

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

**July 8-10, 2019  
State Capitol, Room 307  
Santa Fe**

The second meeting of the Courts, Corrections and Justice Committee was called to order by Representative Antonio Maestas on July 8, 2019 at 9:18 a.m. in Room 307 of the State Capitol in Santa Fe.

**Present**

Rep. Gail Chasey, Co-Chair  
Rep. Eliseo Lee Alcon  
Rep. Deborah A. Armstrong (7/8, 7/9)  
Sen. Gregory A. Baca  
Rep. Karen C. Bash (7/8, 7/9)  
Sen. Jacob R. Candelaria  
Sen. Linda M. Lopez  
Rep. Antonio Maestas  
Sen. Sander Rue (7/8)  
Sen. Antoinette Sedillo Lopez

**Absent**

Sen. Richard C. Martinez, Co-Chair  
Rep. Zachary J. Cook  
Rep. Dayan Hochman-Vigil  
Rep. William "Bill" R. Rehm

**Advisory Members**

Rep. Alonzo Baldonado  
Rep. Georgene Louis  
Sen. Bill B. O'Neill  
Rep. William B. Pratt (7/10)  
Rep. Andrea Romero  
Rep. Patricia Roybal Caballero  
Sen. Mimi Stewart (7/8)  
Sen. Peter Wirth (7/8, 7/9)

Sen. William F. Burt  
Rep. Brian Egolf  
Rep. Doreen Y. Gallegos  
Sen. Daniel A. Ivey-Soto  
Sen. William H. Payne  
Rep. Christine Trujillo

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

**Staff**

Mark Peralta-Silva, Staff Attorney, Legislative Council Service (LCS)  
Elisabeth Johnson, Staff Attorney, LCS  
Erin Bond, Research Assistant, LCS

**Guests**

The guest list is in the meeting file.

## **Handouts**

Handouts and other written testimony are in the meeting file.

## **Monday, July 8**

### **Welcome and Introductions**

Representative Maestas welcomed the committee and audience on behalf of Representative Chasey, co-chair. Members of the committee and staff introduced themselves.

### **Update from the Corrections Department (CD) and Overview of the New Mexico Prison Systems**

Alisha Tafoya Lucero, secretary-designate, CD, introduced herself to the committee and stated that there are six state-operated prison facilities in New Mexico:

- Central New Mexico Correctional Facility in Los Lunas;
- Penitentiary of New Mexico in Santa Fe;
- Roswell Correctional Center in Hagerman;
- Springer Correctional Center in Springer;
- Southern New Mexico Correctional Facility in Las Cruces; and
- Western New Mexico Correctional Facility in Grants.

Secretary Tafoya Lucero noted that there are several privately operated prisons in New Mexico, including the Guadalupe County Correctional Facility, the Lea County Correctional Facility, the Northeast New Mexico Detention Facility, the Northwest New Mexico Correctional Center and the Otero County Prison Facility.

Secretary Tafoya Lucero explained that beginning August 3, 2019, the CD will take over the Northeast New Mexico Detention Facility in Clayton, which is currently run by the GEO Group and owned by the Town of Clayton. She added that the CD is training staff and holding rapid-hire events and that by November 3, 2019, the facility will be state run.

In response to questions from the committee, Secretary Tafoya Lucero stated that an inmate's custody level is determined by a scoring instrument. She explained that the instrument evaluates factors such as an inmate's mental health, nature of offense, length of sentence and escape history and that security increases with the custody level, from custody level I to custody level IV. Secretary Tafoya Lucero noted that special management assignments, such as the Special Management Population and the Predatory Behavior Management Program unit, were formerly known as custody levels V and VI and that special management assignments are designed to separate an inmate from the general population while providing treatment for violence and anger management issues.

Secretary Tafoya Lucero explained upcoming training changes to the New Mexico Corrections Training Academy to reduce staffing shortages, including classes on mental health,

de-escalation techniques and facility-specific firearms training. She added that cadets who pass all other training except firearms may be placed in unarmed posts and that training for corrections officers and probation and parole officers will also be separate.

To improve hiring in rural areas, the CD will conduct applicant screenings in those areas, Secretary Tafoya Lucero said. The screenings, which will include a polygraph test, psychological review and fitness test, will be required before hiring. If an area has at least 15 qualified applicants, she said, the CD may conduct the academy in that area.

Secretary Tafoya Lucero stated that recidivism reduction is important to the CD and that prison facilities offer programs to provide inmates with the skills they need. She added that programs include substance abuse treatment, education and technical training, peer mentorship and peer art classes. Secretary Tafoya Lucero noted that the Southern New Mexico Correctional Facility is the first New Mexico facility to use the Prisoners and Animals Working toward Success program (PAWS) to reduce recidivism. She stated that in PAWS, inmates train dogs in basic obedience and manners for approximately eight weeks, and upon completion of training, the dogs are adopted by families in the community. She noted that the CD is also working to increase inmates' access to outside services, such as obtaining identification from the Taxation and Revenue Department and certification from community colleges.

Secretary Tafoya Lucero stated that additional funding will be requested during the next legislative session to accommodate development in the Information Technology Division of the CD. She noted that the CD is researching the establishment of an electronic health record system and explained that an electronic system would be more expensive than paper records but would track and transfer inmate records more efficiently. She said that Offender Management Network Information (OMNI), a data collection and analysis system, will go live in 2020.

Members of the committee requested data on the number of inmates in state prison facilities for drug-related charges, particularly those related to marijuana. Secretary Tafoya Lucero noted that many drug-related charges are associated with other crimes but expressed hope that OMNI would provide a clearer picture in the future. She noted that OMNI should also provide more data on factors that may affect recidivism rates. Secretary Tafoya Lucero stated that education, including adult basic education and technical education, are known to increase post-release success and reduce recidivism. Members noted the importance of ensuring that inmates are able to use their certifications and experience to gain occupational licenses after release.

Secretary Tafoya Lucero informed the committee that mental health issues are most often discovered when an inmate has an episode in a facility, although initial screenings can identify mental health needs. She noted that after an episode, an individual may be placed on a 24-hour medical hold and that the decision to place a hold is made by the mental health care provider and the CD. Secretary Tafoya Lucero emphasized that more behavioral health staff are needed in

prisons. She stated that violent behavior or attempts to introduce drugs into a facility will result in a call to the state police and possible prosecution.

In response to questions from members, Secretary Tafoya Lucero explained that all corrections officers, whether employed at a state-operated or a privately operated facility, must attend the New Mexico Corrections Training Academy and pass a background check and that all privately operated prisons must follow state law. She noted that there are salary and benefit differences between the state-operated and privately operated prisons; the salary for a corrections officer at a state-operated facility starts at \$17.80 per hour.

Members of the committee expressed concern about a variety of issues, including the appropriate use of restrictive housing, the possible use of medicated treatment for substance abuse, the transfer of the Clayton facility to the CD and the CD's cooperation with the United States Immigration and Customs Enforcement (ICE). Secretary Tafoya Lucero acknowledged their concerns and stated that the CD has taken steps toward addressing those concerns. She noted, however, that the CD must follow statute; any changes to the law must be made by the legislature.

#### **Approval of Minutes**

The minutes of the June 7, 2019 meeting were approved unanimously.

#### **Tour of the Penitentiary of New Mexico**

Committee members, staff and members of the public toured the Penitentiary of New Mexico in Santa Fe.

#### **Recess**

The committee recessed at 4:37 p.m.

#### **Tuesday, July 9**

#### **Reconvene**

Representative Chasey reconvened the meeting at 9:42 a.m.

#### **Probation and Parole Reforms**

Representative Maestas updated the committee on the probation and parole system in New Mexico and on proposed legislative changes. He explained that New Mexico uses determinate sentencing in its criminal justice system to impose a specific time in prison on an inmate. Representative Maestas reported that an inmate's good behavior in prison is incentivized via a sentence reduction, leading to an earlier parole. He added that most offenders are eligible for 50/50 "good time" credit; however, violent offenders may receive 15 percent good time credit and inmates convicted of first degree murder are not eligible for good time credit. Representative Maestas pointed out that in New Mexico, the maximum length of parole is five years and that

violating parole can lead to completing the remaining sentence in prison, with possible additional repeat offender time.

Representative Maestas noted that lawyers and legislators are often unfamiliar with probation and parole. He added that after sentencing, an attorney does not have a legal role and inmates are not permitted to have a lawyer in parole hearings. Representative Maestas stated that attorneys have been refused entrance to parole hearings.

Representative Maestas stated that recent developments in New Mexico's parole system have included geriatric parole, in-house parole and heavy caseloads for probation and parole officers. He remarked that under the Martinez Administration, the Parole Board did not grant parole to individuals who were sentenced to life imprisonment, although the relevant statute says that an inmate may be granted parole after serving 30 years of the inmate's sentence. He added that attempts at legislative reform were vetoed.

Representative Maestas explained that 2019 House Bill 564 (HB 564) combined some of the probation and parole reforms that were vetoed under the previous administration. However, he noted, there were misunderstandings regarding aspects of the bill, including the confusion of life sentences without the possibility of release or parole and life sentences with the possibility of parole and that after the bill passed the legislature, it was vetoed at the request of all 14 district attorneys and the attorney general. Representative Maestas recognized the need for participation from all stakeholders.

Members discussed the need to reduce recidivism, particularly recidivism related to technical violations, which are typically violations related to substance abuse and mental illness. Several members noted that justice and victims' rights must not be ignored in the reform process.

In response to a question from the committee, Representative Maestas explained that capital crimes became life without parole crimes after the death penalty was abolished in 2009. He added that this is not to be confused with a life sentence, which means that an inmate is eligible for parole after serving 30 years of incarceration; both life without parole and a life sentence are informally known as life imprisonment.

Representative Maestas explained to the committee that Governor Michelle Lujan Grisham committed to putting probation and parole reform on call for the 2020 legislative session. Members emphasized the need to include all stakeholders in drafting the new bill and expressed appreciation for the efforts made thus far.

### **Probation and Parole Division of the CD**

Melanie Martinez, director, Probation and Parole Division, CD, provided an overview of probation and parole in New Mexico. She noted that there are 36 district offices serving approximately 16,000 individuals and that roughly 10,000 of those are on probation and 1,000 are on parole. She added that 1,100 are under dual supervision; 2,500 are interstate compact

cases; and approximately 1,700 are absconders or have not made themselves available for supervision.

Ms. Martinez explained that supervision levels are currently determined by the Correctional Offender Management Profiling for Alternative Sanctions (COMPAS) classification or by Static-99 if the parolee is a sex offender. She noted that a New Mexico-based tool is undergoing validation. She added that based on an individual's needs, the offender will be placed in minimum supervision, medium supervision or high supervision and that in some situations, an individual may instead be placed in a special needs program, such as high-risk or community supervision. Ms. Martinez stated that minimum security requires a parolee to check in with the division's Response Center via phone once a month while remaining available for random urine analysis. She reported that a parolee under medium supervision meets with an officer once a month, while a parolee under high supervision meets with an officer in person twice a month and has a monthly home visit. Additionally, she said, special programs have unique requirements.

Ms. Martinez reported that sex offenders tend to be the most difficult population to parole due to the specific requirements for their parole. She added that to help reduce sex offender in-house parole, 22 beds have been added to the sex offender halfway house and that federal funding will allow 40 beds to be added to the New Mexico Men's Recovery Academy.

Behavioral health contracts have increased from 11 vendors to 22 vendors across the state; Ms. Martinez acknowledged the lack of accurate data from vendors in previous years and stated that vendors are now required to provide data and reports on evidence-based programs.

Ms. Martinez highlighted the work done by the New Mexico Men's Recovery Academy and the New Mexico Women's Recovery Academy. She noted that 60 men and 86 women graduated this year and that the women's academy houses children with their mothers. The CD holds holiday events, helps with collection drives and holds back-to-school programs.

Ms. Martinez reported that probation and parole officers are paid a minimum of \$19.88 per hour. There is currently a 25 percent vacancy rate, but Ms. Martinez hopes that returning the human resources function back to individual agencies will help recruitment. Other factors that may help, she said, include incentive pay and satellite screening in remote areas. Increasing the number of probation and parole officers should also decrease caseloads, she said.

Ms. Martinez informed the committee that a parolee or probationer can qualify for early release from supervision if the individual completes at least one-half of the sentence and has not violated supervision for at least one year, although sex offenders, violent offenders and multiple DWI offenders are not eligible for early release. She noted that unsupervised parole is difficult to track and not currently considered feasible.

In response to questions from the committee, Ms. Martinez explained that COMPAS is owned by Equivant, formerly known as Northpointe, and that to validate its use in New Mexico, Equivant assesses New Mexico's data and compares it to expected outcomes.

Members spoke on the importance of easing the transition from prison, and Ms. Martinez noted that there are transitional coordinators to help inmates become successful parolees. Ms. Martinez also explained that parolees frequently incur multiple violations before reincarceration because alternatives to incarceration are often used.

### **Parole Board**

Cisco McSorley, executive director, Parole Board; Erik Bernal, operations manager, Parole Board; and Abram Anaya, member, Parole Board, presented to the committee on the status of the Parole Board. Mr. Anaya explained that the Parole Board was established in 1975 and was designed to have 15 members appointed by the governor. There are currently seven appointed members on the Parole Board.

Mr. Anaya explained that the Parole Board's primary responsibility is to grant, deny or revoke parole. However, he noted, the board has several other duties, including conducting investigations and hearings, maintaining records of its actions and notifying correctional facilities of its decisions regarding inmates. Despite the lack of members, he said, the Parole Board has continued hearings.

Mr. Bernal stated that the Parole Board is a standalone agency authorized for six full-time employees, including an executive director. He said that two positions are currently vacant, which has required the four remaining employees and members of the Parole Board to perform administrative duties typically performed by staff. He added that these duties include preparing and finalizing approximately 500 case files for upcoming hearings. Mr. Bernal hopes that a new strategic plan will be developed to address staffing shortages and employee burnout, he said.

Mr. McSorley reiterated the need to fill vacancies in both Parole Board staff and membership, including the chair of the Parole Board. He stated that increasing the Parole Board's budget would increase training opportunities available to staff and members and assist the Parole Board in meeting national standards. Mr. McSorley also expressed concern that the aging Parole Board building is on CD property, which may associate the Parole Board too closely with the CD.

In response to questions from the committee, Mr. McSorley explained that per diem cannot be paid to a person at home; thus, Parole Board members preparing for a hearing while at home do not receive compensation. He explained that board members are typically retired probation and parole officers, but he hopes to see other backgrounds represented in the future.

To shore up the current budget, the Parole Board may need a supplemental appropriation in the next legislative session, Mr. McSorley said.

Members discussed the possibility of presenting DNA test results at parole hearings as has been done under the Innocence Project.

**Administrative Office of the District Attorneys (AODA) and New Mexico District Attorney Association (NMDAA)**

John Sugg, district attorney, Twelfth Judicial District, and Dianna Luce, president, NMDAA, and district attorney, Fifth Judicial District, presented possible changes to HB 564 for a future legislative session. Mr. Sugg explained that these changes include clarifying unsupervised probation, defining "absconding", using sanction programs such as Stages to Enhance Parolees Success (STEPS) in probation and parole, requiring the complete payment of restitution to enter unsupervised parole and increasing the age of eligibility for geriatric parole. A handout of the complete list of changes is available in the meeting file. Collin Brennan, assistant attorney general, Office of the Attorney General, stated that the Office of the Attorney General agrees with all of the proposed changes.

In response to questions from the committee, Mr. Sugg explained that the NMDAA and the AODA were concerned that their feedback in the legislative process during the last session was not always heard; thus, they attempted to tone down their responses in the 2019 legislative session. Additionally, he noted that district attorneys and their staff must maintain their offices and cases during legislative sessions, making it difficult to attend all committee meetings. Members of the committee expressed a desire to have all stakeholders participate in the legislative process, as all agencies and citizens are invited to participate.

Mr. Sugg explained to the committee that a conditional discharge in New Mexico is not a conviction; instead, an individual is placed on probation by the court and upon successful completion of probation, the case is dismissed. He added that if probation is violated, the court can make a finding of guilt. Mr. Sugg explained that a deferred sentence is similar to a conditional discharge in that a defendant is declared guilty by the court but the court defers sentencing and places the defendant on probation; upon completion of the probation, the case is dismissed. He stated that under a suspended sentence, a defendant pleads guilty and is sentenced but the sentence is suspended and the defendant is a convicted felon. He noted that all three could be impacted by changes to probation and parole.

A member of the committee expressed concern that restitution payments may be difficult for parolees, particularly those struggling with poverty. Mr. Sugg stated that unsupervised parole could be an incentive to pay restitution, which he feels is an important part of probation and parole. He added that judges may have a defendant sign a promissory note for restitution, which is civilly enforceable.

**Public Defender Department (PDD) and New Mexico Criminal Defense Lawyers Association (CDLA)**

The committee heard testimony from Bennet Baur, chief public defender, PDD; Kim Chavez Cook, attorney, PDD; Jonathan Ibarra, attorney, PDD; Rikki-Lee Chavez, attorney, The

Emissary Group, and legislative coordinator, CDLA; and Paul Haidle, senior policy strategist, American Civil Liberties Union of New Mexico (ACLU-NM).

Ms. Chavez discussed how the CDLA prioritizes bills during legislative sessions. She noted that research by The Emissary Group indicates that bills with a rate of controversy of 10 percent or higher do not pass the legislature. Based on the seemingly low levels of controversy surrounding probation and parole reform and New Mexico SAFE's positive rating of the bill, the CDLA expected HB 564 to become law, she said.

Mr. Haidle stated that the ACLU-NM was disappointed by the veto of HB 564, adding that the ACLU-NM had placed a high priority on the bill because of the positive impact on incarcerated people, particularly those suffering from substance abuse or racial disparities. Mr. Haidle also stated that the history of HB 564 includes three 2018 interim committee meetings, several working group meetings through the Council of State Governments Justice Reinvestment Initiative and a Legislative Finance Committee report highlighting the problems with probation, parole and corrections. Mr. Haidle believed that probation and parole stakeholders had opportunities to participate in the legislative process for HB 564.

Mr. Baur expressed a belief that the system of probation and parole is broken but that the CD is not at fault, noting that both the PDD and the CD are overburdened and face societal problems that the agencies are not equipped to deal with. For example, he said, technical parole violations keep people cycling through the system. Mr. Baur noted that sex offenders have the right to counsel in parole hearings. He added that having an advocate available is helpful for an inmate, as counsel can gather evidence for the hearing and make the hearing a more robust discussion.

Ms. Chavez Cook expressed concern over the amendments proposed by the NMDAA, noting that absconding must be a willful act to be a parole violation. She maintained that the Parole Board is not limited by a list of items that can be considered in a parole hearing; however, a list can unintentionally prioritize the items listed as the most important factors. Ms. Chavez Cook also stated that in-house parole has increased because many inmates and their families are indigent and because of a failure to come up with a plan for them to reenter society. Transitional living options could decrease the number of people serving in-house parole, she said, but transitional living facilities and halfway houses are limited in New Mexico.

Mr. Ibarra explained that STEPS violations go before the court, as a judge must sign off on the paperwork for violations and can require alternate sanctions. Several judicial districts do not have or do not use the STEPS program, he noted, and the STEPS program still requires reincarceration for a first violation. Mr. Ibarra believes that absconding often happens because a person does not want to be arrested for a positive drug test; if parolees knew they had a second chance before incarceration, they may be less likely to abscond. Mr. Ibarra also expressed concern that the restitution process is often delayed and that requiring restitution for unsupervised parole would correspondingly delay unsupervised parole.

In response to questions from the committee, Mr. Baur and Mr. Ibarra discussed possible ways to help people struggling with chemical dependency while on probation and parole. Mr. Baur noted that court proceedings have better turnout when only select populations have mandatory drug tests before court. He added that when people are able to appear in court without fear of arrest, they also attend meetings with their attorneys. Mr. Ibarra stated that the situation for those who test positive on drug tests can vary depending on which judicial district they are in and who the probation and parole officer and the judge are. Frequently, he said, an individual is placed in a county jail for more than a month as the parole revocation process is completed. Ms. Chavez Cook suggested that judicial discretion is a critical part of the criminal justice system, including probation and parole. It was noted that in New Mexico, use of medical marijuana is not considered a violation of probation or parole; however, judges in drug courts can force participants to discontinue medical marijuana use.

Members and the panel discussed the importance of using evidence-based best practices for probation and parole, noting that data analysis tools are important but that users must be careful that the tool does not mimic racial disparities and that tools must also be validated across the whole state, not solely in urban areas. A member discussed using parole hearings to prove an individual's innocence, as parole requires people to take responsibility for their alleged actions. Ms. Chavez Cook noted that some inmates may still be appealing their convictions while they are eligible for parole.

#### **Public Comment**

Sheila Lewis, director, Santa Fe Safe, spoke to the committee in favor of reforming probation and parole to help those suffering from addiction and poverty, particularly women and children. She suggested that there should be alternatives to probation and parole.

Fernando Trujillo described his experience dealing with addiction while in the criminal justice system and stated that addicts need rehabilitation, not incarceration. Mr. Trujillo stated that Judge Jason Lidyard of Rio Arriba County has had a positive impact on the community by working with individuals struggling with addiction in drug court.

Barbara Martinez, client, Crossroads for Women, discussed her experience with probation, parole and prison. She explained some of the problems with the STEPS program, such as holding parole violators in high-custody levels. She requested that the state search for ways to assist those dealing with substance abuse.

O.C. Fero told the committee of his time in prison and on parole. He discussed the difficulty inmates face in obtaining parole, despite changing their lives while incarcerated. He noted that he was ordained a priest of the Catholic Apostolic Church of Antioch while incarcerated and requested that the committee hear testimony from former inmates while working to reform the criminal justice system.

**Recess**

The committee recessed at 4:44 p.m.

**Wednesday, July 10****Reconvene**

Representative Chasey reconvened the meeting at 9:56 a.m.

**Correctional Facilities in the Immigration Context**

Allegra Love, executive director, Santa Fe Dreamers Project, presented to the committee on immigrant detention in New Mexico and along the United States and Mexico border. She stated that the system is overwhelmed; thus, United States Customs and Border Protection (CBP) facilities and processes are overwhelmed. She described how temporary holding cells designed for holding migrants for hours are used to house migrants for days and weeks without medical care or nutritious food, noting that these facilities are found in Santa Teresa, Antelope Wells and Lordsburg.

Ms. Love explained the possible routes from CBP custody for a migrant detained at the border. Children who are not accompanied by their biological parent or guardian are separated from the adults who accompany them, which has been a policy since the early 2000s. Initially, she said, unaccompanied undocumented children were held by the CBP for a short period of time before being sent to camps run by the federal Office of Refugee Resettlement (ORR) while next of kin is verified. However, the ORR camps are overwhelmed and unable to accept more children, she said, adding that children who cannot go to an ORR camp are held by the CBP and that New Mexico has no shelters for unaccompanied children.

Ms. Love described another route involving adults and family units placed in ICE custody. She stated that there are two privately run ICE facilities currently in New Mexico, located in Otero County and Cibola County; however, the facilities are overwhelmed, so adults and families are released from CBP custody to the streets. Ms. Love explained that most individuals will not remain in New Mexico, although the adults and families must appear in court at a later date and claim asylum. She added that facilities in Cibola County and Torrance County will be asylum processing centers.

Ms. Love described migrant protection protocols, in which migrants are processed and sent back to Mexico until summoned to the United States for a hearing. Ms. Love stated that Mexico can be dangerous for asylum seekers, who may lack resources or fall prey to cartels. While Mexican leaders tolerate the practice, Ms. Love believes migrant protection protocols are likely unsustainable.

Ms. Love said that ICE also conducts raids, in which undocumented immigrants are arrested around the country and placed in ICE detention.

Ms. Love explained that New Mexico does not have an immigration court, but the New Mexico Immigrant Law Center provides elementary legal information and preparation for detained migrants, including approximately 35 transgender women held in Cibola County. She added that the State Bar of New Mexico and other local nonprofits also assist migrants but are overwhelmed.

In response to questions from the committee, Ms. Love explained conditions contributing to increased numbers of asylum seekers in the last decade, including economic instability and poverty, international gangs, domestic violence and other crimes. Ms. Love stated that the current United States president is trying to deter immigration with detention. However, she said, the influx of migrants plus a no-release policy overwhelms the system. Members requested that LCS staff produce a report on the recent history of immigration.

Ms. Love suggested several policies for the state to consider, including implementing robust sanctuary laws that allow state agencies to not cooperate with ICE and disassociating with groups that are connected with corporate correctional facilities. She noted that detention is a very expensive option, with adult detention costing between \$200 and \$300 per night. Ms. Love pointed out that many privately run prisons have bed quotas in their contracts with local and state governmental entities; if the government does not meet those bed quotas, the government is in breach of contract and must pay a fine.

Ms. Love informed the committee that approximately 90 percent of migrants attend their court appearances. She reported that the percentage of asylum claims approved depends on the jurisdiction in which the claim is made but that approval percentages increase when a migrant has counsel. Ms. Love stated that migrants are allowed counsel, but they are not provided an attorney by the government. She noted that if asylum is not granted, a migrant is not immediately deported, as he or she has the opportunity to appeal the ruling. However, she added, if the migrant is detained during the entire process, he or she may become discouraged and self-deport. Most asylum claims take 18 to 24 months to be adjudicated, she said.

Ms. Love stated that unaccompanied undocumented children must have a sponsor family. She explained that adults who are released on their own recognizance must provide an address and that if members of the sponsor family or occupants of the address provided by the released adult are undocumented, ICE may detain the family or occupants.

Ms. Love noted that while asylum claims cannot be made without crossing into another country, normal immigration applications can be started from a person's home country, but the process is not easy and can take decades before a visa is granted.

A committee member noted that New Mexico is home to the only transgender ICE detention pod. In other states, the member said, ICE either places transgender women in the male population or segregates them. Transgender asylum cases are typically very strong because there are clear grounds for asylum, the member said.

## **Legislative Solutions for ICE Arrests at New Mexico Courts**

Tova Indritz, attorney, and Maria Hodge, legal extern, Office of the Lieutenant Governor, presented possible ways to address ICE arrests at courthouses. Ms. Indritz stated that ICE arrests at courthouses make victims, witnesses and litigants afraid of appearing in court, inhibiting the court's ability to dispense justice. Ms. Indritz stated that there have been at least 30 ICE arrests at courthouses since February 2017.

Ms. Indritz proposed that only judicially issued warrants be executed at courthouses, as ICE uses civil or administrative warrants in its arrests. She added that courts could also issue writs of protection to secure a person from civil arrest while at or traveling to and from court.

Ms. Hodge stated that the New Mexico Supreme Court has declined to adopt rules preventing ICE arrests in courthouses, while the Bernalillo County Metropolitan Court has denied the governor's request to increase enforcement of the court's Courthouse Access Policy. Ms. Hodge explained that several states have sought solutions through the legislative and executive branches, while others have filed complaints in United States district courts. Ms. Hodge noted that the preemption clause of the United States Constitution and the anti-commandeering doctrine may both play into any lawsuits that might occur.

Ms. Hodge suggested several recommendations for legislative solutions, including amending Section 31-8-4 NMSA 1978 to protect undocumented persons acting as witnesses. She stated that courts could be authorized to document ICE arrests at courthouses or be allocated funds for remote court appearances.

Members of the committee expressed concern that ICE arrests lead both documented and undocumented migrants to fear accessing state courts. Members discussed federal preemption issues that might arise if legislation is passed and whether a court case would be more appropriate.

## **Public Comment**

Felipe Rodriguez, New Mexico Dream Team, spoke to the committee on the conditions in which migrants are being held and the abuse migrants face in these detention facilities. He stated that privately owned prisons enrich corporations more than the surrounding communities and force people to work in dehumanizing situations.

Marcela Diaz, Somos un Pueblo Unido, stated that the recent increase in ICE detainments leaves people without jobs, income and family. Many of these arrests, Ms. Diaz continued, result from local government and law enforcement voluntarily cooperating with ICE officials. Ms. Diaz requested that legislators encourage local governments not to share information with ICE.

Gerardo Pacheco, Somos un Pueblo Unido, spoke of his experience being detained by ICE in the Otero County Detention Center. Mr. Pacheco stated that he and his fellow detainees were treated poorly and not allowed to communicate with their families or attorneys, adding that

there were many older adults in the facility who were not provided medical care and that the migrant population was mixed with the inmate population. Mr. Pacheco asked that more be done to oversee and inspect ICE facilities.

Hilaria Martinez, New Mexico Faith Coalition for Immigrant Justice, stated that immigrants are New Mexicans. She informed the committee that her husband was detained by ICE when he went to a probation appointment. He was sent to the Otero County Detention Center, where he spent five months in poor conditions. His family and children now fear the police, she said.

Daniel Vega, New Mexico Faith Coalition for Immigrant Justice, told the committee of a friend who was the victim of domestic violence. He said that her family was too scared to take the friend to the hospital or to report the incident to authorities because victims can also be detained by ICE.

Maria Martinez Sanchez, senior staff attorney, ACLU-NM, suggested that instead of banning civil arrests, ICE should be required to obtain judicial warrants rather than draft administrative warrants to effect arrests.

### **Adjournment**

There being no further business before the committee, the meeting adjourned at 1:12 p.m.