

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

**July 29, 2019
State Bar Center
5121 Masthead Street NE
Albuquerque**

The first meeting of the Criminal Justice Reform Subcommittee of the Courts, Corrections and Justice Committee was called to order by Senator Sander Rue, co-chair, on July 29 at 9:46 a.m. at the State Bar Center in Albuquerque.

Present

Rep. Antonio Maestas, Co-Chair
Sen. Sander Rue, Co-Chair
Sen. Gregory A. Baca
Rep. Alonzo Baldonado
Rep. Gail Chasey
Rep. Antoinette Sedillo Lopez

Absent

Rep. Zachary J. Cook
Sen. Richard C. Martinez

Advisory Members

Sen. Bill B. O'Neill
Rep. William "Bill" R. Rehm

Guest Legislator

Sen. Linda M. Lopez

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 29

Welcome and Introductions

Senator Rue welcomed subcommittee members and the audience and introduced LCS staff.

National Conference of State Legislatures (NCSL)

Amanda Essex, senior policy specialist, criminal justice, NCSL, presented about criminal justice reform. Ms. Essex gave an overview of the NCSL and explained her role within the organization.

Ms. Essex discussed sentencing systems among the different states. She stated that there are common denominators to sentencing and corrections reform, including implementation of large-scale reforms, bipartisan support and support across different government branches. Ms. Essex also provided examples of how other states have reformed criminal justice laws.

Ms. Essex explained that some states have increased the threshold value for felony theft. Along those lines, several states' reforms seek to clearly distinguish the seriousness of a crime and whether it was violent in nature. Some states have also lowered the penalties for certain offenses, including decriminalizing possession of small amounts of marijuana and decriminalizing traffic offenses.

On questioning, Ms. Essex and subcommittee members addressed the following topics.

Risk analysis assessments. A member asked whether risk analysis assessments accurately address the unique issues and racial distinctions in New Mexico. Ms. Essex responded that the accuracy of risk assessments depends on the method of data collection used and stated that the NCSL could provide information on other states that use risk analysis assessments.

Judicial discretion. A member stated a concern about criminal justice reform measures that remove judicial discretion. Ms. Essex responded that a number of states that have implemented criminal justice reforms have started to add more elements of judicial discretion back into statute.

Property crime. A member expressed concern about the idea of decriminalizing property crime in the state because loss from property crime results in small businesses having to pay insurance deductibles and increasing their prices as a result.

South Dakota penalties. A member asked whether the NCSL could provide information about South Dakota's penalty system, which was mentioned in the presentation. Ms. Essex said that she would try to provide this information to LCS staff.

Recidivism rate for shoplifting offenses. A member asked whether there was any data on the recidivism rate for shoplifting. Ms. Essex said that she would try to provide information about this question to LCS staff.

Standard possession amounts for marijuana offenses. A member asked what the standard allowable possession amounts are for marijuana offenses. Ms. Essex said that she would need to check on this but would provide information to LCS staff.

Classification of Crimes in the Criminal Code

Representative Maestas provided an overview of the classification of crimes in New Mexico statute. He stated that Chapter 30 NMSA 1978 is the Criminal Code but that certain penalties are found in other parts of statute. For example, there are penalties found outside the Criminal Code for traffic violations, game and fish violations, New Mexico Insurance Code violations and trade practice violations.

Representative Maestas explained that New Mexico has four degrees of felonies as well as a determinate sentencing structure. He explained the difference in the statute of limitations for first and second degree murder. He then addressed the habitual offenders law found in Section 31-18-17 NMSA 1978.

On questioning, Representative Maestas and subcommittee members addressed the following topics.

Organizational framework for penalties. A member asked whether it would be possible to make a chart that shows the penalties for felonies. Another member followed up by stating that it is necessary to implement a framework for reforming penalties and suggested that it might be helpful to examine each type of crime and the hierarchy of penalties within each type.

Statutory cleanup. A member asked whether the legislature routinely cleans up statutes. Another member responded by explaining that when a bill is drafted, the drafter makes other necessary changes within the statutory text.

Statutes of limitations. A member asked for clarification about the DNA exception for statutes of limitations. Representative Maestas responded that the statute of limitations begins to run when a DNA test identifies the perpetrator in a rape case.

Suspension. A member asked under what circumstances a judge has the authority to suspend a case. Representative Maestas responded that, with the exception of mandatory sentences, a judge has discretion to suspend any case.

Sentencing Reform: New Mexico SAFE

Rikki-Lee Chavez, attorney, The Emissary Group; Emily Kaltenbach, state director, Drug Policy Alliance; Barron Jones, Smart Justice coordinator, American Civil Liberties Union of

New Mexico (ACLU of NM); and Kim Chavez Cook, attorney, Public Defender Department, presented about sentencing reform.

Ms. Kaltenbach spoke on the importance of increasing funding for behavioral health treatment. She suggested the reclassification of drug possession from a fourth degree felony to a misdemeanor. Ms. Kaltenbach also indicated the alliance's desire for penalties for low-level selling of drugs to be included in the reforms.

Ms. Chavez Cook explained sentencing for habitual offenders. She stated that the sentencing time can add up quickly due to sentence enhancements and concurrent or consecutive sentences. She also said that increased sentencing time may not have any deterrence value.

Ms. Chavez Cook provided three suggestions for sentencing reform. First, she suggested giving a judge discretion in cases where a person's charges are related to drug abuse or mental health issues. Second, she suggested amending the habitual offender statute so that it excludes drug abuse issues. Third, she suggested reducing certain felonies to misdemeanors. She further stated that battery on a peace officer and battery on a health care worker would both be a good fit for reduction from a felony to a misdemeanor.

Ms. Chavez Cook spoke about the "three strikes" law in New Mexico. She explained that the law was meant to put away the most violent offenders but that it is actually capturing people that do not have any violent tendencies. She also stated that the three strikes law adds more traffic to a system that is already strapped for resources.

Mr. Jones presented on racial impact statements. He stated that the three strikes law disproportionately affects racial minorities. He also said that six states have mandated racial impact statements.

On questioning, the panel of speakers and subcommittee members addressed the following topics.

Safety-related crimes. A member asked whether there are certain crimes for which the public is safer if the individual is incarcerated and expressed concern that the public wants to be reassured of safety. Another member explained that the Parole Board and the judicial system have discretion in regard to the criminal justice process.

Poverty as an impacting factor. A member stated that along with racial impact statements, it would be beneficial to look at the effect of poverty.

Judicial discretion. A member expressed concern with limiting judicial discretion. A member of the panel responded that maintaining judicial discretion is preferable to taking it away, but one way to address the judicial discretion issue is to use pretrial diversion practices.

Decriminalization of opioid use. A member asked a question about decriminalizing opioid use. A member of the panel responded that the problem is not the use of the substance but the conduct that occurs after the substance use has occurred.

Collateral Consequences of Conviction

Paul Haidle, senior policy strategist, ACLU of NM, presented on the collateral consequences of conviction. Mr. Haidle defined a collateral consequence as a sanction, restriction or disqualification that attaches to a person because of the person's criminal history. Some collateral consequences include the ability to vote, to serve on a jury, to hold a public office, to secure employment, to maintain legal status as an immigrant, to qualify for financial aid or college admission, to own a firearm, to obtain a driver's license, to qualify for military service, to receive public assistance or to obtain housing. Mr. Haidle also explained that collateral consequences extend past the individual and affect communities as well.

Mr. Haidle stated that the "ban the box" law and the law relating to the expungement of criminal records are steps in the right direction for reducing collateral consequences in the state.

Public Comment

The subcommittee heard public comment from the following organizations and individuals.

Kimberlee Pena Hanson, executive director, Gordon Bernell Charter School, expressed the organization's support of the subcommittee's work.

Douglas Carver, deputy director, New Mexico Sentencing Commission, stated that the commission supports measures that address the collateral consequences of conviction, such as those addressed in Senate Bill 325 (2019).

Cisco McSorley, director, Parole Board, stated that New Mexico has a risk assessment tool called COMPASS but that it is in the process of switching to a new tool called OMNI. He said that if the subcommittee has any particular risk factors that it would like to see included in the new assessment tool, it could work with staff to implement those factors into OMNI.

Diane McCash indicated her support of the subcommittee's efforts to reform probation and parole.

Adjournment

There being no further business, the subcommittee adjourned at 3:50 p.m.