12:00 noon       **Lunch**
- 1:00 p.m.       (3)   **Electronic Registration Information Center**  
—Maggie Toulouse Oliver, Bernalillo County Clerk  
—David J. Becker, Director, Election Initiatives, The Pew Charitable Trusts
- 2:30 p.m.       (4)   **Consideration of Legislation for Endorsement**
- 4:30 p.m.       **Public Comment**
- 5:00 p.m.       **Recess**

**Friday, November 22**

- 9:30 a.m.           **Call to Order**  
—Senator Richard C. Martinez and Representative Gail Chasey, Co-Chairs
- 9:35 a.m.       (5)   **Solitary Confinement — Response to the American Civil Liberties Union and New Mexico Center on Law and Poverty Report**  
—Grace Philips, Attorney, NMAC  
—Gregg Marcantel, Secretary, Corrections Department  
—Joe W. Booker, Jr., Deputy Secretary of Operations, Corrections Department  
—Ramon Rustin, Chief, Metropolitan Detention Center  
—Mark Gallegos, Warden, Santa Fe County Adult Detention Center  
—Patrick W. Snedeker, Warden, San Miguel County Detention Center  
—Chris Barela, Director, Dona Ana County Detention Center
- 10:30 a.m.       (6)   **Chief Public Defender and Work of the Public Defender Commission**  
—Jorge Alvarado, Chief Public Defender  
—Hugh Dangler, Public Defender Commission  
—Ben Baur, Office of the Public Defender
- 11:30 a.m.       (7)   **Implementation of Marijuana Reform in Colorado**  
—Art Way, Senior Drug Policy Manager, Colorado, Drug Policy Alliance (DPA)  
—Jessica Gelay, Policy Coordinator, DPA
- 12:30 p.m.           **Lunch**
- 1:30 p.m.       (8)   **Issues Concerning Human Trafficking in New Mexico**  
—Susan Loubet, Executive Director, New Mexico Women's Agenda  
—Sherry Spitzer, Executive Director, New Mexico Asian Family Center
- 2:30 p.m.       (9)   **HB 77 (2013) — Creating the Firearms Transfer Act**  
—Representative Miguel P. Garcia  
—Miranda Viscoli, New Mexicans for Gun Safety  
—Tara Reilly Mica, National Rifle Association  
—A Representative from the New Mexico Gun Collectors Association
- 3:30 p.m.           **Public Comment**
- 4:30 p.m.           **Adjourn**

# **MINUTES**

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

**June 13, 2013  
Room 307, State Capitol  
Santa Fe, New Mexico**

The first meeting of the Courts, Corrections and Justice Committee was called to order by Senator Richard C. Martinez, co-chair, on June 13, 2013 at 10:23 a.m. in Room 307 of the State Capitol.

**Present**

Rep. Gail Chasey, Co-Chair  
Sen. Richard C. Martinez, Co-Chair  
Rep. Eliseo Lee Alcon  
Sen. Linda M. Lopez  
Rep. Georgene Louis  
Sen. Cisco McSorley  
Rep. Jane E. Powdrell-Culbert  
Sen. Sander Rue  
Sen. Lisa A. Torraco

**Advisory Members**

Rep. Phillip M. Archuleta  
Rep. Brian F. Egolf, Jr.  
Rep. Kelly K. Fajardo  
Rep. Miguel P. Garcia  
Sen. Daniel A. Ivey-Soto  
Sen. Bill B. O'Neill  
Rep. Paul A. Pacheco

**Absent**

Sen. Joseph Cervantes  
Rep. Zachary J. Cook  
Rep. Yvette Herrell  
Rep. Emily Kane  
Rep. William "Bill" R. Rehm  
Rep. Mimi Stewart

Sen. Craig W. Brandt  
Rep. Cathrynn N. Brown  
Sen. Jacob R. Candelaria  
Rep. Antonio "Moe" Maestas  
Sen. William H. Payne  
Sen. John Pinto  
Rep. Patricia Roybal Caballero  
Sen. Michael S. Sanchez  
Rep. Sheryl Williams Stapleton

**Staff**

Douglas Carver, Staff Attorney, Legislative Council Service (LCS)  
Monica Ewing, Staff Attorney, LCS  
Cassandra Jones, Research Assistant, LCS

**Guests**

The guest list is in the meeting file.

**Handouts**

Handouts and other written testimony are in the meeting file.

### **Thursday, June 13**

#### **Welcome and Introductions**

Members of the committee and staff introduced themselves.

#### **Interim Committee Procedures**

John Yaeger, assistant director of legislative affairs, LCS, provided the committee with an overview of interim committee protocols.

#### **Development of Work Plan and Meeting Schedule for the 2013 Interim**

Mr. Carver referred the committee to a list of potential work plan items and meeting dates for the 2013 interim. The committee discussed certain of these items and asked for public comment regarding each of the proposed topics. Several members of the committee stressed the importance of ensuring that the committee consider all sides of an issue. The committee directed staff to write a letter to the secretary of corrections requesting that legislators be issued an open invitation to all of New Mexico's prisons unannounced for the duration of the interim.

The following potential work plan items were discussed:

1. *Use of solitary confinement in New Mexico prisons and jails.*  
Steve Allen with the American Civil Liberties Union of New Mexico expressed his appreciation for the committee's interest in this issue. He told the committee that the Vera Institute of Justice has been working with the Corrections Department (CD) to look at solitary confinement in New Mexico. He expressed his interest in hearing an update regarding the issue from the CD, the Vera Institute of Justice and the New Mexico Center on Law and Poverty.
2. *Voter registration and the Electronic Registration Information Center, a multistate registration database.*  
Senator Ivey-Soto asked the committee to consider looking at the integrity of New Mexico's voter registration database. Members of the committee stated that Bernalillo County had also expressed an interest in this issue.
3. *Examination of possible legislative responses to bullying.*  
Mr. Carver told the committee that this work plan item was proposed by committee members in response to bills regarding the same issue that failed to pass during the 2013 session. The Healthy Workplace Campaign has approached committee members regarding the issue.
4. *Federal Prison Rape Elimination Act of 2003 (PREA) compliance.*

Mr. Carver told the committee that the PREA was passed by Congress several years ago and that federal regulations had been approved within the last year. Paul Gutierrez, executive director of the New Mexico Association of Counties (NMAC), told the committee that the NMAC is currently in the process of setting jail standards. It is working to accredit each of the county jails in New Mexico. Mr. Gutierrez expressed interest in briefing the committee more fully regarding this issue at a later meeting date. Dave Schmidt, representing the Council on Crime and Delinquency, reminded the committee that the PREA also affects juvenile facilities.

5. *Termination of parental rights for a child conceived through rape (revisiting HJC/HB 38/508, 2013 session).*
6. *Discussion with the Office of the Attorney General (OAG) concerning double-jeopardy problems posed by the Forfeiture Act and similar laws.*

Mr. Carver told the committee that during legislative sessions the OAG often submits fiscal impact reports that indicate that the Forfeiture Act and similar laws have a double-jeopardy problem. He suggested that it might be helpful for the OAG to explain these references to the committee. Dave Schmidt, representing the Drug Policy Alliance, told the committee that the Forfeiture Act should be reexamined for drug laws and alcohol and substance abuses.
7. *Tax status of private prison companies.*
8. *Pew-MacArthur Results First Initiative, New Mexico Results First model, the cost of the criminal justice system, alternative response to abuse and neglect cases and Legislative Finance Committee (LFC) program evaluations.*

Members of the committee stated that they had attended presentations by the Pew-MacArthur Results First Initiative and recommended that the committee take the time to pursue the issue further. Tony Ortiz with the New Mexico Sentencing Commission (NMSC) told the committee that the NMSC has been working with the Pew-MacArthur Results First Initiative and the LFC on these issues. The NMSC collects and analyzes a lot of the data that is necessary for this model. He told the committee that he would like the opportunity to present to the committee regarding the Pew-MacArthur Results First Initiative as well as the opportunity to request an expansion to the NMSC budget in order to be able to allocate resources for this purpose in the future. Members of the committee expressed support for the idea and requested that the NMSC be added to the work plan.
9. *Examination of issues surrounding juvenile justice.*
10. *Transition of the Public Defender Department to an independent agency.*
11. *Examination of issues surrounding illegal drugs and the criminal justice system.*

Members of the committee suggested that the committee hear presentations from the Drug Policy Alliance and the Right On Crime group.

12. *Statutory fixes to requirements for liens.*
13. *Prostitution and human trafficking.*
14. *Incarcerated women, including health services for imprisoned women, especially for pregnancy, and services for women with trauma.*

Kathy Ansheles, representing the New Mexico Women's Justice Project, told the committee that the committee should consider overcrowding in the New Mexico women's prison. Mr. Ortiz told the committee that the NMSC has collected a lot of data regarding the female population in the CD. The committee discussed other related issues such as in-house parole. Members of the committee requested that an additional item relating to probation and parole be put on the work plan.
15. *The NMAC, including presentations on reforms that county jails are implementing and an update on the HJM 17 (2011) task force regarding mental health issues and law enforcement/detention centers.*

Tasia Young with the NMAC requested that the NMAC be given time to present to the committee several of its initiatives. Members of the committee discussed the housing of state prisoners in county jails.
16. *Background checks for firearms purchases.*
17. *Restorative justice — increase in funding.*

Debra Oliver and Mary Ellen Gonzales with Common Ground and Restorative Justice told the committee that they have been contracting with the Children, Youth and Families Department (CYFD) to provide services since 2008. They requested that the committee allow them to present at a later date regarding their program and the possibility of increased funding.
18. *Authority of county jail administrators to conduct classification of inmates.*
19. *Payment of restitution after a crime.*

Members of the committee stated that often, after someone is released from jail or prison, the court-mandated restitution goes unpaid. They suggested that the committee look at the issue.
20. *Changes needed to the Children's Code and other CYFD matters.*
21. *Prison overcrowding and more effective use of prisons.*
22. *Overview of county misdemeanor compliance programs.*

23. *Alternative methods of handling security bonds.*

Members of the committee agreed to proceed with the proposed work plan items and requested that additional items be added to the work plan. The committee requested these additional items:

- Theft of merchandise shells and pallets.
- Updates from the NMSC and consideration of augmentation of the commission's budget.
- Discussion of whether there is a need for restructuring or changing the probation and parole system in New Mexico.
- Possibility of creating a School for Public Health at the University of New Mexico.
- Discussion of the appeals process in civil cases and examination of whether there is a need for reforms or streamlining.
- School boards and resolution of small-dollar litigation.
- Review of the scope of practice in regulated professions.
- Discussions of tribal jurisdiction and awarding of full faith and credit to judicial decisions.
- Cross-deputization agreements with tribal and pueblo police forces.
- Police shootings and possible legislative responses.
- Prisoner rights in the state's penal system.
- Discussion of indeterminate periods of parole for people convicted of sex offenses.
- Issues surrounding the reliability and use of eyewitness identification.

The members of the committee also discussed locations for the committee to visit during the interim, deciding upon the following schedule:

June 13	Santa Fe
July 22-23	Albuquerque
August 22-23	State Capitol
September 16-17	Las Cruces
October 21-22	Grants and the Pueblo of Acoma
November 21-22	State Capitol

**Adjournment**

There being no further business before the committee, the first meeting of the Courts, Corrections and Justice Committee adjourned at 12:47 p.m.



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

**July 22, 2013  
Science Rotunda, University of New Mexico**

**July 23, 2013  
Metropolitan Detention Center  
Albuquerque**

The second meeting of the Courts, Corrections and Justice Committee was called to order by Representative Gail Chasey, co-chair, on July 22, 2013 at 9:50 a.m. in the Science Rotunda of the University of New Mexico.

**Present**

Rep. Gail Chasey, Co-Chair  
Sen. Richard C. Martinez, Co-Chair  
Rep. Eliseo Lee Alcon  
Sen. Joseph Cervantes  
Rep. Yvette Herrell  
Rep. Emily Kane (7/23)  
Sen. Linda M. Lopez  
Rep. Georgene Louis  
Sen. Cisco McSorley  
Rep. Jane E. Powdrell-Culbert (7/23)  
Rep. William "Bill" R. Rehm  
Sen. Sander Rue  
Rep. Mimi Stewart  
Sen. Lisa A. Torracco

**Absent**

Rep. Zachary J. Cook

**Advisory Members**

Rep. Phillip M. Archuleta  
Sen. Jacob R. Candelaria  
Rep. Kelly K. Fajardo  
Rep. Miguel P. Garcia  
Sen. Daniel A. Ivey-Soto (7/22)  
Rep. Antonio "Moe" Maestas  
Sen. Bill B. O'Neill (7/22)  
Rep. Paul A. Pacheco  
Sen. John Pinto  
Rep. Patricia Roybal Caballero  
Rep. Sheryl Williams Stapleton

Sen. Craig W. Brandt  
Rep. Cathrynn N. Brown  
Rep. Brian F. Egolf, Jr.  
Sen. William H. Payne  
Sen. Michael S. Sanchez

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

### **Staff**

Douglas Carver, Legislative Council Service (LCS)

Monica Ewing, LCS

Cassandra Jones, LCS

### **Guests**

The guest list is in the meeting file.

### **Handouts**

Handouts and other written testimony are in the meeting file.

### **Monday, July 22**

Representative Chasey welcomed the committee and the public in attendance. Members of the committee and staff introduced themselves.

### **Welcoming Remarks**

David Herring, dean, University of New Mexico (UNM) School of Law, welcomed the committee members. He stated that he looks forward to working with the committee on issues that are important to New Mexico.

### **New Mexico Results First**

Charles Sallee, deputy director, Legislative Finance Committee (LFC), told the committee that the LFC has been working with the Pew-MacArthur Results First Initiative for approximately two years. The relationship began when the LFC had a hearing on early childhood education. LFC staff did research and contacted Dr. Gary VanLandingham, director, Pew-MacArthur Results First Initiative, to discuss his cost-benefit model. The model allows those who use it to analyze the cost of social issues, such as adult and juvenile crime, child abuse and substance abuse. The LFC has been able to work with the Pew-MacArthur Results First Initiative with New Mexico-specific data. Mr. Sallee presented the committee with the lifetime total benefits of selected outcomes in New Mexico based on the Results First model. Avoiding a reconviction has a lifetime total benefit of more than \$121,000. Avoiding one case of child abuse or neglect has a lifetime total benefit of more than \$99,000. Preventing a low-income child from getting involved in crime has a lifetime benefit of more than \$84,000, and preventing a case of drug dependence or abuse has a lifetime total benefit of almost \$46,000. Mr. Sallee told the committee that the LFC is continuing to inventory which evidence-based programs are being implemented by the state and trying to use the best research available to estimate outcomes of programs based on New Mexico-specific data. He told the committee that analysis has shown that intensive supervision programs do not work unless they are coupled with treatment. Mr. Sallee emphasized that the Results First method does not only account for cost, but also for positive outcomes.

Mr. Sallee discussed costs associated with juvenile crime. In fiscal year (FY) 2012, the average cost per day for a juvenile justice facility in New Mexico was \$366.65 per person. State

supervision costs for a person in the juvenile justice system were \$7.28 per day. There are a number of programs that address juvenile crime in the New Mexico Results First model, including functional family therapy (FFT), aggression replacement training and multi-dimensional foster care. Mr. Sallee told the committee that FFT is a structured, family-based intervention that uses a multi-step approach to enhance protective factors and reduce risk factors in the family. FFT was discontinued by the Children, Youth and Families Department (CYFD) in 2008. Analysis indicates that FFT will have a positive return. FFT benefits per participant are over \$40,000, which greatly outweigh the cost of the program. Mr. Sallee told the committee that in many cases, it takes years to realize a return on investment.

Mr. Sallee discussed child welfare and education programs. "Alternative response" is a system of responding to referrals to the Protective Services Division of the CYFD that is an alternative to a traditional investigation. If there are no imminent concerns about a child's safety, the alternative response method conducts a family assessment with the goal of engaging a family to determine strengths and needs and plan for the future. In 2011, an LFC evaluation recommended that the CYFD adopt the Alternative Response program. LFC analysis indicated that the Alternative Response program would yield a benefit valued at \$1,028 per person to participants, taxpayers and other beneficiaries, while costing only \$95.00 per person. Benefits of the program include crime reduction, increased earnings of participants, avoided health care costs, reduction in child abuse and reduction in out-of-home placements.

Mr. Sallee told the committee that research allows one to see what works before implementing programs. He stressed the importance of monitoring the ongoing performance of programs to make sure that the programs are maintained and of conducting periodic evaluations of programs. He told the committee that New Mexico's Results First model should be incorporated into budget decisions.

Dr. VanLandingham told the committee that all states are facing challenges. Most states have seen a 20% reduction in their general funds. States are dealing with serious issues with fewer resources than they have had in the past. He told the committee that the best way to deal with diminished resources is to use evidence to target how money is spent. He stressed the importance of investing in programs that have more positive outcomes for a lower cost.

Dr. VanLandingham told the committee that the Results First approach uses the best national research to identify what works. It predicts the impact based on state-specific data and calculates long-term costs and benefits. The Results First model focuses on three key questions: 1) what does it cost to achieve a goal?; 2) what is achieving that goal worth?; and 3) how do alternative ways to achieve that goal compare as investments? The model analyzes taxpayer costs, such as police, public defenders and courts, as well as societal costs, such as lost wages and pain suffered by crime victims. These costs are estimated based on medical records, insurance claims and court judgments. Dr. VanLandingham discussed the costs of FFT in Washington State, \$3,190, versus the calculated benefits, \$37,739. Dr. VanLandingham discussed certain criminal justice programs in terms of their costs and benefits based on the Washington data. Intensive supervision has a long-term benefit of minus \$578, while a mental health court has a long-term benefit of \$20,424. He also discussed juvenile programs, such as aggression-replacement training and "Scared Straight".

Dr. VanLandingham told the committee that Results First can be used to analyze many areas, such as child welfare, education, prevention and public health. Services provided by Results First include the Results First software, staff training and ongoing technical assistance. Additional services include help interpreting results, compiling and sharing lessons learned with participating states and expanding and updating the model. All services are provided free of charge. Washington has used this approach for more than 15 years to help make budget decisions and has achieved better outcomes at lower costs. The Washington crime rate dropped, and the state has achieved \$2.7 billion in long-term benefits as a result. Since 1990, juvenile crime has seen a 49% reduction in the United States. Washington has seen a 67% reduction in juvenile crime over the same time period. Other states have also seen very positive results using the Results First model. Mississippi is using the model to re-energize the state's performance budgeting system and to assess criminal justice and education programs. While using the model, Iowa found its domestic violence treatment program to be ineffective and was able to replace it with a program that has a higher return on investment. Dr. VanLandingham told the committee that utilization of the model can improve government by using evidence, ensuring program quality and tracking results.

Dr. Jon Courtney, program evaluator, LFC, referred the committee to a handout detailing evidence-based programs to reduce recidivism and improve public safety in adult corrections. He told the committee that costs related to offenders who recidivate are substantial and result in general expenses to taxpayers and specific expenses to victims. An LFC evaluation estimates that if current trends hold, offenders released in FY 2011 will cost taxpayers an estimated \$360 million in corrections costs over the next 15 years. Reducing recidivism by 10% would save millions. Dr. Courtney told the committee that data for the Results First model were provided by the New Mexico Sentencing Commission (NMSC), the Corrections Department (CD) and other agencies.

Dr. Courtney detailed the costs of recidivism. Reducing recidivism by 10% could save \$8.3 million in prison costs and reduce victimization costs by an estimated \$40 million. Since being released in 2008, 1,649 inmates, or 44.6%, returned to prison within three years. On average, these inmates return within 328 days of release. In 2011, the CD released 3,440 inmates from prisons into the community. Within three years of being released, 46% of inmates return to prison, and within five years, 53% return to prison.

Dr. Courtney told the committee that the CD funds eight evidence-based programs with an estimated service level of about 6,700 inmates and a cost of over \$9 million. Dr. Courtney detailed the cost-to-benefit ratio of several correctional programs, some of which are currently being implemented by the CD and some that are not. According to the CD, 75% of inmates entering the prison system have a history of drug addiction. Historically, the CD operated an evidence-based program called Therapeutic Communities. Because the program was not implemented properly, it performed poorly. The CD has disbanded this program and is implementing another evidence-based in-prison drug treatment program that is estimated to reduce recidivism by about 20% and, if implemented properly, is likely to produce a positive return on investment. The Intensive Supervision program (ISP) is a highly structured, concentrated form of probation and parole supervision with stringent reporting requirements.

The ISP alone does not produce a positive return on investment, but when coupled with treatment, it does. The LFC program evaluation on the CD in 2012 recommended that treatment be a condition of the ISP. Legislation passed in 2013 to raise the ISP caseload did not include this requirement.

Dr. Courtney stressed the importance of implementing programs well. Program fidelity is critically important to achieving predicted outcomes. He told the committee that the CD has reorganized staffing to create a research and accountability unit to ensure effective program implementation. The CD has also created a 32-step action plan to improve reentry from prison and programming to reduce recidivism.

Dr. Courtney referred the committee to an LFC program evaluation report of the CD. He told the committee that the CD continues to work on programming issues. The CD is implementing UNM Anderson School of Management recommendations for corrections industries programs. The CD has also expanded the number of beds at the men's recovery academy. The CD has identified all current programming and will receive initial training on the Results First model later in the year. The CD has informed the LFC that the department will receive a refund from OptumHealth to the Community Corrections Grant Fund for unspent FY 2010 and FY 2011 money for approximately \$800,000. FY 2012 expenditures are under review. The CD also created a research and analysis unit. Three staff member will be hired and trained by January 2014.

Dr. Courtney listed some outstanding issues from the CD program evaluation. The CD has not implemented cost-saving measures in response to contract modifications with prisons that include a reduction in required full-time equivalents. Caseloads for probation and parole officers are high compared to nationally recognized best practices, while salaries are low. New Mexico's percentage of private prisons is greater than all of the other states, according to the Federal Bureau of Prisons.

Tony Ortiz, executive director, NMSC, told the committee that the NMSC helps provide data to feed into the Results First model. In January 2012, the LFC contacted the NMSC regarding Results First. The NMSC and UNM's Institute for Social Research (ISR) have decades of experience working with criminal justice issues. Mr. Ortiz told the committee that the Results First model requires tremendous amounts of data. The NMSC has been working to extract data in the best possible format in order to work with the model. Mr. Ortiz told the committee that the Results First model has gotten off to a good start in New Mexico, and he hopes it will expand to a number of other policy areas.

Members of the committee discussed the importance of state-level data when making decisions. Committee members requested information and data regarding the results of implementing the Cambiar model in 2009. Linda Freeman, deputy director, NMSC, clarified that released inmates who return to prison for a probation violation are not included in the recidivism data. Members of the committee discussed agency involvement, how the Results First model could be applied to other policy areas and the progress of the CD. They also discussed Senate Bill 65, a bill that passed the legislature in 2013 but was vetoed and that would have required inmates to be enrolled in Medicaid prior to their release. Committee members

suggested that the Human Services Department be requested to provide an update on its efforts to do this.

Committee members asked questions regarding oversight of OptumHealth. Mr. Sallee informed the committee that OptumHealth is overseen by a collaborative of state agencies, of which the secretary of human services is the chair. Members of the committee asked questions regarding specific CD programs. They also discussed private prisons, women's prisons, juvenile facilities, assessments of programs that are currently funded, specifics regarding police reporting of data and the importance of adapting programs for cultural sensitivity based on New Mexico's diverse population.

### **New Mexico Adult Detention Professional Standards Local Government Accreditation Program**

Grace Philips, attorney for the New Mexico Association of Counties (NMAC), told the committee that adult detention centers are operated by counties and that there are no statewide rules that require counties to run jails in a particular way. Other states have a similar structure. Several years ago, the NMAC began discussing voluntary standards. In 2009, a committee was developed and began to meet and to draft standards. The Adult Detention Professional Standards Council consists of nine members from the NMAC and various county institutions. National standards from the American Correctional Association (ACA) were considered as well as standards from other states. Accreditation under the ACA costs \$30,000. Council accreditation fees vary depending on institution size, but they do not exceed \$2,500 for the largest facilities. Ms. Philips told the committee that there are 220 standards that must be met for accreditation. She stated that it is a difficult process, but facilities that achieve accreditation adopt best practices and liability issues plummet as a result. She discussed the importance of uniformity across county facilities.

Members of the committee inquired about the costs of jails to counties. Ms. Philips told the committee that county budgets tend to allocate 30% to 40% for jails. Many counties feel they need justification for increasing jail budgets, and this accreditation process gives them that needed justification. Manuel Romero, loss prevention specialist, NMAC, discussed standards for a safe and secure facility, including food service. He emphasized that standards are manageable and realistic, though they are sometimes difficult. He told the committee that standards can be used as a good guide, even for institutions that are unable to achieve accreditation. Members of the committee asked questions about the differences between the New Mexico Government Accreditation Program's Adult Detention Professional Standards and the ACA standards for accreditation. Ms. Philips told the committee that most of the differences regard physical plant standards. Members of the committee asked about staff training and employee recruitment and retention. Clay Corn, interim administrator at the Chaves County adult and juvenile detention centers, told the committee that these standards help facilities run professionally and securely, which often aids in recruitment and retention. Ms. Philips emphasized the flexibility of these standards. She told the committee that the standards have already been updated as a result of things learned during the accreditation of Chaves County, the first county to be accredited under this program. Members of the committee discussed the incarceration of state prisoners in county jails and the cost to counties for doing so. They also discussed phone access for inmates and best practices for visitors to county facilities.

## **Federal Prison Rape Elimination Act of 2003 — Standards**

Ms. Philips discussed the federal Prison Rape Elimination Act of 2003 (PREA). It is recognized that sexual assaults occur in prisons and jails. Ms. Philips told the committee that the PREA standards are substantial and challenging to comply with, despite their good intention. She told the committee that the law passed in 2003 created a commission to have annual or semiannual studies regarding prison rape. The studies involve questioning and self-reporting regarding sexual misconduct. Some studies also involve interviews with inmates and former inmates and collecting medical records. Ms. Philips told the committee that the most recent reports indicate that 75% of staff misconduct involves female staff and male inmates.

Ms. Philips told the committee that PREA standards are grouped into categories: standards that prevent; standards that detect; and standards that respond. PREA standards address jails, prisons and juvenile detention centers. There are special provisions for gay, lesbian, bisexual and transgender inmates. There are also provisions on data collection and requirements on monitoring contracts. The NMAC has been awarded \$300,000 to fund implementation of the PREA in juvenile facilities. This will involve intensive technical assistance. Ms. Philips told the committee that the NMAC insures most county detention facilities and that sexual misconduct claims are very expensive.

Mr. Romero told the committee that he attended a five-day training in June. The training had around 47 participants. The training was conducted by the National Council on Crime and Delinquency. Participants were tested at the end of the training, and those that passed will be able to certify jurisdictions and facilities for the PREA. He told the committee that time frames set out in the PREA have not been met because the process is so difficult. He told the committee that the estimated cost for a mid-sized facility to meet the PREA standards is \$6,000. This cost could go up if the facility does not meet standards and has to develop a corrective action plan. The PREA includes more than 200 standards. Mr. Romero discussed some challenges to implementing the PREA. Some facilities do not have the right mechanisms to classify inmates.

Steve Allen of the American Civil Liberties Union (ACLU) told the committee that Bernalillo County had to pay three former female inmates last year because they were allegedly forced to have sex with an officer and another inmate. A federal jury last year found that a warden at the women's prison in Grants retaliated against an inmate who reported sexual abuse. A report several years ago listed Tarrant County as having the highest rate of sexual victimization of inmates. Mr. Allen told the committee that the ACLU worked with Senator Rue to introduce Senate Bill 526 in 2013 in order to strengthen auditing requirements in the PREA. Senator Rue told the committee that he made the decision not to pursue the bill because of feedback he received in committee. He expressed a desire to have conversations with various stakeholders and introduce the bill again later.

Members of the committee discussed auditing of PREA standards, the cost of auditing facilities, incidents of sexual misconduct in the state and the implementation of PREA standards in various counties.

**UNM School of Public Health**

President Robert G. Frank, UNM, told the committee that there are efforts on campus to establish a college of public health. He told the committee that the school would specialize in caring for populations rather than caring for individuals. Populations could be county populations, regional populations or state populations. The school would focus on such issues as preventing obesity and crime. The college would collaborate with New Mexico State University (NMSU) and would have positive effects for the state. New Mexico faces many severe public health challenges. In some parts of the state, residents live without running water. Diabetes and obesity are also prevalent in New Mexico. UNM and NMSU both have public health programs, but a college of public health would be more comprehensive and would move UNM to a higher level of engagement, which, in turn, would bring the state to a higher level of programming. The college would add Ph.D. programs in three areas and add an undergraduate program. New Mexico would benefit from affordable, prepared professionals with bachelor's degrees that could provide public health education to individuals in cities and counties. It will increase the public health work force and provide collaboration across the state. Individuals in the program will learn how to maintain good health and prevent disease for the most expensive disorders for which the state often ends up paying. UNM has reached out to the Navajo Nation and believes that the programming could be very effective there.

Members of the committee discussed the potential for a school of public health. The committee asked questions about funding. Members of the committee discussed a lack of providers throughout New Mexico and various work force issues. Dr. Frank stressed the importance of treating a population in order to prevent treating individuals.

### **Public Comment**

Juliana Koob, on behalf of the Coalition of Sexual Assault Programs, told the committee that the coalition is in favor of Senate Bill 526. She stated that it is crucial for victims to have access to someone who can help them. She told the committee that the coalition wants to work with the CD through the audit process to figure out where to focus resources and how best to train staff.

Shannon McReynolds, inspector general, CD, told the committee that the CD is working to make victim advocates available when victims are sent to a medical facility.

Jim Brewster, general counsel, CD, told the committee that the CD has some concerns about Senate Bill 526 and would like to meet with the ACLU and Senator Rue to discuss portions of the bill that are inconsistent with the PREA.

### **Recess**

The committee recessed at 4:45 p.m.

### **Tuesday, July 23**

#### **Metropolitan Detention Center (MDC)**

Tom Swisstack, mayor of Rio Rancho and Bernalillo County deputy manager for public safety, welcomed the committee to the MDC. Mr. Swisstack told the committee that Bernalillo County spends more than \$60 million annually on the MDC. The MDC is over capacity, which

presents a great challenge for the county. Mr. Swisstack introduced MDC staff, as well as Dr. Paul Guerin, director of the ISR. Mr. Swisstack stressed the importance of restructuring the system to prosecute cases more quickly in order to control the inmate population in county jails. The MDC will transport 468 inmates in and out of state facilities in order to meet bed capacity. It will cost approximately \$6.8 million to do this for one year.

Dr. Guerin told the committee that the ISR has been contracted by Bernalillo County to look at its jail population. Nationally, local jails operate at about 84% of their rated capacity. The MDC is the forty-eighth largest jail in the nation in rated capacity. The MDC is currently at 120.2% capacity. New Mexico detention centers were at 87% of design capacity on June 30, 2011.

Dr. Guerin told the committee that jails in the United States operate under the authority of local or federal governments. Entities such as cities, counties and towns operate jails under local government authority. Jails hold pre-trial detainees, sentenced misdemeanants, some sentenced felons, sentenced felons awaiting transfer to a state facility and probation and parole violators. Jail population is affected by admissions and length of stay. Dr. Guerin told the committee that even though bookings have gone down, the MDC population has increased due to an increase in the length of stay for inmates. Dr. Guerin told the committee that facilities should operate at around 85% of capacity in order to have room to move people around and to account for fluctuations in population. Dr. Guerin told the committee that some criminologists have suggested that probation and parole violators should be dealt with in a way that does not require them to go back to jail. Mr. Swisstack told the committee that Bernalillo County is deferring some other projects in order to pay for the increased jail costs at the MDC.

Members of the committee discussed increased length of stay, MDC capacity and court staffing levels. Ramon Rustin, chief of corrections, MDC, told the committee that other major metropolitan areas are reducing their jail populations. Bernalillo County has budgeted \$74.8 million this year for the MDC. This number includes \$3.4 million for food and at least \$6.5 million to send inmates out of the county. Medical expenses have been budgeted at \$12.2 million. Mr. Rustin discussed many of the challenges facing jails. Thirty-four percent of the MDC population faces mental health issues. Mr. Rustin told the committee that it is important for jail programs to have counterparts in the community. Highly developed programs in the community are cheaper and often reduce recidivism. Mr. Rustin told the committee that the MDC has purchased a Northpoint assessment tool in order to classify and separate individuals.

Members of the committee discussed the MDC population as well as the felon population at the MDC. Virginia Chavez, MDC, told the committee that the community corrections program (CCP), also known as house arrest, costs approximately \$13.00 per day per inmate, while incarceration at the MDC costs approximately \$68.00 per day per inmate. Members of the committee asked questions about the CCP. Committee members also discussed case management and court responsibilities. Members of the committee asked questions about inmates who will be transferred out of state. Mr. Rustin told the committee that those individuals are chosen carefully based on a variety of factors. Members of the committee discussed programs at the MDC, community programs and rehabilitation centers. Committee members also discussed legal expungement methods, court fees and district courts.

**Change of Agenda**

Representative Chasey informed the committee that due to time restraints, the presentation regarding a need for increased funding for DNA identification systems and an update from the New Mexico DNA Identification System Administrative Center as well as a presentation regarding the budgetary needs of the NMSC will be moved to the August 22-23 meeting. She thanked the presenters for their flexibility.

**Tour of MDC**

Members of the committee took a tour of the MDC.

**Adjournment**

There being no further business before the committee, the second meeting of the Courts, Corrections and Justice Committee for the 2013 interim adjourned at 1:00 p.m.

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

**August 22-23, 2013  
Room 322, State Capitol  
Santa Fe**

The third meeting of the Courts, Corrections and Justice Committee (CCJ) was called to order by Senator Richard C. Martinez, co-chair, on August 22, 2013 at 9:49 a.m. in Room 322 of the State Capitol.

**Present**

Rep. Gail Chasey, Co-Chair  
Sen. Richard C. Martinez, Co-Chair  
Rep. Eliseo Lee Alcon  
Rep. Yvette Herrell  
Rep. Emily Kane (8/23)  
Sen. Linda M. Lopez  
Rep. Georgene Louis  
Sen. Cisco McSorley  
Rep. Jane E. Powdrell-Culbert  
Sen. Sander Rue  
Rep. Mimi Stewart  
Sen. Lisa A. Torracco

**Advisory Members**

Rep. Phillip M. Archuleta  
Sen. Jacob R. Candelaria (8/22)  
Rep. Kelly K. Fajardo (8/22)  
Rep. Miguel P. Garcia  
Sen. Daniel A. Ivey-Soto  
Rep. Antonio "Moe" Maestas  
Sen. Bill B. O'Neill  
Rep. Paul A. Pacheco  
Sen. John Pinto  
Rep. Patricia Roybal Caballero  
Rep. Sheryl Williams Stapleton

**Absent**

Sen. Joseph Cervantes  
Rep. Zachary J. Cook  
Rep. William "Bill" R. Rehm

Sen. Craig W. Brandt  
Rep. Cathrynn N. Brown  
Rep. Brian F. Egolf, Jr.  
Sen. William H. Payne  
Sen. Michael S. Sanchez

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

**Staff**

Douglas Carver, Staff Attorney, Legislative Council Service (LCS)  
Monica Ewing, Staff Attorney, LCS  
Cassandra Jones, Researcher, LCS  
Jennifer Dana, Legislative Intern, LCS

### **Guests**

The guest list is in the meeting file.

### **Handouts**

Handouts and other written testimony are in the meeting file.

### **Thursday, August 22**

#### **Welcome and Introductions**

Members of the committee and staff introduced themselves.

#### **Need for Increase in Funding for the DNA Identification System and Update**

John F. Krebsbach, administrator of the New Mexico DNA Identification System Administrative Center (DNA Center), told the committee that the Metropolitan Detention Center collects 50 percent of all of the DNA samples that go into the DNA identification database. Mr. Krebsbach told the committee that once samples are received, they are double-checked for mistakes. The sample is processed and then an outside vendor is contracted to analyze the specimen. Research has shown that it is less expensive to contract than to do the analyses in-house. When the data are analyzed, the data are returned to the DNA Center and a technical review is conducted. Eighty-five percent of offenders that match up to a case are New Mexico offenders in New Mexico cases. Sample collection has resulted in solving numerous crimes, and wrongfully arrested individuals have also been vindicated. Mr. Krebsbach emphasized the importance of matching the right people to the right cases. He told the committee that continued funding of the DNA Identification System is vital to the safety and well-being of New Mexico residents.

Mr. Krebsbach shared some statistics regarding DNA samples with the committee. He told the committee that the DNA Center barely has the budget to keep receiving samples, let alone to conduct analyses and perform its other functions. In the past, the DNA Center has been funded by a variety of funding sources. Changes in the federal grant program have resulted in a loss of approximately 80 percent in grant money. Last year, the DNA Center received a federal grant of approximately \$50,000. Mr. Krebsbach told the committee that the DNA Center wants to continue with its core mission to maintain the database and will eliminate analyses if it becomes necessary. The DNA Center will maintain its staff of three employees and maintain equipment in order to make matches for new cases and to be able to collect samples. The DNA Center will use federal money to ensure it has enough kits to collect samples and have those samples in place in order to analyze them when the money becomes available.

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that should have a 21 percent decrease for the cost of analyses. The DNA Center also made a small change to DNA collection kits in order to appease the United States Postal Service so the cost of postage for kits will go down by 31 percent. On December 18, 2012, the State Board of Finance authorized an extension grant of just over \$130,000 for continued analyses of DNA samples through April 30, 2013. Under that grant, 25 burglaries, eight sex offenses, five auto thefts and a number of other crimes were matched to DNA samples.

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Mr. Krebsbach reiterated the importance of federal grants and DNA fees to fund the statutorily required collection of samples. Because of the loss of federal grants, the DNA Center is in need of additional support.

Mr. Krebsbach told the committee that an anticipated shortfall in July of approximately \$150,000 has been reduced by approximately 29 percent due to the aforementioned contractual changes. The executive branch has indicated that the DNA Center should be able to seek funding to prevent shortfalls through the end of the year.

Members of the committee discussed Katie's Law and the effect its implementation has had on the DNA Center, the importance of DNA collection, vendors used to complete DNA sample analyses, the feasibility of doing analyses in-state and how DNA collection affects various governmental entities. The committee also discussed fees for DNA collection, the prevention of crimes and the processing of DNA kits.

### **New Mexico Sentencing Commission (NMSC) Prison Population Forecast**

Tony Ortiz, executive director, NMSC, told the committee that the female population of the Corrections Department (NMCD) has been climbing and is forecasted to continue to do so. Mr. Ortiz told the committee that the federal prison population has increased and the state prison population has decreased.

Mr. Ortiz told the committee that females constitute 6.7 percent of the national prison population but about 10 percent of New Mexico's prison population. Mr. Ortiz told the committee that because the female prison population is so small, it is more difficult to forecast correctly. He said that the NMSC meets with the NMCD quarterly to create the annual prison population forecast. The NMSC has had the opportunity to talk to the NMCD about population trends and to get information about policies and procedures that might have an impact on prison population in the future, such as length of stay, particularly for female inmates, and the number of women serving some portion of their parole in prison. Mr. Ortiz told the committee that the projected high count of the male prison population is 6,297 for fiscal year (FY) 2014 and 6,369 for FY 2015. The projected high count for the female population is 666 for FY 2014 and 681 for FY 2015. The current operational capacity at the New Mexico Women's Correctional Facility in

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### **Approval of Minutes**

Members of the committee voted unanimously to approve the minutes of the committee's July 2013 meeting.

### **Update from the NMCD**

Gregg Marcantel, secretary of corrections, told the committee that the NMCD has made several policy changes targeted at reducing recidivism. He emphasized how important it is to control the prison population. He told the committee that reducing recidivism will require investing in long-term commitments, and he emphasized the importance of having programs that are anchored in a well-conducted risk and needs assessment.

Joe W. Booker, deputy secretary of operations, NMCD, told the committee that the NMCD had implemented various policy changes, including changes to classification and lump-sum awards. Secretary Marcantel discussed recidivism reduction initiatives, including the implementation of programs such as yoga, greenhouse programs, automotive and welding programs and culinary arts programs at NMCD institutions.

Regarding solitary confinement, Mr. Booker told the committee that 16 percent of the NMCD inmate population resides in solitary confinement. He said that long-term isolation can create or exacerbate serious mental health problems and can have other negative consequences. The Vera Institute has visited four NMCD facilities to provide recommendations for segregation, disciplinary sentences and other changes to solitary confinement.

Mr. Booker told the committee that changes to the level system in corrections facilities have increased flexibility in order to increase gender-specific programming for female inmates in the Grants facility.

Jerry Ruark, director of adult prisons for the NMCD, told the committee that inmates that identify as gang members but are not part of an active prison gang are isolated and given more access to programming in order to rehabilitate them. Mr. Ruark explained how inmates are assessed for risk. Secretary Marcantel went into detail about a few of the programs offered to inmates, including the Joni and Friends program, the greenhouse program and the Healing Hearts Dog Rescue program.

CCJ members discussed fees for prisoners, financial liability for inmates trying to reintegrate themselves into society, the ability of ex-inmates to receive state-issued identification cards, services provided to help prisoners when they are released, prisoner enrollment in Medicaid and other issues important to the successful reintegration of prisoners into their communities. They discussed the vetoed SB 65 (2013) regarding the quality of life for prisoners and inmate programming. They asked questions about and discussed legal mail, the introduction of contraband, substance abuse treatment for inmates, health care for inmates, prison gangs and property taxes for private prisons. A committee member requested that the NMCD provide information to the CCJ regarding the breakdown of recidivism rates in private and public prisons; information about what the NMCD is doing to stop overcrowding in county jails, especially with regard to probation and parole violators; and an ethnic breakdown of each facility, including a breakdown by zip code.

### **Concerns Regarding Female Inmates in New Mexico**

Bette Fleishman, executive director, New Mexico Women's Justice Project, told the committee that the Women's Justice Project grew out of Peanut Butter & Jelly Family Services (PB&J) and has done a lot of work over the years. Ms. Fleishman said that she has three issues of great concern regarding female inmates. Ms. Fleishman told the committee that female inmates have the fastest growing inmate population in New Mexico and expressed concern about women that are housed in the men's prisons because of overcrowding at the women's facility in Grants. Ms. Fleishman also expressed concerns about gender-specific programs. She told the

committee that the NMCD should teach women marketable skills. Ms. Fleishman said that there had been rumors that women were being denied trailer visits with their children but that the NMCD has since assured her that this is untrue.

Susannah Burke, executive director, PB&J, referred the committee to an NMSC report dated March 2012 and titled "3-year Recidivism Rate for Clients of PB&J Family Services". Ms. Burke told the committee that the NMSC made recommendations throughout this study that PB&J has worked to implement. Nationally, the recidivism rate is 52 percent, and in New Mexico, it is 47 percent. The PB&J client recidivism rate is 28 percent, and without including probation and parole violations, it is 6.3 percent. Ms. Burke emphasized the importance of having programming specific to parents. She told the committee that many programs would not have been developed had the NMCD not worked with PB&J. PB&J and the NMCD work together in the prevention of the abuse and neglect of children. Ms. Burke said that the NMCD has the opportunity to influence the lives of many children. She said that when children participate in trailer visits, PB&J drives the children to the prison and back to their homes, which gives them an opportunity to talk about the visit. Ms. Burke told the committee that PB&J implemented case management and a weekly support group for families in the community. She emphasized the importance of gender-informed, trauma-informed and specific work because those services are tailored to individuals. Ms. Burke told the committee that there is anecdotal evidence of PB&J's effectiveness, and she shared some stories with the committee that illustrate the potential of inmates and how some programs could help inmates achieve that potential. Ms. Burke told the committee that PB&J is moving toward achieving evidence-based status.

CCJ members discussed probation and parole violations for women, substance abuse treatment facilities for women and programs for women. They requested that the NMSC provide a breakdown of crimes by gender and the average length of sentences for men and women. Mr. Ortiz told the committee that he could provide that information. He also told the committee that the percentage of sentences that men and women serve is almost identical. Members of the committee discussed vocational and educational opportunities for inmates, female recidivism and the cost of programming for female inmates. Members of the committee requested that they be provided with standard conditions of probation and parole.

### **Examination of Issues Surrounding Probation and Parole; Parole and Sex Offenders; Discussion of the Federal Elimination of Parole**

David Pederson, general counsel, Office of the Attorney General (OAG), told the committee that the Adult Parole Board has been conducting sex offender parole hearings for some time. The OAG has the obligation to prosecute hearings in front of the parole board. Sandy Dietz, chair, Adult Parole Board, told the CCJ that a new law in 2007 began impacting the Adult Parole Board in 2012. She told the committee that when a sex offender who has been before the parole board goes back to prison for a violation, there is nothing in statute that requires the parole board to see the offender again. Ms. Dietz told the committee that she believes this is an oversight and that she would like to see provisions regarding this codified in statute. She referred the committee to HB 270 (2013), which addresses some of her concerns. The Adult Parole Board has the informal policy of holding hearings in these unique cases, but

there is concern that when members of the board change, the policy may not continue.

Sherry Stephens, director of the Adult Parole Board, told the CCJ that there have been 16 hearings so far and that two of those hearings have resulted in the offender being discharged from parole. Members of the committee discussed and asked questions about the cost of hearings and risk assessments, proposed legislation to correct this issue, how risk assessments should be conducted, funding for the Adult Parole Board and expert witnesses at Adult Parole Board hearings.

### **Public Comment**

Reverend Holly Beaumont with Interfaith Worker Justice of New Mexico invited committee members to attend meetings regarding the Wage Theft Prevention Act. She told the committee that meetings would be held Wednesday, October 9, from 11:00 a.m. to 1:00 p.m. at St. John's Cathedral in Albuquerque. Kriselda Yazzie from the New Mexico Coalition to End Homelessness stressed the importance of the Wage Theft Prevention Act and again invited committee members to attend a meeting regarding the important issues. Reverend Beaumont told the committee that she would mail invitations to each committee member.

### **Recess**

The committee recessed at 5:32 p.m.

### **Friday, August 23**

#### **Prioritizing Corrections Resources, Including Discussion of HB 465 (2013) on Decrease of Marijuana Penalties**

(Due to scheduling conflicts, this presentation was split into two parts.)

Jerry Madden, senior fellow, Right on Crime, told the committee that he is a former member of the Texas State Legislature, where he served as the chair of the Corrections Committee. He discussed the importance of saving money in prisons. He discussed policies in Texas regarding drug users in prison as well as inmates with mental health issues. He emphasized that a corrections department in any state should attempt to correct inmates. Mr. Madden told the committee that in most states, prisoners come from parole revocation, probation violations or sentences from a judge. He told the committee that if resources are provided in the community, it might be possible to stop some of the probation and parole violations that are filling prisons. He told the committee that as chair of the Corrections Committee, he was told that Texas would need more than 17,000 new prison beds. He discussed the importance of using data in order to make informed decisions. He told the committee that Texas decided to avoid building new prisons by altering other policies. Instead of spending \$530 million on new prisons, Texas spent \$240 million in other programs and policies to reduce the prison population. Mr. Madden told the committee that states and policy groups all over the nation have begun to look at Texas as a model for changes and are beginning to make a difference in the criminal justice field. Texas has closed three prisons in the last two years, as well as eight juvenile facilities. The corrections budget in Texas has not increased, but the number of people on

probation has dropped, as has the number of parole revocations. Juvenile probation has dropped by more than 30,000 juveniles. Mr. Madden referred the committee to the Right on Crime Statement of Principles. Mr. Madden emphasized the importance of: 1) having good data; 2) having a clear mission; and 3) having a good coalition. He told the committee that making positive changes to the criminal justice system to make the state safer and save money at the same time will make a big difference for the state.

Paul J. Gessing, president, Rio Grande Foundation, told the committee that the foundation deals with fiscal issues relating to the budget. He told the committee that criminal justice affects New Mexico in three ways: direct spending, foregone revenues and lost economic growth. Mr. Gessing told the committee that there are many implications from incarcerating individuals. New Mexico has not traditionally followed a strict criminal prescription, and incarceration rates are lower in New Mexico than in other states. He told the committee that New Mexico has high rates of homicides and violent crime combined with low rates of incarceration. According to Federal Bureau of Investigation 2011 reports, New Mexico has relatively high rates of property crime. Mr. Gessing told the committee that New Mexico's crime rate can potentially drive away valuable residents. He told the committee that New Mexico could potentially redeploy resources in a way that is more effective. He emphasized keeping violent criminals behind bars, rehabilitating those that can be rehabilitated and helping those that are in need of services rather than incarcerating them.

Mr. Gessing outlined ways in which the state could control costs and protect public safety, including:

- drug courts, which offer judicial oversight of offenders with mandatory drug testing and escalating sanctions for failure to comply. Mr. Gessing told the committee that a California study in 2006 found that drug courts cost less than \$3,000 per participant. New Mexico has 35 drug courts that have processed 9,500 offenders since 1994, and the recidivism rate of New Mexico drug courts is 11.9 percent;
- diversion of prison probationers and parolees who are revoked for technical violations. Mr. Gessing told the committee that in 2008, there were 413 revocations to prison for violations. He told the committee that if New Mexico used a graduated sanctions matrix that relied on intermediate sanctions and diverted just half of the offenders, it could save \$6.4 million;
- the Law Enforcement Assisted Diversion (LEAD) program or pre-booking diversion, which identifies low-level drug offenders for whom probable cause exists for an arrest and redirects them from jail and prosecution by providing linkages to treatment and social support;
- treatment, which the Arizona Supreme Court found effective in 77 percent of cases. The National Drug Abuse Treatment Outcome Survey of 10,000 participants found that residential treatment resulted in a 50 percent reduction in drug use and a 61 percent reduction in crime;
- the release of geriatric inmates, something that is done in 36 other states. Mr. Gessing told the committee that the release of 17 infirm inmates each year could result in a savings of more than \$840,000;

- more halfway houses, which would provide an alternative for inmates who have been paroled but cannot be released because they lack housing; and
- other reforms that would provide long-term benefits to assist ex-offenders to reintegrate into society. Mr. Gessing discussed barriers to employment for ex-offenders and the difficulty some ex-offenders have obtaining identification cards.

CCJ members discussed revisions to the Criminal Code, how the Right on Crime idea has been implemented in various states, criminal justice policy and crime data.

Senator Torracco made a motion that the CCJ request the permission of the New Mexico Legislative Council (LC) to create a subcommittee to look at changes to the Criminal Code. The motion was seconded by Representative Powdrell-Culbert and passed with no opposition.

Representative Stewart made a motion that the CCJ send the request to the leadership of both parties in each chamber of the legislature by letter, as the next LC meeting is not until October. The motion was seconded by Representative Herrell and passed with no opposition.

Members of the committee asked questions about and discussed geriatric release, drug addiction in New Mexico and treatment options, probation and parole violators, the cost of criminal justice systems in New Mexico and the expansion of various corrections programs that already exist in New Mexico.

### **LEAD Program — Santa Fe**

Emily Kaltenbach, state director of the Drug Policy Alliance, told the committee that through LEAD, low-level drug offenders can get treatment and social support in order to bypass the criminal justice system. She told the committee that treating the underlying public health issues has many public safety benefits. She discussed the importance of effective treatment. Ms. Kaltenbach told the committee that the LEAD pilot program in Santa Fe is committed to intensive case management. Treatment for those participating in the program can be inpatient or outpatient and is tailored to that specific individual. Benefits of the LEAD model include cost savings, reduced overdoses and economic improvement. The Adult Probation and Parole Division of the NMCD has been working with the LEAD task force to identify potential participants. Sergeant Jerome Sanchez from the Santa Fe Police Department discussed the correlation between drug use and property crimes. He shared anecdotal evidence of LEAD's effectiveness. Joohee Rand, director of strategic initiatives for the Santa Fe Community Foundation, told the committee that 100 individuals were identified for opiate-related arrests by Santa Fe law enforcement officers over the past three years. More than one-half of those individuals arrested for opiate possession or sales had a history of property crime arrests or were soon arrested for one. She told the committee that 91 out of 100 individuals arrested for opiate possession in 2010-2012 were repeat offenders with a pattern of being re-arrested every six months on average. This target population of 100 individuals cost more than \$4.2 million over three years. This cost does not include the loss of productivity and earnings, the impact on families, the cost of drug treatments and services provided, the increased public safety issues, the opportunity costs of time and resources and the time spent by some individuals, such as

witnesses and jury members, involved in the judicial process. The estimated cost per individual in the LEAD program is about \$34,000, \$4,000 less per individual than the current system.

Ben Bauer, acting chief public defender, expressed support for the LEAD program. He discussed the impact of drug crimes on the community and told the committee that LEAD is an investment that research shows will pay off. He told the committee that the LEAD program needs a cushion of political support.

Angela R. "Spence" Pacheco, district attorney for the First Judicial District, told the committee that the system as it stands now is ineffective. She described a cycle by which an addict is arrested, prosecuted and put on probation. She told the committee that addicts then violate their parole and the whole cycle starts again. She stressed the importance of treating addicts in order to prevent drug use and related crimes. Ms. Pacheco stressed the importance of supporting treatment options for addicts.

Members of the committee discussed and asked questions about the amount of time district attorneys spend on these crimes, opportunity costs, caseloads for district attorneys and the potential of statewide LEAD programs.

### **Prioritizing Corrections Resources, Including Discussion of HB 465 (2013) on Decrease of Marijuana Penalties (continued)**

Ms. Kaltenbach told the committee that drug policy reform has been happening in various ways around the nation. She discussed some recent news regarding drug policy reform from other states and at the national and international levels. She discussed bipartisan efforts that are being made around drug policy reform in Congress. Ms. Kaltenbach told the committee that ballot initiatives passed almost a year ago in Washington and Colorado to decriminalize marijuana. She told the committee that Representative Kane introduced HB 465 during the 2013 session and that similar legislation has been seen in other states, such as Hawaii and New Hampshire.

Representative Kane told the committee that it is important to focus on good data when discussing any kind of reduced penalties. Members of the committee discussed and asked questions about marijuana with reduced THC levels for medicinal purposes, regulations on medical marijuana, advocates for people who use medical marijuana and decriminalization efforts in other states.

### **Adjournment**

There being no further business, the third meeting of the CCJ for the 2013 interim adjourned at 1:06 p.m.

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

**August 22-23, 2013  
Room 322, State Capitol  
Santa Fe**

The third meeting of the Courts, Corrections and Justice Committee (CCJ) was called to order by Senator Richard C. Martinez, co-chair, on August 22, 2013 at 9:49 a.m. in Room 322 of the State Capitol.

**Present**

Rep. Gail Chasey, Co-Chair  
Sen. Richard C. Martinez, Co-Chair  
Rep. Eliseo Lee Alcon  
Rep. Yvette Herrell  
Rep. Emily Kane (8/23)  
Sen. Linda M. Lopez  
Rep. Georgene Louis  
Sen. Cisco McSorley  
Rep. Jane E. Powdrell-Culbert  
Sen. Sander Rue  
Rep. Mimi Stewart  
Sen. Lisa A. Torracco

**Absent**

Sen. Joseph Cervantes  
Rep. Zachary J. Cook  
Rep. William "Bill" R. Rehm

**Advisory Members**

Rep. Phillip M. Archuleta  
Sen. Jacob R. Candelaria (8/22)  
Rep. Kelly K. Fajardo (8/22)  
Rep. Miguel P. Garcia  
Sen. Daniel A. Ivey-Soto  
Rep. Antonio "Moe" Maestas  
Sen. Bill B. O'Neill  
Rep. Paul A. Pacheco  
Sen. John Pinto  
Rep. Patricia Roybal Caballero  
Rep. Sheryl Williams Stapleton

Sen. Craig W. Brandt  
Rep. Cathrynn N. Brown  
Rep. Brian F. Egolf, Jr.  
Sen. William H. Payne  
Sen. Michael S. Sanchez

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

**Staff**

Douglas Carver, Staff Attorney, Legislative Council Service (LCS)  
Monica Ewing, Staff Attorney, LCS  
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Joe W. Booker, deputy secretary of operations, NMCD, told the committee that the NMCD had implemented various policy changes, including changes to classification and lump-sum awards. Secretary Marcantel discussed recidivism reduction initiatives, including the implementation of programs such as yoga, greenhouse programs, automotive and welding programs and culinary arts programs at NMCD institutions.

Regarding solitary confinement, Mr. Booker told the committee that 16 percent of the NMCD inmate population resides in solitary confinement. He said that long-term isolation can create or exacerbate serious mental health problems and can have other negative consequences. The Vera Institute has visited four NMCD facilities to provide recommendations for segregation, disciplinary sentences and other changes to solitary confinement.

Mr. Booker told the committee that changes to the level system in corrections facilities have increased flexibility in order to increase gender-specific programming for female inmates in the Grants facility.

Jerry Ruark, director of adult prisons for the NMCD, told the committee that inmates that identify as gang members but are not part of an active prison gang are isolated and given more access to programming in order to rehabilitate them. Mr. Ruark explained how inmates are assessed for risk. Secretary Marcantel went into detail about a few of the programs offered to inmates, including the Joni and Friends program, the greenhouse program and the Healing Hearts Dog Rescue program.

CCJ members discussed fees for prisoners, financial liability for inmates trying to reintegrate themselves into society, the ability of ex-inmates to receive state-issued identification cards, services provided to help prisoners when they are released, prisoner enrollment in Medicaid and other issues important to the successful reintegration of prisoners into their communities. They discussed the vetoed SB 65 (2013) regarding the quality of life for prisoners and inmate programming. They asked questions about and discussed legal mail, the introduction of contraband, substance abuse treatment for inmates, health care for inmates, prison gangs and property taxes for private prisons. A committee member requested that the NMCD provide information to the CCJ regarding the breakdown of recidivism rates in private and public prisons; information about what the NMCD is doing to stop overcrowding in county jails, especially with regard to probation and parole violators; and an ethnic breakdown of each facility, including a breakdown by zip code.

### **Concerns Regarding Female Inmates in New Mexico**

Bette Fleishman, executive director, New Mexico Women's Justice Project, told the committee that the Women's Justice Project grew out of Peanut Butter & Jelly Family Services (PB&J) and has done a lot of work over the years. Ms. Fleishman said that she has three issues of great concern regarding female inmates. Ms. Fleishman told the committee that female inmates have the fastest growing inmate population in New Mexico and expressed concern about women that are housed in the men's prisons because of overcrowding at the women's facility in Grants. Ms. Fleishman also expressed concerns about gender-specific programs. She told the

committee that the NMCD should teach women marketable skills. Ms. Fleishman said that there had been rumors that women were being denied trailer visits with their children but that the NMCD has since assured her that this is untrue.

Susannah Burke, executive director, PB&J, referred the committee to an NMSC report dated March 2012 and titled "3-year Recidivism Rate for Clients of PB&J Family Services". Ms. Burke told the committee that the NMSC made recommendations throughout this study that PB&J has worked to implement. Nationally, the recidivism rate is 52 percent, and in New Mexico, it is 47 percent. The PB&J client recidivism rate is 28 percent, and without including probation and parole violations, it is 6.3 percent. Ms. Burke emphasized the importance of having programming specific to parents. She told the committee that many programs would not have been developed had the NMCD not worked with PB&J. PB&J and the NMCD work together in the prevention of the abuse and neglect of children. Ms. Burke said that the NMCD has the opportunity to influence the lives of many children. She said that when children participate in trailer visits, PB&J drives the children to the prison and back to their homes, which gives them an opportunity to talk about the visit. Ms. Burke told the committee that PB&J implemented case management and a weekly support group for families in the community. She emphasized the importance of gender-informed, trauma-informed and specific work because those services are tailored to individuals. Ms. Burke told the committee that there is anecdotal evidence of PB&J's effectiveness, and she shared some stories with the committee that illustrate the potential of inmates and how some programs could help inmates achieve that potential. Ms. Burke told the committee that PB&J is moving toward achieving evidence-based status.

CCJ members discussed probation and parole violations for women, substance abuse treatment facilities for women and programs for women. They requested that the NMSC provide a breakdown of crimes by gender and the average length of sentences for men and women. Mr. Ortiz told the committee that he could provide that information. He also told the committee that the percentage of sentences that men and women serve is almost identical. Members of the committee discussed vocational and educational opportunities for inmates, female recidivism and the cost of programming for female inmates. Members of the committee requested that they be provided with standard conditions of probation and parole.

### **Examination of Issues Surrounding Probation and Parole; Parole and Sex Offenders; Discussion of the Federal Elimination of Parole**

David Pederson, general counsel, Office of the Attorney General (OAG), told the committee that the Adult Parole Board has been conducting sex offender parole hearings for some time. The OAG has the obligation to prosecute hearings in front of the parole board. Sandy Dietz, chair, Adult Parole Board, told the CCJ that a new law in 2007 began impacting the Adult Parole Board in 2012. She told the committee that when a sex offender who has been before the parole board goes back to prison for a violation, there is nothing in statute that requires the parole board to see the offender again. Ms. Dietz told the committee that she believes this is an oversight and that she would like to see provisions regarding this codified in statute. She referred the committee to HB 270 (2013), which addresses some of her concerns. The Adult Parole Board has the informal policy of holding hearings in these unique cases, but

there is concern that when members of the board change, the policy may not continue.

Sherry Stephens, director of the Adult Parole Board, told the CCJ that there have been 16 hearings so far and that two of those hearings have resulted in the offender being discharged from parole. Members of the committee discussed and asked questions about the cost of hearings and risk assessments, proposed legislation to correct this issue, how risk assessments should be conducted, funding for the Adult Parole Board and expert witnesses at Adult Parole Board hearings.

### **Public Comment**

Reverend Holly Beaumont with Interfaith Worker Justice of New Mexico invited committee members to attend meetings regarding the Wage Theft Prevention Act. She told the committee that meetings would be held Wednesday, October 9, from 11:00 a.m. to 1:00 p.m. at St. John's Cathedral in Albuquerque. Kriselda Yazzie from the New Mexico Coalition to End Homelessness stressed the importance of the Wage Theft Prevention Act and again invited committee members to attend a meeting regarding the important issues. Reverend Beaumont told the committee that she would mail invitations to each committee member.

### **Recess**

The committee recessed at 5:32 p.m.

### **Friday, August 23**

#### **Prioritizing Corrections Resources, Including Discussion of HB 465 (2013) on Decrease of Marijuana Penalties**

(Due to scheduling conflicts, this presentation was split into two parts.)

Jerry Madden, senior fellow, Right on Crime, told the committee that he is a former member of the Texas State Legislature, where he served as the chair of the Corrections Committee. He discussed the importance of saving money in prisons. He discussed policies in Texas regarding drug users in prison as well as inmates with mental health issues. He emphasized that a corrections department in any state should attempt to correct inmates. Mr. Madden told the committee that in most states, prisoners come from parole revocation, probation violations or sentences from a judge. He told the committee that if resources are provided in the community, it might be possible to stop some of the probation and parole violations that are filling prisons. He told the committee that as chair of the Corrections Committee, he was told that Texas would need more than 17,000 new prison beds. He discussed the importance of using data in order to make informed decisions. He told the committee that Texas decided to avoid building new prisons by altering other policies. Instead of spending \$530 million on new prisons, Texas spent \$240 million in other programs and policies to reduce the prison population. Mr. Madden told the committee that states and policy groups all over the nation have begun to look at Texas as a model for changes and are beginning to make a difference in the criminal justice field. Texas has closed three prisons in the last two years, as well as eight juvenile facilities. The corrections budget in Texas has not increased, but the number of people on

probation has dropped, as has the number of parole revocations. Juvenile probation has dropped by more than 30,000 juveniles. Mr. Madden referred the committee to the Right on Crime Statement of Principles. Mr. Madden emphasized the importance of: 1) having good data; 2) having a clear mission; and 3) having a good coalition. He told the committee that making positive changes to the criminal justice system to make the state safer and save money at the same time will make a big difference for the state.

Paul J. Gessing, president, Rio Grande Foundation, told the committee that the foundation deals with fiscal issues relating to the budget. He told the committee that criminal justice affects New Mexico in three ways: direct spending, foregone revenues and lost economic growth. Mr. Gessing told the committee that there are many implications from incarcerating individuals. New Mexico has not traditionally followed a strict criminal prescription, and incarceration rates are lower in New Mexico than in other states. He told the committee that New Mexico has high rates of homicides and violent crime combined with low rates of incarceration. According to Federal Bureau of Investigation 2011 reports, New Mexico has relatively high rates of property crime. Mr. Gessing told the committee that New Mexico's crime rate can potentially drive away valuable residents. He told the committee that New Mexico could potentially redeploy resources in a way that is more effective. He emphasized keeping violent criminals behind bars, rehabilitating those that can be rehabilitated and helping those that are in need of services rather than incarcerating them.

Mr. Gessing outlined ways in which the state could control costs and protect public safety, including:

- drug courts, which offer judicial oversight of offenders with mandatory drug testing and escalating sanctions for failure to comply. Mr. Gessing told the committee that a California study in 2006 found that drug courts cost less than \$3,000 per participant. New Mexico has 35 drug courts that have processed 9,500 offenders since 1994, and the recidivism rate of New Mexico drug courts is 11.9 percent;
- diversion of prison probationers and parolees who are revoked for technical violations. Mr. Gessing told the committee that in 2008, there were 413 revocations to prison for violations. He told the committee that if New Mexico used a graduated sanctions matrix that relied on intermediate sanctions and diverted just half of the offenders, it could save \$6.4 million;
- the Law Enforcement Assisted Diversion (LEAD) program or pre-booking diversion, which identifies low-level drug offenders for whom probable cause exists for an arrest and redirects them from jail and prosecution by providing linkages to treatment and social support;
- treatment, which the Arizona Supreme Court found effective in 77 percent of cases. The National Drug Abuse Treatment Outcome Survey of 10,000 participants found that residential treatment resulted in a 50 percent reduction in drug use and a 61 percent reduction in crime;
- the release of geriatric inmates, something that is done in 36 other states. Mr. Gessing told the committee that the release of 17 infirm inmates each year could result in a savings of more than \$840,000;

- more halfway houses, which would provide an alternative for inmates who have been paroled but cannot be released because they lack housing; and
- other reforms that would provide long-term benefits to assist ex-offenders to reintegrate into society. Mr. Gessing discussed barriers to employment for ex-offenders and the difficulty some ex-offenders have obtaining identification cards.

CCJ members discussed revisions to the Criminal Code, how the Right on Crime idea has been implemented in various states, criminal justice policy and crime data.

Senator Torracco made a motion that the CCJ request the permission of the New Mexico Legislative Council (LC) to create a subcommittee to look at changes to the Criminal Code. The motion was seconded by Representative Powdrell-Culbert and passed with no opposition.

Representative Stewart made a motion that the CCJ send the request to the leadership of both parties in each chamber of the legislature by letter, as the next LC meeting is not until October. The motion was seconded by Representative Herrell and passed with no opposition.

Members of the committee asked questions about and discussed geriatric release, drug addiction in New Mexico and treatment options, probation and parole violators, the cost of criminal justice systems in New Mexico and the expansion of various corrections programs that already exist in New Mexico.

### **LEAD Program — Santa Fe**

Emily Kaltenbach, state director of the Drug Policy Alliance, told the committee that through LEAD, low-level drug offenders can get treatment and social support in order to bypass the criminal justice system. She told the committee that treating the underlying public health issues has many public safety benefits. She discussed the importance of effective treatment. Ms. Kaltenbach told the committee that the LEAD pilot program in Santa Fe is committed to intensive case management. Treatment for those participating in the program can be inpatient or outpatient and is tailored to that specific individual. Benefits of the LEAD model include cost savings, reduced overdoses and economic improvement. The Adult Probation and Parole Division of the NMCD has been working with the LEAD task force to identify potential participants. Sergeant Jerome Sanchez from the Santa Fe Police Department discussed the correlation between drug use and property crimes. He shared anecdotal evidence of LEAD's effectiveness. Joohee Rand, director of strategic initiatives for the Santa Fe Community Foundation, told the committee that 100 individuals were identified for opiate-related arrests by Santa Fe law enforcement officers over the past three years. More than one-half of those individuals arrested for opiate possession or sales had a history of property crime arrests or were soon arrested for one. She told the committee that 91 out of 100 individuals arrested for opiate possession in 2010-2012 were repeat offenders with a pattern of being re-arrested every six months on average. This target population of 100 individuals cost more than \$4.2 million over three years. This cost does not include the loss of productivity and earnings, the impact on families, the cost of drug treatments and services provided, the increased public safety issues, the opportunity costs of time and resources and the time spent by some individuals, such as

witnesses and jury members, involved in the judicial process. The estimated cost per individual in the LEAD program is about \$34,000, \$4,000 less per individual than the current system.

Ben Bauer, acting chief public defender, expressed support for the LEAD program. He discussed the impact of drug crimes on the community and told the committee that LEAD is an investment that research shows will pay off. He told the committee that the LEAD program needs a cushion of political support.

Angela R. "Spence" Pacheco, district attorney for the First Judicial District, told the committee that the system as it stands now is ineffective. She described a cycle by which an addict is arrested, prosecuted and put on probation. She told the committee that addicts then violate their parole and the whole cycle starts again. She stressed the importance of treating addicts in order to prevent drug use and related crimes. Ms. Pacheco stressed the importance of supporting treatment options for addicts.

Members of the committee discussed and asked questions about the amount of time district attorneys spend on these crimes, opportunity costs, caseloads for district attorneys and the potential of statewide LEAD programs.

### **Prioritizing Corrections Resources, Including Discussion of HB 465 (2013) on Decrease of Marijuana Penalties (continued)**

Ms. Kaltenbach told the committee that drug policy reform has been happening in various ways around the nation. She discussed some recent news regarding drug policy reform from other states and at the national and international levels. She discussed bipartisan efforts that are being made around drug policy reform in Congress. Ms. Kaltenbach told the committee that ballot initiatives passed almost a year ago in Washington and Colorado to decriminalize marijuana. She told the committee that Representative Kane introduced HB 465 during the 2013 session and that similar legislation has been seen in other states, such as Hawaii and New Hampshire.

Representative Kane told the committee that it is important to focus on good data when discussing any kind of reduced penalties. Members of the committee discussed and asked questions about marijuana with reduced THC levels for medicinal purposes, regulations on medical marijuana, advocates for people who use medical marijuana and decriminalization efforts in other states.

### **Adjournment**

There being no further business, the third meeting of the CCJ for the 2013 interim adjourned at 1:06 p.m.

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

**September 16-17, 2013  
New Mexico State University - Pan American Center (Barbara Hubbard Room)  
and  
J. Paul Taylor Center  
Las Cruces**

The fourth meeting of the Courts, Corrections and Justice Committee was called to order by Senator Richard C. Martinez, co-chair, on September 16, 2013 at 9:45 a.m. in the Barbara Hubbard Room of the Pan American Center at New Mexico State University (NMSU).

**Present**

Rep. Gail Chasey, Co-Chair  
Sen. Richard C. Martinez, Co-Chair  
Rep. Eliseo Lee Alcon  
Rep. Yvette Herrell  
Sen. Linda M. Lopez (9/16)  
Rep. Georgene Louis  
Sen. Cisco McSorley  
Rep. Jane E. Powdrell-Culbert  
Rep. William "Bill" R. Rehm  
Sen. Sander Rue (9/16)  
Rep. Mimi Stewart

**Advisory Members**

Rep. Phillip M. Archuleta (9/16)  
Rep. Kelly K. Fajardo (9/16)  
Rep. Antonio "Moe" Maestas  
Sen. Bill B. O'Neill  
Sen. John Pinto  
Rep. Patricia Roybal Caballero (9/16)  
Rep. Sheryl Williams Stapleton

**Guest Legislators**

Sen. Mary Kay Papen (9/17)  
Rep. Debbie A. Rodella (9/16)

**Absent**

Sen. Joseph Cervantes  
Rep. Zachary J. Cook  
Rep. Emily Kane  
Sen. Lisa A. Torracco

Sen. Craig W. Brandt  
Rep. Cathrynn N. Brown  
Sen. Jacob R. Candelaria  
Rep. Brian F. Egolf, Jr.  
Rep. Miguel P. Garcia  
Sen. Daniel A. Ivey-Soto  
Rep. Paul A. Pacheco  
Sen. William H. Payne  
Sen. Michael S. Sanchez

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

### **Staff**

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

Cassandra Jones, Researcher, LCS

Jennifer Dana, Legislative Intern, LCS

### **Guests**

The guest list is in the meeting file.

### **Handouts**

Handouts and other written testimony are in the meeting file.

## **Monday, September 16**

### **Introductions**

Members of the committee and staff introduced themselves.

### **Welcome by NMSU President**

Garrey E. Carruthers, president of NMSU and former governor of New Mexico, welcomed the committee. He discussed the positive atmosphere at NMSU and highlighted advances that NMSU is making in engineering and health. He told the committee that vetoed legislation in the 2013 legislative session would have appropriated funding for an endowment fund at NMSU. He requested that the legislature pass this same legislation again in the upcoming session. Governor Carruthers told the committee that NMSU wants to develop programs that will be beneficial to the state, including public health programs in each county so that even rural counties have access to good information.

Governor Carruthers told the committee that NMSU is attempting to meet the needs of the state by offering more certificates, more science, technology, engineering, math and health programs and more research. He expressed appreciation for money the state allocates to NMSU. Governor Carruthers told the committee that NMSU has begun working to come up with a simpler funding formula for higher education and told committee members that he will contact them in the future to discuss potential policy options.

Members of the committee asked questions about and discussed tuition for students that live out of state but less than 135 miles from NMSU; reciprocity with out-of-state schools; entrepreneurship incentives at NMSU; NMSU's relationship with the national laboratories; the higher education funding formula; and programs offered at NMSU.

### **Progress of the Public Defender Commission**

Michael Stout, chair of the Public Defender Commission, presented a list of Public Defender Commission members to the committee. The commission is composed of 11 members: five from Albuquerque, three from Las Cruces, one from Santa Fe, one from Carlsbad

and one from Portales. Mr. Stout reviewed for committee members the legislative acts that led to the formation of the commission and provided the committee with the commission's governing statute. The commission had its first meeting on August 6, 2013, during which the fiscal year 2015 budget proposal was approved and the goals of the commission were discussed. The commission also has begun a search for the chief public defender. Statute requires that the chief public defender be appointed by October 15, 2013.

Mr. Stout also discussed a survey that was offered to every employee of the Public Defender Department. The commission received 265 responses, a response rate of approximately 60%. Mr. Stout discussed rates that are paid to contract counsel for the Public Defender Department and emphasized that the rates are quite low.

Members of the committee asked questions about and discussed services provided by contract counsel; conflicts of interest; how the members of the commission are selected; plea negotiations; the Public Defender Department's budget; and the search for a chief public defender.

### **Approval of Minutes**

Upon a motion made by Senator McSorley and seconded by Representative Alcon, the minutes of the August 2013 meeting of the committee were approved.

### **Southwest Region National Child Protection Training Center, NMSU**

Shelly A. Bucher, L.M.S.W., programs operations director of the Southwest Region National Child Protection Training Center, told the committee that any act of commission or omission by a parent or other caregiver that results in harm, potential for harm or threat of harm to a child is considered to be child maltreatment. Acts of commission are defined as acts that are deliberate and intentional, regardless of whether harm to the child is the intended consequence of the act. Acts of omission are defined as failure to provide for a child's basic needs, even if harm to the child is not the intended consequence. Child maltreatment affects a child's brain architecture, mental health, health risk behaviors, social functioning and life expectancy. More specifically, it can lead to smaller brains, learning disorders, juvenile delinquency, adult crimes, suicides, sexually transmitted diseases and alcohol and drug abuse. Ms. Bucher told the committee that child maltreatment has long-term effects and can affect adult health. Child maltreatment is significantly associated with most adult crime outcomes. Childhood and adolescent maltreatment victims have higher rates of overall delinquency. Ms. Bucher shared some statistics regarding child maltreatment and child fatalities in New Mexico but emphasized that reports do not reflect the number of children experiencing maltreatment. Ms. Bucher told the committee that it is estimated that one in five children experiences some form of maltreatment. Ms. Bucher told the committee that the number of child maltreatment cases in New Mexico in 2011 could fill each seat in the Pan American Center at NMSU twice over and there would still be an additional 2,700 cases. Ms. Bucher told the committee that New Mexico KIDS COUNT ranked New Mexico as fiftieth in terms of child welfare. Factors of the ranking include economic well-being, education, health and family. Ms. Bucher discussed some of the costs associated with child maltreatment. Costs include short- and long-term health care needs,

special education, productivity losses and child welfare and criminal justice costs. These costs combined to create a \$124 billion lifetime economic burden for reported child maltreatment in 2008.

Ms. Bucher told the committee that the Southwest Region National Child Protection Training Center at NMSU supports West Texas, New Mexico, Arizona and Southern California. The mission of the center is to end child abuse, neglect and other forms of child maltreatment in three generations through education, training, awareness, prevention, advocacy and the pursuit of justice. Additional benefits of the center include its ability to develop models for how to interact on a collaborative enterprise, its specialized work force, its influence on practices to create standards of excellence in reducing child maltreatment and its influence on economic growth and community development. Ms. Bucher told the committee that students at the center have been very supportive and appreciative of the resources the center has to offer. Ms. Bucher told the committee that the center strives to be a trauma-informed system to promote child and family resilience factors, to understand the impact of past and current child and adult traumatic stress and to institute system responses in order to mitigate impact. Types of prevention include primary, secondary and tertiary. Primary prevention focuses on programs for the general population that try to prevent abuse before it occurs, including media campaigns, parent education and family support. Secondary prevention involves programs for families with risk factors for abuse, such as poverty or young parental age. Tertiary prevention focuses on programs for families in which child maltreatment has already occurred, with the goal of preventing reoccurrence.

Ms. Bucher discussed the importance of early primary prevention. Efforts in early childhood abuse prevention are an important link in comprehensive efforts to reduce juvenile crime. Early family support and educational interventions affect multiple risk factors for delinquency. Prevention is more effective and less costly than treatment. Investing in prevention yields a 19:1 ratio of savings in long-term costs. Education and awareness should be, and are, taking place in high school, higher education institutions, media campaigns and community outreach. Community outreach includes efforts to create communities where there are many services and supports for parents and where neighbors share a belief in the collective responsibility to protect children. Community outreach also includes family resource centers, community mental health and wellness clinics and prevention programs. Outreach focuses on strengthening families with parenting classes and support groups.

The center provides a modern training complex, complete with interview rooms with two-way mirrors, mock homes with cameras, webinar rooms, mock courtrooms and a control center for observation. A law enforcement video series includes videos regarding ensuring child safety upon parental arrest, ensuring child safety in abuse and neglect referrals and ensuring child safety by minimizing trauma. The center also provides online learning for educators and training for the investigation and prosecution of child abuse and neglect cases. A recent training for investigation and prosecution of child abuse cases had more than 100 attendees, including law enforcement personnel, district attorneys, attorneys and Children, Youth and Families Department (CYFD) investigators. Topics of the training included investigation, interviewing,

interrogating, cross-examination, testifying, assessing and allegations. Attendees of the training reported that 100% of the information provided would be useful in their positions and would improve their job performance. Attendees also provided recommendations for additional training. In collaboration with the Western Regional Children's Advocacy Center serving 13 states, a multistate study was conducted to assess professional development needs of child protection professionals. A specific survey also addressed Native American needs.

Ms. Bucher told the committee that the center strives to be a facilitator of change. It recognizes the shared responsibility of private and public leaders and strives to build a continuum of trauma-informed care and training centers. It promotes collaboration and multidisciplinary teams and coordinates policies, programs and resources in order to ensure sustainability of systems that provide care and training.

Members of the committee discussed and asked questions about training with cultural sensitivities; collaboration between the center and appropriate state agencies; cultural competency; outreach; funding for preventive programs; steps to prevent child abuse; center-provided training; the link between poverty and child maltreatment; and the allocation of scarce resources.

### **Results First and Child Welfare in New Mexico**

Jack Tweedie from the National Conference of State Legislatures presented statistics to the committee. The entry rate is calculated from the number of children entering care during the year for every 1,000 children in the general population. Entry rates in New Mexico were 3.3, the same as the national average. Kinship care is determined based on what percentage of all children in care on the last day of the fiscal year are living with a relative. In New Mexico in 2011, 17% of children were in kinship care. The national average in 2011 was 27%. In 2011, 5% of children were in congregate care settings. The national average was 14%. Of the children in care in New Mexico who remained in care at least eight days, only 29% were reunified within 12 months. The national average was 40%. Of all the children reunified, 11% of New Mexico children reentered care within 12 months. The national average was 12%. Of all children in care at least two years, 32% of New Mexico children achieved permanency within the following year. The national average is 41%. Of all children who were victims of substantiated or indicated abuse or neglect during the first six months of the reporting year, 90% of New Mexico children did not experience another incident of substantiated or indicated abuse or neglect within a six-month period.

Mr. Tweedie told the committee that states receive federal dollars for child welfare activities from a variety of sources. States spent \$29.4 billion in federal, state and local funds for child welfare purposes in state fiscal year 2010. This number consists of \$13 billion in federal funds, \$12.5 billion in state funds and \$3.3 billion in local dollars. New Mexico's spending was 71% federally funded and 29% state funded. The national average is 46% federally funded, 43% state funded and 12% locally funded. Mr. Tweedie noted that the national average includes 22% of federal funding from Temporary Assistance for Needy Families (TANF) funds, while New Mexico does not receive any TANF funding for this purpose. Mr. Tweedie told the committee

that a child welfare waiver demonstration project can enable a state to use federal Title IV-E funds outside of the foster care cost restrictions. The federal Department of Health and Human Services (HHS) may approve up to 10 projects per year in federal fiscal years 2012 through 2014. An approved project must be designed to accomplish one or more of the following goals: increasing permanency for all infants, children and youths by reducing the time in foster placements when possible and promoting a successful transition to adulthood for older youths; increasing positive outcomes of infants, children, youths and families in their homes and communities, including tribal communities, and improving safety and well-being; and preventing child abuse and neglect and the reentry of infants, children and youths into foster care. Waivers allow state and tribal child welfare agencies to design and demonstrate a wide range of approaches for improving safety, permanency and well-being outcomes for children. The HHS will give priority to projects that focus on positive well-being outcomes for children, youths and their families, especially those who have experienced trauma related to maltreatment; the social and emotional well-being of children and youths who are available for adoption, as well as those who have been adopted; project design that yields "more than modest improvements" in the lives of children and families and contributes to the evidence about what works to improve child and family outcomes; and leveraging the involvement of other resources and partners. Mr. Tweedie discussed approved states and implementation zones, including Hawaii, New York and Wisconsin. Mr. Tweedie told the committee that most applicants are focusing on children and youths who are in out-of-home care or at risk of out-of-home placement. Three states are targeting children below the age of five. Some states also intend to further target less restrictive placements for older youths and reduce the over-reliance on congregate care.

Mr. Tweedie discussed different rating criteria for programs, including evidence support. Mr. Tweedie also discussed specific programs such as the multi-systemic therapy for child abuse and neglect. He described state-specific programs, such as Connecticut's Results-Based Accountability program, differential response programs in many states and Jacob's Law in West Virginia.

Members of the committee asked questions about and discussed training for foster parents in New Mexico; uses for TANF money; why New Mexico does not receive TANF money; and various child welfare programs.

Charles Sallee, deputy director of the Legislative Finance Committee (LFC), told the committee that New Mexico Results First is a new tool for supporting evidence-based policymaking and budgeting. The LFC has partnered with the Pew-MacArthur Results First Initiative. New Mexico Results First can assess costs and benefits using the best available research and New Mexico-specific data. Mr. Sallee told the committee that the child welfare continuum includes prevention, intervention, foster care and reunification or adoption. In New Mexico, there are 6,200 reported child maltreatment victims, approximately one-half of whom are under the age of five. Child abuse and neglect are linked to adverse outcomes such as crime, poor education outcomes, substance abuse, special education and depression. Mr. Sallee discussed the tangible costs of a case of child abuse or neglect resulting in adoption in New Mexico, approximately \$107,000, and provided a breakdown of these costs, including

investigation, juvenile court determination, police and out-of-home placement. Mr. Sallee told the committee that New Mexico Results First can be used to improve outcomes by using cost-benefit analysis to decrease child maltreatment, decrease foster care placement, increase permanency and increase child safety. New Mexico is working with the CYFD to update and refine the estimated costs of child maltreatment and the inventory program information; assess cost and performance data of evidence-based programs that are being used; and prioritize investments. New Mexico Results First has shown that programs that work include home visiting; parent education; early childhood centers; alternative response; family prevention; intensive case management; guardianships; and federal Title IV-E waivers. Mr. Sallee discussed the details of some programs. Parents as Teachers is a home visiting program for parents and children, with a main goal of having children ready to learn by the time they begin school. There is an estimated 52% chance of a positive return on investments for this program. Nurse-Family Partnership of New Mexico provides intensive visitation by nurses during a woman's pregnancy and the first two years after birth. There is an 87% chance of a positive return on investments with this program, with a benefit-to-cost ratio of \$5.33:1. Alternative response has a 99.9% chance of a positive return on investment in New Mexico and an estimated benefit-to-cost ratio of \$9.22:1. The Positive Parenting program aims to increase the skills of parents and has a 99% chance of a positive return on investment, with an estimated benefit to cost ratio of \$6.33:1. Mr. Sallee told the committee that the state should focus on financing front-end services that are proven to work. He told the committee that reductions in out-of-home placements would free up resources for reinvestment. Mr. Sallee told the committee that the next steps include developing a consumer report on child welfare programs and working with the CYFD to answer important questions about child welfare programming in New Mexico. Mr. Sallee told the committee that the state spends significant resources on child welfare, but questioned whether funding is appropriately targeted. He stressed the importance of monitoring program performance and improving programming if necessary.

Members of the committee discussed and asked questions about kinship care in New Mexico; child welfare investments in New Mexico; home visiting programs and their benefits; community-based programs; foster homes; and various other programs.

### **Update from the CYFD**

Yolanda Berumen-Deines, secretary of children, youth and families, told the committee that at the start of fiscal year 2013, Juvenile Justice Services (JUST) was reorganized by reuniting all juvenile justice-related program areas under a single and cohesive Juvenile Justice Division. Jennifer Padgett, deputy secretary, CYFD, told the committee that in 2005, juvenile justice management, legislators and union employees all visited Juvenile Justice Facilities in Missouri to study their model for the rehabilitation of youths in their system. The Missouri model focuses on two main concepts: the establishment of smaller, regional facilities; and reducing unit sizes to no more than 10 to 12 youths per unit. Based on what was learned, New Mexico's justice system implemented a change from a correctional philosophy to a rehabilitation philosophy in late 2006. The Missouri model was adapted to meet the needs of the CYFD through a contract with the Missouri Youth Services Institute (MYSI), and Cambiar New Mexico was established. In 2008, training began at the J. Paul Taylor Center (JPTC) in Las

Cruces. The facility population was reduced from 48 to 36 clients. While individual units began their intensive four-week training, the vacant unit was renovated to make it more like a home. MYSI staff provided coaches and mentors in each unit to reinforce the concepts learned in training. Training at the JPTC was completed in early 2009. Ms. Padgett told the committee that goals of Cambiar New Mexico include creating smaller, safer and more nurturing living units; implementing youth-centered unit management; developing individualized service plans; staffing facilities with youth care specialists who receive training that provides them with clinical and therapeutic skill sets; and providing rich programming, including education, vocational training, behavioral health and medical and other services. Cambiar New Mexico extends services beyond CYFD facilities. In 2009, the legislature supported and passed many changes to the Delinquency Act of the Children's Code; created the Juvenile Public Safety Advisory Board; and replaced the Juvenile Parole Board with the Supervised Release Panel. The Supervised Release Panel is chaired by the JUST director and is composed of facility superintendents and others. This was an integral part of implementing the Cambiar model, which relies on the staff and management working with each youth to know when that youth is ready for release, and then giving staff and management the actual authority to release that youth.

Secretary Berumen-Deines told the committee that the Lincoln Pines Youth Center is on target for its autumn opening and showed the committee some pictures of the facility. The Albuquerque Reintegration Center has been converted into an all-female reintegration center. The CYFD has seen an increase in the number of clients who are earning high school diplomas or general equivalency diplomas. The secretary shared some statistics with the committee. For fiscal year 2013, 92.1% of clients completed a formal probation, 5.8% of clients were re-adjudicated within two years of previous adjudication, 9% of clients were recommitted to a CYFD facility within two years of discharge from facilities; and there were 249 physical assaults in juvenile justice facilities.

Members of the committee discussed and asked questions about the success of the Cambiar model; various performance measures and metrics; recidivism rates; the JPTC; the goals of Cambiar; reintegration centers; CYFD employee training; various youth facilities; tracking of youths that end up in the corrections system; services to CYFD clients; the CYFD's five-year master plan; incarceration terms for juvenile offenders; and CYFD case workers. Members of the committee requested that the CYFD research how other states track juvenile offenders that move into the adult system and that the CYFD present some best practices at a later date.

### **Recess**

The committee recessed at 5:59 p.m.

### **Tuesday, September 17**

### **Presentation on and Tour of the JPTC**

Committee members and staff toured the JPTC and were given a presentation on the Cambiar model and how it works at the facility.

**Adjournment**

There being no further business before the committee, the fourth meeting of the Courts, Corrections and Justice Committee for the 2013 interim adjourned at 12:30 p.m.

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

**October 21-22, 2013  
Piñon Room, Sky City Casino Hotel  
Pueblo of Acoma  
and  
New Mexico Women's Correctional Facility  
Grants**

The fifth meeting of the Courts, Corrections and Justice Committee (CCJ) was called to order by Representative Gail Chasey, co-chair, on October 21, 2013 at 9:57 a.m. at the Sky City Casino Hotel at the Pueblo of Acoma.

**Present**

Rep. Gail Chasey, Co-Chair  
Sen. Richard C. Martinez, Co-Chair  
Rep. Eliseo Lee Alcon  
Rep. Yvette Herrell (10/21)  
Sen. Linda M. Lopez  
Rep. Georgene Louis  
Sen. Cisco McSorley  
Rep. Jane E. Powdrell-Culbert  
Rep. William "Bill" R. Rehm (10/21)  
Sen. Sander Rue (10/22)  
Rep. Mimi Stewart

**Advisory Members**

Sen. Jacob R. Candelaria (10/21)  
Rep. Kelly K. Fajardo (10/21)  
Rep. Miguel P. Garcia  
Rep. Antonio "Moe" Maestas (10/21)  
Sen. John Pinto  
Rep. Patricia Roybal Caballero (10/21)  
Rep. Sheryl Williams Stapleton

**Guest Legislators**

Rep. Alonzo Baldonado (10/21)  
Rep. Debbie A. Rodella (10/21)

**Absent**

Sen. Joseph Cervantes  
Rep. Zachary J. Cook  
Rep. Emily Kane  
Sen. Lisa A. Torracco

Rep. Phillip M. Archuleta  
Sen. Craig W. Brandt  
Rep. Cathrynn N. Brown  
Rep. Brian F. Egolf, Jr.  
Sen. Daniel A. Ivey-Soto  
Sen. Bill B. O'Neill  
Rep. Paul A. Pacheco  
Sen. William H. Payne  
Sen. Michael S. Sanchez

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

**Staff**

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

Monica Ewing, Staff Attorney, LCS

Cassandra Jones, Research Assistant, LCS

**Guests**

The guest list is in the meeting file.

**Handouts**

Handouts and other written testimony are located in the meeting file.

**Monday, October 21**

Representative Chasey requested that Representative Louis chair the meeting. Members of the committee introduced themselves.

**Welcoming Statement and Presentation of Issues**

Governor Gregg P. Shutiva, Pueblo of Acoma, welcomed the committee to Sky City Casino and the Pueblo of Acoma. He told the committee that with the revenue the pueblo generates from gaming, it employs approximately 500 people. The Pueblo of Acoma is currently the largest employer in Cibola County. The casino operates under a compact agreement and sends more than \$1 million in revenue-sharing payments to the state each year. The current compact will expire in 2015. Governor Shutiva told the committee that he is looking to the committee for support in the pueblo's efforts to arrive at a new compact. He told the committee that the Pueblo of Acoma contributed more than \$7 million to the Department of Transportation to construct a bridge off of the Interstate 40 exit. Governor Shutiva described the economic difficulties the pueblo has experienced during the recession. He told the committee that the community experiences high unemployment and that gaming revenues have dropped significantly, in no small part due to the impact of the opening of other casinos, including the Downs Racetrack and Casino in Albuquerque.

Governor Shutiva told the committee that, several years ago, the tribal council approved a master plan that calls for an industrial park with manufacturing as the anchor for jobs and business development, but the pueblo has been unable to attract businesses to the reservation. He told the committee that the pueblo has been in an ongoing legal battle with the Continental Divide Electric Cooperative regarding infringements, trespassing and rights of way. The cooperative refuses to provide service to new residences or businesses until the lawsuit is resolved. Governor Shutiva told the committee that the Pueblo of Acoma is in need of state support to bring better-paying jobs to the community and that the pueblo wishes to create sound and sustainable business development on its lands.

Governor Shutiva told the committee that many tribes have sophisticated judicial systems that meet the needs of the tribes. The Acoma Tribal Court was established approximately 35 years ago; it handles juvenile, traffic and civil cases and is a court of general jurisdiction limited only by federal limitations on tribal sovereignty. The tribal court has a full-time judge who oversees the court. The court also contracts with licensed attorneys to fill part-time positions as judges, prosecutors and defense attorneys. Court attorneys are also allowed to represent clients in civil cases involving child welfare and elderly or vulnerable adults and cases involving health and wellness. The pueblo also uses the traditional fiscale system, in which fiscales do not have formal police training and do not carry weapons, but they have an important role in peacekeeping, which requires the use of cultural knowledge to solve problems and conflicts. Fiscales serve as mediators during family disputes and assist clan elders in making decisions. The court has one probation officer who handles adult and juvenile cases and who had a caseload of 131 cases in 2012. The probation officer provides pretrial services, random alcohol and drug testing, oversight of house arrests, electronic monitoring and supervision of health and wellness cases. In 2000, the pueblo constructed a 24-bed adult detention facility to address the growing crime rate. The facility was constructed primarily using tribal funds. The federal Bureau of Indian Affairs has provided partial funding for operations since 2010.

Governor Shutiva emphasized that there needs to be greater collaboration among tribal and state courts and agencies as well as a way to ensure tribal sovereignty. He told the committee that, in some situations, the pueblo has had trouble getting tribal court orders recognized in state courts, particularly in situations involving child custody, child support and other disputes. He asked that the CCJ offer general support for increased cooperation among the various court systems. He told the committee that, sometimes, joint jurisdiction between state and tribal courts is necessary when cases on the same issue are filed in state and tribal forums. He also told the committee that there should be more cooperation when it comes to pretrial and probation oversight of defendants. Governor Shutiva said that more meaningful cooperation with the Children, Youth and Families Department would be helpful. He told the committee that the state does assist with child support and that the Human Services Department provides an attorney to help collect child support off of the reservation. The tribal social services agency also receives assistance with foster care.

Randall Collins, chief judge at the Pueblo of Acoma, told the committee that the tribal court is for the Acoma community and that it strives to provide equal justice under the law through due process and protection of the Pueblo of Acoma's tribal traditions and sovereignty, and sovereignty is promoted and protected by the court. Judge Collins told the committee that from September 2011 to September 2012, there were 113 civil filings and 237 civil hearings. Over the same period, there were 3,031 criminal filings, 717 criminal hearings, 76 juvenile filings and 78 juvenile hearings. Judge Collins told the committee that the court lacks resources and that federal budget cuts and an expanding workload have placed great strain on the tribal court system. Because of federal funding cuts, the courts have experienced a 50% reduction in personnel. The courts need increased legal representation for criminal and civil cases. Judge Collins told the committee that the recent court service improvements include improved monitoring to reduce jail costs and ensure public safety. Diversion programs are used to reduce

costs, improve compliance, help prevent other crimes, complement existing social programs and assist in helping members become a productive part of the community. Diversion programs used by the Pueblo of Acoma's tribal court include an adult wellness court and Project Venture, which addresses juveniles with high-risk behavior or truancy issues. Judge Collins told the committee that the Pueblo of Acoma is also working on reforming some of its laws.

Members of the committee asked questions about and discussed tribal jurisdiction, the population of the Pueblo of Acoma, the pueblo's health and wellness program, federal funding, tribal sheriffs, collaboration between tribal and state entities and diversion programs.

### **Termination of Parental Rights Bill**

Representatives Louis and Baldonado and Professor Antoinette Sedillo Lopez of the University of New Mexico School of Law presented a bill to the committee, which Representative Louis said was heard during the past legislative session. Representative Louis introduced a witness, Kim Dixon, who told the committee that she became pregnant and had children as a result of rape, and she was later taken to court by her rapist over custody of the children. The children's biological father was charged with second degree criminal sexual penetration, but he was still granted unsupervised visitation with the children. Ms. Dixon told the committee that since the birth of her children, she has been forced to face her rapist 21 times, and she is very concerned about the safety of her children when they are with him. Representative Baldonado told the committee that the original bills, HB 508 and HB 38, had been discussed extensively, were changed to reflect that discussion and were combined into a committee substitute. Professor Sedillo Lopez told the committee that the process in this bill to terminate or suspend parental rights of a rapist would not be triggered unless the victim wished it. She told the committee that in the majority of cases, rapists do not attempt to communicate with their victims or be involved in a child's life, but this bill would protect the small number of women who are put in this situation. Representative Louis told the committee that a lot of input was considered when looking at this bill and that two options were considered for victims: (1) termination of parental rights; or (2) suspension of parental rights. This was done to protect children in cases where termination of rights might not be in a child's best interest.

Members of the committee asked questions about and discussed convictions for criminal sexual penetration, the length of time that victims would have to initiate this procedure, technical details of the bill, court presumptions in favor of joint custody, similar laws in other states, appeal processes proposed in the bill, criminal and civil burden of proof requirements, the evidentiary value of criminal convictions in civil cases and current protections in law.

### **Trauma and Victimization of Female Inmates**

Dr. Betty Caponera, director of the New Mexico Interpersonal Violence Data Central Repository, and Linda Freeman, deputy director of the New Mexico Sentencing Commission (NMSC), made a presentation to the committee on abuse of female inmates in New Mexico. Dr. Caponera referred the committee to a report from the NMSC, "Prevalence of Adverse Childhood Experience & Victimization among New Mexico's Female Inmate Population". She told the committee that the Interpersonal Violence Data Central Repository is charged with creating a

report on sex crimes in New Mexico each year. The repository also creates a report on domestic violence. Dr. Caponera told the committee that the adverse childhood experience (ACE) questionnaire, developed in San Diego, looks at the relationship between adverse childhood experiences and specific health outcomes. Although the participants are educated and middle class, adverse experiences are common. Nearly 69% of females and 66% of males in the study had at least one ACE. As the number of ACEs increases, the risk of a variety of health problems also increases. Dr. Caponera told the committee that in 2010, she wrote a proposal to the Corrections Department (CD) to survey inmates and was given permission to do so. At the New Mexico Women's Correctional Facility (NMWCF), only 23 of 233 eligible inmates declined to participate in the survey. Dr. Caponera told the committee that three major observations came out of the study: (1) most of the inmates experienced multiple types of abuse or household dysfunction; (2) most of the inmates experienced these indicators multiple times; and (3) most of the inmates continued to experience these indicators into adulthood.

Ms. Freeman told the committee that as a result of the ACE study, many people use ACE indicators when comparing prevalence of abuse. Among comparable populations, women in New Mexico are more likely to experience emotional abuse. Ms. Freeman told the committee that almost all of the women that participated in the study reported experiencing some form of abuse at some point in their lives. She told the committee that only a small proportion of women sought help for the abuse they suffered; therefore, most of these women have not received the help they need to deal with the ramifications of the abuse they suffered. Over the years, the CD has created programs more specific to women. The findings of the report confirm the need to continue developing programs specifically designed for women as well as programming that considers the magnitude of untreated trauma.

Members of the committee asked questions about and discussed results of the study, ongoing studies, similarities between men and women regarding ACEs and policy consequences of the study.

### **Approval of Minutes**

Upon a motion by Senator Lopez, seconded by Senator Martinez, the minutes of the September 2013 CCJ meeting were approved.

### **Criminal Justice Reform Subcommittee**

Representative Chasey announced to the committee that the New Mexico Legislative Council approved a Criminal Justice Reform Subcommittee, and she directed the co-chairs of the CCJ to appoint eight members, including two members of each party in each chamber, in consultation with the speaker of the house of representatives and the president pro tempore of the senate. Representative Chasey told the committee that the co-chairs would propose the following members for the subcommittee: Representative Maestas and Senator Torracco as co-chairs; Representatives Chasey, Fajardo and Powdrell-Culbert; and Senators McSorley, O'Neill and Rue.

### **Use of Solitary Confinement in New Mexico's Prisons**

Steve Allen, American Civil Liberties Union of New Mexico (ACLU-NM), and Gail Evans of the New Mexico Center on Law and Poverty (NMCLP), discussed a just-published report from the ACLU-NM and the NMCLP regarding solitary confinement in prisons and jails in New Mexico. Ms. Evans told the committee that she has seen a change in prisons over the past couple of decades, and she provided anecdotal evidence. She has had clients in solitary confinement that have not had any human contact except for attorney visits. She stressed that prison reform, particularly regarding solitary confinement, should be a priority for New Mexico.

Ms. Evans told the committee that the report began as a request for information sent to eight jails around the state and to the CD. She told the committee that the information was often difficult to maintain because of the way that it is compiled. She said the CD estimates that 16% of its inmates are in solitary confinement at any given point in time. She said that the Metropolitan Detention Center in Albuquerque reported that it has about 300 people in solitary confinement at most times. Ms. Evans told the committee that each jail she contacted uses solitary confinement. Ms. Evans discussed policy changes regarding solitary confinement in states such as Maine, Mississippi and Illinois. She told the committee that it costs more to incarcerate maximum security prisoners and have prisoners in solitary confinement. A 2007 Arizona estimate shows that the annual cost of placing someone in a "supermax" facility was \$50,000, compared to \$20,000 for other prisoners. In Texas, it costs 45% more to house prisoners in solitary confinement than in conventional prison cells.

Mr. Allen said that the NMCLP and the ACLU-NM urge New Mexico to adopt the following reforms to the use of solitary confinement: increased transparency and oversight; limiting the length of solitary confinement to no more than 30 days; mandating that all prisoners be provided with mental, physical and social stimulation; and banning the use of solitary confinement for the mentally ill and children. Mr. Allen told the committee that he is excited that the CD has agreed to work with the Vera Institute to address solitary confinement in New Mexico.

Members of the committee asked questions about and discussed: solitary confinement in other states; the CD's work with the Vera Institute; costs of implementing certain recommendations and incarcerating individuals in solitary confinement; oversight of privately run prisons; lawsuits as a result of solitary confinement; and the impacts of solitary confinement on individuals.

Members of the committee requested that the New Mexico Association of Counties (NMAC) respond to the report and discuss solitary confinement in county jails. Grace Philips, attorney, NMAC, mentioned that she had only recently received the report. She told the committee that the NMAC standards for accreditation for county detention facilities address special-management housing and management of individuals with mental issues. She said that the presentation had many factual inaccuracies. Ms. Philips emphasized that isolation, solitary confinement and segregation are terms that should not be used interchangeably. There are many reasons to segregate, many of which are for an inmate's protection rather than for discipline. The

committee agreed to allow the CD and NMAC to respond to the report at the CCJ's November meeting.

### **Public Comment**

Don Johnston identified himself as a convicted sex offender who had been held in solitary confinement. He described his experiences in solitary confinement to the committee.

Jim Brewster, general counsel for the CD, told the committee that the CD will provide a written response to the report and welcomes the opportunity to make a presentation to the committee on CD policies. He told the committee that the CD screens for mentally ill inmates and provides programs to inmates in segregation.

### **Report from the Judiciary: Unified Budget and Proposed Legislation**

Petra Jimenez Maes, chief justice of the New Mexico Supreme Court, reminded the committee of the judiciary's relatively new budget process — the unified budget. She told the committee that the unified budget contains all of the budget requests from the judiciary for fiscal year (FY) 2015. The budget process begins with judicial entities presenting their proposed budgets during two full days of hearings in August to a budget committee. The budget committee then makes recommendations to the New Mexico Chief Judges Council, which deliberates and makes recommendations to the New Mexico Supreme Court. The New Mexico Supreme Court carefully reviews, edits and sets the budget. The judiciary is requesting a general fund increase of approximately \$10.8 million, which includes approximately \$1.8 million to cover Public Employees Retirement Association (PERA) and General Services Department rate increases. The total requested general fund appropriation is approximately \$158 million, or 2.55% of the projected total state spending for FY 2015. The chief justice referred the committee to the unified budget proposal book. The judiciary is requesting an increased budget to allow for an increase in the base budget, judicial compensation, five new judgeships, a drug court and PERA rate increases. Chief Justice Maes told the committee that the judiciary's highest priority is to improve funding for basic court operations.

Chief Justice Maes discussed judicial salaries and salary comparisons outside of the judiciary. She told the committee that the judiciary is requesting a 5% increase in judge salaries, still considerably less than the Judicial Compensation Commission recommended. She said that the First Judicial District needs 2.1 new judges, but the judiciary is requesting only one new judgeship. The Second Judicial District needs 5.14 new judges, only one of which has been requested. The Fifth Judicial District needs 2.05 new judges, only one of which has been requested. The Thirteenth Judicial District needs 3.61 new judges, one of which has been requested. The Dona Ana County Magistrate Court needs 2.5 new judges, only one of which has been requested in the unified budget.

Chief Justice Maes told the committee that the FY 2015 request allows for an increase in drug court funding of \$1.5 million. This increase is consistent with the three-year growth plan adopted by the New Mexico Supreme Court in July 2013. Chief Justice Maes discussed the benefits of drug courts.

Chief Justice Maes then discussed potential legislation for the 2014 session. She referred the committee to drafts of the bills. One bill would fund new judgeships in certain districts, another would remove a sunset on legislation that allows the courts to collect a magistrate court's operation fee when an offender commits a traffic offense and the third would allow the Administrative Office of the Courts (AOC) and the Traffic Safety Bureau (TSB) of the Department of Transportation, with the agreement of the New Mexico Finance Authority, to distribute annually to the AOC and TSB assets in the Metropolitan Court Bond Guarantee Fund that exceed 120% of the annual bond payments from the fund.

Members of the committee asked questions about and discussed the judiciary's unified budget, administrative support, funding for special courts, use of contract attorneys, judicial salaries, court leases, court renovations, judicial retirement requirements and the Judicial Compensation Commission.

### **Recess**

The chair announced that the last presentation of the day, regarding SB 65 (2013), would be rescheduled for the November meeting. The committee recessed at 4:51 p.m.

### **Tuesday, October 22**

#### **Tour of the NMWCF**

Committee members and staff toured the NMWCF and were given a presentation on the facility. Arlene Hickson, warden of the NMWCF, and staff at the facility discussed various programs. The Healing Hearts dog-training program has been in place at the NMWCF since August 2007. The program has adopted more than 275 dogs, and some of those dogs are now being used during therapy. Inmates must meet certain criteria to be assigned to the program, and the program is considered to be a full-time institutional job assignment for the inmates. Programs in segregation include education, work programming and recreation five days a week as well as bible studies and individual counseling. Mental health screenings are done for all inmates within 24 hours of admission and for any inmate in need of mental health services or psychiatric services. Clinical assessments are offered to all women who are prescribed or may need psychotropic medications. Seventy-seven percent of the inmates at the NMWCF are on psychotropic medication. The prison's mental health department also holds group and individual psychotherapy sessions, and it provides services for inmates prior to discharge. From 2011 to 2012, there was a 9% increase in the mental health caseload. The Therapeutic Behavioral Health Unit has been in operation for three years and includes a supportive-living environment for 10 high-risk female offenders who have exhibited self-injurious behaviors or borderline personality disorder traits. There have been 28 graduates of the program.

The Fitness Pod houses 21 individuals led by four facilitators and is populated by inmates that might benefit from proper diet and exercise. A variety of workouts and instruction on physical and mental health topics are provided. The goal is to increase health awareness, decrease chronic health medication costs and empower inmates to make better health decisions. The Residential Drug and Alcohol Program combines cognitive behavioral therapy, motivational interviewing and interactive journaling. This model has been operated successfully within the

Federal Bureau of Prisons for a number of years. Education programs are offered to inmates, including adult basic education and vocational programming in Microsoft and veterinarian technician programs. Breaking Barriers is a nine-week course that includes several workshops and class discussions. The Success for Offenders After Release Program is an intensive job-skills program open to certain inmates. Participants complete intensive career assessment, exploration, goal-setting and education. P.S. I Love You is a program that provides inmates with a way to communicate with their children and grandchildren by recording an inmate reading a book aloud and sending the book and a video to the inmate's family.

The committee asked questions about and discussed: programs provided to inmates; mental health issues; educational services; inmates that are Medicaid-eligible; information provided to inmates regarding social services available after discharge; family visitations; computer training; prison demographics; inmate population growth; and gender-specific programming.

### **Adjournment**

There being no further business before the committee, the fifth meeting of the CCJ for the 2013 interim adjourned at 1:21 p.m.

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

**November 21-22, 2013  
Room 322, State Capitol  
Santa Fe**

**D**

The sixth meeting of the Courts, Corrections and Justice Committee (CCJ) was called to order by Representative Gail Chasey, co-chair, on November 21, 2013 at 9:48 a.m. in Room 322 of the State Capitol.

**Present**

Rep. Gail Chasey, Co-Chair  
Sen. Richard C. Martinez, Co-Chair  
Rep. Eliseo Lee Alcon  
Sen. Joseph Cervantes (11/22)  
Rep. Zachary J. Cook (11/21)  
Rep. Yvette Herrell  
Rep. Emily Kane  
Sen. Linda M. Lopez (11/21)  
Rep. Georgene Louis  
Sen. Cisco McSorley  
Rep. Jane E. Powdrell-Culbert  
Rep. William "Bill" R. Rehm (11/22)  
Sen. Sander Rue  
Rep. Mimi Stewart  
Sen. Lisa A. Torracco

**Absent**

**Advisory Members**

Sen. Craig W. Brandt  
Sen. Jacob R. Candelaria  
Rep. Kelly K. Fajardo (11/21)  
Rep. Miguel P. Garcia  
Sen. Daniel A. Ivey-Soto  
Rep. Antonio "Moe" Maestas  
Sen. Bill B. O'Neill  
Sen. John Pinto  
Rep. Patricia Roybal Caballero  
Rep. Sheryl Williams Stapleton

**F**

Rep. Phillip M. Archuleta  
Rep. Cathrynn N. Brown  
Rep. Brian F. Egolf, Jr.  
Rep. Paul A. Pacheco  
Sen. William H. Payne  
Sen. Michael S. Sanchez

**T**

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

**Staff**

Douglas Carver, Staff Attorney, Legislative Council Service (LCS)  
Monica Ewing, Staff Attorney, LCS  
Cassandra Jones, Research Assistant, LCS

### **Guests**

The guest list is in the meeting file.

### **Handouts**

Handouts and other written testimony are in the meeting file.

### **Thursday, November 21**

Members of the committee introduced themselves.

### **House Joint Memorial (HJM) 17 (2011) — Study of the Needs of and Available Resources for People with Mental Health Disorders in Crisis Situations**

Grace Philips, attorney, New Mexico Association of Counties (NMAC), discussed how the task force established by HJM 17 found that there were major concerns surrounding how to divert people who have mental illnesses from jail and interactions with law enforcement. Ms. Philips told the committee that the task force had wide participation from many organizations and agencies. The task force developed a series of recommendations, including system improvements, such as developing flexible funding streams and payment mechanisms to compensate providers for critical services; regional crisis triage centers to conduct mental health evaluations and provide up to 23-hour diversion; respite services to serve as a nonclinical alternative to reduce the need for hospitalization or incarceration; training for family members, teachers, students and first responders; establishment of a centralized, statewide call center that is connected to local authorities and behavioral health agencies throughout the state; expansion of the warm line service statewide that are client-run or client-staffed to provide telephone-based peer support; development of broad community coalitions in all communities or in counties of the state to enhance and integrate the local capacity to respond to mental health crises; using peer services whenever possible to provide and enhance services; and the need for a review of criminal statutes to determine whether there are sensible changes that can be made that would reduce costly, and often unnecessary, lengthy and ineffective incarceration of individuals with mental illness.

Phil Evans, New Mexico Crisis and Access Line, told the committee that the crisis line project began approximately one year ago. A location has been opened on Jefferson Avenue in Albuquerque. The crisis line became active on January 7, 2013. Mr. Evans told the committee that the New Mexico Crisis and Access Line has taken more than 2,100 phone calls. Call volume has grown steadily since the line became available. Mr. Evans told the committee that the New Mexico Crisis and Access Line consistently gathers data critical for decision-makers and planners. Approximately 2.7% of crisis calls result in law enforcement involvement. He referred the committee to some marketing material created for the crisis line.

Daphne Rood-Hopkins, director, community outreach and behavioral health, Children, Youth and Families Department (CYFD), told the committee that the HJM 17 task force recommended certain changes relating to mental health first aid. An eight-hour course is now available that teaches first aid skills for mental health crisis situations and the recognition of early stages of mental health problems. In particular, those that are certified in mental health first aid learn potential risk factors and warning signs for a range of mental health problems; an understanding of the prevalence of various mental health disorders in the United States and the need for reduced stigma in communities; a five-step action plan encompassing the skills, resources and knowledge to assess the situation, to select and implement appropriate interventions and to help the individual in crisis connect with appropriate professional care; and an understanding of the resources available to help someone with mental health problems. Currently, more than 3,000 people are certified in mental health first aid in New Mexico. New Mexico currently has 76 instructors, 27 of whom can offer a curriculum focused on youth and 39 of whom can offer the public safety curriculum. Continuing education units to maintain certification are available through the University of New Mexico. The training is now included in core training for all CYFD employees. The CYFD has spent \$20,000 to train trainers in order to more effectively share the curriculum across the state. Ms. Rood-Hopkins told the committee that one of the biggest challenges has been finding the money to pay for books for each participant in the mental health first aid training. The books cost \$16.00 per participant. The NMAC has contributed \$15,000 for the purchase of the books.

Chris Tokarski, executive director of Mental Health Resources, Inc., told the committee that as a result of the HJM 17 task force, he realized that he needed to change his practice in order to meet the needs of the community. The task force came up with a five-year plan to bring together representatives from mental health centers and local hospitals and other stakeholders. Mr. Tokarski told the committee that he changed his practice to an open-access system in order to accommodate more referrals and help patients move through episodes of care more quickly. His practice established a relationship with the local emergency room and reached out to the community hospital. He told the committee that this new system has been very successful in placing patients in the appropriate care and reducing the number of times a patient with mental health issues would return to the emergency room.

Veronica Sanchez, M.S.W., L.I.S.W., Taos County Crisis Systems of Care Alliance, told the committee that it is often difficult to find care for people with mental health issues in small communities and rural areas. She told the committee that the Taos County Crisis Systems of Care Alliance began as a result of a symposium held by the Interagency Behavioral Health Purchasing Collaborative. The Taos community began looking at recovery-oriented systems of care as a result of the high numbers of individual with substance abuse issues in the area. Professionals in Taos came together to discuss the issues and develop systems in the community. Taos currently has five work groups that focus on different issues. The goals and objectives of the Taos County Crisis Systems of Care Alliance include developing a seamless system-of-crisis response; decreasing professional silos of care by having monthly crisis system-of-care meetings; and working through a collaborative and coordinated process with all community partners and stakeholders to develop a rapid access network. Ms. Sanchez emphasized that the

overarching goal is to keep people out of hospitals and jails as much as possible.

Kevin Burns, patrol sergeant, San Juan County Sheriff's Office, told the committee that he has been trained to facilitate interaction with persons with mental illness as a result of House Bill (HB) 93 (2011), which was drafted in response to recommendations from the HJM 17 task force. The training focuses on less authoritative approaches by law enforcement contacts when interacting with people with mental health issues. He told the committee that stakeholders in San Juan County have come together to make cross-discipline connections in order to have a more proactive approach to dealing with people who have mental health issues and to reduce the number of interactions between people with mental health issues and law enforcement.

Representative Miera reminded committee members that he is a licensed drug and alcohol counselor. He stressed the importance of the HJM 17 task force and thanked those involved for their hard work.

Members of the committee discussed and asked questions about previous mental health legislation; how people with mental health issues are typically identified; the rights of a person with mental health issues; the need for more data regarding people with mental health issues and their treatment; drug impairment as it correlates to mental health and behavioral health issues; the number of beds needed for mental health patients and where they are needed the most; the New Mexico Crisis and Access Line; services for people with mental health issues who have been released from prison or jail; pretrial services for people with mental health issues; incarceration of people with mental health issues; funding needed for mental health issues; maximizing limited behavioral and mental health resources; and the latest diagnostic criteria for certain mental illnesses.

### **Electronic Registration Information Center (ERIC)**

Maggie Toulouse Oliver, Bernalillo County clerk, introduced David J. Becker, director, Election Initiatives, The Pew Charitable Trusts. Mr. Becker discussed the voting population in New Mexico, stating that the voting-eligible population in New Mexico is 1,432,375. There are 978,000 registered voters, which comprise 68.3% of the eligible voting population, compared to the national average of 71.2%. Voter turnout is 54.9% of the eligible population, with slightly more than 355,000 early voters. Of New Mexico's voters, 2.1% voted by mail and 79.9% voted in person. In New Mexico, the eligible voting population increased from 1.36 million in 2008 to 1.43 million in 2012. Despite this increase, the number of ballots counted decreased from 830,000 in 2009 to 790,000 in 2012. In 2008, there were 5,288 provisional ballots cast, compared to 6,630 provisional ballots cast in 2012. In 2008, 1,739 provisional ballots were rejected. In 2012, 2,100 provisional ballots were rejected.

Mr. Becker then discussed challenges to voter registration. In 2012, one out of every eight Americans moved. One out of every five young Americans moved in the same year. One out of three voters believes that their records will update automatically with each move, and more than 50% of voters are unaware that they can update their information at their state's motor vehicle department. Mr. Becker told the committee that most voter registration activity occurs during

the two months before the voter registration deadline for an election, which creates a huge burden for administrators. Currently in the United States, 12.7 million voter records are out of date, 1.8 million deceased individuals are still registered to vote, 2.7 million individuals are registered in multiple states and one in four eligible voters is not registered to vote. Mr. Becker told the committee that online voter registration is more accurate, costs less and is preferred by voters. Mr. Becker discussed states that currently use online voter registration.

Mr. Becker told the committee that seven states are currently a part of the ERIC. The ERIC uploads limited data from voter lists and states' motor vehicle records every 60 days. Administrators receive reports on voters who have moved, voters who have died and eligible residents who are not registered to vote. As part of the ERIC agreement, administrators must contact voters to inform them of how to register to vote or to confirm that they moved. The ERIC works within the parameters set by the National Voter Registration Act of 1933. Involved states own, pay for and govern the ERIC. The ERIC is a 501(c)(3) organization and each state utilizing the ERIC has representation on the board of directors. The total annual cost to operate the ERIC is less than \$500,000. Mr. Becker told the committee that if New Mexico signed up right now, its share of the cost would be less than \$50,000. Because the cost of operating ERIC stays the same, each state's share goes down as more states join. The ERIC helps states keep up with the mobile electorate, better identify voters who have died and find and reconcile duplicate records. The ERIC results in cost-savings due to less printing costs, a reduction in returned mail, fewer provisional ballots to process and reduced costs for unsophisticated data-matching. Records are more up-to-date when changes occur, which reduces the administrative burden before an election. In the seven ERIC states, over 5.7 million eligible but unregistered voters were identified by the ERIC. All were contacted by mail and over 300,000 voters registered as a result.

Members of the committee asked questions about and discussed whether the ERIC implementation would have to be done statutorily; requirements for joining the ERIC; online voter registration; how the ERIC counters voter fraud; security of online voter registration; how the ERIC information is distributed to county officials; the ERIC security measures; the integrity of the ERIC data; the efficiencies of online voter registration; and the cost-effectiveness of online voter registration. Ms. Oliver told the committee that the NMAC County Clerks Affiliate has endorsed moving forward with the ERIC. The chair invited Dianna J. Duran, secretary of state, to give her views on the ERIC. Secretary Duran discussed measures she has taken in order to ensure that New Mexico has an accurate voter file. She told the committee that she has a couple of concerns about moving forward with the ERIC, including the cost of joining the ERIC and concerns raised by the Michigan secretary of state regarding the security of the ERIC. She told the committee that the seven states currently in the ERIC came up with the bylaws and she is concerned about the agreement they came to. Mr. Becker clarified that the cost of joining the ERIC changes as more states join and told the committee that it is expected that a minimum of 15 states will be involved in the ERIC by the end of 2015. He also clarified that Michigan does not participate in the ERIC and has not engaged the ERIC in conversation recently.

### **Double Jeopardy and Forfeiture**

R. Dave Pederson, general counsel, Office of the Attorney General, told the committee that double jeopardy can occur when there are criminal and civil sanctions for the same activity. He told the committee that double jeopardy protections exist in order to protect the Fifth Amendment rights of accused persons. He told the committee that the supreme court has set rules for when a civil and criminal sanction can exist for the same offense. In these cases, the court generally looks at whether or not the civil sanction is so severe that it becomes punitive and violates the double jeopardy clause. He told the committee that the easiest way to avoid issues of double jeopardy would be to have only a criminal or a civil sanction for an offense, rather than both, or to clarify in statute that sanctions are meant to be remedial rather than punitive. He warned, however, that even with clarifying language, courts could find the penalty to be too severe.

Members of the committee asked questions about and discussed criminal and civil sanctions; restitution for victims; appropriate penalties for various crimes; specific court decisions regarding double jeopardy; and forfeiture laws.

### **Approval of the Minutes**

The chair noted that because the committee lacked a quorum, the CCJ would continue as a subcommittee. Upon a motion by Representative Alcon, seconded by Representative Herrell, the subcommittee voted unanimously to adopt the minutes of the October 21-22 meeting of the CCJ.

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

The following legislation was presented to the CCJ for endorsement in the 2014 legislative session.

#### *Making the Magistrate Court Operations Fund and Fees Permanent: 202.194767.1SA*

This bill would remove the 2014 sunset on the Magistrate Courts Operations Fund. After discussion, Senator Martinez made a motion to amend the bill to extend the sunset until May 31, 2019 rather than remove it altogether. The motion was seconded by Representative Alcon and passed without opposition. Senator Martinez made a motion to endorse the bill, seconded by Representative Alcon. The bill was endorsed by the committee without opposition. Senator Martinez agreed to carry the bill.

#### *Including the Administrative Office of the Courts (AOC) as a Recipient of Balances in the Metropolitan Court Bond Guarantee Fund: 202.194860.2SA*

This bill would change how excess amounts of funds in the Metropolitan Court Bond Guarantee Fund are determined and include the AOC in the distribution of these excess funds. Representative Alcon made a motion to endorse the bill, seconded by Senator Martinez. The bill was endorsed with no opposition. Senator Candelaria agreed to carry the bill.

#### *Additional Judgeships: 202.194766.1SA*

This bill would create additional judgeships in the First, Second, Fifth and Thirteenth Judicial districts, as well as create an additional magistrate in the Dona Ana District. After discussion, Representative Chasey moved to endorse the bill. The motion was seconded by

Representative Louis and passed without opposition. Representative Henry Kiki Saavedra will carry this bill.

*Increasing the Amount of the County Correctional Facility Gross Receipts Tax That May be Imposed: 202.195154.1*

This bill would increase the amount of the county correctional facility gross receipts tax that may be imposed from one-eighth to one-fourth percent. The bill was discussed but the co-chair postponed the vote until the following day.

*Bail Bondsmen — Qualifications and Educational Requirements for Licensure: 202.194906.1*

The co-chair, with consensus from the subcommittee, agreed not to discuss this bill because the committee had not received any information about it during the interim.

*A Memorial Requesting the Supreme Court Consider How Recidivism Rates Might be Incorporated into the Judicial Performance Evaluation Commission Process: 202.195149.1*

This memorial would request that the supreme court consider how to incorporate recidivism rates into the Judicial Performance Evaluation Commission process. The subcommittee discussed the memorial, but no motion for endorsement was made.

*Termination of Parental Rights for a Child Conceived in Rape: 202.195095.1*

This bill would provide for the termination or permanent suspension of parental rights when criminal sexual penetration results in conception of a child. The subcommittee discussed the bill, but the co-chair postponed the vote until the following day.

**Adoption of Subcommittee Report**

The co-chair noted that a quorum was again present. The committee voted unanimously to approve the report of the subcommittee, including the endorsement of three bills noted above and the approval of the minutes.

**Recess**

The committee recessed at 5:41 p.m.

**Friday, November 22**

The committee reconvened at 9:46 a.m. on Friday, November 22.

## **Solitary Confinement — Response to the American Civil Liberties Union and New Mexico Center on Law and Poverty Report**

Gregg Marcantel, secretary, Corrections Department (NMCD), introduced his staff. Joe W. Booker, Jr., deputy secretary of operations, NMCD, told the committee that the NMCD does not use what is traditionally defined as solitary confinement. Prisoners are sometimes placed in some form of confinement for various reasons. The preferred term to use is "administrative segregation" — used when an inmate has done something to cause a security concern to the institution. Administrative segregation is only used after a prisoner has a hearing and is found guilty. Prisoners in administrative segregation still have showers, recreation time and access to certain programs. The secretary clarified that prisoners in isolation never experience sensory deprivation. He told the committee that the NMCD reached out to the Vera Institute of Justice to begin looking at its practices regarding isolated prisoners. He emphasized that the NMCD is concerned about past state practices regarding isolated prisoners and that he appreciates the NMCD's relationship with the Vera Institute of Justice to help it address solitary confinement issues. The NMCD has started to look at which prisoners are isolated because they are predatory and which are isolated for their own protection. The NMCD has taken measures to integrate those that are isolated for their own protection into the general population without endangering them. The secretary discussed many programs that the NMCD uses to stimulate prisoners and to create opportunities for camaraderie.

Ms. Philips told the committee that special management housing and solitary confinement are not the same thing. She introduced administrators from several county detention facilities and invited them to discuss their use of segregation.

Ramon Rustin, chief, Metropolitan Detention Center (MDC), told the committee that the report states that the MDC houses 300 inmates in solitary confinement. Mr. Rustin told the committee that he assumes the report is talking about segregation. MDC has eight pods that are for segregated inmates, but he stressed that segregation is different from solitary confinement. Segregation units are used for inmates in the intake process before they are assigned to the general population. Segregation units can also be used for discipline in certain cases where inmates serve a specified sentence. One section is also used to house protective custody inmates and another is used for inmates that are seriously mentally ill and violent. Mr. Rustin told the committee that the segregation pods are structured like general population pods and have doors with glass windows. Inmates in segregation can hear things outside of their room and are not isolated from human contact. The inmates are housed in a single cell but have the opportunity to eat together. Mr. Rustin also noted how challenging it is to find support in the community for the mental health population.

Pablo Sedillo, Public Safety Department director, Santa Fe County, told the committee that solitary confinement is an obsolete term. He told the committee that Santa Fe County has worked to reduce the number of mentally ill people coming into the detention facility and that they looked at as special management cases. Inmates in segregation have a review every seven days in order to ensure their well-being. Multidisciplinary teams that include case managers, medical teams and the warden make assessments weekly. Mark Gallegos, warden, Santa Fe

County Adult Correctional Facility, told the committee that inmates receive a mental health assessment early on and that individuals in special management are watched closely.

Chris Barela, director, Dona Ana County Detention Center, referred the committee to photos of the administrative segregation units in the Dona Ana County Detention Center. He told the committee that special management inmates live as comfortably as possible. Mr. Barela told the committee that the NMAC developed standards that most county detention facilities are striving to implement that include policies regarding administrative segregation.

Members of the committee asked questions about and discussed security threat groups; prison gang activity; predatory prisoners; the Vera Institute of Justice; community resources and diversion programs; alternatives that should precede segregation; how solitary confinement is defined; the number of prisoners in NMCD segregation; segregating inmates with certain mental health issues; costs of mental health services to county detention facilities; changes in solitary confinement in recent years; the impact of segregation on physical and mental health; competency hearings; the importance of pretrial services; and the use of solitary confinement and administrative segregation in the NMCD and county detention facilities. The chair invited Gail Evans, legal director, New Mexico Center on Law and Poverty, and Steve Allen, director of public policy, American Civil Liberties Union-New Mexico, to comment. Mr. Allen told the committee that this is an important issue regardless of semantics and terminology. The definition of solitary confinement used in the report is similar to what the Vera Institute of Justice uses. He commended the NMCD for working with the Vera Institute of Justice. Ms. Evans thanked the committee for giving this important issue its consideration.

### **Implementation of Marijuana Reform in Colorado**

Jessica Gelay, policy coordinator, Drug Policy Alliance (DPA), introduced Art Way, senior drug policy manager, Colorado, DPA. Mr. Way told the committee that in 2001 Colorado passed an amendment to alter the state's constitution to recognize the medical use of marijuana. In 2005, 54% of Denver residents voted to remove criminal penalties under the Denver Municipal Code for the possession of up to an ounce of marijuana for adults 21 years or older. In 2006, more than 54% of Denver residents supported a statewide vote to remove criminal penalties for possession of up to an ounce of marijuana by adults 21 years or older. The statewide initiative failed. In 2007, 57% of Denver voters voted to make the arrest of adult marijuana offenses the lowest law enforcement priority under the Denver Municipal Code. In 2010, HB 1352, which requires evidence of distribution in order to indict for felony charges where the individual is possessing less than 12 ounces of marijuana, passed. Mr. Way told the committee that last year, Amendment 64 passed, which establishes a tax and regulation system conferring the right for adults age 21 years and over to use, possess and cultivate limited amounts of marijuana. Amendment 64 also allows for the state regulation, cultivation, processing and distribution of industrial hemp. Amendment 64 won with 54.8% of the vote. The goals of Amendment 64 were to redirect law enforcement resources away from marijuana prohibition and toward violent and otherwise harmful crimes, to reduce youth access to marijuana and replace the underground market with a system in which marijuana is regulated and taxed in a manner similar to alcohol, to bolster Colorado's economy with significant new tax

revenue and job creation and to address marijuana use as a health issue rather than as a criminal justice issue. Amendment 64 requires that Colorado's tax department adopt regulations necessary for its implementation by July 1, 2013, that localities enact ordinances for regulation within the localities by October 1, 2013 and that the tax department begin accepting and processing applications to issue annual licenses by October 1, 2013. The amendment also requires that, no later than July 1, 2014, the general assembly enact legislation governing the cultivation, processing and sale of industrial hemp. In December 2012, the governor of Colorado created a task force on the implementation of Amendment 64 that includes legislators, the Department of Health, the Public Safety Department and other stakeholders. Recommendations from the task force include vertical integration, which requires that retail licensees must grow at least 70% of their product; and dual licensing, which allows those who own medical marijuana dispensaries to open a recreational facility on the same premise as long as appropriate restrictions, such as separate and distinct inventory control, recordkeeping and point of sale, are maintained. Mr. Way discussed some legislation that has passed to implement Amendment 64. Colorado is a home-rule state that allows localities to opt out of the recreational marijuana industry. Sixty-seven cities have banned recreational cannabis growers and retailers within their borders and at least 28 have imposed moratoriums on recreational cannabis sales. Imminent concerns include counties and jurisdictions that opt out and prevent the goals of Amendment 64 from occurring in their localities, how to define public use and defining a drug-endangered child and the use of child protective services to maintain a certain level of marijuana prohibition.

Members of the committee discussed and asked questions about federal interference with Colorado's marijuana policy; the progression of legislation in Colorado; the street value of marijuana compared to the cost of purchasing marijuana legally; the age limit for marijuana use; the number of possession arrests in New Mexico; the cost of arresting people in New Mexico for possessing small amounts of marijuana; support for Amendment 64 in rural areas; and requirements for opening a marijuana dispensary.

### **Chief Public Defender and Work of the Public Defender Commission**

Jorge Alvarado, the recently appointed chief public defender, discussed the background to his appointment as the first chief public defender of the newly independent Public Defender Department. He discussed the November 2012 constitutional amendment that was passed to make the Public Defender Department an independent state agency. The legislature created the Public Defender Commission and established the relationship between the Public Defender Commission and the Public Defender Department. Mr. Alvarado discussed his previous work experience. He told the committee that he was pleased to discover that the Public Defender Department has social workers on staff, and he discussed diversion alternatives such as teen court programs. He also discussed the importance of addressing mental health programs in the community. Mr. Alvarado told the committee that 95% of cases are resolved by pleas or dismissals, while the other five percent clog the courts. The cases that go to trial should be ones where the client is innocent or there is an overcharging of the client. Mr. Alvarado told the committee that the Public Defender Department wants to preserve the human dignity of every person involved. Hugh Dangler, Public Defender Commission, and a former chief public defender under the previous administrative structure of the Public Defender Department, told the

committee that he is excited about having Mr. Alvarado as the chief public defender. He discussed several challenges that the department is facing. He told the committee that currently, in the MDC, clients using public defender services see a different attorney each time they go to court. He told the committee that such a system is ineffective, principally because it adversely affects client representation, but that the department needs more funding in order to change the practice.

Members of the committee discussed and asked questions about payments for contract attorneys; Public Defender Department data; juvenile cases; requirements a client must meet to be eligible for public defender representation; reintegration of prisoners after serving time; resources needed by the Public Defender Department; when and for what purposes contract attorneys are hired; and public defender caseloads.

### **Issues Concerning Human Trafficking in New Mexico**

Susan Loubet, executive director, New Mexico Women's Agenda, referred the committee to bill draft 202.195137.1, which had been HB 556 in the 2013 legislative session. She told the committee that she supported two bills during the past legislative session, one of which passed and was signed by the governor. The bill draft 202.195137.1 was also introduced but did not pass. The bill provides for a presumption of coercion for someone who is arrested for prostitution who is under the age of 18.

Members of the committee discussed the legislation and asked questions.

### **Reconsideration of Legislation Proposed for Endorsement**

The committee took a vote on motions for committee endorsement for two bills that had been discussed on the prior day's meeting.

#### *Termination of Parental Rights for a Child Conceived in Rape: 202.195095.1*

The committee endorsed this bill with five votes in favor of endorsement and three against.

#### *Increasing the Amount of the County Correctional Facility Gross Receipts Tax That May be Imposed: 202.195154.1*

The motion to endorse this bill failed, with four votes in favor and five votes against.

### **HB 77 (2013) — Creating the Firearm Transfer Act**

Representative Garcia and Miranda Viscoli, New Mexicans for Gun Safety, presented the version of HB 77, as amended, from the 2013 session that passed the house and made it to the senate but was never brought up for a vote in the past legislative session. Representative Garcia told the committee that HB 77, as amended, is a gun-violence prevention initiative. The substitute for HB 77 introduced during the 2013 session was a bipartisan compromise bill that involved the collaboration of the AOC, the Department of Public Safety (DPS) and both parties in the legislature. Major changes from the original bill include that the substitute does not include background checks conducted by the DPS, costing the state close to \$900,000; the substitute bill has federal firearm licensees (FFLs) doing the required background checks

utilizing the Federal Bureau of Investigations' (FBI) National Instant Criminal Background Check System (NICS) at no expense to the state; the original bill required the creation of a state registry, which is not included in the substitute; the original bill required background checks by the DPS on private sales between two private individuals, while the compromise bill does not address private individual-to-individual sales; and the substitute only provides for background checks at gun shows of unlicensed private vendors. Representative Garcia told the committee that the substitute bill could aid in capturing 85% of all firearm sales through background checks. National firearm sales studies reflect that 60% of firearm sales are conducted through a licensed FFL, and an additional 25% occur at gun shows, while only 15% are private individual-to-individual sales. Representative Garcia told the committee that the substitute bill also includes an amendment that codifies the AOC's current practice of reporting current information on the mentally and criminally adjudicated to the FBI NICS database, which allows New Mexico to comply with federal laws and makes federal funding available to assist the state with NICS reporting. Representative Garcia told the committee that it is critical to the well-being of New Mexico residents to prevent gun violence, something this draft legislation seeks to do. He told the committee that the bill would improve the process of keeping firearms away from individuals prohibited by federal law from owning a weapon and would close the private-sale loophole at gun shows.

Ms. Viscoli told the committee that many of America's most infamous criminals bought their weapons at gun shows. She told the committee that this bill draft would close this loophole in New Mexico. She reminded the committee that the bill passed in the house with bipartisan support and that both parties worked together to hammer out the details. She told the committee that closing the gun show loophole levels the playing field for FFL holders who are in direct competition with unlicensed vendors at gun shows. These unlicensed vendors do not have to do a background check and make a more appealing sales outlet to law-abiding citizens who prefer not to wait for a background check and to criminals who will not pass a background check. Ms. Viscoli told the committee that New Mexico is ranked the tenth-worst state for gun deaths. There were 14.6 gun deaths for every 100,000 people in the state in 2010. Ms. Viscoli emphasized the importance of passing this legislation.

Tara Reilly Mica, National Rifle Association, told the committee that HB 77 is the first step toward criminalizing all private transfers of firearms. She told the committee that the bill as it was originally introduced did just that. There are no consequences for those criminals who attempt to acquire a gun through a licensed dealer as the legislation would require. Ms. Mica told the committee that existing laws need to be enforced before background checks are expanded to more sales and more people are required to fill out government-issued forms. She told the committee that a survey conducted by the Bureau of Justice found that 79% of state prison inmates who used or possessed firearms in the course of committing crimes acquired them from street or illegal sources or friends and family. Only 1.7% obtained a firearm at a gun show. Ms. Mica told the committee that, at gun shows, the majority of vendors are FFL dealers who must already comply with the same background check and recordkeeping requirements as sales made in stores. She told the committee that private individuals cannot access the FBI NICS to conduct background checks on potential buyers. Ms. Mica told the committee that FFLs are

most likely to experience delays from the NICS system during high-volume call times, such as the holidays. Ms. Mica expressed concern about background checks at gun shows and delayed responses that could prevent sales if the gun show ends. She told the committee that most FFLs charge a fee for conducting background checks, even though there is no charge for them to access the NICS system. The fee is capped in HB 77, but private sellers view it as a tax. Ms. Mica told the committee that in 2013, PoliceOne conducted a national survey of 15,000 active and retired law enforcement officers, of whom 80% said that a prohibition on private transfers of firearms between individuals would not reduce violent crime. Ms. Mica told the committee that Texas recently passed legislation to allow law enforcement to seize firearms found in the possession of persons who are taken into emergency custody and transported to the nearest inpatient mental health treatment facility because they pose a substantial risk of serious harm to themselves and others. The National Rifle Association (NRA) worked with lawmakers on the law's provisions relative to the disposition of firearms and relief from disability. Ms. Mica told the committee that it is the NRA's position that straw purchase legislation would have more of an impact on gun crime and that a bill similar to the one in Texas would have more of an impact on limiting access to guns by dangerously mentally ill people than HB 77 does.

Members of the committee asked questions about and discussed specific crimes committed with guns in recent events; current reporting requirements in New Mexico; how the possession of a driver's license affects gun sales in New Mexico; mental health information available to gun sellers in New Mexico; how criminals acquire their firearms; the correlation between gun deaths and sales at gun shows, if any; data regarding gun purchases as they relate to criminal activity; crimes committed with guns in New Mexico; the right to bear arms; ways to prevent violent crimes; the safety of children in homes with guns; safeguards against violent crime; data gathering by various agencies; gun transfers; and restrictions against unreasonable searches and seizures.

The co-chair invited members of the audience in favor and opposed to the legislation to make public comment. There were a few members of the public who spoke in favor of the bill and a large number who opposed the bill.

### **Adjournment**

There being no further business before the committee, the sixth and final meeting of the CCJ for the 2013 interim adjourned at 6:38 p.m.

# **ENDORSED LEGISLATION**

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HOUSE BILL

**51ST LEGISLATURE - STATE OF NEW MEXICO - SECOND SESSION, 2014**

INTRODUCED BY

ENDORSED BY THE COURTS, CORRECTIONS AND JUSTICE COMMITTEE

AN ACT

RELATING TO COURTS; CREATING ADDITIONAL JUDGESHIPS IN THE  
FIRST, SECOND, FIFTH AND THIRTEENTH JUDICIAL DISTRICTS;  
CREATING AN ADDITIONAL MAGISTRATE IN THE DONA ANA DISTRICT;  
MAKING APPROPRIATIONS.

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

**SECTION 1.** Section 34-6-4 NMSA 1978 (being Laws 1968,  
Chapter 69, Section 7, as amended) is amended to read:

"34-6-4. JUDGES--FIRST JUDICIAL DISTRICT.--There shall be  
[~~eight~~] nine district judges in the first judicial district."

**SECTION 2.** Section 34-6-5 NMSA 1978 (being Laws 1968,  
Chapter 69, Section 8, as amended) is amended to read:

"34-6-5. JUDGES--SECOND JUDICIAL DISTRICT.--There shall be  
[~~twenty-six~~] twenty-seven district judges in the second  
judicial district."

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1           SECTION 3. Section 34-6-8 NMSA 1978 (being Laws 1968,  
2 Chapter 69, Section 11, as amended) is amended to read:

3           "34-6-8. JUDGES--FIFTH JUDICIAL DISTRICT.--There shall be  
4 [~~ten~~] eleven district judges in the fifth judicial district."

5           SECTION 4. Section 34-6-16 NMSA 1978 (being Laws 1971,  
6 Chapter 52, Section 3, as amended) is amended to read:

7           "34-6-16. JUDGES--THIRTEENTH JUDICIAL DISTRICT.--There  
8 shall be [~~seven~~] eight district judges in the thirteenth  
9 judicial district. The judges of divisions one, three and six  
10 shall reside and maintain their principal offices in Valencia  
11 county. The judges of divisions two, five, [~~and~~] seven and  
12 eight shall reside and maintain their principal offices in  
13 Sandoval county. The judge of division four shall reside and  
14 maintain the judge's principal offices in Cibola county."

15           SECTION 5. Section 35-1-10 NMSA 1978 (being Laws 1968,  
16 Chapter 62, Section 12, as amended) is amended to read:

17           "35-1-10. MAGISTRATE COURT--DONA ANA DISTRICT.--There  
18 shall be [~~six~~] seven magistrates in Dona Ana magistrate  
19 district. Divisions 1, 2, 3, 4, 5, [~~and~~] 6 and 7 shall operate  
20 as a single court in Las Cruces and shall rotate riding circuit  
21 to Anthony and Hatch on a regularly scheduled basis."

22           SECTION 6. TEMPORARY PROVISION--DISTRICT AND METROPOLITAN  
23 JUDGES--APPOINTMENTS.--The additional district judgeships  
24 provided for in this act shall be filled by appointment by the  
governor pursuant to the provisions of Article 6 of the

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1 constitution of New Mexico.

2 SECTION 7. TEMPORARY PROVISION--MAGISTRATE--APPOINTMENT  
3 AND ELECTION.--The office of magistrate in Dona Ana district,  
4 division 7, shall be filled by appointment by the governor.  
5 The appointed magistrate shall begin serving on July 1, 2014  
6 and shall serve until succeeded by a magistrate elected at the  
7 general election in 2014. The first full term of office of the  
8 elected magistrate shall begin on January 1, 2015.

9 SECTION 8. APPROPRIATIONS.--

10 A. The following amounts are appropriated from the  
11 general fund to the following agencies for expenditure in  
12 fiscal year 2015 for the following purposes:

13 (1) three hundred fifty-two thousand four  
14 hundred eighty-four dollars (\$352,484) to the first judicial  
15 district court for salaries and benefits and furniture,  
16 supplies and equipment for one additional district judge and  
17 support staff;

18 (2) three hundred sixty-seven thousand two  
19 hundred seventy-four dollars (\$367,274) to the second judicial  
20 district court for salaries and benefits and furniture,  
21 supplies and equipment for one additional district judge and  
22 support staff;

23 (3) two hundred thirty-four thousand three  
24 hundred ninety-one dollars (\$234,391) to the fifth judicial  
25 district court for salaries and benefits and furniture,

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underscored material = new  
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1 supplies and equipment for one additional district judge and  
2 support staff;

3 (4) four hundred fifteen thousand six hundred  
4 seventy dollars (\$415,670) to the thirteenth judicial district  
5 court for salaries and benefits and furniture, supplies and  
6 equipment for one additional district judge and support staff;  
7 and

8 (5) one hundred seventeen thousand four  
9 hundred fifty dollars (\$117,450) to the administrative office  
10 of the courts for salary and benefits and furniture, supplies  
11 and equipment for one additional magistrate in the Dona Ana  
12 magistrate district.

13 B. Any unexpended or unencumbered balance remaining  
14 at the end of fiscal year 2015 shall revert to the general  
15 fund.

16 SECTION 9. EFFECTIVE DATE.--The effective date of the  
17 provisions of this act is July 1, 2014.

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SENATE BILL

**51ST LEGISLATURE - STATE OF NEW MEXICO - SECOND SESSION, 2014**

INTRODUCED BY

DISCUSSION DRAFT

FOR THE COURTS, CORRECTIONS AND JUSTICE COMMITTEE

AN ACT

RELATING TO COURT OPERATIONS; MAKING THE MAGISTRATE COURTS  
OPERATIONS FUND AND FEES PERMANENT.

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

SECTION 1. Section 35-7-13 NMSA 1978 (being Laws 2010,  
Chapter 7, Section 1) is amended to read:

"35-7-13. MAGISTRATE COURTS OPERATIONS FUND--CREATED--  
PURPOSE [~~TERMINATION OF FUND~~].--The "magistrate courts  
operations fund" is created in the state treasury for  
appropriation by the legislature for the operations of  
magistrate courts. The fund consists of magistrate courts  
operations fees collected pursuant to Section 66-8-116.3 NMSA  
1978 and any appropriations, gifts, grants and donations.  
Income from the fund shall be credited to the fund. Money in  
the fund at the end of a fiscal [~~years 2010, 2011, 2012 and~~

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1 2013] year shall not revert to any other fund. [Balances  
2 remaining in the fund at the end of fiscal year 2014 shall  
3 revert to the general fund, and the fund shall be dissolved on  
4 July 1, 2014.]"

5 SECTION 2. Section 66-8-116.3 NMSA 1978 (being Laws 1989,  
6 Chapter 318, Section 35 and Laws 1989, Chapter 319, Section 14  
7 and also Laws 1989, Chapter 320, Section 5, as amended) is  
8 amended to read:

9 "66-8-116.3. PENALTY ASSESSMENT MISDEMEANORS--ADDITIONAL  
10 FEES.--In addition to the penalty assessment established for  
11 each penalty assessment misdemeanor, there shall be assessed:

12 A. in a county without a metropolitan court, twenty  
13 dollars (\$20.00) to help defray the costs of local government  
14 corrections;

15 B. a court automation fee of ten dollars (\$10.00);

16 C. a traffic safety fee of three dollars (\$3.00),

17 which shall be credited to the traffic safety education and  
18 enforcement fund;

19 D. a judicial education fee of three dollars  
20 (\$3.00), which shall be credited to the judicial education  
21 fund;

22 E. a jury and witness fee of five dollars (\$5.00),  
23 which shall be credited to the jury and witness fee fund;

24 F. a juvenile adjudication fee of one dollar  
25 (\$1.00), which shall be credited to the juvenile adjudication

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1 fund;

2 G. a brain injury services fee of five dollars  
3 (\$5.00), which shall be credited to the brain injury services  
4 fund;

5 H. a court facilities fee as follows:  
6 in a county with a metropolitan court . . . . . \$24.00;  
7 in any other county . . . . . 10.00;  
8 and

9 I. ~~[until May 31, 2014]~~ a magistrate courts  
10 operations fee of four dollars (\$4.00), which shall be credited  
11 to the magistrate courts operations fund."

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SENATE BILL

**51ST LEGISLATURE - STATE OF NEW MEXICO - SECOND SESSION, 2014**

INTRODUCED BY

ENDORSED BY THE COURTS, CORRECTIONS AND JUSTICE COMMITTEE

AN ACT

RELATING TO THE METROPOLITAN COURT BOND GUARANTEE FUND;  
INCLUDING THE ADMINISTRATIVE OFFICE OF THE COURTS AS A  
RECIPIENT OF BALANCES IN THE FUND ABOVE THE RESERVE AMOUNT;  
MAKING AN APPROPRIATION.

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

**SECTION 1.** Section 6-21-6.13 NMSA 1978 (being Laws 2008,  
Chapter 91, Section 2) is amended to read:

"6-21-6.13. METROPOLITAN COURT BOND GUARANTEE FUND.--

A. The "metropolitan court bond guarantee fund" is  
created in the authority. The fund is [~~comprised~~] composed of  
appropriations, donations, transfers pursuant to Section  
3-18-17 NMSA 1978 and money earned from investment of the fund  
and otherwise accruing to the fund. Money in the fund is  
appropriated to the authority as a credit enhancement to the

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1 distributions from the court facilities fund in order to  
2 guarantee and secure the payment of principal, interest,  
3 premiums and expenses on bonds issued pursuant to Section  
4 34-9-16 NMSA 1978 and Laws 2000, Chapter 5, Section 2.

5 Balances remaining in the fund at the end of a fiscal year  
6 shall not revert. The authority shall administer the fund, and  
7 money from the fund may be drawn only on warrants signed by the  
8 chief executive officer of the authority pursuant to vouchers  
9 signed by the chief executive officer.

10 B. Before each due date for payments of principal,  
11 interest, premiums or expenses on bonds issued pursuant to  
12 Section 34-9-16 NMSA 1978 and Laws 2000, Chapter 5, Section 2,  
13 the authority shall determine if the distributions from the  
14 court facilities fund will be sufficient to meet the amount  
15 due. If the authority determines that distributions from the  
16 court facilities fund are not sufficient to meet the total  
17 amount due, any insufficient amount shall be paid immediately  
18 from the metropolitan court bond guarantee fund. After each  
19 due date for a payment on the bonds, the authority shall  
20 [~~determine the amount necessary to~~] reserve in the metropolitan  
21 court bond guarantee fund an amount equal to the bond payments  
22 due in the next fiscal year as security for future payments  
23 [~~and~~]. Beginning on July 1, 2015, the authority shall transfer  
24 any balance, above the amount reserved, in the following  
25 proportions:

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1                   (1) fifty percent to the administrative office  
2 of the courts; and

3                   (2) fifty percent to the traffic safety bureau  
4 of the department of transportation.

5                   C. The amounts transferred pursuant to Subsection B  
6 of this section are appropriated to the administrative office  
7 of the courts for expenditures as authorized from the  
8 magistrate and metropolitan court capital fund; and to the  
9 traffic safety bureau for expenditure on statewide efforts to  
10 prevent or reduce incidents of driving while intoxicated.

11                   ~~[G-]~~ D. Upon payment of all principal, interest,  
12 premiums and expenses on bonds guaranteed and secured by  
13 amounts in the metropolitan court bond guarantee fund, the  
14 authority shall certify to the administrative office of the  
15 courts that all obligations for bonds have been fully  
16 discharged. Upon the certification, the director of the  
17 administrative office of the courts shall cease transferring  
18 amounts to the metropolitan court bond guarantee fund and  
19 transfer those amounts to the traffic safety bureau of the  
20 department of transportation. Such amounts are appropriated to  
21 the bureau for the purposes specified in Subsection ~~[B]~~ C of  
22 this section."

23                   **SECTION 2. EFFECTIVE DATE.**--The effective date of the  
24 provisions of this act is July 1, 2014.

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HOUSE BILL

**51ST LEGISLATURE - STATE OF NEW MEXICO - SECOND SESSION, 2014**

INTRODUCED BY

FOR THE COURTS, CORRECTIONS AND JUSTICE COMMITTEE

AN ACT

RELATING TO PARENTAL RIGHTS; PROVIDING FOR THE TERMINATION OR  
PERMANENT SUSPENSION OF PARENTAL RIGHTS WHEN CRIMINAL SEXUAL  
PENETRATION RESULTS IN CONCEPTION OF A CHILD; CLARIFYING  
LANGUAGE IN THE ADOPTION ACT THAT CONSENT FROM THE BIOLOGICAL  
FATHER OF A CHILD CONCEIVED AS A RESULT OF CRIMINAL SEXUAL  
PENETRATION IS NOT REQUIRED; PROVIDING A PENALTY.

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

**SECTION 1.** A new section of Chapter 40 NMSA 1978 is  
enacted to read:

"[NEW MATERIAL] CONCEPTION RESULTING FROM CRIMINAL SEXUAL  
PENETRATION--TERMINATION OF PARENTAL RIGHTS OR PERMANENT  
SUSPENSION OF LEGAL AND PHYSICAL CUSTODY AND VISITATION  
RIGHTS.--

A. As used in this section:

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1 (1) "child" means a child conceived as a  
2 result of criminal sexual penetration as found pursuant to  
3 Subsection B of this section;

4 (2) "criminal sexual penetration" means  
5 criminal sexual penetration pursuant to the laws of this state  
6 or an offense pursuant to the laws of another jurisdiction,  
7 territory or possession of the United States or an Indian  
8 nation, tribe or pueblo that is equivalent to criminal sexual  
9 penetration pursuant to the laws of this state;

10 (3) "respondent" means the biological father  
11 of a child whose rights a victim seeks to terminate or  
12 permanently suspend pursuant to this section; and

13 (4) "victim" means a woman who became pregnant  
14 as a result of criminal sexual penetration as found pursuant to  
15 Subsection B of this section.

16 B. In a proceeding pursuant to this section, the  
17 court shall find whether the child was conceived as a result of  
18 criminal sexual penetration.

19 C. If the court finds that the child was conceived  
20 as a result of criminal sexual penetration, the court shall  
21 terminate or permanently suspend legal and physical custody and  
22 visitation rights of the respondent with respect to the child  
23 if, having considered the relationship between the child's  
24 biological parents and the circumstances of the child's  
25 conception, the court finds that termination of parental rights

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1 or permanent suspension of legal and physical custody and  
2 visitation rights is necessary to protect the physical, mental  
3 and emotional welfare of the victim.

4 D. Proceedings to terminate parental rights or  
5 permanently suspend legal and physical custody and visitation  
6 rights that involve a child subject to the federal Indian Child  
7 Welfare Act of 1978 shall comply with the requirements of that  
8 act.

9 E. A motion to terminate parental rights or  
10 permanently suspend legal and physical custody and visitation  
11 rights pursuant to this section:

12 (1) may be filed only by the victim; and  
13 (2) shall be filed within six years from the  
14 date the victim knew or had reason to know her pregnancy with  
15 the child resulted from criminal sexual penetration perpetrated  
16 by the respondent.

17 F. A motion for termination of parental rights or  
18 permanent suspension of legal and physical custody and  
19 visitation rights filed pursuant to this section shall set  
20 forth:

21 (1) whether the victim seeks termination of  
22 respondent's parental rights or permanent suspension of  
23 respondent's legal and physical custody and visitation rights;  
24 (2) the facts and circumstances of the child's  
25 conception;

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- 1 (3) the date and place of birth of the child;
- 2 (4) the name and address of the respondent, if
- 3 known;
- 4 (5) the name and address of the person who
- 5 would retain legal custody of the child upon termination of
- 6 respondent's parental rights or permanent suspension of legal
- 7 and physical custody and visitation rights; and
- 8 (6) whether the child is subject to the
- 9 federal Indian Child Welfare Act of 1978 and, if so:
- 10 (a) the tribal affiliations of the
- 11 child's biological parents;
- 12 (b) the specific actions taken by the
- 13 victim to notify the child's biological parents' tribes and the
- 14 results of the contacts, including the names, addresses, titles
- 15 and telephone numbers of the persons contacted. Copies of any
- 16 correspondence with the tribes shall be attached as exhibits to
- 17 the motion; and
- 18 (c) the specific efforts made to comply
- 19 with the placement preferences set forth in the federal Indian
- 20 Child Welfare Act of 1978 or the placement preferences of the
- 21 appropriate Indian tribes.
- 22 G. Notice of the filing of the motion, accompanied
- 23 by a copy of the motion, shall be served by the victim on all
- 24 other parties, including, if applicable, the foster parent, the
- 25 person providing care for the child with whom the child is

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1 residing, the custodian of the child, any person appointed to  
2 represent any party and any other person the court orders.  
3 Service shall be in accordance with the Rules of Civil  
4 Procedure for the District Courts for the service of motions,  
5 except that foster parents and attorneys of record in the  
6 proceeding shall be served by certified mail. The notice shall  
7 state specifically that the person served shall file a written  
8 response to the motion within thirty days if the person intends  
9 to contest the termination of parental rights or permanent  
10 suspension of legal and physical custody and visitation rights.  
11 In any case involving a child subject to the federal Indian  
12 Child Welfare Act of 1978, notice shall also be sent by  
13 certified mail to the tribes of the child's biological parents  
14 and upon any "Indian custodian", as that term is defined in 25  
15 U.S.C. Section 1903(6).

16 H. When a motion to terminate parental rights or  
17 permanently suspend legal and physical custody and visitation  
18 rights is filed, the victim shall request a hearing on the  
19 motion. The hearing date shall be at least thirty days, but no  
20 more than sixty days, after service is effected upon the  
21 parties entitled to service.

22 I. After a motion is filed, the court shall advise  
23 the victim and respondent of the right to counsel, if any, and  
24 the court shall appoint counsel from the children, youth and  
25 families department upon request for a person the court

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1 determines to be indigent.

2 J. If there is significant cause, the court may  
3 appoint a guardian ad litem for a child who is the subject of a  
4 proceeding pursuant to this section. When the court appoints a  
5 guardian ad litem, the court shall make a record of its reasons  
6 for the appointment. A party to the proceeding or an employee  
7 or representative of a party shall not be appointed as guardian  
8 ad litem.

9 K. The grounds for a termination of parental rights  
10 or permanent suspension of legal and physical custody and  
11 visitation rights shall be proved by clear and convincing  
12 evidence, except for a proceeding involving a child subject to  
13 the federal Indian Child Welfare Act of 1978.

14 L. In a proceeding to terminate parental rights or  
15 permanently suspend legal and physical custody and visitation  
16 rights that involves a child subject to the federal Indian  
17 Child Welfare Act of 1978:

18 (1) the grounds for a termination of parental  
19 rights or permanent suspension of legal and physical custody  
20 and visitation rights shall be proved beyond a reasonable doubt  
21 and shall meet the requirements set forth in 25 U.S.C. Section  
22 1912(f); and

23 (2) the court shall, in an order terminating  
24 parental rights or permanently suspending legal and physical  
25 custody and visitation rights, make specific findings that the

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1 requirements of that act have been met.

2 M. A judgment of the court permanently suspending a  
3 respondent's legal and physical custody and visitation rights  
4 pursuant to this section shall provide:

5 (1) that the respondent has no rights to legal  
6 or physical custody of or visitation with the child;

7 (2) that the respondent has no right to  
8 consent to or receive notice of a subsequent adoption  
9 proceeding concerning the child;

10 (3) that the judgment does not affect the  
11 ability of the victim, the child or the state to seek child  
12 support for the child from the respondent;

13 (4) that the judgment does not affect the  
14 child's right of inheritance from and through the respondent;

15 (5) that the respondent has no right of  
16 inheritance from the child; and

17 (6) the name of the person who retains custody  
18 of the child.

19 N. A judgment of the court terminating a  
20 respondent's parental rights pursuant to this section shall  
21 provide:

22 (1) that the respondent has no rights to legal  
23 or physical custody of or visitation with the child;

24 (2) that the respondent has no right to  
25 consent to or receive notice of a subsequent adoption

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1 proceeding concerning the child;

2 (3) that the respondent is divested of all  
3 legal rights and privileges with respect to the child;

4 (4) that no party may seek child support for  
5 the child from the respondent; and

6 (5) the name of the person who retains custody  
7 of the child.

8 O. The court shall issue appropriate orders within  
9 thirty days after the hearing on a motion filed pursuant to  
10 this section.

11 P. The statements made in a proceeding pursuant to  
12 this section shall be unavailable for use in any other legal  
13 proceeding or action.

14 Q. All records or information concerning a party to  
15 a proceeding to terminate parental rights or permanently  
16 suspend legal and physical custody and visitation rights  
17 pursuant to this section shall be confidential and closed to  
18 the public. The records and information shall be disclosed  
19 only to the parties and any other person or entity, having a  
20 legitimate interest in the case or the work of the court, by  
21 order of the court.

22 R. Whoever intentionally and unlawfully releases  
23 any information or records closed to the public pursuant to  
24 this section or releases or makes other unlawful use of records  
25 in violation of this section is guilty of a petty misdemeanor

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1 and shall be sentenced pursuant to the provisions of Section  
2 31-19-1 NMSA 1978.

3 S. Nothing in this section shall affect the  
4 requirements set forth in the Abuse and Neglect Act or the  
5 Adoption Act as those acts may relate to a child that is the  
6 subject of a proceeding pursuant to this section."

7 SECTION 2. Section 32A-5-19 NMSA 1978 (being Laws 1993,  
8 Chapter 77, Section 146, as amended) is amended to read:

9 "32A-5-19. PERSONS WHOSE CONSENTS OR RELINQUISHMENTS ARE  
10 NOT REQUIRED.--The consent to adoption or relinquishment of  
11 parental rights required pursuant to the provisions of the  
12 Adoption Act shall not be required from:

13 A. a parent whose rights with reference to the  
14 adoptee have been terminated pursuant to law;

15 B. a parent who has relinquished the child to an  
16 agency for an adoption;

17 C. a biological father of an adoptee conceived as a  
18 result of [~~rape or~~] incest;

19 D. a biological parent of an adoptee conceived as a  
20 result of criminal sexual penetration as defined in Section  
21 30-9-11 NMSA 1978 when the parent has been convicted of  
22 criminal sexual penetration or when the parent's rights have  
23 been terminated or permanently suspended pursuant to this 2014  
24 act. For the purposes of this subsection, a conviction for  
25 rape or criminal sexual penetration pursuant to the laws of

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1 another jurisdiction, territory or possession of the United  
2 States or of an Indian nation, tribe or pueblo, when that law  
3 is equivalent to New Mexico law for criminal sexual  
4 penetration, shall be deemed to be a conviction;

5 ~~[D-]~~ E. a person who has failed to respond when  
6 given notice pursuant to the provisions of Section 32A-5-27  
7 NMSA 1978; or

8 ~~[E-]~~ F. an alleged father who has failed to  
9 register with the putative father registry within ten days of  
10 the child's birth and is not otherwise the acknowledged  
11 father."

12 **SECTION 3. EFFECTIVE DATE.**--The effective date of the  
13 provisions of this act is July 1, 2014.

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# **APPENDIX**

**Agendas and Minutes for the**

**Criminal Justice Reform**

**Subcommittee**

**of the**

**Courts, Corrections and Justice**

**Committee**

# **AGENDAS**

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

**November 26, 2013  
Room 309, State Capitol  
Santa Fe**

**Tuesday, November 26**

- 9:00 a.m.           **Call to Order and Introductions**  
—Senator Lisa A. Torracco and Representative Antonio "Moe"  
Maestas, Co-Chairs
- 9:30 a.m.       (1)   **[The South Dakota Criminal Justice Reform Experience](#)**  
—Jim Seward, General Counsel, Office of the Governor, South  
Dakota
- 12:00 noon       **Lunch**
- 1:00 p.m.       (2)   **[The Texas Criminal Justice Reform Experience](#)**  
—Jerry Madden, Senior Fellow, Right on Crime
- 3:00 p.m.       (3)   **[The Way Forward for New Mexico](#)**  
—Criminal Justice Reform Subcommittee Members
- 4:30 p.m.       **Public Comment**
- 5:30 p.m.       **Recess**

**SUPPLEMENTAL AFTERNOON AGENDA  
for the  
FIRST MEETING  
of the  
CRIMINAL JUSTICE REFORM SUBCOMMITTEE  
of the  
COURTS, CORRECTIONS AND JUSTICE COMMITTEE**

**November 26, 2013  
State Capitol, Santa Fe  
Room 309**

**Tuesday, November 26**

- 1:15 p.m.      **Work Plan; South Dakota Model; Utilizing Data from the Pew Foundation**
- 2:00 p.m.      **"10-point plan": The Texas Criminal Justice Reform Experience**  
—Jerry Madden, Senior Fellow, Right on Crime
- 3:00 p.m.      **Question & Answer Session**  
—Questions by Criminal Justice Reform Subcommittee Members
- 4:00 p.m.      **The Way Forward for New Mexico**  
—Criminal Justice Reform Subcommittee Members
- 4:30 p.m.      **Public Comment**
- 5:30 p.m.      **Recess**

Revised: December 16, 2013

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

**December 16, 2013  
Room 311, State Capitol  
Santa Fe**

**Monday, December 16**

- 9:00 a.m.           **Call to Order and Introductions**  
—Senator Lisa A. Torracco and Representative Antonio "Moe"  
Maestas, Co-Chairs
- 9:30 a.m.       (1)   **[1999 Criminal Reform Effort, Current Parallel Reform  
Efforts and Overview of Drivers of the State Prison  
Population](#)**  
—Tony Ortiz, Executive Director, New Mexico Sentencing  
Commission  
—Linda Freeman, New Mexico Sentencing Commission
- 11:30 a.m.       **Lunch**
- 1:30 p.m.       (2)   **[Drivers of Costs for Corrections Department and the  
Corrections Budget; Entrepreneurial Prison Programs and  
Halfway Houses](#)**  
—Gregg Marcantel, Secretary, Corrections Department (CD)  
—Aurora B. Sánchez, Deputy Secretary of Administration, CD
- 3:00 p.m.       **Formation of a Problem Statement for New Mexico**  
—Discussion Among Members of the Subcommittee
- 4:30 p.m.       **Public Comment**
- 5:00 p.m.       **Recess**

# MINUTES

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

D

**November 26, 2013  
Room 309, State Capitol  
Santa Fe**

The first meeting of the Criminal Justice Reform Subcommittee (CJRS) of the Courts, Corrections and Justice Committee was called to order by Representative Antonio "Moe" Maestas, co-chair, on November 26, 2013 at 9:15 a.m. in Room 309 of the State Capitol.

**Present**

Rep. Antonio "Moe" Maestas, Co-Chair  
Sen. Lisa A. Torraco, Co-Chair  
Rep. Gail Chasey  
Rep. Zachary J. Cook  
Sen. Cisco McSorley  
Sen. Bill B. O'Neill  
Rep. Jane E. Powdrell-Culbert  
Sen. Sander Rue

**Absent**

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**Guest Legislators**

Sen. Jacob R. Candelaria  
Sen. Daniel A. Ivey-Soto

**Staff**

Douglas Carver, Staff Attorney, Legislative Council Service (LCS)  
Caela Baker, Staff Attorney, LCS  
Jennifer Dana, Legislative Intern, LCS

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**Guests**

The guest list is in the meeting file.

**Handouts**

Handouts and other written testimony are in the meeting file.

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**Tuesday, November 26**

**Welcome and Introductions**

Members of the subcommittee and staff introduced themselves.

## **The South Dakota Criminal Justice Reform Experience**

Jerry Madden, a senior fellow at Right on Crime, introduced Jim Seward, general counsel, Office of the Governor of South Dakota. Mr. Madden explained that South Dakota has recently enacted significant criminal justice reforms, and Mr. Seward will offer the subcommittee a road map of the reforms that South Dakota has implemented in areas such as sentencing and court reform.

Mr. Seward told the subcommittee that South Dakota is similar to New Mexico in terms of its rural and Native American populations, which are factors that can affect decisions related to criminal justice reform. Mr. Seward gave an overview of criminal justice reform efforts in South Dakota, including formation of the Criminal Justice Initiative (CJI) Work Group and enactment of the South Dakota Public Safety Improvement Act.

Mr. Seward told the subcommittee that South Dakota's prison population had grown by more than 500% over the past 35 years and that the women's prison population hit an all-time high in the fall of 2011. Mr. Seward stated that the secretary of the South Dakota Department of Corrections approached him about the problem and explained that other states had undertaken reforms to reduce prison populations, rather than building new prisons. At that time, the South Dakota prison population was projected to grow by 25% over the next 10 years, at a cost of \$224 million. Mr. Seward explained that these statistics were similar to trends in other states that were experiencing rising imprisonment rates despite an overall decline in crime.

In light of these statistics and with the desire to reduce the prison population, South Dakota formed the CJI Work Group. The first step of the CJI Work Group was to hold stakeholder meetings. These meetings revealed that most of the stakeholders agreed that reforms were needed to improve public safety and reduce corrections spending. Most stakeholders agreed that this could be accomplished by focusing resources on violent, chronic and career criminals, or those "people we are afraid of, not just mad at". Following the stakeholder meetings, the CJI Work Group engaged in a bipartisan effort to create a formal work plan to address these goals. The CJI Work Group also engaged the assistance of The Pew Charitable Trusts. According to Mr. Seward, The Pew Charitable Trusts offers assistance to states by collecting and analyzing data related to corrections practices and identifying areas that may benefit from reform.

A subcommittee member asked Mr. Seward about the optimal number of members for a work group. Mr. Seward responded that a small work group of 12 to 18 people is preferable. The CJI Work Group was a bipartisan work group consisting of members from all three branches of government.

Mr. Seward discussed data related to the criminal justice system in South Dakota. He explained that in fiscal year 2012, over 80% of offenders admitted to South Dakota prisons had been sentenced for nonviolent crimes, and over 50% had been sentenced for drug- or alcohol-related crimes. Of the drug-related crimes, 70% were convicted of drug possession and only

30% were convicted of drug distribution or manufacturing. Additionally, one out of four inmates was in prison due to a parole violation.

Upon reviewing relevant data, the CJI Work Group identified three broad goals: 1) improve public safety by investing in programs, practices and policies that have been proven to reduce recidivism; 2) hold offenders more accountable by strengthening community supervision; and 3) reduce corrections spending and focus prison space on violent, chronic and career criminals. These broad goals translated into the development of the following policy areas, which were used as a framework for the development of a work plan: 1) supervision and reinvestment; 2) statutory review; and 3) efficiency and sustainability. The CJI Work Group chose not to address issues involving the legalization of any drugs, the release of current inmates from prison, the juvenile justice system, the death penalty, the sex offender registry or the root causes of crime, such as education or poverty.

In addition, a Council of Advisors was formed to provide advice to the CJI Work Group. The Council of Advisors consisted of law professors, former attorneys general, judges, district attorneys and others with expertise in criminal justice. One subcommittee member commented that having a council of advisors seems problematic in terms of efficiency, if there are already a work group and other subgroups. Mr. Seward responded that a council of advisors is not mandatory, but South Dakota officials found its Council of Advisors beneficial because it acted as a "sounding board" for the CJI Work Group. Mr. Seward added that the CJI Work Group was metaphorically looking at reforms from a 30,000-foot level, while the Council of Advisors was looking at reforms from a 50,000-foot level.

Another subcommittee member asked about the budget South Dakota had for the CJI Work Group. Mr. Seward responded that the CJI Work Group did not have a budget. Instead, the CJI Work Group was composed of state and county employees who received their normal salary or per diem. Mr. Seward stated that the only expense was that of food and coffee, but The Pew Charitable Trusts frequently picked up the bill. In response to a question from another subcommittee member, Mr. Seward told the subcommittee that the CJI Work Group met for about six months.

#### *Supervision and Reinvestment*

Mr. Seward explained that the supervision and reinvestment focus of the CJI Work Group addressed the supervision of high-risk offenders and the creation of an earned-discharge program. Under the earned-discharge program, South Dakota probationers and parolees earn reductions in parole or probation sentences in 30-day blocks. For each 30-day period that a probationer or parolee is "perfectly compliant", the probation or parole sentence is reduced by 30 days. Mr. Seward told the subcommittee that the rationale behind this program is to reduce the number of persons that probation and parole officers must supervise and to direct their attention to offenders who actually need supervision, rather than those who are perfectly compliant. Since July 2013, 95% of South Dakota parolees have earned credit under the earned-discharge program. Mr. Seward commented that statistics show that New Mexico has high caseload levels

for probation and parole officers, which is similar to South Dakota's situation prior to implementation of the earned-discharge program.

In addition, efforts in this category involved improving drug and specialty courts, such as "HOPE" courts, which, according to Mr. Seward, are an effective way to deal with nonviolent drug addicts. Under the HOPE program, drug offenders are assigned a particular color and must call a toll-free number on a daily basis to determine if their color is "up" for that particular day. If an offender's color is "up", the offender must submit to drug testing on that day. If the offender tests positive for an illegal substance, the offender is jailed for a predetermined amount of time. According to Mr. Seward, statistics have shown that offenders are 50% less likely to use drugs and return to prison under these programs. Additionally, of those who do use illegal substances, such a relapse typically occurs only one time during the probation or parole sentence. Programs such as the HOPE courts implement "swift and certain sanctions" by utilizing predetermined penalties pursuant to a "sanctioning grid" or "response matrix". The earned-discharge program and HOPE courts are examples of evidence-based practices that have proven successful in other states.

Another program that South Dakota implemented is the 24/7 program for driving while intoxicated (DWI) offenders. Mr. Seward explained that under this program, certain DWI offenders must report to their local sheriff's office two times per day to submit to a breath test. Mr. Seward explained that the goal of this program is to allow people to remain in the community rather than in prison, while remaining clean and sober.

Mr. Seward noted that the CJI Work Group worked closely with personnel in county sheriffs' offices and county jails so that they understood that the intention of the reforms was not to shift the burden from the prison system to county jails. A provision in the reforms was enacted to ensure that if counties observe an influx of probationers in county jails, the state will reimburse the counties for the increased expense.

Another effort of the CJI Work Group that fell under the supervision and reinvestment category involved implementation of the effective practices in community supervision (EPICS) interviewing technique by parole and probation officers. EPICS was developed by Professor Edward Latessa of the University of Cincinnati. EPICS provides a structure for probation and parole officers to identify high-risk thinking and anti-social attitudes that lead to criminal behavior. South Dakota implemented a similar program, the level of service inventory – revised assessment. This assessment helps to predict violent recidivism and violations among the probation population, as well as institutional misconduct among incarcerated offenders.

One subcommittee member asked whether reforms such as the implementation of EPICS were made in statute or by administrative regulations. Mr. Seward responded that the use of EPICS could be mandated by statute or put into administrative regulations. He added that The Pew Charitable Trusts may be able to help legislators understand what aspects of criminal justice reform in New Mexico are better addressed in the New Mexico Administrative Code.

Other efforts in the area of supervision and reinvestment involved an examination of housing for parolees, negotiations concerning a pilot program for Native American parolees, improvements to the victim notification system and limiting preliminary hearings to felony cases. Mr. Seward explained that 47% of parole violations in South Dakota involve Native American parolees, and frequently the violations occur when a parolee absconds to a reservation. Overall, Native Americans constitute 9% of the population of South Dakota. Under the South Dakota pilot program, the tribes and the state would enter into agreements similar to a tribal-state compact. Under this agreement, a tribe would be permitted to hire a tribal parole officer using state funds, which would enable Native American parolees to complete their supervised probation sentences within their reservations. Pursuant to such an agreement, the tribe would promise to return parole violators to state custody. South Dakota is currently negotiating this type of agreement with two tribes, although the agreements have not yet been finalized.

Housing for parolees has been a challenge in South Dakota. In the past, the same housing units were used to serve both parolees who had recently been released from prison and parolees who had recently violated their conditions of parole and were being sent back to prison. South Dakota initiated a pilot program that eliminates this practice in some cases and provides \$250,000 for additional housing for parolees. Data from the pilot program will be reviewed to determine whether the approach is working.

A subcommittee member asked whether the CJI Work Group sought input or assistance from the housing community and observed that parolee housing is also a problem in New Mexico. The member noted that in New Mexico, parole revocations are frequently a result of some type of housing issue, particularly a lack of affordable housing. The member further commented that felony offenders are ineligible for Section 8 housing. Another member commented that housing can also be a challenge because halfway houses are often unwelcome in neighborhoods, and housing placement is particularly difficult for sex offenders. The member suggested that inviting residents of the neighborhood to become involved in some capacity may be helpful.

Concerning housing, Mr. Seward stated that the CJI Work Group tried to focus on parolees who are most likely to have difficulty finding housing after release from prison; however, he acknowledged that this is an issue with which South Dakota is currently struggling. Mr. Madden stated that Texas approached this problem by expanding its halfway house program to specifically address the needs of offenders suffering from drug addiction. Mr. Seward recommended that the subcommittee determine whether housing is a factor that is driving the prison population in New Mexico.

Finally, Mr. Seward indicated that every county in South Dakota is responsible for notifying victims when an offender is scheduled to be released from prison and inputting this information into the county system. Under the reforms, a state victim notification system was created, which is expected to save resources and provide improved notification to victims.

*Statutory Review*

Under the statutory review category, the CJJ Work Group focused on differentiating levels of criminal conduct, creating presumptive probation for Class 5 and Class 6 felonies and developing "swift and certain sanctions". Class 5 and Class 6 felonies involving violence, a risk to public safety and sex offenses were excluded from the presumptive probation framework.

Mr. Seward told the subcommittee that, in differentiating levels of criminal conduct, South Dakota created a tiered controlled substance sentencing statute, created more targeted punishments for grand theft, enhanced options for sentencing DWI offenders and differentiated sentencing for the various levels of burglary.

One subcommittee member asked for clarification concerning the levels of felony offenses in South Dakota. Mr. Seward responded that a sixth degree felony is the lowest degree of felony. In the context of DWI offenses, a sixth degree felony carries a two-year maximum sentence. A fifth degree felony is the second-lowest degree of felony in South Dakota, carrying a five-year maximum sentence for a DWI offense. As part of the reform efforts, the maximum sentence for a fifth degree felony was lowered from 10 years to the current five-year maximum.

Another subcommittee member asked if South Dakota looked at specific crimes to determine whether a felony charge was appropriate. Mr. Seward responded that the CJJ Work Group studied this issue, and he provided the case of methamphetamine use as an example. He explained that in Wyoming, methamphetamine use is a misdemeanor offense. In South Dakota, on the other hand, methamphetamine use previously had been a felony offense. The CJJ Work Group addressed this in its efforts to create a tiered controlled substance sentencing statute that differentiates between a college student using methamphetamine, for example, and "drug kingpins" who possess or distribute methamphetamine.

#### *Efficiency and Sustainability*

Finally, the focus on efficiency and sustainability involved measuring and evaluating the implementation of reforms and improving training on evidence-based practices that have been proven to reduce recidivism. Under this category, reform efforts were enacted to require a 10-year fiscal impact statement on any bill that will significantly change the prison population.

According to Mr. Seward, the South Dakota criminal justice reforms are estimated to save the state \$207 million in construction and operating costs through 2022.

Mr. Seward stated that additional information on criminal justice reform in South Dakota can be found at <http://psia.sd.gov>.

#### **Subcommittee Questions and Comments**

Former New Mexico Attorney General Harold D. "Hal" Stratton, Jr., expressed support for the efforts of the subcommittee. Secretary of Corrections Gregg Marcantel was unable to attend the subcommittee meeting, but sent his regards to members of the subcommittee.

Subcommittee members discussed South Dakota criminal justice reform and indicated that there has been strong bipartisan support for this subcommittee and that New Mexico has not undertaken substantial criminal justice reforms for decades. One member of the subcommittee expressed a desire to make improvements to the juvenile justice system and to request the Legislative Finance Committee (LFC) to undertake a financial analysis that would demonstrate the fiscal impact that criminal justice reforms would have in New Mexico. Another member stated that serving a prison sentence has a lasting impact on the prisoner's family and that this should be considered when recommending reforms.

Several members indicated that enacting criminal justice reform would save New Mexico money in the short term, while also producing long-term public safety savings. Members of the subcommittee discussed a conference on criminal justice reform offered by the National Conference of State Legislatures. One subcommittee member will be attending the conference and offered to report back to the subcommittee.

Another subcommittee member asked Mr. Seward if the South Dakota reforms were passed as part of an omnibus bill. Mr. Seward responded in the affirmative and indicated that the bill was titled "An Act to Improve Public Safety". Mr. Seward told subcommittee members that the CJJ Work Group believed that passage of the entire reform package was more likely if it was offered in the form of an omnibus bill. Mr. Madden stated that Texas enacted significant criminal justice reform through an appropriations bill and through work with the state budget. Some members of the subcommittee expressed support for the omnibus bill approach.

One subcommittee member asked Mr. Seward whether South Dakota changed any constitutional provisions. Mr. Seward responded in the negative. The member indicated that the Constitution of New Mexico was changed in 1985 or 1986 to address forfeiture. The member stated that funds were formerly used for education, but under the current law, funds are used for police, which has created a kind of bounty system. The member expressed support for a change that would direct forfeiture funds toward programs such as rehabilitation.

Another subcommittee member asked Mr. Seward whether South Dakota has experienced a dramatic increase in the number of women in prison, similar to the trend in New Mexico. Mr. Seward responded that South Dakota did see a significant increase in female inmates and found that over half were addicted to drugs or alcohol. South Dakota responded by creating more treatment opportunities. The member asked whether South Dakota has any special programs for geriatric offenders. Mr. Seward responded that South Dakota did not make any changes regarding geriatric offenders because they did not constitute a significant portion of the prison population. Finally, the member asked how South Dakota defines recidivism. Mr. Seward responded that South Dakota put the definition of recidivism in statute, and it is defined as returning to prison within three years of release. Mr. Seward stated that prior to the reforms, the recidivism rate in South Dakota was 44%. Current statistics following implementation of the reforms are not yet available. Mr. Madden indicated that the recidivism rate in Texas is 28%.

One subcommittee member noted that programs requiring an offender to pay the cost of participating in an alternative program may not be effective in cases where the offender does not have the means to pay. As a result, the member indicated that the subcommittee should consider whether it is worth paying \$70.00 to \$90.00 per day to keep the inmate in prison, or just structure the reforms so that the state pays for the alternative programs, rather than requiring fees from the offenders.

Another subcommittee member expressed support for programs that offer cognitive or behavioral treatment for offenders, particularly those in the abuse and neglect system. Another member asked whether it is feasible to have different work groups to look at different aspects of criminal justice reform. Mr. Madden responded that, in his opinion, it is best to have one work group. If specific groups are needed to look at discrete issues, they should be organized under the umbrella of the main work group.

Subcommittee members asked whether a formal letter should be sent to initiate contact with The Pew Charitable Trusts to request assistance with data gathering and analysis. Mr. Carver responded that he has been in contact with The Pew Charitable Trusts representatives and those representatives indicated that the letter should be sent after The Pew Charitable Trusts gathers initial data. A subcommittee member indicated that the New Mexico Sentencing Commission (NMSC) has already gathered a significant amount of data concerning corrections in New Mexico and The Pew Charitable Trusts may be able to use some of this data.

Tony Ortiz, executive director of the NMSC, told subcommittee members that the NMSC has more than 100 reports on its web site concerning correctional issues in New Mexico. Additionally, the NMSC has been working with the Pew-MacArthur Results First Initiative for two years. Mr. Ortiz indicated that specialty courts, such as pre-prosecution diversion programs, already exist in New Mexico, although they could be improved. Additionally, Mr. Ortiz indicated that earned meritorious deductions have been in place in New Mexico since 1999, although this program is not frequently used.

One subcommittee member asked what the status of the NMSC's budget has been over the last few years. Mr. Ortiz responded that the NMSC's budget has been reduced by about 30% in recent years. He further indicated that he recently briefed the governor on a possible \$50,000 expansion to the NMSC's budget that would enable it to assist the LFC, which is currently working with the Pew-MacArthur Results First Initiative.

Another subcommittee member noted that a stumbling block in New Mexico is the fact that the news media is saturated with stories concerning crime, and residents have prior prejudices against defendants who have destroyed families and communities. The member asked how the subcommittee can overcome these obstacles to reform. Mr. Madden suggested that "the numbers" should drive decisions. Mr. Seward responded that people want programs that hold offenders more accountable, reduce the caseload of probation officers and improve public safety.

Several members expressed concern about the volume of traffic citations that are clogging the court system, particularly in the Bernalillo County Metropolitan Court.

### **Eleven-Point Plan for New Mexico**

Mr. Madden presented an 11-point plan to the subcommittee, outlining the steps he suggests that New Mexico take in order to successfully reform its criminal justice system. These steps include developing a clear mission statement, analyzing data, asking for input from stakeholders, working on a broad scale, developing a time line, undertaking reform as a bipartisan effort, reviewing existing programs to see if they can be improved and engaging the assistance of outside experts.

Mr. Madden indicated that sending inmates to prisons in other states may be an option to save money on corrections. A subcommittee member asked why sending inmates out-of-state would save money. Mr. Madden responded that in Texas, up to 1,000 inmates per day had to be transported long distances to attend medical appointments and court appearances. He indicated that in some instances, moving inmates out-of-state could be a sound fiscal decision.

### **Public Comment**

Ed Apodaca read a letter to the subcommittee concerning his son, Joshua Apodaca, who was killed in New Mexico in 2007. Mr. Apodaca stated that he and his wife, Brenda Barela, support the subcommittee's efforts to strengthen criminal laws in New Mexico.

Margarita Sanchez thanked the subcommittee for its efforts and stated that criminal justice reform in New Mexico is long overdue. She stated that Chicanos and African Americans comprise a substantial percentage of the prison population and the prison population needs to be reduced. She further stated that she would like to see: 1) sentencing adjusted to reflect the severity of the crimes; 2) an effort to provide financial and housing resources to inmates reentering the general population; 3) a limit on the use of long-term solitary confinement; and 4) improved access to medical care for inmates. Finally, she commented that organizations such as legal aid should be consulted by the subcommittee for input.

Sister Sarah Rahman stated that she volunteers in the corrections system. She would like to see a review of the policies concerning adding time to inmates' sentences for behavior infractions while incarcerated. She also expressed a desire for the subcommittee to review the process for approving or denying parole plans and to review the quality of medical care provided in prison facilities.

One of the subcommittee co-chairs summarized a letter from the Honorable Thomas A. Donnelly, former district judge for the First Judicial District in New Mexico. The letter gave an overview of historical revisions to the Criminal Code, which began in 1957. A letter from Dr. Steven A. Vaughn was also summarized. Dr. Vaughn is a former medical director for the Corrections Department. He expressed support for a review of the inmate health care system.

Gerald Madrid, owner of Gerald Madrid Bail Bonds in Albuquerque, addressed the subcommittee. He explained that his business deals with the front end of the criminal justice system. He told the subcommittee that offenders are increasingly being released on their own recognizance with no bond requirement, and this results in a greater percentage of pretrial violations, such as failure to appear in court.

Barri Roberts, executive director of the Bernalillo County Forensic Intervention Consortium, told the subcommittee that she would like to see reforms aimed at keeping people who suffer from mental illness from entering the criminal justice system. Ms. Roberts told the subcommittee that use of the "Sequential Intercept Model" may be helpful in these endeavors because it is a framework for understanding how people with mental illness interact with the criminal justice system. The Sequential Intercept Model was developed by the federal Substance Abuse and Mental Health Services Administration GAINS Center. Finally, Ms. Roberts told the subcommittee that citations issued to homeless individuals, in particular loitering citations, are increasing the workload of courts because these individuals are frequently unable to pay the citations. Ms. Roberts suggested that these types of offenses could be changed from criminal to civil penalties.

Robert P. "Rick" Tedrow, 11th Judicial District attorney for Division 1, and president of the New Mexico District Attorney's Association, expressed support for the work of the subcommittee.

Henry Valdez, director of the Administrative Office of the District Attorneys (AODA), told the subcommittee that the AODA keeps data for all cases involving district attorneys and would be happy to provide that data to the subcommittee.

Robert Mitchell, administrator of the Alternative Sentencing Division of San Juan County, told the subcommittee that he works mostly with misdemeanor offenders who are participating in alternative treatment programs. He asked the subcommittee members to consider where misdemeanor offenders fit into reform efforts, as well as the role of magistrate judges in supervising misdemeanor offenders participating in alternative compliance programs.

Peter Bochert, the statewide drug court coordinator for the Administrative Office of the Courts, told the subcommittee that there is a need for a standardized statewide assessment of alternative programs. Additionally, he stated, programs should be evaluated to ensure that they are targeting the appropriate offender groups, in particular, those who are at a high risk of committing repeat offenses. Finally, he told the subcommittee that persons suffering from mental health issues often spend more time in county jails than persons who do not suffer from mental illness, and this is an issue that may warrant review.

### **The Way Forward for New Mexico**

Members of the subcommittee discussed the goals that they envision for the subcommittee. Several members expressed a desire to quickly identify the areas that the subcommittee should not address and to create a mission statement. Several members indicated

that New Mexico's juvenile justice system, while not perfect, is in good shape, and it is not an area on which the subcommittee should focus. Another member disagreed and expressed opposition to excluding juvenile justice from the purview of the subcommittee.

Other areas that were identified for possible review by the subcommittee include:

- ▶ treatment programs for sex offenders;
- ▶ review of the sex offender registry to determine whether it includes offenders who should not be required to register;
- ▶ examination of whether incarceration for DWI offenders is appropriate;
- ▶ the lack of funding for post-release programs;
- ▶ housing for parolees;
- ▶ pre-prosecution diversion programs;
- ▶ the possibility of closing probation and parole offices and having probation and parole officers spend more time in the field;
- ▶ earned-discharge programs;
- ▶ mental and behavioral health programs; and
- ▶ employment opportunities for rehabilitated offenders.

Members of the subcommittee determined that the next meeting of the subcommittee will be held on December 16, 2013 at 9:00 a.m.

The co-chairs of the subcommittee invited the public to submit comments to [CJRS@nmlegis.gov](mailto:CJRS@nmlegis.gov) and visit the Criminal Justice Reform Subcommittee web site, which can be found at <http://www.nmlegis.gov/lcs/default.aspx> under the link for "Committees" and then "Interim Committees".

### **Adjournment**

There being no further business before the subcommittee, the first meeting of the CJRS of the Courts, Corrections and Justice Committee was adjourned at 4:25 p.m.

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

**December 16, 2013  
Room 311, State Capitol  
Santa Fe**

D

The second meeting of the Criminal Justice Reform Subcommittee (CJRS) of the Courts, Corrections and Justice Committee was called to order by Representative Antonio "Moe" Maestas, co-chair, on December 16, 2013 at 9:15 a.m. in Room 311 of the State Capitol.

**Present**

Rep. Antonio "Moe" Maestas, Co-Chair  
Sen. Lisa A. Torraco, Co-Chair  
Rep. Zachary J. Cook  
Sen. Cisco McSorley  
Sen. Bill B. O'Neill  
Sen. Sander Rue

**Absent**

Rep. Gail Chasey  
Rep. Jane E. Powdrell-Culbert

**Guest Legislator**

Sen. Daniel A. Ivey-Soto

A

**Staff**

Douglas Carver, Staff Attorney, Legislative Council Service (LCS)  
Caela Baker, Staff Attorney, LCS  
Jennifer Dana, Legislative Intern, LCS

**Guests**

The guest list is in the meeting file.

F

**Handouts**

Handouts and other written testimony are in the meeting file.

**Monday, December 16**

**Welcome and Introductions**

Members of the subcommittee and staff introduced themselves.

T

## **1999 Criminal Reform Effort, Current Parallel Reform Efforts and Overview of Drivers of the State Prison Population**

Tony Ortiz, executive director of the New Mexico Sentencing Commission (NMSC), told members of the CJRS that the NMSC consists of 24 members, representing all facets of the criminal justice system. The role of the NMSC is to collect and analyze data and provide evidence to legislators that can be used to make policy decisions.

### *Historical Overview of Efforts to Reform the Criminal Justice System in 1999*

Mr. Ortiz told members of the CJRS that three bills were introduced in the 1999 regular session that were the result of about two and one-half years of criminal justice reform efforts. The first bill, House Bill (HB) 225, would have enacted the Sentencing Standards Act and expressed the following purposes: 1) to "establish rational and consistent sentencing standards that reduce disparity in the imposition of sanctions by providing principles for judges to use in determining appropriate criminal sanctions"; 2) to "encourage the use of the severe sanction of imprisonment only when necessary to ensure public safety or provide an appropriate level of punishment"; and 3) to "make better use of the finite resources of the state". HB 225 would have created presumptive sentencing for many crimes. The bill was passed by both chambers along party lines but vetoed by the governor. One of the subcommittee members asked which party voted for the bill. Mr. Ortiz responded that most Democrats voted for the bill, while most Republicans voted against the bill. Another member asked whether the reforms contained in HB 225 were still pertinent today or whether the circumstances had changed. Mr. Ortiz responded that today there are different "drivers" of the prison system than there were in 1999. Additionally, Mr. Ortiz indicated that in 1999 there was a national trend toward using presumptive sentencing. Mr. Ortiz told members of the CJRS that the governor's veto message indicated that HB 225 would "do away with mandatory sentencing" and "replace it with a series of guidelines and presumptions". The veto message further stated that "citizens have a right to be assured that criminals who destroy their lives will receive due punishment in the form of incarceration".

The second bill, HB 226, would have enacted the Persistent Violent Offender Act and would have provided an indeterminate life sentence for persistent violent offenders who are not amenable to rehabilitation. HB 226 passed the House unanimously but died in the Senate Judiciary Committee.

The third bill, HB 227, concerned the earned meritorious deduction program for inmates. HB 227 passed both chambers and was signed into law. The provisions of HB 227 set forth a formula for calculating earned meritorious deductions based on the classification of the offender. Different formulas for calculating earned meritorious deductions apply, depending on whether the offender is considered nonviolent or violent. Serious violent offenders are required to serve at least 85% of their sentences. In addition, a distinction is made for offenders who have returned to prison because of a parole violation.

Mr. Ortiz told members of the CJRS that the takeaway from the 1999 effort is that the three bills were designed to be passed as a package, but they were not introduced as an omnibus bill. Ultimately, two of the bills failed and only one was signed into law. Mr. Ortiz asked members of the CJRS to keep this in mind as the subcommittee moves forward with criminal justice reform efforts.

One member of the subcommittee commented that the South Dakota effort was successful because it was packaged as an omnibus bill. Another member opined that sentencing overhaul would be a roadblock to passing an omnibus bill. One member indicated that reform efforts should include examination of misdemeanor crimes, while another indicated that there should be six to seven classes of felony offenses to minimize sentencing disparity.

*Parallel Efforts: County Jail Reform and Juvenile Justice Reform*

Mr. Ortiz told members of the CJRS that in August 2013 the Juvenile Justice Stakeholders Task Force was convened to study programs and services within the juvenile justice system. The goal of the task force is to develop a package of proposed policy changes. Additionally, the Bernalillo County Criminal Justice Review Commission (BCCJRC) was formed to look at how quickly cases within the criminal justice system are processed, including issues such as conveyance of arrest reports from law enforcement to the district attorneys and the timeliness of setting judicial proceedings. The purpose of the BCCJRC is to address the amount of time defendants spend incarcerated prior to trial. Mr. Ortiz explained that there is a large number of defendants in the Bernalillo County Metropolitan Detention Center who have not yet been convicted of a crime but remain in jail because they do not have the means to post bond. One member of the CJRS stated that New Mexico is among a minority of states that have greater inmate populations in county jails than in the prison system. Another member requested that a representative of the BCCJRC present findings to the CJRS during the next interim.

One member of the CJRS pointed out that there is disparity in terms of discretion and control over an offender depending on whether the offender is sentenced by a district court judge or a magistrate judge. If a district court sentences the offender, the Corrections Department (CD) has full control over the type of facility the offender is incarcerated in, as well as the programs that are made available to that offender. However, if a Bernalillo County Metropolitan Court judge or a magistrate judge sentences the offender, that judge retains control over administration of the sentence. The member pointed out that this creates an "imbalance" of power in the system by limiting the discretion of a judge of general jurisdiction while simultaneously giving judges of limited jurisdiction absolute control. The member opined that judges should have some level of discretion over administering sentences.

Another member of the CJRS commented that the state may have to start paying more to shift inmates into CD facilities rather than continuing to have counties pay to house inmates in county jails. The member stated that, unlike inmates in CD facilities, those held in county facilities do not have access to programs that reduce recidivism and are not eligible to start the earned meritorious deduction program.

Concerning the juvenile justice system, one member commended the Children, Youth and Families Department (CYFD) on its efforts in implementing the Missouri Model and acknowledged that the CYFD has not had access to the funding required to fully implement the changes required by the Missouri Model. The member pointed out that although such changes have up-front costs, they will result in long-term cost savings.

#### *Data Points*

Mr. Ortiz told members of the CJRS that there are two basic things to keep in mind when thinking about what causes prison populations to fluctuate — admissions and length of stay. Mr. Ortiz explained that in fiscal year (FY) 2012, there was a clear increase in admissions of serious violent offenders in the male prison population. Concerning male prison admission, the number of serious violent offenders admitted to CD facilities in FY 2011 was 211. In FY 2012, the number increased to 331.

Mr. Ortiz stated that an additional "driver" of the prison population is parole readmissions. He explained that roughly 30% of offenders are readmitted to prison each year because of parole violations.

Concerning the female prison population, Mr. Ortiz pointed out that admissions for violent crimes increased in FY 2012. Additionally, there has historically been a greater number of admissions for drug possession than for drug trafficking; however, those numbers have flipped in recent years, with the admissions for drug trafficking now outnumbering those for drug possession.

Several members of the CJRS acknowledged that drugs are a significant driver of corrections costs because, in addition to drug trafficking or possession, other types of crimes are frequently linked to drug use. Another member stated that Section 43-2-3 NMSA 1978 expresses a policy that "intoxicated and incapacitated persons may not be subjected to criminal prosecution, but rather should be afforded protection" and that "alcohol-impaired persons and drug-impaired persons should be afforded treatment in order that they may lead normal lives as productive members of society". The member stated that although the legislature expressed this policy, it has done little to back it up.

The members of the CJRS engaged in a discussion about the distinction between probation and parole. One member commented that the federal system does not have a parole program and questioned whether the parole program in New Mexico is necessary or beneficial, particularly when many offenders are serving their parole sentences in prison.

### *Drivers of the State Prison Population*

Linda Freeman, deputy director of the NMSC, presented additional statistics to the CJRS. She stated that "drivers" of the prison population are not necessarily the same for the male population as they are for the female population. She explained, however, that admissions for both men and women have decreased over the past few years. From FY 2007 to FY 2013, there was a 4.5% decrease in admissions overall. With decreased admissions, length of stay becomes a more important consideration in efforts to reduce the prison population. Ms. Freeman told members of the CJRS that recent data indicate that the female inmate population is largely driven by length of stay rather than by new admissions.

D Ms. Freeman presented the following statistics concerning length of stay:

- nationally, the estimated percentage of male prisoners held in state prisons by crime type in 2011 was 54.3% violent, 17.7% property, 16.2% drug and 10.7% public order;
- in New Mexico, based on FY 2012 data, the percentage of male prisoners held in state prisons by crime type was 41.6% violent, 20.4% property, 21.6% drug and 16.4% public order;
- nationally, the estimated percentage of female prisoners held in state prisons by crime type in 2011 was 36.8% violent, 27.8% property, 25.2% drug and 8.7% public order; and
- in New Mexico, based on FY 2012 data, the percentage of female prisoners held in state prisons by crime type was 24.7% violent, 30.2% property, 32.3% drug and 12.9% public order.

A One member of the CJRS asked which category includes DWI offenses. Ms. Freeman responded that DWI is included in the public order category.

Ms. Freeman referred to a recent study conducted by the Pew Charitable Trusts, "The Impact of Parole in New Jersey", which found that inmates released to parole supervision were less likely to be rearrested, reconvicted and reincarcerated for new crimes than inmates who served their full prison sentences and were released without supervision. The study found that the two groups returned to prison at nearly identical rates, however, because parolees were frequently sent back for technical violations.

F Members of the CJRS engaged in a discussion concerning the parole system, including whether the parole system should be eliminated. One member asked whether other states have eliminated parole programs. Mr. Ortiz responded that Virginia had eliminated its parole program, but he is not certain what the result has been.

### **Drivers of Costs for the CD and the Corrections Budget; Entrepreneurial Prison Programs and Halfway Houses**

T Gregg Marcantel, secretary of corrections, discussed factors that are driving costs within the CD. He stated that prison operating costs, including costs related to infrastructure and maintenance, constitute a significant portion of the CD budget. Other factors impacting prison

operating costs include: 1) an aging prison population; 2) disbursed prison facilities; 3) an increasing prison population; and 4) the cost of mental health treatment.

Secretary Marcantel told members of the CJRS that recidivism also drives costs. Factors affecting recidivism include: 1) the lack of evidence-based programming in prisons; 2) the lack of post-incarceration employment opportunities; and 3) the lack of community resources and halfway houses. Additionally, Secretary Marcantel suggested that programs that encourage family and community connections may help reduce recidivism.

**D** Concerning prison costs, Secretary Marcantel told members of the CJRS that although the inmate population has continued to rise in recent years, the CD has experienced a decrease in funding and staffing.

Secretary Marcantel explained to members of the CJRS that the CD used to have a philosophy that focused on bed space, with little regard for the accountability of inmates or programs to reduce recidivism. The problem with that philosophy, however, was that recidivism reached 46%. More recently, the CD has implemented a cradle-to-grave logic that is focused on preparing inmates for returning to the community from the moment they walk in the door. Secretary Marcantel told members of the CJRS that the CD is implementing broader drug and alcohol treatment programs. In addition, the CD is working on a "one-stop" initiative that will allow inmates leaving prison to obtain a government identification card and apply for government benefits. The CD also offers educational and parenting programs and provides inmates leaving prison with business attire to attend interviews.

Secretary Marcantel described other programs being implemented by the CD, such as the Old Main Revitalization project, the Hobby Craft program and a project focusing on sustainability in the prisons. Finally, Secretary Marcantel discussed the CD efforts to implement a program called Motivating Offender Change, which will provide cognitive behavioral therapy to certain inmates.

One member of the CJRS suggested that if parole violations are a driver of the prison population, perhaps a legislative fix is needed to prevent inmates from returning to prison for technical violations. Secretary Marcantel explained that swift and certain sanctions could address this issue. For example, he suggested that in the case of certain technical violations, offenders might have "a quick run to jail" and be released before they lose their job. He stated that swift and certain sanctions are most effective when there are personal consequences to the offender.

Another member of the CJRS expressed support for the possibility of expungement for people who are trying to reform. The member also suggested that although the business attire program is a good idea, it would be more effective if coupled with job coaching. Secretary Marcantel responded that he agrees and added that the Hobby Craft program is intended to address unemployment by teaching inmates business skills so that they might be able to eventually own and operate a business.

One member of the CJRS asked how many prison facilities currently exist in the state and what the capacity is of each. Aurora Sanchez, deputy secretary of administration, CD, responded that there are 11 prison facilities. The facilities are as follows:

- the Penitentiary of New Mexico, which has a capacity of 864;
- the Southern New Mexico Correctional Facility, which has a capacity of 764;
- the Western New Mexico Correctional Facility, which has a capacity of 368;
- the Central New Mexico Correctional Facility, which has a capacity of 1,300;
- the Roswell Correctional Center, which has a capacity of 340;
- the Springer Correctional Facility, which has a capacity of 296;
- the Guadalupe County Correctional Facility, which has a capacity of 601;
- the Lea County Correctional Facility, which has a capacity of 1,267;
- the Northeast New Mexico Detention Facility, which has a capacity of 626;
- the Otero County Prison Facility, which has a capacity of 342; and
- the New Mexico Women's Correctional Facility, which has a capacity of 654.

Ms. Sanchez told members of the CJRS that the New Mexico Women's Correctional Facility in Grants is currently over capacity at 657 inmates. One member of the CJRS noted that Texas has closed three prisons in recent years and inquired as to whether the CD can create a plan to help reduce the number of inmates in the prison system. Secretary Marcantel responded that the CD is currently working on such a plan and its goal is to reduce recidivism by 10%. Several members of the CJRS requested data concerning prison capacity, current prison population and inmate classification levels for each prison facility. Ms. Sanchez indicated that the CD would create a spreadsheet with this information for members of the CJRS.

One member of the CJRS commented that the large number of DWI offenses occurring in McKinley County is primarily driven by Native American populations. The member inquired as to whether the CD had considered a joint powers agreement to try to address this situation. Rose Bobchak, acting director of the Adult Probation and Parole Division of the CD, responded that the CD had previously attempted to negotiate joint powers agreements with the tribes, but only the Pueblo of Laguna was willing to consider a joint powers agreement. One member of the CJRS requested the CD to make contact with the tribes again concerning joint powers agreements and report the responses to the CJRS during the next interim period.

Members of the CJRS inquired about treatment and services for sex offenders. Secretary Marcantel responded that the Otero County Prison Facility has a separate wing that houses sex offenders. He indicated that offenders participate in evidence-based programs on a daily basis but that community services for sex offenders upon release are scarce. Further, most sex offenders complete their parole terms in prison because of the lack of social support programs and housing options. One member inquired about the roadblocks to finding and financing housing for parolees. Secretary Marcantel stated that the CD is working on this and has considered utilizing existing state-owned properties. He indicated that the average cost of holding an offender in a prison facility is \$104 per day and that it makes financial sense for the

state to consider investing in housing programs so that parolees do not have to serve their parole sentences in prison.

Another member asked whether the CD has encountered a "not in my backyard" attitude concerning housing and programs for sex offenders. Secretary Marcantel acknowledged that this has been a problem and that neighborhoods typically do not welcome halfway houses or probation and parole offices because of the sense that their presence makes neighborhoods less safe.

Members of the CJRS engaged in a discussion about "therapeutic communities". One member indicated that judges have been sentencing offenders to prison with the recommendation that they be placed in a therapeutic community. The member expressed a concern about whether therapeutic communities exist within CD facilities. Ms. Bobchak indicated that the Central New Mexico Correctional Facility in Los Lunas has a six-month inpatient drug treatment program. Several members of the CJRS indicated that this program should be expanded and implemented in other prison facilities.

#### **Approval of Minutes**

Members of the CJRS voted unanimously to approve the minutes of the subcommittee's November 2013 meeting.

#### **Discussion About the Future of the CJRS**

Members of the CJRS expressed support for requesting approval to continue the CJRS during the next interim period. Members discussed reconvening the subcommittee for a first meeting in April or May 2014.

#### **Public Comment**

Leila Hood, an attorney who practices criminal defense, expressed support for the work of the CJRS.

K.C. Quirk, executive director of Crossroads for Women, described the mission of Crossroads for Women. She explained that it is a housing program for former female inmates that also provides social and community-based services. She told members of the CJRS that more programs are needed to address issues such as abuse and trauma and basic life skills. She stated that some existing evidence-based programs do not take into account matters that are important to women and that it is important to remember that, in many cases, women do not enter the criminal justice system for the same reasons that men do.

Marisa Garrett, a resident of Crossroads for Women, recounted her experience as an inmate at the New Mexico Women's Correctional Facility in Grants. She told members of the CJRS that although there were educational and vocational programs at the facility, most of them had extensive waiting lists. In other cases, programs were only available to inmates with longer sentences — 18 months or more, for example.

Shannon Good, a volunteer at Crossroads for Women, stated that she has a background in behavioral health. She stressed the importance of educational services in prison facilities, including educational programs, such as welding and computer programming, that have historically been offered only to men.

A. Sarah Rahman, a volunteer prison chaplain, told members of the CJRS that inmates had asked her to request an increase in educational programs in the prisons, as well as programs for aging inmates.

D Paul Mueller told members of the CJRS that the definition of "serious youthful offender" should be amended to include many more violent crimes and allow harsher sentences for juveniles convicted of serious crimes. Additionally, he stated that loitering laws would hold business owners accountable for crimes that occur on their premises.

Mark Donatelli of Rothstein, Donatelli, Hughes, Dalstrom, Shoenburg & Bienvenu, LLP, asked members of the CJRS to review determinate sentencing, particularly relating to 30-year sentences. Additionally, he commented that many states have a "unified system" under which all jails and prisons are operated by the state. He suggested that the CJRS consider a unified system for New Mexico. Finally, he echoed the need for more community-based intervention programs.

### **Adjournment**

There being no further business before the subcommittee, the second meeting of the CJRS of the Courts, Corrections and Justice Committee adjourned at 4:50 p.m.

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