



Representative Gail Chasey, Chair
Courts Corrections and Justice Interim Committee
Via email

October 8, 2019

Re: NM SAFE Funding Recommendations for Criminal Justice Reform

Representative Chasey,

Thank you for the opportunity to provide recommendations on funding opportunities for criminal justice reform during the 2020 Legislative Session. On behalf of the New Mexico SAFE Coalition we respectfully submit six recommendations below.

Recommendation #1: Funding for transitional living centers

NM SAFE recommends additional funding specifically for transitional living beds in the community in order to reduce costs and increase successful reintegration.

According to the 2020 LFC Appropriation Recommendations, to reduce recidivism, best practices indicate a reentry plan should be developed at the time of an inmate's admission to prison, evidence-based programs should be provided during incarceration to address substance use and other needs, comprehensive reentry resources should be provided to each inmate on release, and evidence-based programming should be provided to offenders once they are on parole. Although the department spends about 90 percent of funding on evidence-based programming for inmates and those on probation and parole, the number of individuals served by these programs is unknown. If a parolee is released to a halfway house, no programming is provided on-site. Without participation and completion data, ascertaining the effectiveness of programming and its impact on the recidivism rate is difficult.

The department has reduced the number of release-eligible inmates (REIs), those held in prison past their release date, by half since 2012. However, between 2017 and 2018, private prisons held almost double the number of release-eligible inmates than public facilities held. The department claims difficulty in finding housing placements for offenders has driven the REI rate. LFC, Corrections Department, and Mortgage Finance Authority staff have been working to identify housing options to reduce recidivism rates and ease placement concerns through additional transitional housing options and housing vouchers. Additionally, the department should consider performance-based funding for private prison providers to ensure best outcomes.

To help reduce recidivism and REI rates, the recommendation includes \$2.8 million for implementing the highest-rated, evidence-based programming within prisons and at halfway houses. The Pew-MacArthur Results First Initiative and the Washington State Institute for Public



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Policy have developed models to calculate the return on investment to taxpayers from evidence-based prevention and intervention programs and policies using tens of thousands of national studies. The \$2.8 million in the recommendation is for programming that achieves the highest marks from these models. Additionally, the recommendation includes \$2.2 million to increase available beds at transitional living centers and \$209.2 thousand for 10 percent pay increases for state behavioral and mental health staff. The recommendation also provides \$233.5 thousand to fully fund the recidivism reduction office within the department to ensure the fidelity of programming and collection of needed performance data.

Although cost savings resulting from reduced recidivism rates should be reinvested into evidence-based programs, any state prison savings as a result of a population decrease are likely to be minimal due to fixed overhead costs, like the number of correctional officers in prisons and program administration. A percent decrease among medium security male inmates in private prisons could save almost \$1 million. However, the medium security, or level three, inmate population housed at private prisons has remained relatively stable, while other security level populations have declined, meaning savings are not likely to be realized at private facilities. For meaningful savings, the inmate population would have to decrease at a rate that safely allows fewer officers to be on duty or the closure of facilities.

Recommendation #2: Funding for Law Officers of the Public Defender

NMSAFE recommends fully funding the LOPD Budget Request for the next fiscal year. Many of the issues that NM SAFE is addressing arise because we see that the criminal system has needlessly drawn in people who no longer need to be, or should never have been, in the system. LOPD is currently funded significantly under the levels necessary to provide effective assistance of counsel to their almost 70,000 clients per year across the state. If LOPD does not have the necessary people and resources, they cannot adequately help clients address problems prior to any conviction. A fully funded LOPD would include more attorneys and staff to reduce workloads, more social workers and case managers to identify and address mental health and substance abuse issues, greater resources for rural representation, and IT money to make the system more efficient. For that reason, rational and recurring funding for LOPD must be a bedrock of any reform of the criminal justice system, and the LOPD budget request should be fully funded.

The LOPD base budget request for FY21 includes:

- Compensation for Contract Counsel to Improve Client Services Statewide and Expand Legislative Pilot Project to Pay Hourly Rates to Contract Defenders in Complex Cases and Expert Witnesses;
- 15 Attorneys and 30 Staff FTE to Improve Client Services Statewide and Reduce Recidivism;
- Facilities Expenses of Escalating Rent, Additional Office Space, and Vehicles. Meet Demand for Non-Professional Experts;
- Continue Data Sharing with Criminal Justice Partners; and



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- Recruitment and Retention Difficulties in Underserved Communities.

According to the 2020 LFC Appropriation Recommendations, PDD's FY20 request was \$10.3 million, or 19.8 percent, over the FY19 operating budget. Of the total amount, \$8 million was for four expansion items to support 72 FTE. PDD requested a \$2.3 million increase from the FY19 operating budget, mainly for vacancy rates, servicing the new case management system, supplies, equipment, and expert fees. LFC recommends a \$1.9 million increase from the FY19 operating budget and prioritizes vacancy rates and defense-related costs.

Recommendation #3: Funding for Substance Abuse Treatment and Diversion

NM SAFE recommends recurring funding for evidence based treatment and diversion, such as the Law Enforcement Assisted Diversion (LEAD) and a program at UNM for an injectable opioid treatment pilot for individuals who have not been successful in traditional treatment.

LEAD Evidence: An evaluation of the Santa Fe program was conducted by the NM Sentencing Commission in 2018. Results showed:

- Follow-up participants reported reductions in use of heroin, improved quality of life and gains in obtaining permanent housing.
- LEAD participants had a statistically significant decrease in the number of arrests in the first six months after diversion into the program. In the six months prior to diversion, participants had an average of 1.31 arrests, which decreased to 0.93 post-diversion. The number of new arrests in the first 6 months pre-and post-diversion decreased by 30% and the number of warrant arrests decreased by 28%. The comparison group arrest averages were largely unchanged during the six-month pre- and post-diversion time-period.
- Participants with high levels of participation in case management had fewer arrests for new charges.
- LEAD participants had no violent charges post-diversion.
- Participants were detained for significantly fewer days than the comparison group both pre-diversion (14.38, compared to 55.93) and post-diversion (22.83, compared to 126.51).
- LEAD participants had an average number of 0.62 emergency medical service calls pre-diversion compared to an average of 0.54 calls post-diversion – a 13% decrease.
- The cost savings to the criminal justice system were \$4,727 per person per year – a 52% decrease.
- When the cost of the LEAD program is added to the criminal justice and emergency medical costs, the average annual cost for a LEAD client was \$7,541 per client per year. Thus, overall cost savings of LEAD over the system “as usual” was 17%, saving \$1,558 per client per year.

Injectable Opioid Treatment: There is a need to enhance the existing health care system in New Mexico and explore additional comprehensive and innovative models to address problematic drug use and reduce recidivism. For people who use opiates who have not found success with



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methadone, suboxone or other treatments, the most dramatic developments in drug substitution therapies have been in injectable opioid treatments. In 2018, The NM House of Representatives overwhelmingly supported HM57 that requested the Legislative Health and Human Service Committee with hearing testimony on injectable opioid treatment as a feasible, effective and cost-effective strategy for reducing drug use and drug-related harm among long-term heroin users for whom other treatment programs have failed. Researchers at the University of New Mexico are now interested in exploring a pilot program.

Injectable opioid treatment programs, as part of comprehensive treatment strategies, provide substantial benefits to long-term heroin users who have not been responsive to other types of treatment by;

- reducing drug use;
- being a stepping stone to other treatments and even abstinence;
- improving health, social functioning and quality of life; and,
- reducing crime.

Recommendation #4: Funding for independent system wide Corrections audits

NM SAFE recommends funding for independent, system-wide audits of 1) provision of healthcare by Centurion in Corrections Department facilities, as well as 2) an independent audit of Prison Rape Elimination Act (PREA) compliance at Corrections Department facilities.

According to the 2020 LFC Appropriation Recommendations, in May 2016, NMCD decided not to renew the inmate healthcare contract with Corizon Health and instead chose Centurion LLC to provide health services. Centurion also provides service in Florida, Massachusetts, Minnesota, Mississippi, Tennessee, and Vermont. In the same year, the agency contracted with Boswell for pharmacy services, a change from past contracts where healthcare and pharmacy were handled by the same vendor, and with MHM Correctional Services to provided gender-responsive, trauma-informed behavioral health services to the female population. All three health contracts include payment escalators between 2 percent and 4 percent per year although appropriation levels have remained flat. The pharmaceutical contract uses a per-inmate per month payment that increases by two percent per year for each of the four years of the contract. The recommendation includes \$1 million for 2 percent cost-of-living adjustments for the health, pharmaceutical, and behavioral health contracts.

Recommendation #5: Funding for expungement implementation (HB370)

NM SAFE recommends funding additional law enforcement support at DPS to conduct and process FBI background checks for expungement petitions pursuant to the new expungement of criminal records act (HB370).

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ACLU of New Mexico, New Mexico Criminal Defense Lawyers Association, and the Law Offices of the Public Defender have all had conversations around implementation of the criminal records expungement act (HB 370) passed in the 2019 legislative session. It is our understanding that there is a need for funding to help implement this legislation, and we support any funding that will make expungement a simple, accessible process. For instance, the Department of Public Safety may need to hire additional staff in order to process requests for FBI background checks as part of the requirements for filing a petition for expungement.

Recommendation #6: Funding for legal services for expungement assistance

NM SAFE recommends funding for legal assistance for individuals who are unable to afford or otherwise access legal services to expunge criminal records.

In conversations with numerous stakeholders, it has become clear that there could be a gap in provision of legal services for people who are unable to afford an attorney to assist with expungement filings. We are working to make sure the system is as simple and user friendly as possible, but there will be people who need legal assistance with filings, hearings, and issues that will inevitably arise with the new process. One promising idea is to fund a pilot program in a limited number of jurisdictions (i.e., the First and Second) to provide legal assistance for people filing expungement petitions. Such a program could include a court based advice desk, expungement clinics, community know your rights trainings, and limited in court representation.

Thank you again for the opportunity to present our recommendations for criminal justice reform funding during the 2020 Legislative Session. We are happy to provide additional information if on any of the above recommendations if necessary.

Sincerely,



Paul Haidle, JD on behalf of New Mexico SAFE

cc: Senator Richard Martinez, Co-Chair Courts Corrections & Justice Interim Committee
Senator Sander Rue, Co-Chair Criminal Justice Reform Interim Subcommittee
Representative Antonio Maestas, Co-Chair Criminal Justice Reform Interim Subcommittee
Mark Silva-Peralta, Staff Attorney, Legislative Council Service



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New Mexico SAFE Partner Organizations

Albuquerque Health Care for the Homeless
American Civil Liberties Union of New Mexico
Best Chance NM
Crossroads for Women
Disability Rights New Mexico
Drug Policy Alliance
El Centro de Igualdad y Derechos
Enlace Comunitario
Equality New Mexico
Fathers Building Futures
League of Women Voters
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National Alliance on Mental Illness - NM
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Native American Voters Alliance
New Mexico Conference of Catholic Bishops
New Mexico Conference of Churches
New Mexico Criminal Defense Lawyers
New Mexico Voices for Children
New Mexico Women’s Justice Project
PB&J Family Services
Pegasus Legal Services for Children
Prison Reform Ministry of Immaculate Conception Church
Santa Fe Safe
Somos Un Pueblo Unido
Southwest Women’s Law Center
Street Safe New Mexico
Strong Families New Mexico
Transgender Resource Center