

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

**October 16-17, 2017
Science and Technology Center Rotunda
University of New Mexico
Albuquerque**

**October 18, 2017
Joint Meeting with the Legislative Health and Human Services Committee
John E. Brown Juvenile Justice Center
Albuquerque**

The fifth meeting of the Courts, Corrections and Justice Committee (CCJ) was called to order by Representative Gail Chasey, co-chair, on October 16, 2017 at the Science and Technology Center Rotunda at the University of New Mexico (UNM) at 9:45 a.m.

Present

Rep. Gail Chasey, Co-Chair
Sen. Richard C. Martinez, Co-Chair
Rep. Eliseo Lee Alcon
Sen. Gregory A. Baca
Sen. Jacob R. Candelaria
Rep. Zachary J. Cook (10/16, 10/17)
Rep. Jim Dines (10/16, 10/18)
Sen. Linda M. Lopez (10/18)
Rep. Antonio Maestas
Rep. Sarah Maestas Barnes
Rep. Javier Martínez (10/17)
Sen. Cisco McSorley (10/18)
Rep. William "Bill" R. Rehm
Rep. Angelica Rubio
Sen. Sander Rue

Advisory Members

Rep. Deborah A. Armstrong (10/18)
Sen. Bill B. O'Neill (10/16, 10/17)
Sen. Mimi Stewart (10/16, 10/17)
Rep. Christine Trujillo

Absent

Sen. William F. Burt
Rep. Brian Egolf
Rep. Doreen Y. Gallegos
Sen. Daniel A. Ivey-Soto
Sen. William H. Payne
Sen. John Pinto
Rep. Patricia Roybal Caballero
Sen. Peter Wirth

Guest Legislator

Rep. D. Wonda Johnson (10/18)

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

Staff

Monica Ewing, Staff Attorney, Legislative Council Service (LCS)

Celia Ludi, Staff Attorney, LCS

Diego Jimenez, Research Assistant, LCS

Guests

The guest list is in the meeting file.

Handouts

Copies of all handouts and materials are in the meeting file.

Monday, October 16

Call to Order — Introductions

Representative Chasey welcomed members of the committee, staff and guests to the meeting and committee members and staff introduced themselves.

New Mexico SAFE — 2017 Legislative Report

Adriann Barboa, field director, Strong Families New Mexico, reported that New Mexico SAFE is a statewide coalition of 29 organizations launched in October 2016 to move New Mexico toward more realistic, evidence-based approaches to criminal justice and public safety. Referring to a report entitled, "Put to the Test, New Mexico SAFE 2017 Legislative Report", she explained that the coalition analyzed and graded legislative proposals in "report cards" using four criteria:

- 1) Does it make New Mexico Safer for children and families?
- 2) Is it Apolitical?
- 3) Is it Fiscally responsible?
- 4) Is it Evidence-based?

The coalition applauded legislative leadership for assigning many criminal justice bills to finance committees for hearing, Ms. Barboa said. The fiscal implications of criminal justice bills are significant, and the hard questions about how to spend limited resources to improve public safety are asked in those committees. In the past, the debate around crime bills was largely characterized by emotionally driven responses to high-profile crimes, but that debate is now shifting to one that focuses on data, research and the fiscal impacts of legislation. The report cards highlighted the connection between the costs associated with continual increases in criminal sentences and the corresponding drain on resources for education, health care and

economic programs that have a less direct, but equally important, impact on public safety. The coalition's legislative report includes report cards for 24 bills introduced in the 2017 regular session and a table showing their final bill status. Of seven bills that were passed by both chambers, six were vetoed by the governor and one, House Bill 75, was signed into law.

Dalilah Naranjo, community engagement specialist, Crossroads for Women (CFW), a New Mexico SAFE coalition member, said that CFW assists formerly incarcerated and homeless women by providing gender-specific, trauma-informed services. Incarceration and release from incarceration affect women and men differently, Ms. Naranjo said. CFW provides wraparound services and does not discharge participants from the program when they have relapses and setbacks, which are considered part of the recovery journey. A 2015 New Mexico Sentencing Commission report found that recidivism rates decrease for women who participate in CFW programs.

Kim Chavez Cook, appellate attorney, Law Offices of the Public Defender (LOPD), identified some overlapping policy concerns between the LOPD and New Mexico SAFE: crime prevention; targeting serious crime for incarceration; and seeking alternatives to incarceration for lower-level nonviolent offenses. She noted the lack of wraparound services available to offenders, and she commented that some people come out of prison more dangerous than when they went in. She also observed that New Mexico has one of the highest rates of children with incarcerated parents, which is one of the reasons the state has so many children living in poverty.

She suggested a two-pronged legislative approach to reduce crime and increase public safety: redirecting resources away from funding prisons and toward funding preventive services such as substance abuse treatment, behavioral health services and poverty reduction programs; and a comprehensive sentencing system that provides narrow definitions of crimes, with longer sentences for serious offenses, and that allows greater judicial discretion.

Steve Allen, director of public policy, American Civil Liberties Union of New Mexico, asserted that the root causes of poverty, lack of economic development and lack of behavioral health services must be addressed in order to see a long-term reduction in crime and improvement in public safety. Ninety-five percent of people currently incarcerated will eventually be released into their communities, and services need to be available to help them transition into their communities. The debate about crime prevention and public safety needs to be de-politicized, and policymakers should listen to both incarcerated people and crime victims to find out what their needs are and how to meet those needs.

On questioning, the following topic was addressed:

Proposed legislative actions. The most immediate results from criminal justice reform will come from increased access to behavioral health and substance abuse treatment services. Substance abuse in particular has a direct correlation with crime; nearly all serious violent offenses were committed while the offender was intoxicated. New Mexico is one of the few

states where incarceration rates are increasing, and the state lags behind the rest of the country in recovery from the economic downturn. Additionally, comprehensive sentencing schemes that address repeat offenders, particularly those who commit property crimes, should be developed. Another area that requires attention is reformation of juvenile justice policies to stop the "school to prison pipeline".

The committee encouraged the coalition to broaden its membership to include law enforcement representatives, prosecutors, defense attorneys and court officials and offer a comprehensive plan with priorities for legislative action.

Albuquerque Police Department (APD) Update on Status of APD Reforms — Monitor's Reports — Officer Recruitment

Jessica Hernandez, city attorney, City of Albuquerque, referring to her handout, provided the committee with an overview of the United States Department of Justice (DOJ) settlement agreement with the APD regarding the finding of a pattern of excessive use of force in the APD.

In 2011, the City of Albuquerque asked the Police Executive Research Forum (PERF) to conduct an examination of the conditions associated with the use of force by APD officers and with assaults against police officers. The examination did not include an evaluation of the appropriateness of use of force. The PERF report, available at <https://www.cabq.gov>, made 39 recommendations regarding training, recruiting, reporting and response to mental health calls. If all recommendations in the report were implemented, the prevalence of officer-involved shootings would be reduced. The APD initiated 20 additional actions regarding increased mental health, technology improvements and increased reviews. Among other things, Albuquerque was among the first cities in the nation to use police officer body cameras.

In April 2014, the DOJ notified the mayor that an investigation begun in November 2012 found a pattern or practice of excessive use of force by the APD, and the city immediately began negotiating a settlement agreement to avoid being sued by the DOJ. The police union was a party to the negotiations, and a nine-section settlement agreement comprising 276 specific requirements was signed seven months later in November 2014.

The settlement agreement set an ambitious and aggressive plan to bring the APD into compliance within six years, at which time the agreement would terminate. The APD's own goal was to be in compliance within two years, to sustain compliance for an additional two years and to end the settlement agreement and associated monitoring within a total of four years. The APD is not yet in full compliance with the settlement agreement.

The settlement agreement identifies three categories of compliance: primary (policy), secondary (training) and operational (day-to-day processes). Today, all 37 policies have been approved and training on the policies has been completed. The APD is now in the operational phase, implementing the policies on a day-to-day basis. The independent monitor, Dr. James R. Ginger, measures and reports every six months on compliance and outcome assessments, and he

makes recommendations for areas not yet in compliance. The parties agreed to extend the timing of the monitor's review and reporting periods to allow the APD time to implement changes for subsequent reviews.

A December 2015 APD staffing study (<https://www.cabq.gov/police/documents-related-to-apds-settlement-agreement>) found that, based on calls for service (as opposed to per capita or budget), the APD will be adequately staffed at 1,000 sworn officers; it currently has about 840. The city's plan to increase the number of sworn officers relies on robust recruiting efforts through a recruiting company. The APD Academy trains three classes per year, and there are 42 cadets in the current class. The APD receives many more applications than it accepts, and the APD rigorously screens candidates for drugs and criminal history in addition to administering polygraph, written and physical and mental health tests.

The starting salary of a new officer is \$58,240, which is budgeted at \$88,450 with associated benefits. The city will again seek legislation to allow retired officers to return to work without forfeiting their pension payments. The APD estimates that approximately 104 retired officers would return to work if that policy were in place. House Bill 171 (2016), was written to have a positive impact on the Public Employees Retirement Association (PERA) fund by allowing retired officers to return to work without forfeiting their pensions, because the returned officers would make the usual PERA contributions but would not be eligible for an increase in their pensions because of the additional service. The legislation would have also limited reemployment to five years and would have required most reemployed APD officers to be assigned to patrol. The APD is also reviewing the deployment of the existing officers and is considering initiating police and community together (PACT) teams, which are property crime specialists who are not sworn officers but who are able to take reports and gather evidence at crime scenes.

On questioning, the following topics were addressed:

Implementation of new policies. There is a conflict between APD management and the union regarding promotion policies. Management wants discretion in making promotion decisions, and the union wants there to be no consideration of factors other than seniority and the passing of the exam. The dispute is being litigated.

Staffing. There was considerable discussion of the return-to-work proposal. A big obstacle to local recruitment is that many applicants fail to pass the drug test. Ms. Hernandez will provide the committee with information regarding the average salary of a retiring officer. Approximately 450 to 480 officers are assigned to patrol and the remainder are assigned to specialized units or are detectives. Ms. Hernandez said that she will provide staffing and deployment numbers to the committee.

Sexual Assault Examination Kits (SAEKs) Update — Status of Kit Processing — 2017 Legislative Changes — Evidence Lab Staffing

Timothy M. Keller, state auditor, briefly reviewed the Office of the State Auditor's (OSA's) December 2016 "Special Audit of Untested Sexual Assault Evidence Kits in New Mexico". In December 2015, the OSA and the Department of Public Safety (DPS) began a statewide inventory of unprocessed SAEKs, and they found that 5,440 kits had not been tested for DNA evidence that could lead to the identification of the assailant. The untested kits had not been forwarded to either of the forensic laboratories in the state and were in the custody of local law enforcement agencies. A lack of human and financial resources throughout the criminal justice system contributed in part to the backlog. It is estimated that for every 1,000 sexual assaults committed in New Mexico, only 344 will be reported to law enforcement and only six offenders will ever be convicted. Successful arrest and prosecution of offenders are dependent on timely testing of SAEKs.

Since the publication of the OSA's audit report in December 2016, the untested SAEKs have been forwarded to the two forensic laboratories for processing, but progress in testing has been slow at the APD's laboratory. In addition, the publicity surrounding the report has resulted in increased calls from victims whose cases have been languishing. Victims whose kits are being tested must be notified of the possibility of future involvement in the criminal justice process as a witness, which can re-traumatize victims. The untested SAEKs highlight three issues that must be addressed: the need for adequate and sustained funding for both forensic laboratories; institutionalization of victim notification procedures; and increased availability of services for survivors of sexual assault.

Connie Monahan, statewide coordinator, Sexual Assault Nurse Examiner (SANE), and co-chair, SAEK Memorial Task Force, New Mexico Coalition of Sexual Assault Programs (NMCSAP), reminded the committee that the task force was created in July 2016 in response to house and senate memorials. The task force has met four times and will meet again in October 2017. She described the task force's notable achievements, particularly in supporting the DPS in procuring a federal grant to, among other things, create a team that will build infrastructure to prevent another backlog. The task force members are committed to continuing to work in their respective agencies statewide to implement policies to reduce the backlog and prevent it from recurring. The members support continued training and increased staffing for law enforcement and increased community education to encourage sexual assault reporting.

Scott Weaver, secretary, DPS, remarked that ordinarily, the City of Albuquerque's forensic laboratory (AFL) processes SAEKs from Albuquerque, and the DPS Forensic Laboratory (DPSFL) in Santa Fe processes kits from all other local law enforcement agencies and the New Mexico State Police. Of the total unprocessed SAEKs, 73 percent would ordinarily be assigned to be processed by the AFL and the remaining 27 percent would be assigned to be processed by the DPSFL. The AFL's backlog is so high, however, that legislation passed in the 2017 session allows the DPSFL to assist with processing. New Mexico's unprocessed SAEK issue is not unique; rather, it is so prevalent nationwide that the DOJ's Bureau of Justice

Assistance created a Sexual Assault Kit Initiative (SAKI) to provide grants of federal funds to help state and local law enforcement address the issue. The DPS received a \$2 million SAKI grant in 2016 to establish practices for collecting and processing forensic evidence in sexual assault cases and to support other law enforcement agencies with investigating and prosecuting sexual assault cases. The DPS has added staff, and it expects to have the remainder of its backlog tested by the end of the current fiscal year.

In addition to providing evidence for prosecutions, testing SAEKs helps build and maintain a database of DNA profiles. New Mexico, like all other states, participates in Combined DNA Index System (CODIS), the national DNA database created and maintained by the Federal Bureau of Investigation. New Mexico is in the early stages of building its state database, which contributes to CODIS, and building the database is expensive and time-consuming. The DPS is working with Idaho to see if it can adopt Idaho's model to New Mexico to save both time and money.

Jeff McDonald, commander, Scientific Evidence Division, APD, commented that the SAEK backlog resulted from a policy that provided for testing of only those SAEKs that related to cases the district attorney intended to prosecute. The City of Albuquerque now has an ordinance that requires testing of all SAEKs, with deadlines for testing. In September 2017, the city contracted with two vendors to test the backlogged SAEKs, and the city shipped the first batch of SAEKs for testing. The city was also awarded a SAKI grant on September 29, 2017.

On questioning, the following topics were addressed:

Current status of SAEK processing. The AFL is averaging 20 new cases per month and is keeping up with processing them; the backlog will be addressed by outside contracted laboratories. There are currently between 3,650 and 3,800 untested SAEKs at the AFL. The DPSFL started with approximately 1,400 backlogged kits, and it has tested about one-half of them. When the state backlog is cleared, the DPSFL will assist the AFL.

Laboratory staffing. It takes about a year to train even experienced new staff in laboratory procedures. It is difficult to hire forensic scientists in New Mexico, and especially experienced forensic scientists, because of private sector competition and competition from laboratories in other states.

Victim notification. Victim notification is performed by local law enforcement after processed SAEKs are returned. Albuquerque has an Albuquerque Sexual Assault Evidence Response Team consisting of representatives from the APD, the Bernalillo County Sheriff's Office, the Albuquerque SANE collaborative, the Rape Crisis Center of Central New Mexico, the district attorney's office and Albuquerque's Family Advocacy Center to advise the city council on short-term strategies for processing SAEKs. A Rape Crisis Center of Central New Mexico victim advocate accompanies law enforcement officers on victim notification calls that are made in person. More money is needed for victim notification. The NMCSAP and law enforcement

are considering a statewide public information approach that would allow victims to opt out of notification by contacting law enforcement.

Funding Needs for Sexual Assault Services — Services in Rural Communities and for Communities of Color

Deleana OtherBull, executive director, Coalition to Stop Violence Against Native Women, said that only nine tribes out of the 22 tribes in New Mexico have sexual assault survivor programs, and of those, only one program gets state funding. The biggest challenge for survivors of sexual assault is access to care, including transportation to care providers. Funding for culturally appropriate services for survivors, education and prevention services is badly needed, she said. New Mexico has the third-highest incidence of violence against Native American women and also has the highest percentage of incarcerated Native American women in the U.S.

Karen Herman, director, Sexual Assault Services, NMCSAP, agreed with earlier speakers that the best practice for victim notification is to have a victim advocate accompany law enforcement. Children are among those most likely to be sexually assaulted, and those survivors need supportive therapeutic services to help them heal or face long-term consequences. Native American survivors are another underserved population. The NMCSAP urges support for \$1 million in funding in the next fiscal year to provide training, technical assistance and services for underserved populations of sexual assault survivors, including services provided by and for Native Americans. The NMCSAP also urges mandating increased training for physicians and other health care professionals on child sexual abuse.

Availability of rape crisis centers. There are currently 12 rape crisis centers in New Mexico, but based on population and geography, there should be 17, one for every two counties, in addition to more centers on tribal lands. Five additional rape crisis centers, each serving a 20,000 square-mile area with four staff, are needed. Tribes have a hard time utilizing state funding for rape crisis centers because the state uses a cost-reimbursement approach, and most tribes do not have the funding to pay expenses up front and wait for reimbursement. Currently, only the Northern Navajo Medical Center in Shiprock offers services for sexual assault survivors on tribal lands. Native American tribes have sought federal funding for rape crisis centers, but it is difficult to attract and retain SANE professionals.

Human Trafficking in New Mexico

Anthony Maez, special agent in charge, Internet Crimes Against Children Unit, Office of the Attorney General (OAG), referring to his handout, "Human Trafficking in New Mexico", informed the committee that the OAG and The Life Link have received a grant to support efforts to combat human trafficking statewide through prevention, prosecution and survivor protection. He explained that state human trafficking statutes prohibit using force, fraud or coercion to subject a person to labor, services or commercial sexual activity. Human trafficking involves a recruiter who identifies potential victims, a trafficker who controls the victims, the victims and consumers who purchase goods or services from victims. Traffickers can be of any race,

ethnicity, gender or age. Victims come from every culture and demographic but all are vulnerable in some way, and traffickers exploit those vulnerabilities. Children may be trafficked for sex through various means, and traffickers often use social media to recruit underage girls.

Of the human trafficking cases reported in New Mexico between July 2016 and July 2017, 67 involved sex trafficking, 18 involved labor trafficking and five involved both sex and labor trafficking. The labor and sex trafficking cases mostly involved the influx of "Asian massage" businesses, but a lot of trafficking involves domestic victims. Successful reduction practices include treating victims as victims of crimes rather than as offenders. There are also two types of special immigration visas, T- and U-visas, that allow undocumented trafficking victims to remain in the United States and assist law enforcement authorities in the investigation or prosecution of human trafficking cases.

On questioning, possible legislative action was discussed, including:

- funding for trainers in schools to provide students, teachers and parents with information about the federal Internet Crimes Against Children Task Force program to prevent victimization;
- funding for services for victims, especially children; and
- funding to build a shelter for human trafficking victims, which has already been designed pro bono by an architect on land donated by a church for this purpose.

Public Comment

Megana Dwarakanath, a medical resident at the UNM School of Medicine, supported development of a screening protocol for medical service providers and more training to identify and assist human trafficking victims.

Recess

The committee recessed at 4:24 p.m.

Tuesday, October 17

Reconvene

Representative Chasey reconvened the meeting at 9:20 a.m.

UNM School of Law (SOL) Update

Sergio Pareja and Alfred Mathewson, co-deans, UNM SOL, reported that the bar examination passage rate for first-time takers in July 2017 was 91 percent, up from 68 percent in July 2016. In 2016, New Mexico adopted the Uniform Bar Exam (UBE), and the first-time pass rate dropped dramatically. The UNM SOL formed a task force headed by former dean Leo Romero to study the issue and make recommendations for improving the pass rate. The school implemented all of the task force's recommendations, including enlisting alumni and faculty to coach students and offering practice exams and lectures. New Mexico's experience with

decreasing pass rates after adoption of the UBE is not unique, and the school was asked to send a representative to speak at the National Conference of Bar Examiners to explain how it improved its rates for 2017. Twenty-six states, the District of Columbia and the United States Virgin Islands have adopted the UBE, which provides the same series of tests in all of its member states, resulting in portable scores that make reciprocity between states easier. Each state that has adopted the UBE may administer an additional jurisdiction-specific law component, and each state sets its own passing score. There is some pressure for states to agree on a uniform passing score. As well as study approaches, the task force found an economic disparity between students who passed the first time and those who did not: many of the students who could not afford to not work while studying for the exam did not pass the first time.

The UNM SOL added the master of studies of law degree, a one-year 30-credit program for students who want to study law but do not want a juris doctor (JD) degree. The first class of 12 students was admitted in fall 2017. Eleven of the students are attending part time while working full time. The admissions process is competitive, but it does not require taking the Law School Admission Test. The degree requires that students take one introductory four-credit overview course specific to the program and 26 additional credits from any course in the JD curriculum other than practice skills courses.

The law student class of 2020, which started in fall 2017, was the largest class in years, at 120 students admitted from over 700 applicants. Most other law schools have seen declining applications recently. The UNM SOL highlights its affordability and is not seeking a tuition increase. As the state's only law school, it has an admissions preference for in-state students, and its graduates often stay in the state. Increasingly, UNM is competing with Arizona and Colorado for New Mexico students, and the UNM SOL's affordable tuition is key to attracting New Mexico students. The admission process is very competitive, but the school has found that a more selective admission process results in very little attrition.

The UNM SOL faculty is in the process of revamping the curriculum in accordance with a broad goal to incorporate more experiential learning through all three years.

The UNM SOL's Madrid Summer Law Institute in Spain is in its sixth year, with 47 students participating in summer 2017. It is a four-week, five-credit program at the Facultad de Ciencias Jurídicas y Sociales at the Universidad Rey Juan Carlos (URJC) with all English-language classes taught by UNM SOL and URJC faculty. Enthusiasm for the program is high among students, and the UNM SOL is exploring the possibility of initiating an exchange program with the URJC.

The UNM SOL has two new faculty members and is searching for a third.

Dean Mathewson plans to retire in January 2019 and will step down from the co-deanship at the end of the spring semester in 2018. Dean Pareja will stay on for two years as the sole dean while the UNM SOL does a national search for a new dean. The deans believe the co-dean

model has worked well to help stabilize the UNM SOL through the transition after retirement of a number of long-term faculty.

New Mexico's Ignition Interlock Program

Sarita Nair, chief government accountability officer and general counsel, OSA, referring to her handout, "Ignition Interlock Fund", summarized the statutory creation and administration of the Interlock Device Fund. The fund consists of fees collected from people convicted of DWI and who are required to install an ignition interlock device on their cars. Money in the fund is used to cover part of the costs of installing, removing and leasing ignition interlock devices for indigent people. She reported that in 2016, \$1 million in the fund was transferred to the General Services Department for use by the DPS to plan, design, renovate, equip and furnish the New Mexico State Police District 3 in Roswell and \$500,000 was transferred to the Administrative Office of the Courts to purchase and install security and other equipment and for infrastructure improvements at magistrate and district courts statewide.

Michael Sandoval, director, Modal Division, Department of Transportation (DOT), and Franklin Garcia, chief, Traffic Safety Bureau, DOT, referring to their handout, "NM Ignition Interlock Program", reviewed the ignition interlock program history, noting that the Interlock Device Fund became insolvent in 2009 partly due to coverage provided for indigent persons. In 2010, the DOT created objective standards for indigency, and the more uniform application of the standards resulted in a healthy fund.

Since 1978, total fatalities in crashes and fatalities in alcohol-involved crashes have been declining, and DWI arrests statewide have been declining since 1992. New Mexico law requires installation of an ignition interlock device on any vehicle operated by a person who has been convicted of DWI, as well as revocation of the offender's driver's license. Driving privileges may be reinstated if an offender can show compliance with all requirements imposed by a court or by the Motor Vehicle Division of the Taxation and Revenue Department. The DOT provides funding for four or five compliance officers in the Albuquerque area, as well as compliance officers in Santa Fe; compliance funding is available to other counties on request.

There are currently 12,669 ignition interlocks in use statewide, provided by 10 manufacturers and serviced by 67 service centers. The devices require regular maintenance. The average yearly cost of having an ignition interlock device is \$1,130 in addition to a \$50.00 fee, which is deposited in the Interlock Device Fund to subsidize a portion of the annual cost for indigent persons. In 2010, the annual subsidy was approximately \$650, but the current subsidy is \$460, in addition to waiving the payment of the Interlock Device Fund fee. Indigency is verified by proof of enrollment in one or more public assistance programs. The Traffic Safety Bureau has a staff of five that manage the interlock indigency program and Interlock Device Fund.

On questioning, the following topics were addressed:

Indigency criteria. The requirement of enrollment in a public assistance program could exclude young persons, particularly young males, who are ineligible for public assistance.

Availability of ignition interlock devices. It was suggested that the devices should be made available to anyone who wants one regardless of whether that person has been charged with DWI.

Administrative procedures. There are some inconsistencies between court and administrative procedures and the DOT rules that are in the process of revision. Removal of a device requires a court order, but not all circumstances where removal is necessary require a court appearance, for instance, the purchase of a different car or the changing of device providers. Another issue is that some device leases exceed the court-ordered period.

Approval of Minutes

The committee approved the minutes for its August 23, 2017 meeting with no amendments.

Fathers Building Futures (FBF)

Stanley Mount, president, Board of Directors, FBF, identified himself as the owner of a small specialty construction company that has employed formerly incarcerated people who were clients of PB&J Family Services, Inc., in Albuquerque. He is a founder of FBF, which was created to stop the cycle of crime by preventing recurrence. FBF is working to build a self-sustaining business model, but for now, it is still donation-dependent. He observed that a lot of the barriers that previously incarcerated people face upon release are counterproductive because the barriers set people up to fail and encourage illegal options to make ends meet. FBF offers support and essential skills training such as financial literacy. He remarked that the children of incarcerated parents want to be proud of their parents, and those parents want their children to be proud of them. He introduced Joseph Shaw, father of three children and operations manager, FBF; Ada Garay, mother of two children and office manager, FBF; and Willie Rankin, father of four children and manager, Auto Detailing and Mobile Power Washing, FBF.

Mr. Rankin reported that he was released from prison four years ago with a \$58,000 child support debt accrued while he was in prison and unable to work at a reasonable wage. He did work throughout his incarceration, and 25 percent of those wages were garnished to pay child support. Upon release, he became a client of FBF and is currently employed by FBF. He continues to pay 25 percent of his wages to reduce the child support debt he now owes. He said that child support laws are unfair because they impute income to an incarcerated person that is impossible to earn in prison, resulting in enormous debt upon release. The debt burden of child support accrued during incarceration can be overwhelming, especially when added to other challenges of trying to make a new life. He said that he is committed to and wants to pay child support, but he proposed that, instead of an unattainable income being imputed for child support during incarceration, 50 percent of any wages earned by inmates be garnished during incarceration.

Mr. Shaw agreed with Mr. Rankin's proposal regarding child support. He observed that former inmates who choose not to go back to their old lives face barriers that also affect their children. Some of those barriers are to employment and housing that keep families headed by or including former felons from living in better neighborhoods. A personal barrier for Mr. Shaw is not being allowed to go on his daughter's school field trips because of his status as a former felon. His wife is also a former felon, which means that both parents are not allowed to accompany their daughter on school activities, even though their convictions were related to substance abuse and not violence. He commented that his mistakes will follow him forever and will affect his whole family.

Ms. Garay said that she was never asked to pay child support while she was incarcerated; although she wanted to, there was no procedure for it. She said, and Mr. Rankin and Mr. Shaw agreed, that being able to pay child support while incarcerated is one way to maintain a sense of connection and responsibility with one's children.

On questioning, the following topics were discussed:

- education, job skills training and life skills training available in state prisons;
- pay for work performed in prison;
- substance abuse treatment in prison;
- collateral consequences of imprisonment;
- successful reintegration after incarceration;
- the impact of incarceration for low-level drug possession; and
- restoration of voting rights and the difficulties of voter registration for former felons.

Immigration Policies — Deferred Action for Childhood Arrivals (DACA)

Allegra Love, director, Santa Fe Dreamers Project, referring to the handout "NM DACA Post-Hearing", explained that the United States president's September 5, 2017 rescission of the federal DACA program resulted in the federal Department of Homeland Security immediately ceasing to accept all applications for protection under DACA. The president challenged Congress to act before March 5, 2018, when his executive order would begin affecting the first group of DACA recipients. Nationwide, approximately 800,000 young people who grew up in the United States have received DACA authorization to remain; they are referred to as "Dreamers". In New Mexico, 10,000 persons are eligible to receive DACA protection, 6,838 have been approved, and 5,622 have been allowed to renew their status. Of the 6,838 who have been approved, 6,250 are employed, 369 are business owners and 3,070 are students. DACA-eligible residents are estimated to contribute approximately \$18.8 million annually in state and local taxes in New Mexico. The DACA program promised applicants that the information they provided would not be used to refer them or family members to the United States Immigration and Customs Enforcement (ICE) for deportation proceedings, but because of the rescission information provided by Dreamers may be used against them for immigration purposes.

Jennie Lusk, director, Consumer and Family Advocacy Services Division, OAG, said that the U.S. attorney general said he would not defend the DACA program, and the president issued an executive order rescinding the program. On September 6, 2017, the New Mexico attorney general joined 15 other attorneys general in suing the federal government to stop the administration from ending the DACA program.

Cindy Nava, president and policy analyst, American Mexican Binational Association, explained that the association was formed this year at a conference sponsored by the U.S. Department of State to address DACA issues, and the association is focusing on developing legislation to enshrine DACA in law.

On questioning, the following topic was addressed:

DACA status. DACA status affects only the person who applied for it and no other family members. It must be renewed every two years. It allows the recipient to work and go to school; without it, the person is not allowed to do either. DACA is not an affirmative benefit, but it is an executive decision to not use federal resources to detain or remove the recipient. DACA recipients receive a work permit, but they are not eligible for a green card and do not have a path to citizenship through DACA. DACA recipients do not qualify for any federal monetary benefits such as food stamps, but they do pay taxes. Any criminal charge, including traffic offenses, results in loss of DACA status.

Proposed Revisions to Child Abuse Statute

Representative Maestas reviewed House Bill 463 (2017) and House Bill 361 (2015) that propose revisions to the child abandonment and abuse statutes. The existing law would be reorganized into separate offenses for abandonment and abuse. He explained that the existing child abuse statute has led to more than 200 pages of interpretation by the courts. He suggested replacing the current crime of "abandonment or abuse of a child" (Section 30-6-1 NMSA 1978) with three separate crimes of "negligent child abuse", "reckless child abuse" and "intentional child abuse". He also suggested revisions to the penalties for those crimes.

Carlos Pacheco, a former child abuse prosecutor, and Joe Sanchez, LOPD, supported Representative Maestas' proposals, asserting that clear, well-written statutory language is essential to protect children and provide due process to accused persons. They noted that the current statutory language does not reflect the current state of the law on child abuse because of extensive court interpretation, leading to confusion about application for law enforcement personnel and prosecutors.

Public Comment

Karen Whitlock, chapter lobbyist, National Association of Social Workers, New Mexico Chapter, expressed strong support of the DACA program. She noted that DACA-like programs started with the Eisenhower Administration to provide coverage for child care and domestic help.

The Reagan Administration provided an amnesty for illegal immigrants. President Barack Obama was the first to formalize the approach.

Rikki-Lee Chavez, lobbyist, New Mexico Criminal Defense Lawyers Association, agreed that revisions to the child abuse statute are needed.

George Chandler, New Mexico Criminal Defense Lawyers Association, expressed appreciation for Representative Maestas' work on the child abuse and neglect statutes.

Recess

The committee recessed at 3:50 p.m.

Wednesday, October 18

The joint meeting of the CCJ and the Legislative Health and Human Services Committee (LHHS) was convened at 9:18 a.m. by Representative Chasey.

Tour — Bernalillo County Youth Services Center (BCYSC)

Members of the committees were divided into small groups for guided, secure tours of the BCYSC. Craig Sparks, director, Services Center, BCYSC, described the process that would be observed and identified staff who would escort members on the tour. Cell phones and laptops were not permitted inside the facility.

Welcome and Introductions

The meeting was reconvened at 10:46 a.m. by Representative Chasey. Committee members introduced themselves. Representative Chasey thanked Mr. Sparks for the very informative tour.

Welcome — BCYSC — Juvenile Detention Alternatives Initiative (JDAI)

Mr. Sparks provided a brief review of the BCYSC, beginning with a history of the facility and some statistics on the facility's services. The JDAI, a model developed by the Annie E. Casey Foundation in 1948, was instituted in Bernalillo County in 1992. Mr. Sparks described the purposes and objectives of this model. The model reversed many negative outcomes that preceded its institution. Mr. Sparks explained trends from 1999 to the present.

Committee members asked questions in the following areas:

- clarification of budget trends over time;
- identification of capital outlay needs;
- an observation that other counties benefiting from the center could contribute; and
- clarification regarding the daily cost per resident; \$155 per day.

Update on Improving Outcomes for Youth Statewide — Juvenile Justice Initiative in New Mexico

Nancy Arrigona, research manager, Council of State Governments Justice Center (CSGJC); Nina Salomon, project manager, CSGJC; Monique Jacobson, secretary, Children, Youth and Families Department (CYFD); and Judge John J. Romero, Jr., Second Judicial District Court, were invited to present to the committees.

Secretary Jacobson noted that the CYFD operates three juvenile facilities in New Mexico, and committee members are invited to visit at any time. She discussed an initiative, Improving Outcomes for Youth, that began in April 2017 to determine what steps could be taken to strengthen public safety and improve outcomes for youth in the state's juvenile justice system (JJS). Through the initiative, a statewide bipartisan task force was established, co-chaired by Secretary Jacobson and New Mexico Supreme Court Justice Barbara Vigil. Secretary Jacobson emphasized that the CYFD relies on collaboration with many partners to accomplish its goals.

Ms. Salomon described the task force that was convened to establish a plan for improving outcomes for youth statewide. The task force worked with representatives from several other states as well as from the CYFD. Judge Romero emphasized the commitment of the courts to work with the task force to promote safe, reliable solutions for youth.

Secretary Jacobson reviewed the findings and recommendations of the task force. She provided data regarding the number of referrals to the JJS. Opportunities within the JJS have increased to match youth with the appropriate level and length of supervision based on an understanding of the risk of reoffending. Findings of the task force include the following:

- the number of youth referred to the JJS has declined significantly since 2012, in large part due to policy and practice changes. The decline in cases is due in part to improved initial assessments;
- a focus on prevention rather than intervention has led to community resources not being directed to youth with a high risk of reoffending. This is an area that needs to be addressed (see handout);
- the majority of youth referred to the JJS do not reoffend; however, there is a small number of youth who would benefit from more intensive services and supports; and
- New Mexico lacks sufficient data and research capacity to fully measure system performance and outcomes.

Ms. Arrigona expanded on this lack of data and research, which limits the ability of the state to address the most prevalent needs as well as the ability to know whether money is being spent in the most productive areas. Definitions need to be refined to fully understand why youth are reentering the JJS, Ms. Arrigona said.

Ms. Salomon noted that the task force will be meeting again on November 2 to reach consensus on policy proposals.

Committee members had questions and made comments in the following areas:

- an observation that the decrease in referrals to the JJS is impressive;
- clarification of the number of youth in the system today — between 180 and 200;
- whether behavioral health issues are a factor in youth incarceration; there are multiple behavioral health needs, but if behavioral health is a juvenile's primary need, the juvenile generally does not come through the JJS; virtually all youth in the JJS have experienced trauma of some sort;
- what the most effective strategies are to prevent recidivism; valid assessment tools and screening, mental health therapy and family therapy are all critical; services must be matched to the individual needs of the youth;
- an observation regarding the importance of staff in facilities being supportive rather than punitive;
- why it seems so hard to identify the number of youth who have successfully completed their reintegration yet still come back into the system; the CYFD is examining this closely; the circumstances are complex;
- whether there should be a state law to prohibit commitment of a child six years old or younger; the CYFD is exploring this;
- clarification regarding New Mexico's lack of the use of the "structured decision-making tool"; it is being used to a certain extent but has not been revalidated in recent years; the inconsistent use may be a reflection of inadequate training in its use;
- clarification regarding what is being used in place of the structured decision-making tool; ultimately, decisions are made in the court, and that is where the tool is being used;
- whether the courts have a rule requiring the structured decision-making tool's use; no — ways to build consistency are part of the task force's current discussions; the tool is lengthy and takes a lot of time to use, thereby delaying treatment for the youth in the system;
- clarification regarding the future approval of a memorandum of understanding that will allow sharing of information between the courts and the CYFD; July 1, 2018 is the target date; the collection, matching and reporting of these data are a massive project;
- whether there are data regarding the number of youth who qualify for special education; Secretary Jacobson will follow up and provide this information;
- the importance of funding wrap-around services, especially in schools;
- the importance of very early intervention and screening that may signal a child at risk of future incarceration;
- a comment that the CYFD is in need of a significant technological upgrade in order to support growing data requirements;
- an observation that different districts have very different needs; and
- the importance of all agencies working together effectively to ensure maximum use of federal resources.

Molina Healthcare and Bernalillo County Metropolitan Detention Center — Medicaid Pilot Project

Amir Wodajo, director of case management and behavioral health, Molina Healthcare of New Mexico, was joined by Tina Rigler, vice president of government contracts, Molina Healthcare of New Mexico, to describe a project being implemented by Molina Healthcare of New Mexico to help inmates successfully reintegrate into society following incarceration. She noted that 1,200 inmates were enrolled in Medicaid in 2015. The project allows inmates to keep their eligibility while in prison or jail and have their benefits reactivated upon release. The pilot project was developed in collaboration with the Bernalillo County Metropolitan Detention Center in Albuquerque. Through care coordination, inmates have increased access to services and benefits that promote optimal health upon release. The pilot has resulted in a decrease in emergency department use, behavioral health services and physical health services due to increased understanding of benefits and what constitutes appropriate use of services.

In addition to health benefits, individuals enrolled in the program had a significantly lower rate of recidivism in the first year of the program. Of the 296 individuals enrolled in the program, cost savings of close to \$8,000 per person per month were seen. Molina hopes to expand the program to 27 additional adult and juvenile detention centers statewide. A brief video presentation highlighted individual success stories.

Committee members had comments and questions in the following areas:

- whether all managed care organizations (MCOs) will ultimately be required to engage in the care coordination project; yes, according to a letter of direction from the Human Services Department (HSD);
- clarification regarding a shift in payment responsibility; Medicaid is not responsible for payment of care once a person is jailed; the benefit can be shifted to fee-for-service care when an inmate is hospitalized;
- clarification regarding cost savings for enrollees in the pilot program; the savings are achieved due to reduced inappropriate use of services;
- at what point savings to the state will be realized; the HSD is working to implement this program more broadly, both through contract requirements with the MCOs and through the Centennial Care 2.0 waiver renewal;
- whether there is a target date for enrolling more incarcerated people in Medicaid in county jails; not all counties are pursuing this avenue;
- how this project will work in relation to non-public employees engaging in presumptive eligibility enrollment of inmates; HSD Deputy Secretary Michael Nelson will follow up;
- clarification that an individual enrolled in Medicaid while incarcerated is not enrolled in managed care; this could be an opportunity in the waiver renewal to facilitate greater access to care coordination; and

- whether other MCOs are working on similar projects; they are beginning to in jails in geographic areas outside of Albuquerque, but are in preliminary stages of development.

Health Care and Medical Personnel in Corrections

David Jablonski, secretary, Corrections Department (NMCD), was joined by numerous staff members to provide testimony to the committees. He introduced Wendy Price, Psy.D., chief, Behavioral Health Bureau, NMCD, and David Selvage, health services administrator, NMCD, who is a licensed certified physician assistant with a significant background in health care, including with Presbyterian Healthcare Services and the Department of Health. Also present to provide technical support and answer questions were Jerry Roark, deputy secretary of operations, NMCD, and Phillippe Rodriguez, acting director, Administrative Services Division, NMCD.

Secretary Jablonski reviewed the following NMCD contracts: Centurian (medical) for \$42.6 million; MHM (behavioral health) for \$2.2 million; and Boswell (pharmacy), which has an \$11 million cap. He highlighted the efforts and costs of providing care for inmates with hepatitis C using Project ECHO. Hepatitis C is a prevalent condition among inmates that is very costly to treat. The NMCD has been working to reduce the cost of health care with some success. It is in the process of partnering with Christus St. Vincent Regional Medical Center in Santa Fe to obtain access to the federal 340B Drug Discount Program. Inmate initiatives include a diabetes wellness program, a lactation project and a sober living communities project. A project to treat opioid addiction provides naloxone to inmates upon discharge.

The NMCD uses evidence-based programs in over 90 percent of its behavioral health programs, which are broad-based and include healing trauma, anger management groups, grief support and a variety of therapeutic models. A mental health treatment center provides inpatient psychiatric hospitalization when necessary. A contract is in place with HealthInsight New Mexico for oversight and registered nurse-led audits of health care services that are provided. The NMCD is working closely with the HSD to ensure that Medicaid is being properly billed, when possible, and to ensure appropriate tracking for inmates when they are released and are on probation.

Questions and comments covered the following areas:

- how NMCD health care outcomes for inmates compare with other states; it is not known;
- clarification regarding the meaning of "challenged" inmates; these are inmates with addictions or who demonstrate self-harm behavior;
- whether Medicare covers any inmates; it is not known;
- what the cost of health care is per inmate; about \$6,300 per year;
- whether Centurion is an out-of-state entity; yes;

- a suggestion that the NMCD look for ways to provide its own health care services for inmates;
- whether the cost of the hepatitis C program is in the contract with Centurion; it is part of the pharmaceutical contract;
- a request for additional information about the mental health treatment center; it is a facility in Los Lunas; it is separate from the New Mexico Behavioral Health Institute at Las Vegas;
- clarification regarding the residential drug abuse center; it is not a single location; the NMCD contracts with 27 facilities around the state;
- whether there are health care services for sex offenders within the prison system; yes — there is a program that has services especially directed at sex offenders;
- a request for the number of inmates enrolled in sex offender treatment programs; it is not known; it is 100 or fewer; NMCD staff will provide numbers;
- a request for the number of inmates 65 years of age and older; about 200, or about two percent of the total population;
- whether a different method of health care treatment should be recommended for inmates 65 years of age and older; the NMCD has a geriatric unit in Los Lunas for those who qualify;
- clarification regarding the number of inmates with behavioral health issues who are on psychotropic drugs — currently around 49 percent;
- whether inmates with mental health disorders are integrated in the general population and how their needs are met; they have therapy offered to them; they also have access to acute and private care;
- clarification regarding the time frame for addressing formal grievances; 20 days;
- how many people are employed through health care contracts; the department will provide that information;
- an observation that, according to a state audit, the NMCD has the highest percentage of contract employees in state government and whether the NMCD feels that is necessary and justifiable; the cost of the contracts and the number of individuals employed have remained stable since the state audit was performed;
- clarification regarding the Centurion contract and whether it covers everything; it does not cover all extraordinary costs, such as transplants;
- why Otero County is excluded from the physical health contract; Otero County has a separate contract, and the county provides its own care;
- clarification regarding who audits the contracts; there are several methods of auditing and oversight, both internal and external; additionally, annual reports are required from the contractors;
- clarification regarding the cost of hepatitis C treatment; it has declined from \$95,000 to \$65,000 per treatment and continues to decline;
- clarification regarding the term of the health care contracts; it is four years; contracts are reviewed annually, including several detailed performance measures;
- whether opportunities exist for departments to share services rather than contracting out for those same services; possibly;

- what the policy is for female inmates for contraceptives; the department will look into it and provide a copy of its policy and incidence of use; and
- whether there are incidents of involuntary sterilization; no.

Breastfeeding and Incarceration

Sarah Gopman, M.D., assistant medical director, Milagro Outpatient Clinic, Lissa Knudsen, M.P.H., board chair, New Mexico Breastfeeding Task Force (NMBTF), and Candice Rae Padilla, B.P.C., I.B.C.L.C., board member, NMBTF, were invited to address the committees.

Ms. Knudsen described the overall objectives of the NMBTF and provided some statistics regarding the number of women who are currently incarcerated and the types of crimes they committed. The rate of incarceration of women increased by more than 700 percent in the nation between 1980 and 2014. On average, six percent to 10 percent of incarcerated women are pregnant.

Ms. Padilla spoke about the dangers of not allowing lactating mothers to breastfeed in prison, as well as the great benefit to babies when they have the opportunity to bond with their mothers. The health outcomes of infants and their mothers are much better than the health outcomes when mothers do not breastfeed. Dr. Gopman presented information regarding breastfeeding and substance abuse. Research shows that babies experiencing withdrawal symptoms as a result of opioid exposure during pregnancy have reduced symptoms if allowed to breastfeed.

Ms. Knudsen noted that inmates who breastfeed have certain care needs specific to their breastfeeding. She presented recommendations of the NMBTF, including alternative sentencing and early release options, to allow: nonviolent lactating mothers to be housed with or near their children; lactation policies both in prisons and detention centers that permit caregivers to bring infants to the correctional facilities for feeding; and policies that allow mothers to hand-express milk. She reviewed the history and progress of the NMBTF's work at the state, local and departmental levels. Collaborating partners were identified, as was the need for more data. Long-term recommendations include allowing mothers to be housed together with their babies while breastfeeding; the establishment of prison nurseries; and the recognition of pregnancy and lactation as factors that must be considered during determinations for release and bond.

The committee members had comments and asked questions in the following areas:

- what the recommended treatment is for drug-addicted breastfeeding mothers; buprenorphine is recommended over methadone for substance abuse treatment;
- whether the recommendations offered should be implemented in all correctional facilities or only in some; it should be implemented in all state and local facilities;
- recognition that the recommendations come with potentially substantial costs; local counties would be challenged to fund all of these initiatives;

- a contention that most of the costs are minimal and that counties are beginning to support these proposals;
- acknowledgment that breastfeeding vastly improves not only the health, but also the mental and cognitive ability, of a child;
- acknowledgment that the lives of the breastfeeding incarcerated women are also vastly improved; and
- whether breastfeeding affects recidivism; it is speculated that recidivism is lower, but no known research exists to support this.

Public Comment

Elena Rubinfeld, staff attorney, Southwest Women's Law Center, expressed support for the NMBTF and its recommendations.

Tony Johnson also expressed support for the NMBTF.

Adjournment

There being no further business, the joint meeting of the CCJ and the LHHS was adjourned at 3:40 p.m.