

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

**October 15-16, 2019
Village Council Chambers
660 Main Street NW
Los Lunas**

The third meeting of the Criminal Justice Reform Subcommittee (CJRS) of the Courts, Corrections and Justice Committee was called to order by Representative Antonio Maestas, co-chair, on October 15, 2019 at 10:06 a.m. in the Village Council Chambers in Los Lunas.

Present

Rep. Antonio Maestas, Co-Chair
Sen. Sander Rue, Co-Chair (10/15)
Sen. Gregory A. Baca
Rep. Alonzo Baldonado
Rep. Gail Chasey
Rep. Zachary J. Cook (10/15)
Sen. Richard C. Martinez
Sen. Antoinette Sedillo Lopez

Absent

Advisory Members

Sen. Bill B. O'Neill (10/15)
Rep. William "Bill" R. Rehm

(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.

Tuesday, October 15

Welcome and Introductions

Representative Maestas welcomed the subcommittee. Members and staff introduced themselves.

Specialty Court Programs in the Thirteenth Judicial District

Beth A. Williams, deputy court executive officer, Thirteenth Judicial District Court, discussed the use of specialty court programs, such as drug courts, in Valencia County. Ms. Williams explained that drug courts are still relatively new programs and will benefit from innovation and the development of evidence-based best practices.

D.J. Renteria, program director, Juvenile Drug Court, Thirteenth Judicial District Court, provided an overview of the Valencia County Juvenile Drug Court. Addicted or substance-abusing youth enter the court via adjudication or preprosecution diversion, he said. Those who enter through adjudication are under strict court supervision, have more requirements than preprosecution participants and may face detention for a positive drug test. All participants are evaluated by a clinical provider to create a treatment plan, and participants are expected to maintain good standing in school. Good behavior and progress are rewarded, while violations are met with appropriate sanctions.

Mr. Renteria explained that rewards and sanctions are determined weekly by the Juvenile Drug Court team. The team has 12 members, including juvenile parole officers, counselors, a defense attorney and a district attorney. Including a variety of juvenile justice stakeholders helps to provide youth with a balanced and fair case in drug court.

Mr. Renteria stated that youth who complete the program through preprosecution diversion will not have a criminal record and will not serve any prison time. Adjudicated youth, however, have already been charged before they enter Juvenile Drug Court, but participation in the court can avoid a felony conviction. Adjudicated youth who have exhausted all other sanctions could spend a short period of time in detention, he noted. Many youth improve their school attendance and grades while in the program.

Ragon Espinoza, coordinator, DWI Drug Court, Thirteenth Judicial District Court, provided a brief history of drug courts, which developed based on the belief that people cannot be punished into sobriety. Treatment, appropriate supervision and a system of prompt consequences are key to drug courts, he said. Participants are referred to the Valencia County DWI Drug Court by judges and attorneys. If accepted into the program, a participant works with DWI Drug Court team members to set proximal and distal goals. Proximal goals should be attainable in the present or near future and include honesty and attending treatment, and distal goals are long-term, such as sobriety, Mr. Espinoza said. He added that proximal goals are highly sanctioned, and those who lie about substance abuse face greater consequences than those who are honest.

Mr. Espinoza discussed the cost-effectiveness of drug court programs. The Valencia County DWI Drug Court has a lower recidivism rate than average, and it costs approximately \$23.00 per participant per day, while a day in prison costs almost \$100 per person. Participants in the program have improved self-esteem and health as they reach sobriety.

Ms. Williams informed the subcommittee that, nationwide, juvenile drug courts have seen reduced participation. Ms. Williams opined that this does not mean that drug courts are ineffective but that they are changing. Drug courts have high retention rates nationwide, and the Valencia County Juvenile Drug Court had 26 graduates and an 80 percent retention rate in the last year, Ms. Williams stated, adding that judges impact the whole community when judges are able to invest their time in specialty court programs.

In response to questions from the subcommittee, Mr. Renteria explained that the Juvenile Drug Court serves 13- to 18-year-olds but separates participants by age, gender, risk level and needs. Clinical assessments take approximately three hours and are conducted in sessions both with and without parents; a defense attorney is also present. Mr. Renteria noted that working with families can be difficult, especially if the family is not biologically related to the participant.

The panel discussed the difficulty of transportation and scheduling in a largely rural county. Mr. Renteria stated that participants in Juvenile Drug Court and their drivers can be offered gasoline cards, which are paid for by grants or the court's budget. Court employees have also provided rides in court vehicles. A member of the subcommittee expressed frustration that Medicaid contractors are not required to offer drug testing or transportation.

Members discussed the importance of tracking program data and providing the data to Legislative Finance Committee (LFC) analysts. Ms. Williams stated that the Thirteenth Judicial District works closely with the Administrative Office of the Courts to collect data. The district has also reached out to the Center for Court Innovation, which provides technical assistance to criminal justice organizations for analysis assistance. The district tracks demographic information, some of which is reported to supplemental funding sources. Ms. Williams explained that both the Juvenile Drug Court and the DWI Drug Court see a high rate of Hispanic participants, which may relate to the high rate of Hispanic poverty in the county. Mr. Renteria recognized the importance of providing culturally sensitive programming and noted that Spanish-language interpreters and documentation are available for all interactions. The court is also working with the Pueblo of Isleta to develop appropriate programming for youth.

Mr. Espinoza and Mr. Renteria discussed enrollment levels and funding in the specialty courts. The DWI Drug Court can serve a maximum of 30 people at a time, although enrollment is typically kept between 20 and 25. The DWI Drug Court has a wait list, but the Juvenile Drug Court does not. However, the district attorney can freely refer people to the program. Both programs see more participation in the summer. More funding is always needed for incentives and community programming. Staffing is also difficult because of low pay, the presenters said.

Reform Committee of the New Mexico Sentencing Commission (NMSC)

Linda Freeman, executive director, NMSC, introduced Douglas Carver, deputy director, NMSC, and Angela "Spence" Pacheco, chair, Reform Committee, NMSC. Ms. Freeman explained that the NMSC is housed at the University of New Mexico, which allows the NMSC to interact with other researchers and insulates the NMSC from politics. NMSC staff evaluate preprosecution diversion programs, such as the Pojoaque Law Enforcement Assisted Diversion Program; collect and analyze data from criminal justice agencies around the state; and staff NMSC committees on reform, juvenile justice and legislative proposals.

Mr. Carver explained that all NMSC committees are composed of criminal justice stakeholders from around the state. The Legislative Committee meets during the legislative session to discuss and endorse legislation relating to criminal justice. The Reform Committee was reestablished this year to implement the reform agenda of the NMSC.

Ms. Pacheco stated that the Reform Committee has provided a venue for members to see where communication has broken down and where positive recognition is lacking. She provided an overview of the Reform Committee's position on probation and parole reform, which is detailed in the "Probation and Parole Reforms" handout. The Reform Committee reached a consensus on the development of a tiered probation and parole system but was unable to agree upon the criteria for such a system, Ms. Pacheco noted. The committee was unable to agree on whether incarceration should be a response for technical parole violations, she said.

In response to questions from the subcommittee, Mr. Carver stated that the Reform Committee's next meeting will be held after a new probation and parole reform bill is drafted, but the Reform Committee has already held four meetings. Members of the CJRS are welcome to attend Reform Committee meetings, he said.

Members of the subcommittee discussed possible tiered systems of probation and parole. Ms. Pacheco noted that Reform Committee members and CJRS members disagreed upon issues, including responses to absconding, violations related to substance abuse and the classification of parolees by initial crime.

Sentencing Emerging Adults

Mr. Carver discussed the changing status of emerging adults in the criminal justice system. He noted that science and society are coming to recognize a stage of growth separate from childhood and adulthood, which is frequently referred to as young or emerging adulthood. During this stage, an individual's risk and reward calculations are skewed, but the individual is often more amenable to rehabilitation.

Mr. Carver noted that several states offer expungement for criminal records incurred as a young adults. Several states make other provisions for emerging adult offenders, such as special court programs and separate correction units. Germany, Croatia and the Netherlands allow emerging adults to participate in youth court for longer periods of time than the United States.

Mr. Carver stated that the NMSC has a Juvenile Committee that can make recommendations on emerging adults to the full commission.

In response to questions from the subcommittee, Mr. Carver explained that the effects of trauma frequently manifest during emerging adulthood, as do mental illnesses. Members of the subcommittee discussed the importance of providing treatment rather than criminalizing an individual from a young age. Mr. Carver explained that research into emerging adulthood is new, and data on race, gender and ethnicity may not yet be available.

Mr. Carver stated that societal indicators of adulthood, such as drinking and obtaining health insurance, have been pushed to later ages. This may indicate society's recognition of emerging adulthood as a stage of growth.

Public Comment

Cisco McSorley, director, Parole Board, spoke in favor of specialty court programs, especially for youthful offenders.

Recess

The subcommittee recessed at 3:47 p.m.

Wednesday, October 16

Reconvene

Representative Maestas reconvened the subcommittee at 9:52 a.m.

Discussion: Possible Topics for Bills in the 2020 Legislative Session

Subcommittee members discussed possible topics for bills in the upcoming legislative session, including changes to probation and parole, sentencing reform, penalties for sex trafficking and the use of good time in prisons. Members noted the importance of working with the LFC on the financial aspects of criminal justice reform.

Approval of Minutes

The subcommittee unanimously adopted the minutes of the July 29, 2019 subcommittee meeting. The subcommittee adopted the minutes of the August 20-21, 2019 subcommittee meeting, amended on page 2 from "probation is an option only for those inmates" to "parole is an option only for those inmates".

Sentencing Outside the Criminal Code: Department of Game and Fish (DGF)

Robert Griego, colonel of field operations, DGF, and Jason Alarid, attorney, discussed the regulations of the DGF and how the regulations are enforced.

Colonel Griego stated that the DGF is responsible for game species, protected species and nongame species as determined by statute. The Law Enforcement Division of the DGF has

approximately 120 employees, 100 of which are commissioned officers based around the state. Chapter 17 NMSA 1978 authorizes the State Game Commission to promulgate rules relating to game and fish in New Mexico, and these rules are then enforced by the DGF. The rules include appropriate methods of hunting and fishing, what weapons may be used and what penalties can be assessed. Hunting or fishing license revocation is a common penalty, although jail time and fines are also possible, Colonel Griego said.

Mr. Alarid stated that he represents many clients in game and fish cases, many of whom he believes acted out of ignorance rather than a desire to break the law. He expressed concern that the rules and regulations created by the State Game Commission and enforced by the DGF are unconstitutionally vague. Mr. Alarid noted that hunting is not defined in statute.

In response to questions from the subcommittee, Mr. Alarid stated that deferred sentences, which are not considered admissions of guilt in court, have been used to revoke hunting licenses. Colonel Griego stated that the DGF considers deferred sentences to be an admission of guilt, and he offered to present to the subcommittee on the matter in the future.

The panel and the subcommittee discussed intent and how the DGF establishes intent in its investigations. Mr. Alarid expressed concern that individuals who accompany a hunter engaged in illegal activities may be charged with aiding and abetting. Colonel Griego stated that guides and outfitters with a knowledge of the regulations may be sanctioned more harshly than the hunter following the direction of guides and outfitters. Most cases go to the district attorney, Colonel Griego said, but the DGF may move forward with charges if the district attorney's caseload is too high.

Members of the subcommittee stated that it may be helpful to both the DGF and the public to reduce vagueness in rules and regulations. Members suggested that the statutes could be amended to provide more clarity for the State Game Commission, although a member cautioned against placing too many details in statute. Members recognized that all of the members of the State Game Commission are newly appointed and may need time to make changes.

Adjournment

There being no further business before the subcommittee, the third meeting of the CJRS adjourned at 12:26 p.m.