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

August 10, 2018
State Bar Center
5121 Masthead Street NE
Albuquerque

The second meeting of the Criminal Justice Reform Subcommittee of the Courts, Corrections and Justice Committee was called to order by Representative Antonio Maestas, co-chair, on August 10, 2018 at 9:37 a.m. at the State Bar Center in Albuquerque.

Present	**Absent**
Rep. Antonio Maestas, Co-Chair	Sen. Richard C. Martinez
Sen. Sander Rue, Co-Chair	
Sen. Gregory A. Baca	
Rep. Gail Chasey	
Rep. Zachary J. Cook	
Rep. Jim Dines	
Sen. Cisco McSorley	

Guest Legislator
Sen. Bill B. O'Neill

Staff
Celia Ludi, Staff Attorney, Legislative Council Service (LCS)
Randall Cherry, Staff Attorney, LCS
Erin Bond, Research Assistant, LCS
Magdalena Kephart, Law Student Intern, LCS

Guests
The guest list is in the meeting file.

Handouts
Handouts and other written materials are in the meeting file.

Friday, August 10

Call to Order and Introductions

Representative Maestas welcomed everyone to the meeting, and the subcommittee members and staff introduced themselves. Representative Maestas also recognized retired New Mexico Supreme Court Justice Edward L. Chavez in the audience.

Using Data Analytics to Improve New Mexico's Public Safety and Criminal Justice Outcomes

Daniel Gerard, M.S., director of operations, Institute of Crime Science (ICS), University of Cincinnati, was joined by M. Murat Ozer, Ph.D., research associate, ICS, and Jamie Newsome, Ph.D., research associate, ICS. Mr. Gerard introduced himself and his colleagues, stating that he recently retired from the Cincinnati Police Department (CPD), where he served as a district commander and was directly responsible for police operations in a 20-square-mile area with more than 85,000 residents in 14 neighborhoods. Mr. Gerard stated that Dr. Ozer is from Turkey, where he developed counterterrorism programs, and that Dr. Newsome previously worked in a community-based correctional facility and conducted research on the causes of crime and delinquency. Dr. Newsome added that the ICS was developed to support agencies in developing research-oriented programs.

Mr. Gerard observed that most stakeholders in the criminal justice system want the system to be effective, efficient and equitable. The system must be able to effectively deal with emotionally charged events, efficiently use limited resources to solve problems and equitably serve all people in a transparent manner.

Mr. Gerard explained that researchers and governments traditionally look at large areas, such as precincts and districts or cities and counties. This makes the specific underlying causative factors of increased criminal justice system activity more challenging to analyze. Thus, criminal justice systems often treat symptoms and do not address the underlying problems.

Mr. Gerard informed the subcommittee that crime is not randomly distributed, citing as an example a "hot spot" study of Minneapolis that concluded that 3% of the city's addresses generated 50% of calls for service to the police and that a small number of serious chronic offenders account for an overwhelming majority of crimes. Mr. Gerard added that 10% of men account for around 66% of the crimes committed by men, while 10% of women account for 59% of crimes committed by women.

Mr. Gerard commented that most shooting victims and suspects shared characteristics, including low levels of education, poor social skills and fractured families, noting that the effects of street life compound over time for both individuals and families and are exacerbated by the lack of legal economic opportunities, causing individuals to turn to illegal activities, such as drug dealing.

Mr. Gerard informed the subcommittee that in 2015, 50% of gun homicides in the United States occurred in just 127 cities and towns, even though those cities and towns collectively contain less than 25% of the population, and the individual neighborhoods where these homicides occurred make up an area only 42 miles wide by 42 miles long. In comparison, the contiguous United States is 2,802 miles wide by 1,650 miles long.

Mr. Gerard explained how data analytics programs developed by Dr. Ozer allowed the CPD to identify specific neighborhoods where particular crime rates are higher and, further, to identify the individuals involved. Turning criminal justice data into actionable intelligence can be difficult, however. Raw data is produced by many criminal justice system players, including police officers, prosecutors, judges and magistrates, correctional officers and post-release authorities, and may be housed in many individual databases that are maintained by different agencies and are not linked. Analytical approaches collect and condense the data from different sources and make patterns easier to identify. The ICS data visualization program has the ability to link people and places using information from a variety of sources and can process an unlimited number of records. The program can clearly display analyzed information in an easily actionable format. To implement a similar program in New Mexico, the ICS would need data and a memorandum of understanding for future data access. A process would also need to be in place to allow the ICS to remotely acquire agency data at regular intervals.

Dr. Ozer then demonstrated the ICS analytics program using a density map that displayed all of the crimes reported in Cincinnati in the previous 60 days. The density map uses data that autopopulates nightly from police databases. The map can center on areas of interest, such as neighborhoods, streets and buildings; a specific incident may also be selected to display details from applicable reports. In addition to the current data, the program also contains information derived from reports on every police contact in the area in the past five years. The data can be sorted to display demographic groups or to identify common contacts between individuals to create degrees of separation diagrams. These diagrams can be used to determine who is at the center of a criminal organization and who might be an effective informant.

The diagrams have also been used by overdose response teams to reach out to friends and acquaintances of people who have suffered drug overdoses. This allows law enforcement officers to proactively identify and offer services to individuals who might also be at risk for a drug overdose in the future. Mr. Gerard observed that in situations without analytics, an individual may have to overdose before police know that intervention is needed. He noted that the program also allows local law enforcement to track and predict the movement of drug overdoses and violence throughout the city and state, and areas in the likely path of a crime wave could be given time to train and warn the public and officers. For example, the data analytics program has shown that Cincinnati typically runs eight days behind a crime wave in Louisville, Kentucky, while Ross County, Ohio, has been observed to trail Cincinnati by two weeks. This knowledge, and the sharing of information, allows Cincinnati and Ross County to prepare more effectively to prevent similar crimes.

Mr. Gerard pointed out that the analytics program can also be used in correctional facilities to track patterns of violence. For example, staff could not understand the reason for sudden regular spikes in violent incidents among juveniles residing in a facility of the Ohio Department of Youth Services. Application of the analytics program determined that the violence coincided with the release of educational programs, times when individuals who would not otherwise be permitted to interact encountered each other in hallways. In another instance, the program's social network analysis showed that a juvenile bystander who witnessed but was not directly involved in approximately 20 violent incidents was, in fact, the leader of the group instigating violence. He was transferred to another location, and the violence rates decreased. The program also identified times of understaffing and dangerous locations within the facilities.

In adult facilities, Mr. Gerard continued, the ICS analytics program has been used to study behavioral health needs. Recidivism rates for treatment programs can be tracked to determine the best practices. Average recidivism rates can be produced for a specific treatment modality as well.

Mr. Gerard concluded that the power of data analytics is the ability to focus on the people committing crimes, rather than waste resources on surveillance of whole communities of generally law-abiding people. Instead of targeting entire neighborhoods because of high crime rates, the knowledge that most residents were not only not involved but were likely to be victims, and that most of the crimes were committed by a few people who could be identified and removed, allowed police to focus their resources on wrongdoers and made the neighborhoods safer and their residents more trusting of police. Mr. Gerard remarked that, in approximately three and one-half years of applying data analytics in Cincinnati's District 3, there had been a significant reduction in violent crimes because police attention was focused on the appropriate targets, rather than the community at large, and the public became allies of the police instead of adversaries in the fight against crime.

In response to questions from the subcommittee, Mr. Gerard explained that the analytics program's data begins with reports filed by law enforcement officers. Every report that officers produce is deposited nightly to the program. Other criminal justice system agencies add data as cases proceed through the system. Implementing the program on a statewide basis in New Mexico would likely require criminal justice data from the last five years from many criminal justice agencies. If the ICS were engaged to implement the program in New Mexico, the ICS team would assist with training and programming, and the program could immediately produce maps and analyses of the data. Ideally, a central data repository would be established and housed in a politically neutral entity. Agencies would be responsible for providing data to the repository, and the repository would provide training in return. Mr. Gerard affirmed that the program is reliant upon good data and trained users, and he noted that the program was designed with that in mind. He cautioned that statewide implementation in Ohio has been difficult because law enforcement agencies are often reluctant to share data with perceived outsiders. However, he has observed that New Mexico agencies seem to be more receptive to information sharing than their Ohio counterparts. Mr. Gerard remarked that, compared to similar programs used in San

Francisco, the ICS analytics program is more affordable and more focused on state data rather than international crime.

In reply to an inquiry, Mr. Gerard explained that completely eliminating drug abuse would be difficult because a new substance inevitably emerges while the previous problem drug is being dealt with. In addition, reasons for drug abuse are often complex; for example, underserved dental areas often have high rates of opiate abuse because painkillers such as Percocet may be repeatedly prescribed in place of dental surgery because a person lacks dental care insurance. While there is a correlation between drug use and crime, Mr. Gerard said he believes that efforts to eliminate drug use may not be the most efficient method of reducing crime.

In response to questions, Mr. Gerard discussed the use of data analytics in the courtroom. Judges must be educated to understand and use the program but seem receptive. Reactions from defense attorneys have been mixed, but there is a feeling that defendants have labeled themselves as violent offenders by their actions; data analytics has simply consolidated those actions into data points. Anecdotally, potential witnesses are more likely to come forward when they see that law enforcement is targeting the perceived threat and not the community at large.

Mr. Gerard informed the subcommittee that his team has already met with many New Mexico stakeholders, including the Albuquerque Police Department, the Criminal Justice and Public Safety Task Force, the Corrections Department and the Greater Albuquerque Chamber of Commerce safety committee. He noted that his team has been invited to return for a meeting with Tim Keller, mayor of Albuquerque.

Draft Uniform Criminal Records Accuracy Act
Representative Maestas introduced Jack Burton, commissioner, Uniform Law Commission (ULC), stating that the ULC drafts and proposes specific statutes in areas of the law where uniformity between the states is desirable.

Mr. Burton informed the subcommittee that several legislators are also members of the ULC: Representative Cook, Representative Maestas, Senator McSorley and Senator William H. Payne. Not all of the bills that the ULC drafts are meant for every state, and experts in New Mexico are currently evaluating whether the Uniform Criminal Records Accuracy Act is appropriate for New Mexico to improve the accuracy of criminal records for both law enforcement and civil purposes such as employment or housing background checks.

Mr. Burton stated that the act consists of the following eight articles:

- Article 1 establishes definitions and could be tailored to meet New Mexico's laws regarding criminal records.
- Article 2 requires contributing justice agencies, such as police departments and courts, that discover they possess inaccurate criminal history records to correct their records,

notify the central repository of the necessary correction and notify any other contributing justice agencies of the necessary correction.

- Article 3 establishes and sets out the responsibilities of the central repository.
- Article 4 contains provisions that allow individuals to correct their erroneous criminal history records, which are more detailed than those under existing New Mexico law.
- Article 5 establishes a mistaken identity prevention registry designed to prevent mistakes such as the inaccurate modification of criminal history records and confusion of an individual with another individual. The registry would allow an individual with a common name or a stolen identity to obtain a certificate that the individual is not a specified individual with a similar name or identifying characteristic who is the subject of criminal history record information.
- Article 6 requires the central repository to establish procedures related to systems security. It also requires the state auditor to conduct annual audits of a sample of contributing justice agencies and triennial audits of the central repository.
- Article 7 provides a method of enforcement and implementation, including damages to subjects injured by an intentional or reckless violation of the act.
- Article 8 consists of miscellaneous provisions, such as repeals and severability.

Mr. Burton suggested three possible courses of action for the legislature. First, the act could be adopted in its entirety or piecemeal, in a form most appropriate for New Mexico. Second, because the act is new and has yet to be adopted by other states, New Mexico could wait and study other states' courses of action. Third, the legislature could decide that no action is needed.

Philip Larragoite, deputy chief public defender, Law Offices of the Public Defender, who is also a ULC commissioner, remarked that the draft is less than one month old and has not yet been adopted by any state. He suggested that it should be carefully studied to ensure that it does not conflict with existing law, such as the Inspection of Public Records Act. He recognized that the integrity of data is key and suggested that New Mexico does not need to be the first state to adopt the Uniform Criminal Records Accuracy Act.

In response to a question, Mr. Burton stated that while the use of a single identification number for people in the criminal justice system to reduce misidentification was studied by the drafting committee, it was not included in the act. Mr. Burton noted that because some states recover criminal justice costs by selling information to employers for background checks, the bill was drafted to allow the central repository to provide corrected information to employers and landlords free of cost.

Members of the subcommittee supported the need for a process to correct errors in criminal records but stressed that any legislation must fit New Mexico's needs. More study of the legal and governmental ramifications of the draft, including its fiscal impact, is needed.

Paul Haidle, senior policy strategist, American Civil Liberties Union of New Mexico (ACLU-NM), informed the subcommittee that the federal Fair Credit Reporting Act governs background checks on a federal level and requires a credit reporting agency to correct an individual's background check if inaccurate data is reported. Mr. Haidle stated that he believes the proposed act would allow an individual to repair the mistake at the source, rather than needing to correct each erroneous background check individually. Mr. Larragoite noted that having a certificate of correction would limit confusion if internet searches yield incorrect results after correction at an agency level.

Chart of Crimes and Penalties
Ms. Ludi and Ms. Kephart presented a chart of the crimes and penalties listed in Chapter 30 NMSA 1978. Ms. Ludi explained that Ms. Kephart reviewed the entire compilation of statutes to identify offenses that carry a criminal penalty, and she noted whether an offense was violent or nonviolent. The chart for Chapter 30 NMSA 1978 has been through the LCS's internal proofreading process; the remainder of the compilation is still in process. The completed work will be made available through the LCS. Ms. Ludi pointed out the notation "Draft" at the top of every page, adding that while every effort has been made to ensure accuracy, it cannot be guaranteed that there are no errors and any errors are inadvertent and not purposeful.

In response to questions from the subcommittee, Ms. Kephart stated that violent and nonviolent crime determinations were made based upon the behavior as described in statute. Some crimes are listed as violent or nonviolent due to vague language in the statutes. Ms. Kephart noted that there is no definition of a violent crime in Chapter 30 NMSA 1978, but Section 33-2-34 NMSA 1978 lists crimes considered serious violent offenses that would restrict a prisoner from earning meritorious deductions.

At a member's request, Ms. Kephart explained that some chapters, such as the Motor Vehicle Code and Department of Game and Fish regulations, have their own penalties, while some offenses have unique penalties. Some unique penalties are based on the amount of money involved, such as money laundering. She noted that unique penalties, as well as habitual offender sentencing, can be confusing for the public to understand. Mr. Haidle commented that unique penalties and discrepancies in penalties in the same tier are not unusual. Douglas Carver, deputy director, New Mexico Sentencing Commission (NMSC), agreed, adding that ad hoc criminal codes are problematic nationwide.

Discussion of Possible Legislation
Members of the subcommittee discussed possible approaches to legislative criminal justice reform. Topics included:

- the need for more standard and parallel penalties for offenses;
- the need for penalties to be established on consistent standards;
- judicial discretion in sentencing;
- comparing statutes with jury instructions created by the New Mexico Supreme Court;

- whether piecemeal or comprehensive reforms are most suitable for New Mexico;
- the study of penalties as effective deterrents;
- the public's opinion of criminal justice reform; and
- the need for up to four additional subcommittee meeting days and one additional meeting day for the Courts, Corrections and Justice Committee to discuss a criminal justice reform legislative package.

Mr. Carver noted that the NMSC could be requested, via letter, to research topics related to sentencing.

Public Comment

Bill Zonko informed the subcommittee that he moved to New Mexico in 2002, after he retired. Before retirement, Mr. Zonko developed treatment centers in New Jersey. He expressed concern that the criminal justice system in New Mexico seems to focus on imprisonment and does not recognize that many individuals suffer from mental illnesses that require treatment. Mr. Zonko believes that treatment and rehabilitation are superior alternatives to imprisonment and expressed support for substituting treatment for incarceration.

Mr. Haidle spoke on behalf of the ACLU-NM, expressing concern that algorithms used in data analytics and crime prediction are often biased based on race and poverty. He referred to the example of Chicago, which was an early adopter of "big data" analysis. Chicago used the social media accounts of gang members to identify other possible members. The database wrongly identified many individuals, who then had a harder time landing jobs and were often targets of police harassment. Because the database was internal, disputing incorrect labels was difficult, if not impossible. Mr. Haidle stated that systems using big data analysis will need accountability and transparency to avoid abuse. He also noted that big data companies often use trademark law to support secrecy and stated that intellectual property protection should not creep into criminal law.

Denicia Cadena, policy director, Young Women United, addressed the Human Service Department's (HSD's) "HHS 2020" initiative, an effort to integrate access to public benefits offered through the HSD and other agencies. The program would use data from New Mexico residents and students, but it is unclear if the data would be used for analytics. The HSD believes that improving technology will save money and simplify governmental services.

Adjournment

There being no further business before the subcommittee, the second meeting of the Criminal Justice Reform Subcommittee adjourned at 3:30 p.m.