

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

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

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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

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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

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(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.