

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

**August 23-24, 2017
State Capitol, Room 322
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 23, 2017 at 9:44 a.m. in Room 322 of the State Capitol in Santa Fe.

Present

Rep. Gail Chasey, Co-Chair
Sen. Richard C. Martinez, Co-Chair
Rep. Eliseo Lee Alcon
Sen. Gregory A. Baca
Sen. Jacob R. Candelaria (8/23)
Rep. Jim Dines
Sen. Linda M. Lopez (8/23)
Rep. Antonio Maestas
Rep. Sarah Maestas Barnes
Rep. Javier Martínez (8/23)
Sen. Cisco McSorley
Rep. William "Bill" R. Rehm
Rep. Angelica Rubio

Absent

Rep. Zachary J. Cook
Sen. Sander Rue

Advisory Members

Rep. Deborah A. Armstrong
Sen. John Pinto
Rep. Christine Trujillo
Sen. Peter Wirth

Sen. William F. Burt
Rep. Brian Egolf
Rep. Doreen Y. Gallegos
Sen. Daniel A. Ivey-Soto
Sen. Bill B. O'Neill
Sen. William H. Payne
Rep. Patricia Roybal Caballero
Sen. Mimi Stewart

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

Staff

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

Guests

The guest list is in the meeting file.

Handouts

Copies of all handouts are in the meeting file.

Wednesday, August 23

Call to Order

Senator Martinez welcomed members of the committee, staff and guests to the meeting. Ms. Ewing informed the committee that a copy of a rulemaking notice was available for the committee's review.

Restorative Justice: Balanced Justice for Victims, Offenders and Communities

Thom Allena, Ph.D., professor, Peace and Global Justice Studies Program, University of New Mexico, said that a nationwide poll showed that only 27% of Americans have confidence in the criminal justice system. Communities are finding innovative ways to improve public safety. Dr. Allena recently heard about residents in one Albuquerque neighborhood who are taking turns monitoring their neighborhood from their rooftops to help prevent crime.

Dr. Allena discussed Denver's community justice councils — a public safety system that gives communities a role in their own criminal justice system — and suggested that a system like it could be used in Albuquerque neighborhoods. The Denver program is overseen by district attorneys' offices and provides for offenders to sit with community boards composed of residents who tell offenders how their crimes affected the community. Collectively, the boards and the offenders decide how to repair damage, restore victims' trust and assist offenders in making better choices. Dr. Allena said that when people have direct involvement in a system, as with restorative justice practices, people have greater confidence in the system. Restorative justice allows people to be personally involved with and invested in community justice.

The model for restorative justice that Dr. Allena proposes addresses three principles: public safety, repairing harm to victims and community and building offenders' competencies. In restorative justice systems, instead of immediately sentencing an offender to prison or jail, offenders have a chance to meet the victims of their crimes, which can provide more effective rehabilitation for offenders. He said he believes that a balanced approach that addresses the needs of victims, offenders and communities is needed.

Restorative justice programs, currently implemented in 37 states, view crime, delinquency and other violations through a different lens than traditional juvenile and criminal justice approaches. Rather than considering criminal acts as violations against the state, those acts are viewed as violations of the relationship between individuals and their communities. Offenders are held accountable by encouraging their understanding and repair of the harm they caused, while encouraging them to become more productive citizens.

Dr. Allena discussed an example of a restorative justice program in Vermont that has resulted in 88% of nonviolent adult offenders being sanctioned by a community panel rather than sentenced by a judge. The panel is staffed by trained citizens, and the goal of the panel's sanctions is to repair harm, restore community and build offenders' competencies. Vermont also uses a reparative model for its parole and community reentry programs, in which trained citizens meet with parolees to provide support and ensure parolees' accountability upon reentering their communities. Dr. Allena said that involving communities when offenders reenter society is very important.

Dr. Allena highlighted a program in Longmont, Colorado, in which city police have the option to refer first- and second-time juvenile offenders to the Longmont Community Justice Partnership (www.lcjp.org). The partnership uses a model called community group conferencing, in which offenders are offered the opportunity to be diverted from traditional juvenile justice systems and to instead meet with victims, family and community members to discuss the harm and residual impacts of their actions. Collectively, the offender and members of the community determine sanctions for the offender. There is a 7% recidivism rate among offenders who participate in that process, compared to the 70% recidivism rate for similar offenders who participate in non-restorative programs.

Dr. Allena explained that restorative practices can be implemented at any stage of the criminal justice system. A few of the models currently in use in the country include: victim-offender mediation; high-risk victim-offender dialogue; family and community group conferences; sentencing circles; community accountability boards; reparative panels; community impact panels; and reparative reentry.

Restorative justice is also applicable outside of the criminal justice context and has been used in schools, universities and workplaces to manage conflict and as part of the disciplinary process. A member noted that the U.S. Department of Justice recently made a \$4.2 million grant to the Albuquerque Public School District for the purpose of implementing restorative practices in 12 middle schools to address behavior that would otherwise likely result in a student's suspension or expulsion. The schools are in the process of planning their restorative programs, and program coordinators at six schools have been hired.

Dr. Allena described retired state district court judge Peggy Nelson's practice that employs sentencing circles and community reentry circles in cases involving high-impact crimes; the Children, Youth and Families Department's use of juvenile justice boards; and the Corrections Department's pilot project for women offenders returning to Albuquerque and Santa Fe from incarceration.

Dr. Allena said that a 2012 study found that restorative programs helped to lower rates of recidivism, future police contacts and juvenile probation referrals. Other long-term effectiveness measures shown in the study suggest that victim satisfaction following participation in most restorative practices exceeds 90%. Restorative justice practices have been endorsed by

organizations that include the American Bar Association and the National Council of Juvenile and Family Court Judges.

Dr. Allena recommended that the committee consider policies that incorporate restorative justice elements, particularly in the area of juvenile justice. He also recommended funding for the creation of a restorative justice coordinating council that would include elected officials, justice system leaders, representatives from relevant agencies, restorative justice practitioners and interested citizens.

A member recalled the story of Amy Biehl, a young woman who was killed in South Africa and whose mother traveled the world with the man who killed her daughter. The experience shared by the man and Ms. Biehl's mother made significant impacts on their lives.

In response to a member's question, Dr. Allena confirmed that restorative justice models are based on justice practices developed and used by tribal communities. Another member asked whether the effectiveness of restorative justice programs varies by offender type, and Dr. Allena said that the most promising results are found in juvenile programs.

Another member noted that one of the most important things for victims of crime is to have their voices heard and to be a part of the criminal justice process. Dr. Allena noted that an offender cannot be forced to participate in a restorative justice process, and the process is not effective unless the participants fully understand it and willingly participate. He added that a restorative justice program does not require a prosecutor to relinquish authority to later prosecute and that there must be consequences for offenders who do not successfully complete the requirements in a restorative justice program.

In response to a member's question about the restorative justice program in Vermont that is used for 88% of nonviolent offenders' cases, Dr. Allena said that those offenses are often property crimes and that the program is run by Vermont's corrections department.

Update from New Mexico District Attorney's Association (NMDAA)

Rick Tedrow, president, NMDAA, commented that voluntary restorative justice programs can be useful, but that it is important for courts to have a way to intervene when a restorative justice process fails. He added that pre-prosecution diversion programs should be under district attorneys' management, in part for recordkeeping purposes. He said that it is often assumed that a prosecutor's priority is to send offenders to jail, but prosecutors and many victims actually seek accountability for crimes. He reminded the committee that district attorneys throughout the state are eager to assist with improving the criminal justice system and criminal laws. He noted that his tenure as president of the NMDAA ends after the 2018 session.

Mr. Tedrow introduced Henry Valdez, director, Administrative Office of the District Attorneys (AODA), and the district attorneys for the Eighth, Fifth and First judicial districts who were also in attendance. Mr. Tedrow said that, currently, most of the state's prosecution

diversion programs are established by district attorneys' offices and not through statute. He invited committee members to take a tour of any district attorney's office to meet local prosecutors and to learn about pre-prosecution diversion programs.

Mr. Tedrow said that because the 2018 legislative session is a budget-related short session, the NMDAA will request that a number of initiatives it supports be placed among those issues the governor approves for consideration during the session. The NMDAA will pursue the following pieces of legislation because it believes they are essential to public safety:

- House Bill 129 (2017), referred to as the "*Birchfield* fix" because it puts necessary statute language in place following the *Birchfield v. North Dakota* case before the United States Supreme Court, will be reintroduced and would allow law enforcement officers to obtain warrants to perform blood tests on persons in cases that involve driving while under the influence of drugs or alcohol;
- House Bill 560 (2015), which was signed into law; the NMDAA supports the law but believes it needs some revision;
- a bill to remove the statute of limitations for second degree murder prosecutions and to potentially increase the penalty for second degree murder convictions; and
- a bill to protect police officers by increasing the penalty for great bodily harm against a police officer from a third degree felony to a second degree felony.

Mr. Tedrow said that procedures are being developed to deal with concerns about restitution that were raised in a report by investigative journalist Larry Barker, and he does not believe legislation is needed at this point to address the concerns.

Mr. Valdez briefly explained the distinct roles of the NMDAA and the AODA, which he said is not an oversight agency, except with respect to the compensation and personnel plans for district attorneys, which the AODA administers.

New Mexico is one of only a few states with a statewide case management system. The system is available free of charge to all prosecutors in the state, including the attorney general and agencies with prosecutorial functions. Mr. Valdez noted that the state's victim notification system was developed by the AODA, which saved significant state resources.

In response to a question from a member, Mr. Tedrow said that the most significant criminal justice system issue in the state is that the state's Criminal Code has been developed in "piecemeal" fashion since 1978 and is in need of revision. In addition, the case management rules in Bernalillo County are a significant concern for district attorneys.

In response to a question about increased crime in the state, Mr. Tedrow said that the increase is statewide and is related to methamphetamine and heroin in many cases, which leads to an increase in property crime.

Responding to a question about the district attorneys' budgets, Mr. Tedrow said that their budgets were significantly reduced during the recession and some federal funding has been lost, so they are in need of additional funding. The greatest expense relates to personnel, he said, and a starting prosecutor is paid approximately \$48,000 per year.

State Auditor's Pay Equity Audit

Tim Keller, state auditor, introduced Sarita Nair, chief government accountability officer and general counsel, Office of the State Auditor, and other staff members in attendance. He introduced his recently released report, "Transparency Report on Pay Equity Vendor Reporting". He noted that women in America are more likely to be poor than men, and more than one-half of all people in poverty are women. He said that women are poorer than men in this country because women with the same qualifications as men are paid less and because of job segregation, which he described as a divide among genders represented in various professions. Nationwide, women are paid, on average, \$.78 per \$1.00 paid to men in equal positions, and Hispanic women are paid \$.55 per \$1.00 paid to men in equal positions. This gender wage gap results in \$2.3 billion in wages lost by women each year.

In 2009, Executive Order 2009-049 was issued and included a mandate that contractors submit pay equity information when applying to do business with the General Services Department (GSD). The information submitted in response to that executive order provided the data set analyzed by the auditor's office in preparing the pay equity report. He said that just 267 vendors submitted the required pay equity information out of thousands of applications received by the GSD. The data show that there is significant work to be done to improve pay equity in the state, including improving reporting and compliance with the executive order.

Ms. Nair said that the office's analysis of pay equity issues is part of its many efforts to review procurement in the state. She said that in addition to the required reporting by potential state vendors, the executive order also requires the State Personnel Office (SPO) to monitor pay equity within the state's workforce, a requirement, she added, that has not been met in seven years.

Ms. Nair said that the pay equity data was reviewed through three lenses:

- 1) the difference in earnings between men and women;
- 2) the difference in representation of genders within industries; and
- 3) compliance with the executive order.

The data analysis shows that service worker positions have the lowest average wage gap between genders at 10%, while officer and manager positions have the greatest average wage gap between genders at 26%. To demonstrate the effect of a wage gap of 26%, Ms. Nair said that a woman would have to work a full year plus three additional months — through April 1 of the next year — to make the same salary her male counterparts made during a 12-month period. "Technicians" had the highest reported wage gap by industry at 171%. Regarding job

segregation, Ms. Nair said that women hold just 6% of semiskilled operatives positions and 3% of skilled craft worker positions.

Ms. Nair said that, at the time, the issuance of the executive order was a progressive move toward pay equity; however, the lack of enforcement of the order's provisions reduces its effectiveness.

The committee discussed several issues, including difficulties in obtaining data on pay equity; opposition to pay equity measures from certain groups; and various approaches to enforcing the executive order, including denial of contracts for vendors whose applications do not comply with the order or whose pay equity gaps are above a certain level.

A member noted that women are often the primary caregivers for children, and being underpaid can lead to lifelong poverty for those who care for children. Auditor Keller agreed and noted that policies that require disclosure of a person's past salaries are structural barriers that also work to perpetuate pay disparity.

In response to a member's question, Auditor Keller said that the governor responded to his inquiries regarding the lack of compliance with the pay equity executive order by stating that pay equity is important to the governor's administration. He noted the disconnect between policies and the results that come from lack of enforcement.

In response to a question from a committee member, Auditor Keller said that because his office had so little data to analyze due to lack of compliance with the executive order, it is difficult to draw conclusions about pay equity issues in the state. He said that his office will request that the SPO comply with the executive order, but he added that his office is unable to force the SPO to comply.

In response to a member's comment, Ms. Nair agreed that the state's Fair Pay for Women Act is a good tool to help improve pay equity; however, she added that the private cause of action created in the act is less effective if a plaintiff is unable to prove a claim because of a lack of pay data. Auditor Keller noted that compliance with pay equity policies can be encouraged by the legislature by making appropriations to certain agencies contingent on compliance with pay equity policies.

Medical Cannabis — Treatment for Opioid Addiction

Emily Kaltenbach, state director, Drug Policy Alliance (DPA), told the committee that medical cannabis should be available as a tool to treat opioid addiction in the state. She said that legislation to create that tool was passed during the 2017 regular session, but was vetoed by the governor. She noted that New Mexico no longer leads the country in drug overdoses but said that the number of drug overdose deaths continues to increase. Prescription drugs and heroin are the primary causes of overdose deaths nationwide and in New Mexico.

Ms. Kaltenbach referred to a study that found that mental health and substance use disorders were the leading causes of disease burden in the United States in 2015 and told the committee that the use of medical cannabis can help people successfully transition off opioids. Cannabis is currently being used to treat opioid addiction in California and Massachusetts, but New Mexico would have been the first state to provide for that use explicitly in statute.

Jessica Gelay, policy manager, DPA, said that in 2016, the DPA submitted a statement in support of a petition submitted by Anita Briscoe, M.S., A.P.R.N.-B.C., requesting the addition of opioid use disorder to the list of medical conditions for which medical cannabis may be used in treatment. In November 2016, the state's Medical Cannabis Advisory Board voted 5-1 to recommend the addition of the disorder as a qualifying medical condition. The Department of Health, however, did not choose to add the disorder to the list of qualifying conditions.

In the 2017 regular session, the DPA worked with legislators on several bills that included a provision to add opioid use disorder as a qualifying medical condition. A bill introduced by Representative Nate Gentry, House Bill 527, is the bill that passed the legislature and was vetoed. In her veto message, the governor noted concern that the bill would bypass an important responsibility of the Medical Cannabis Advisory Board, which is charged with revising the list of qualifying medical conditions, and said that including opioid use disorder would result in a rapid increase in program enrollment that the Department of Health could not manage. The governor also noted that chronic pain is already a qualifying condition. In response to the concerns noted in the veto message, the DPA reminded the committee that the Medical Cannabis Advisory Board had voted to recommend the inclusion of opioid use disorder before the 2017 legislative session and noted that the Department of Health received over \$2.1 million in licensing fees under the existing program, which could be used to expand the program. Ms. Gelay also noted that opioid use disorder and chronic pain are distinct medical conditions.

Ms. Briscoe said that in her work with patients seeking recertification for the medical cannabis program, she noticed that from those patients who suffer from posttraumatic stress disorder (PTSD), she was regularly receiving feedback that one of the benefits those patients experienced from the use of medical cannabis was the patients' ability to stop the use of heroin and other opioids. She consulted with professional peers on the issue and asked them to report any similar feedback from patients. Together, Ms. Briscoe and her peers found that approximately 400 patients, many of whom were diagnosed with PTSD, had stopped taking heroin and other opioids while using medical cannabis. She said that she spoke with the secretary of health about the issue, and the secretary said that more evidence of medical cannabis' utility in treatment of opioid use disorder is needed.

Dr. Michael DeBernardi, Psy.D., director of behavioral health services, The Life Link, said that in its work with homeless women, Life Link staff noticed the significant need for addiction and behavioral health treatment and began to work on those issues. He said that The Life Link uses methods that are shown to be scientifically effective and added that there is not a

significant amount of research on the uses of cannabis because it is a scheduled drug that is tightly regulated by the federal government.

Dr. DeBernardi said that there is a stronger correlation between childhood trauma and opioid abuse than there is between high blood pressure and heart attacks. He said that Life Link staff have developed a harm reduction model, in which clients are encouraged to stop using drugs to help minimize the harm that drugs cause in clients' lives. He noted that clients are afraid of the symptoms of opioid withdrawal, and Life Link staff have found that cannabis can reduce those symptoms. He reported that the states that have medical cannabis programs have collectively reported a 25% decrease in opioid overdoses and said that it appears to be impossible for a human to ingest the amount of cannabis that would be required to cause a fatal cannabis overdose.

The chair noted that the Department of Health was invited to present and to participate in the medical cannabis discussion, but representatives of the department declined the invitation.

In response to a question from a committee member, Dr. DeBernardi said that he is a psychologist focused on addiction among young persons. He further explained that The Life Link recommends the use of medical cannabis for some clients, but it simultaneously requires those clients to participate in other forms of treatment to address issues and trauma that contribute to the clients' addictions.

A committee member noted that the bill that was vetoed by the governor included provisions that would have required a patient using medical cannabis to treat opioid use disorder to use additional forms of treatment as well. The member noted that many people who are addicted to prescription opioid drugs are also on Medicaid and there could be considerable savings when those people stop using opioids. Ms. Briscoe said that she has noted that the costs of Suboxone and naloxone are increasing, which could cause Medicaid expenses to also increase.

Lynn and Erin Compassionate Use Act — Policy Recommendations

Ms. Kaltenbach discussed several policy recommendations that she said are a priority for the DPA. She said that the civil protections for medical cannabis patients should be improved and recalled the provisions of House Bill 527 (2017) and a recent law passed in Colorado to ensure that custody of a medical cannabis patient's children is not in jeopardy because of participation in the program.

Ms. Gelay said that many medical cannabis program participants from other states visit New Mexico and are unable to legally transport their cannabis medicine over state lines and could be subject to criminal liability in New Mexico if they do. Ten states have implemented reciprocity programs to address this issue.

Ms. Kaltenbach and Ms. Gelay made other recommendations for revising the state's medical cannabis law, including:

- codifying of qualifying medical conditions in the Lynn and Erin Compassionate Use Act;
- adding opioid use disorder to the list of qualifying conditions;
- adding neurodegenerative dementias to the list of qualifying conditions;
- allowing patients to grow medicine cooperatively to enable patients to share the costs of growing and to improve crop yields;
- allowing patients to possess the entire harvest grown by the patient; and
- allowing patients to sell their personal harvests to licensed nonprofit producers.

The committee discussed the potential impact on the medical cannabis program of the creation of a recreational cannabis program. A member noted that incentives could be used to encourage medical producers to remain in the medical market to ensure that patients have access to medical cannabis and to maintain reasonable prices for medical cannabis.

Recess

The committee recessed at 4:20 p.m.

Thursday, August 24

The committee reconvened at 9:18 a.m.

Government Accountability

Maggie Toulouse Oliver, secretary of state, discussed government ethics and transparency efforts undertaken by her office. Her office began posting financial disclosure statements online to give the public a better sense of where appointed and elected officials' funds come from and where potential conflicts of interest could exist.

The Secretary of State's Office is underfunded and understaffed, but even so, the office has focused on automating and streamlining Campaign Reporting Act compliance, which has resulted in an increase in voluntary compliance and the payment of fines and penalties to the state when late and incorrect reports are filed. The office has also been working on creating guides for political action committees and others to help improve compliance.

One of the most significant projects in the Secretary of State's Office is the proposal of new campaign finance rules. She recalled that the legislature passed Senate Bill 96 (2017), but that bill was vetoed. In areas in which the Secretary of State's Office has applicable rulemaking authority, it has taken provisions from that bill and proposed rules with similar provisions. One important section of the proposed rules addresses independent expenditure reporting and is intended to incorporate those sections of existing law that are enforceable and constitutional and put them into rule. The draft rule was published, and public comment was taken at three public hearings. A total of 327 comments were received in person and via faxes, emails and letters. Of those comments, six were neutral on the proposed policies, 34 opposed the policies and 88% of the comments supported the new rules. The second draft of the rule has been published, and the

30-day comment period has not concluded. The final hearing on the rule will be on August 30, 2017. The rule should be promulgated and effective on October 3, 2017.

Secretary Toulouse Oliver recalled House Bill 105 (2016), which became law and requires the secretary of state to take actions to improve and modernize lobbyist disclosure and campaign finance reporting processes. An appropriation intended to help the secretary to implement those changes was removed from the bill and a later capital outlay provision for the same purpose was vetoed, but the Secretary of State's Office is still obligated to make those improvements. Secretary Toulouse Oliver said her office is making the modifications internally using existing resources. She has also sought financial and technical support from outside organizations, and she noted that financial support will be required to complete the project.

Regarding public funding for some statewide elections, Secretary Toulouse Oliver said that the Public Election Fund has been significantly depleted. Money in the fund has been used to help the Secretary of State's Office cover shortages in elections; however, there are five statewide judicial vacancies and three Public Regulation Commission vacancies that will be eligible for public financing, meaning that public funding of upcoming elections is in jeopardy. Secretary Toulouse Oliver will propose a way to restore the fund in the 2018 session.

Heather Ferguson, legislative director, Common Cause New Mexico, said that good government and accountability are important to the public and to the legislature and expressed appreciation for the proposed disclosure rules. She noted that some of the opposition to those rules focuses on issues of free speech and privacy.

Ms. Ferguson recalled that the constitutional amendment introduced by Representative Dines in the 2017 regular session to create an ethics commission passed the legislature and will be voted on in 2018. The amendment, she said, represents 40 years of work on the issue. She highlighted some of the complexities involved in creating an ethics commission, including creating a balance between accessibility of information about ethics complaints filed and ensuring that complaints are not filed frivolously or for political advantage. She noted that systems in other states similar to that established by the constitutional amendment have not resulted in a reported increase of frivolous complaints.

Doug Nickle, director of development, Take Back Our Republic (TBOR), informed the committee that TBOR is the nation's only conservative organization addressing government transparency and disclosure issues. He said that common sense campaign finance reform is important, and TBOR believes that transparency and disclosure are nonpartisan issues that are important to the political process. More people are becoming informed about the financial aspect of politics and want to know if elected officials are being influenced by contributions. He said that he believes special interest groups have heavily influenced politics and democracy, and TBOR works across the political spectrum on the issue.

TBOR is working on two federal bills that address foreign influence in elections. Mr. Nickle said that the primary work on accountability issues should be done at the state level and that states should inform the federal government's direction on the issue. He added that TBOR is working on legislation to close loopholes that enable anonymity in online campaign donations made with credit cards. Mr. Nickle noted that in the 2008 election, over \$100,000 was donated to the Obama campaign through online contributions in one woman's name, but the contributions were actually fraudulent and not made by that woman. The legislation that TBOR supports would require an online donation to be verified by the donor using a credit card "CVV code" on the back of a credit card. He noted that he has worked with Common Cause New Mexico and the Rio Grande Foundation on the issue.

Mr. Nickle said that increased access to information reduces citizen apathy, which can result in greater citizen participation in the political process.

Peter St. Cyr, executive director, New Mexico Foundation for Open Government, expressed his support for the secretary of state's proposed campaign finance rules. He referred to the state's Inspection of Public Records Act (IPRA) and said that it is important in enabling citizens to understand government affairs. He said that the act helps uncover waste, fraud and abuse in government and deters corruption. He referred to a bill introduced during the 2017 regular session that would have narrowed the scope of the IPRA and protected certain records related to Spaceport America from disclosure. Although the bill died during the session, Mr. St. Cyr reported that requests for records that would have been protected by the bill's provisions have been denied. He said that he believes there is not enough funding available for the enforcement of the IPRA.

Mr. St. Cyr said that providing information to the public is a duty of governments and responding to IPRA requests should not be considered a burden. He recommended that legislation could be introduced to provide that 1% of every bond issued by the state be used to fund compliance with the IPRA and other open government infrastructure.

In response to a question from a committee member, Secretary Toulouse Oliver explained how her office and the state auditor work together on issues of government accessibility and are working to develop best practices on how her office conducts its records examinations.

The committee discussed the high cost of litigation related to the release of public information and the fact that accessible public information should be a nonpartisan issue. A member of the committee expressed concern about the lack of funding available for publicly financed campaigns, and Secretary Toulouse Oliver said that one solution could be to allow for unspent campaign money to remain in the fund rather than reverting to the General Fund. She added that with upcoming public financing-eligible races, the Public Election Fund's shortfall is projected to be \$1.5 million, which will have to be remedied during the upcoming legislative session. The lack of money in the fund could discourage candidates from seeking public financing.

A member expressed appreciation for the presentations on accountability and noted that it is difficult to have a full discussion on the IPRA, the Open Meetings Act and other issues related to accountability during busy legislative sessions. Another member shared his experience with litigating against governments that refused to disclose records subject to disclosure under the IPRA and emphasized how costly it is for the public when a government chooses to litigate rather than disclose records in accordance with the IPRA.

A member recalled that legislation introduced in the 2017 regular session included language that could be used as a model for implementing legislation for an ethics commission if voters approve the constitutional amendment creating the commission.

In response to a member's question, Secretary Toulouse Oliver said that she has addressed those issues within her office's authority in the rules she has proposed; however, there are several aspects of the state's campaign finance laws that should be addressed legislatively.

Proposed Topics for CCJ Discussion in 2018

Representative Chasey noted several topics that could be considered by the committee during the 2018 interim, including the intersection of technology and traffic safety; technology and crime prevention; guardianship; autonomous vehicles; and the creation and disclosure of corrections-related documents and records.

Bail and Pretrial Detention System Changes

Arthur Pepin, director, Administrative Office of the Courts, recalled that the constitutional amendment revising the state's bail system passed the legislature and was approved by 87% of voters. He noted that the amendment revised provisions related to pretrial release of a person accused of a crime and how persons who pose a flight risk or who are dangerous may be held before their trials. Following the adoption of the amendment, the New Mexico Supreme Court (NMSC) adopted rules to implement the changes to the Constitution of New Mexico, and those rules went into effect on July 1, 2017.

Mr. Pepin said that the new rules do not change the conditions of release that may be imposed by a court. If a court finds that release of a person on that person's own recognizance is insufficient, the court may impose a number of conditions on the person's release, including the payment of a surety bond. The new rules do not allow for the use of a "bail bond schedule", by which a court would set a person's bond amount based on a schedule of crimes and correlating bond amounts. He noted that when a court requires payment of a bond, the court is trying to guarantee a person's appearance at a later court date, not trying to increase public safety.

Regarding the amendment to the Constitution of New Mexico, Mr. Pepin said that the new language provides that a person is entitled to release before trial, unless certain conditions exist, and the person may not be held before trial solely because the person is unable to pay the bond amount set by the court.

Mr. Tedrow expressed the NMDAA's dissatisfaction with the rules adopted by the NMSC. He noted that before July 1, 2017, in San Juan County, just 2% of accused persons failed to appear in court following their pretrial release, but since the implementation of the NMSC's new rules, during two separate weeks, the courts in that county found that 20% and 17% of accused persons failed to appear after being released. He acknowledged that the data were collected over a short period of time, so he is unsure whether the increase in failures to appear in court is attributable to the rules change, but he noted that the increase is concerning to the NMDAA.

Mr. Tedrow said that because of the rules change, the NMDAA is now required to dedicate 26 hours per week to pretrial release court hearings. He said that the hearings amount to an additional full-time position, and he anticipates additional personnel will be needed for the purpose of those hearings. Regarding the substance of the hearings, he noted that there is confusion among defense attorneys, district attorneys and judges regarding the evidence that must be shown to establish that a person should not be released before trial.

Mr. Tedrow said that sheriffs have reported an increase in their operations costs, which they attribute to additional work to extradite and retrieve offenders on bench warrants. He said that fewer bail bonds professionals are involved in retrieving offenders, which results in increased law enforcement costs.

Bennett Baur, chief public defender, Law Offices of the Public Defender (LOPD), noted that his office is charged by the Constitution of New Mexico with securing the rights of clients and the office also wants an effective and efficient criminal justice system. He said there are many consequences when a person is arrested for, but legally innocent of, a crime and is held in jail for that crime; the person often loses employment, family relationships or the person's home. He said that every person should be released before trial unless a person is a flight risk or is a danger to the community. He also added that some people who are arrested are innocent of the crimes for which they were arrested. He acknowledged that the NMSC's new rules have created additional work for the LOPD but said that his office is optimistic that the new processes will function well.

Richard Pugh, district defender, LOPD, told the committee that at one time, New Mexico was second only to Georgia with respect to the number of people incarcerated before trial. He noted that the Laura and John Arnold Foundation has developed a "gold standard" tool (Arnold tool) for use in making pretrial release determinations, and it is used in many states and in large cities throughout the United States. The tool, he said, is used to determine who should and should not be held in jail pretrial. He said that the cumulative disadvantage of being in jail should be considered and jail time should be minimized for many of those arrested. He noted that district attorneys' decisions to hold a large number of arrested persons have increased the workload for the district attorneys, public defenders and the courts, all of which must participate in expedited hearings processes with tight deadlines.

Gerald Madrid, president, Bail Bond Association of New Mexico, said that the bail bond industry appreciates being part of the discussion of this issue. He said that the industry was represented on the NMSC's committee that considered and recommended rules related to the constitutional amendment. He told the committee that there was a surge in crime in New Mexico in late 2014 and that surge has persisted. As a result of the constitutional amendment, he said, the population of the Bernalillo County Metropolitan Detention Center has significantly decreased.

Mr. Madrid noted that bail bond professionals are effective at their jobs and they try to ensure a person's appearance before the court by taking great personal, financial and other risks. Bail bond professionals are small business owners, and many have been forced to close their businesses now that fewer people are being released on bond and instead are being released on their own recognizance. He said he has laid off most of his staff.

Mr. Madrid said that the increase in crime rates can be attributed to the use of the Arnold tool and noted that the tool was validated in Kentucky, where the bail bond industry does not exist. He added that the tool's effectiveness has not been scientifically proven.

In response to a committee member's question, Mr. Madrid explained that when a bail bond professional posts bond for a person released from jail, the professional forfeits the bond to the court if the professional is unable to return the released person to court as required. He added that if the professional is unable to find a released person on the date of a court appearance, the court will generally allow 30 days for the professional to locate the person, and the professionals will go to great lengths to return a person to court.

In response to another question, Mr. Pepin noted that the Administrative Office of the Courts has trained judges and courts on issues related to the constitutional amendment and new rules to help with the transition and will continue to provide training.

A member commented that the court management order that established deadlines for certain cases in the Second Judicial District Court might have impaired public safety, and Mr. Pepin noted that, while cases might have been dismissed in order to meet deadlines set by the order, those cases are not required to be dismissed with prejudice and may be prosecuted when the district attorney chooses.

Regarding the Arnold tool and in response to a member's question, Mr. Pepin noted that the Arnold tool does not give any weight to a person's arrest history, and he said that a judge is able to make a decision that does not align with the Arnold tool's recommendation regarding release.

A member noted that the legislature needs to continue to consider the issue of pretrial release as the facts around the issue evolve. The member said that the constitutional amendment aligned the Constitution of New Mexico with similar federal provisions and the changes will

require many adjustments. The new language offers courts new tools with respect to dangerous persons.

Adjournment

There being no further business before the committee, the third meeting of the CCJ for the 2017 interim adjourned at 1:00 p.m.