

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

**August 20-21, 2019
Ruidoso Convention Center
111 Sierra Blanca Drive
Ruidoso**

The second 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 August 20, 2019 at 9:57 a.m. at the Ruidoso Convention Center in Ruidoso.

Present

Rep. Antonio Maestas, Co-Chair
Sen. Sander Rue, Co-Chair
Sen. Gregory A. Baca
Rep. Alonzo Baldonado (8/20)
Rep. Gail Chasey
Rep. Zachary J. Cook

Absent

Sen. Richard C. Martinez
Rep. Antoinette Sedillo Lopez

Advisory Members

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

Guest Legislators

Rep. Rachel A. Black
Sen. Ron Griggs (8/20)
Sen. Linda M. Lopez (8/20)

(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, August 20

Welcome and Introductions

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

Sentencing Reform: Justice Action Network (JAN)

Jenna Moll, director, JAN, presented on sentencing reform. She gave an overview of JAN and explained her role within the organization. Ms. Moll stated that JAN is the largest bipartisan coalition working on criminal justice reform and that it only works on evidence-based criminal justice reforms. She explained that, historically, criminal justice was focused on punitive aspects, but that approach does not necessarily help with changing an individual's behavior.

Ms. Moll said that sentencing reform efforts are moving toward more individualized systems of probation. Those systems focus on risk, need and responsivity. The risk component focuses on the seriousness of the crime and the reasons for committing it. The need component focuses on the positive factors that, if addressed properly, make the individual less likely to remain in custody. The responsivity component addresses whether the programs are effective in reducing crime and supervision. Ms. Moll stated that there is a movement toward probation sentencing being goal-based versus time-based.

Regarding reform recommendations, Ms. Moll said that the number one area of focus is on the individual aspects of probation supervision and that the goal should be to focus on four to six criminogenic needs. She said that form probation is not effective and can be costly. Ms. Moll strongly urged the state to focus on earned "good time" credits, which allow individuals to reduce their overall probation time.

Ms. Moll spoke about graduated sanctions and incentives and explained that the sooner the punishment is implemented, the better the results are proven to be. She also spoke of the importance of distinguishing between technical and non-technical violations.

Ms. Moll explained that in New Mexico, parole is an option only for those inmates serving lengthy sentences. She said that some states use earned good time credits for parole. She advised that parole conditions need to be tailored to the individual and focused on access to employment.

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

JAN. A member asked for background information on JAN. Ms. Moll stated that it is a 501(c)(4) organization that is funded by a couple from Houston, Texas.

Technical Violations. A member stated that there needs to be consequences for a failed drug test, but the consequences should not necessarily require reincarceration. Ms. Moll responded that it is most effective to have a clear variance and progression in punishment systems.

Probation Revocation. A member asked at what point in the system of graduated sanctions is an individual's probation revoked. Ms. Moll stated that if the severity of the original offense and the severity of the violative offense are both high enough, then the grid will specify revocation, but it is ultimately up to the state to establish that line.

Graduated Sanctions. A member stated support for individualized sanctions over graduated sanctions.

Proportionate Sanctions. A member asked about the benefits of proportionate sanctions. Ms. Moll explained that every time the risk, need and responsivity analysis is used, states are getting data on what works for the individual and what does not.

Probation Officers. A member asked whether probation officers have set working hours. Ms. Moll responded that probation officers are experimenting with flexible hours and locations and that video conferencing might also be possible.

Social Workers. A member asked if Ms. Moll knew of jurisdictions where social workers have been incorporated into the probation and parole process. Ms. Moll said that she will get more details on this.

Assessing the System. A member asked whether states go back and assess how a person tracked through the system. Ms. Moll responded that doing so can help address a system failure but cannot account for individual human nature.

Use of the Arnold Tool. A member stated the importance of being careful when comparing New Mexico's system to systems of other states and asked how Ms. Moll responded to the criticisms of the Arnold tool, a risk assessment tool developed by the Laura and John Arnold Foundation. Ms. Moll stated that she acknowledges the differences among other states and cautioned against using model bills. She added that use of the Arnold Tool should be combined with discretion and professional expertise.

Sentencing Reform: Council of State Governments (CSG)

Carl Reynolds, senior legal and policy advisor, CSG, presented on sentencing reform. Mr. Reynolds stated that crimes of varying types should be systematically ranked and grouped in order of severity. He also distinguished between scalable offenses, special interest offenses and

outlier offenses. Mr. Reynolds used the example of property crimes as scalable offenses and explained that severity can be ranked based on monetary value.

Mr. Reynolds spoke about habitual offender laws. He explained that some negative consequences of habitual offender policies include reduced proportionality of punishment to conviction offense severity, increased prosecutorial discretion and leverage, increased need for prison beds to house people convicted of property and drug offenses, increased number of older inmates and the potential for increased racial disproportionality in prison.

Mr. Reynolds indicated that data for New Mexico must be further developed to quantify the impact of supervision violations on prisons and jails. He also stated that the investigation of fees, fines and restitution can be part of a sentencing study but requires additional commitment of resources and time.

On questioning, Mr. Reynolds and subcommittee members addressed the following topics.

Frameworks for Criminal Justice Reform. A member asked whether states that have done a good job with criminal justice reform used a framework before creating guidelines. Mr. Reynolds said that every state started with goals for the reforms.

Model Penal Code (MPC) and Criminal Enhancements. A member asked if Mr. Reynolds could provide information to subcommittee members on the MPC and criminal enhancements. Mr. Reynolds stated that he provided that information to Mr. Peralta-Silva.

Restitution. A member stated that it is difficult for an individual who is incarcerated to make regular restitution payments. Mr. Reynolds responded that every state struggles with restitution and that it is important to make sure that it is prioritized in statute and that the supervision system is aimed at collecting restitution.

Crime Rate Reduction. A member asked if there is any proof that crime rates are down. Mr. Reynolds responded that crime rates have gone down all across the United States but that New Mexico crime rates have gone up, mostly due to a decrease in population.

Implication on Juveniles. A member asked if there are any studies on juvenile sentencing. Mr. Reynolds spoke about a study in Texas, where criminal justice reforms have dramatically reduced the population of juveniles in custody. He said that he will share a copy of that report with Mr. Peralta-Silva.

Sentencing Reform: Fifth Judicial District Attorney's (DA's) Office

Dianna Luce, DA, Fifth Judicial District, presented on sentencing reform. Ms. Luce expressed concern about the sentence for second degree murder. She stated that it is difficult to explain the sentencing discrepancy between first and second degree murder to victims. She

indicated that a judge still has discretion to alter the sentence in cases where the punishment is too strict. She also expressed concern about the sentence for voluntary manslaughter.

Tim Rose, DA, Tenth Judicial District, presented on sentencing reform. Mr. Rose explained the process in rural Quay County. He spoke about the importance of family relationships in the rural setting and stated that he often works with the family of the offender.

Mr. Rose said that Quay County is severely affected by methamphetamine use. He explained that it is different from working with other drug charges because methamphetamine has different psychological effects.

Gerald Byers, chief deputy DA, Third Judicial District, presented on sentencing reform. Mr. Byers explained that there has been a change in the prosecutorial mindset toward focusing on the humanity of the incarcerated person.

Mr. Byers stated that his district has emphasized diversion programs that seek to rehabilitate the individual. He also spoke on the effects of methamphetamine use in his district. Additionally, Mr. Byers spoke about the importance of victims' rights and said that changes in the sentencing structure need to take victims' rights into consideration.

Linda Atkinson, executive director, DWI Resource Center and New Mexico Victims Rights Project, presented on sentencing reform. Ms. Atkinson stated that 80% to 85% of domestic violence victims do not report incidents. She said that she would like to see a change in language in court documents from "alleged victim" to "victim". She expressed concern with revictimization as a person moves through the system.

On questioning, the presenters and subcommittee members addressed the following topics.

Sentencing Priority for DAs. A member asked for confirmation that second degree murder and voluntary manslaughter are the two priority offenses for sentencing reform for the DAs. Ms. Luce confirmed that they are.

Diversionary Programs. A member asked if the state is doing a good job in regard to diversionary programs. Mr. Byers responded that while the laws for diversionary programs are on the books, there are few facilities to which to send people. He stated the importance of attracting and funding mental health professionals.

Restitution. A member asked what a reasonable expectation would be for restitution and whether the state needs to reexamine the issue. Mr. Byers responded that restitution can be dismissed or adjusted.

Stacking of Offenses. A member spoke about a change in law that allows embezzlement charges to be stacked and asked if there are other charges that can be stacked. The DAs responded that similar offenses, such as issuing worthless checks, cannot be stacked.

Victim Advocacy. A member spoke about the possibility of victim advocacy services being moved into its own agency. The DAs indicated that sometimes victims do not understand the role of a DA in the case and may think that their communications with the DA are confidential.

Murder Charges. A member asked for clarification on the difference between a first and a second degree murder charge. Ms. Luce stated that first degree murder requires premeditation or deliberation, which is difficult to prove but easy for the defense to attack, especially in drug use cases. For second degree murder, the statute of limitations is six years and if that six years passes, prosecutors do not get to offer the lesser included offenses.

Limitations on Three Strikes Laws. A member asked for clarification on the three strikes law. Ms. Luce stated that most prosecutors do not use the three strikes law because when the individual crimes time out, prosecutors cannot use the three strikes law. She indicated that prosecutors seek habitual enhancements.

Recreational Marijuana. A member asked about recreational marijuana use. The DAs said that the black market in Colorado is stronger than it was before the state legalized recreational marijuana. The DAs also stated that legalizing recreational marijuana creates problems of driving under the influence and forming specific intent for other crimes.

Wednesday, August 21

Sentencing Reform: Addressing the Behavioral Health and Mental Health Needs of Our Communities

Danielle Munez, social worker, Public Defender Department (PDD), presented on the behavioral and mental health aspects of sentencing reform. Ms. Munez stated that mental health issues are more prevalent in rural areas, where people are more likely to live in poverty. She said that rural areas often have a shortage of mental health providers. Ms. Munez said that there is a need for mental health treatment in rural areas that addresses posttraumatic stress disorder.

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

Mental Health Professional Requirements. A member asked what experience is required of a mental health professional. Ms. Munez responded that there are several different types of mental health providers. She said that certified peer support professionals are required to have 40 hours of training but that most other service providers require a master's degree and a license. She also stated that there are not enough practitioners to provide the supervisory hours required for licensure.

Tax Credit. A member asked whether the tax credit for doctors and nurses applies to mental health professionals. Ms. Munez responded that it does not.

Drug Use. A member expressed concern with drug use in relation to criminal acts. Ms. Munez responded that drug use is a problem and that it is hard to separate the drug use from the criminal act.

Funding. A member asked what the state needs to do regarding funding issues. Ms. Munez said that it is a state issue and that it might be helpful to look at Medicaid restructuring.

Sentencing Reform: A Rural Perspective and a Rural Fellowship Project

Matthew Chavez, district defender, Twelfth Judicial District, PDD, presented on a rural perspective to sentencing reform. Mr. Chavez stated that New Mexico has a higher percentage of rural areas than the national average. He also stated that small counties have driven the overall jail growth since 1970, despite their substantially lower crime rates in comparison to urban areas.

Mr. Chavez said that the number of women in confinement in rural communities is rapidly rising. He explained that incarcerated women experience mental health, substance abuse and co-occurring disorders at twice the rate of men.

Mr. Chavez discussed the problem of lawyer shortages in rural areas and the factors that affect this problem. He stated that a first step to address this problem is implementing a rural fellowship program. The goal of a rural fellowship program is to provide a pipeline of public defenders and prosecutors to rural New Mexico.

On questioning, Mr. Chavez and subcommittee members addressed the following topic.

Rural Fellowship Program. A member asked what steps would be necessary to set the fellowship program in motion. Mr. Chavez responded that the main challenge will be funding the program.

Public Comment

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

Administrative Office of the Courts (AOC)

Cynthia Pacheco, manager, Warrant Enforcement Program, AOC, expressed concern about the roadside plea in New Mexico and supports its elimination.

The Disability Coalition

Ellen Pinnes, advocate, The Disability Coalition, expressed the organization's concern with Medicaid not covering certain mental health services. She also stated that the organization supports licensing reform.

Disability Rights New Mexico

James Jackson, executive director, Disability Rights New Mexico, expressed the organization's position that legislation should be monitored to make sure that it is actually making a difference. He stated that, regarding red flag legislation, the organization supports language that is neutral and that it is important to make sure that the language does not stereotype people with mental illness.

Twelfth Judicial District Court

The Honorable Daniel A. Bryant, judge, Twelfth Judicial District Court, Division III, stated that, in regard to criminal justice reform, the state needs to be willing to look at which offenses deserve attention and a punishment of incarceration. He also explained complications that arise on the Children, Youth and Families Department's docket.

Adjournment

There being no further business, the subcommittee adjourned at 1:36 p.m.