

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

**November 13, 2018
Ladera Banquet Room, Ladera Golf Course
3401 Ladera Drive NW
Albuquerque**

The seventh 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 November 13, 2018 at 9:18 a.m. at the Ladera Banquet Room at the Ladera Golf Course in Albuquerque.

Present

Rep. Antonio Maestas, Co-Chair
Sen. Sander Rue, Co-Chair
Sen. Gregory A. Baca
Rep. Gail Chasey
Rep. Jim Dines
Sen. Richard C. Martinez
Sen. Cisco McSorley

Absent

Rep. Zachary J. Cook

Guest Legislators

Rep. Daymon Ely
Rep. Sheryl Williams Stapleton

Staff

Celia Ludi, Staff Attorney, Legislative Council Service (LCS)
Randall Cherry, Staff Attorney, LCS
Mark Peralta-Silva, Staff Attorney, LCS
Erin Bond, Research Assistant, LCS

Guests

The guest list is in the meeting file.

Handouts

Handouts and other written materials are in the meeting file.

Tuesday, November 13

Introductions and Approval of Minutes

Representative Maestas welcomed everyone to the meeting, and the subcommittee members and staff introduced themselves. The subcommittee then approved the minutes for the September 26-27, 2018 and October 17, 2018 meetings.

Council of State Governments (CSG) Justice Center — Justice Reinvestment Initiative Update and Discussion of Proposed Legislation

Carl Reynolds, senior legal and policy advisor, CSG Justice Center, discussed his PowerPoint presentation entitled "New Mexico Justice Reinvestment, November 13, 2018". Mr. Reynolds updated the subcommittee on the CSG's activities and plans. He noted that, unlike most of the states that the CSG serves, New Mexico has been engaged in criminal justice reform for some time. As a result, the subcommittee will have a number of bills for presentation to the full Courts, Corrections and Justice Committee for endorsement on December 4, 2018. However, while the CSG team has assisted on some of those bills, it will not have bills available for consideration at that time.

Mr. Reynolds explained that New Mexico has an unusually large amount of information available from the Administrative Office of the District Attorneys, Corrections Department (CD) and others. The CSG is in the process of collecting and analyzing this information, but this process will take more time.

Mr. Reynolds said that the CSG has convened a working group composed of senior executives from the relevant agencies in the executive and judiciary branches. He wants to ensure that the members have had an opportunity to review and comment on each bill that the CSG would propose prior to its being offered to the legislature. He nevertheless believes that the CSG's legislative recommendations will be available on or before the date that the legislative session convenes in January 2019.

Mr. Reynolds explained that the CSG serves two roles: providing advice; and recommending policy options and proposed legislation. The process requires stakeholder engagement. To that end, the CSG plans to engage in numerous meetings with these stakeholders. CSG members have already visited probation and parole offices around the state and will meet with the working group on December 14, 2018.

Mr. Reynolds' presentation was largely consistent with his slide presentation with a few notable highlights. He noted that New Mexico legislators have introduced a number of bills on a range of topics related to criminal justice reform over the past several years. The CSG will review those bills and may offer recommendations based on its data analysis.

Mr. Reynolds observed that, in general, criminal justice reform efforts should be balanced. Addressing recidivism is crucial, but other issues are as important, including repairing

harm and prevention. On repairing harm, he noted, for example, that expanding the types of professionals to whom a victim can report in order to receive compensation might be helpful as victims may not be comfortable reporting crimes to law enforcement or similar authorities. Those victims nevertheless need services. He also noted that victim advocates and other service providers in New Mexico appear to need additional training. He does not believe that statutory changes are needed in this area at this time.

With regard to prevention, Mr. Reynolds noted that the CSG is not typically involved in this issue, but he observed that New Mexico has taken significant steps toward addressing prevention. The CSG will offer advice on this issue to the extent possible.

Mr. Reynolds noted that the CSG agrees with the common observation that additional and improved behavioral health services are crucial, and he also noted that this is a national problem. The CSG has discussed this with leaders in the field in New Mexico and plans further discussions. He suggested that, subject to the availability of behavioral health services, the CSG may recommend expanding diversion programs, noting the high cost of incarceration and the lack of services in county jails. On a related topic, Mr. Reynolds also noted that he has discussed the possibility of expanding specialty courts with the chief justice of the New Mexico Supreme Court and the Administrative Office of the Courts.

Mr. Reynolds stated that he had recently met with tribal leaders on criminal justice reform issues. He discovered that the federal government is currently engaged in a similar process nationwide with regard to Native Americans. He plans to explore further opportunities for funding and coordination of efforts in this area.

Mr. Reynolds made a number of general observations, including that data and data sharing are important to the success of the reform process; that privacy issues should be carefully considered; that reform requires the confidence of the public and stakeholders, which requires communication, data and good data analysis; and that New Mexico has a disproportionately high number of females incarcerated, as compared to other states. The CSG plans to meet with the American Civil Liberties Union and Crossroads for Women on the last topic.

In response to questions, Mr. Reynolds stated that he plans to be available during the upcoming legislative session to review and assist in drafting and to testify on bills. He is registered as a lobbyist.

Mr. Reynolds noted that much of the information and many of the contacts that the CSG has obtained relate to urban centers, but he agreed to expand his efforts to include rural stakeholders. He also agreed that restorative justice programs have promise, but he noted that the CSG has not engaged in significant efforts in this area. He agreed to explore this issue further.

A subcommittee member noted that the Legislative Finance Committee (LFC) has recommended that private prison contracts should tie funding to recidivism rates, noting that

private prisons actually benefit from high rates of recidivism, as those return inmates fill beds. He asked if other states have addressed this. Mr. Reynolds responded that Pennsylvania has taken that approach to funding halfway houses and other services. However, he was not aware of any state that has tied funding to recidivism rates with regard to private prisons.

In response to a question, Mr. Reynolds noted that the CD and the Bernalillo County courts use a risk/needs assessment tool. The CSG supports the use of risk/needs assessment tools, but it does not endorse any particular tool. He agreed to provide general advice on issues to consider in the choice of these tools.

Mr. Reynolds responded to a question on Native Americans in prison, noting that New Mexico has a lower number of Native Americans in prison in proportion to the general population as compared to other states. While the Native American population comprises 11 percent of the total population in New Mexico, Native Americans comprise only seven percent of the prison population. This is lower than the national average.

The member observed that this may reflect New Mexico's efforts to allow tribal courts to address crimes and punishments on tribal and pueblo lands.

Members asked advice on how to build public trust in the criminal justice reform process. Mr. Reynolds responded that the public safety wheel on Slide 5 is the best way to address this. It requires a balanced and honest discussion showing real data. He recommended long meetings with the media and providing lots of information and honest answers to every question. The members must show the advantages of what is being proposed.

A subcommittee member noted that all public questions were directed to a single contact within the governor's office when the state was engaged in juvenile justice reform efforts. There was discussion regarding who an appropriate point of contact might be in the future. Mr. Reynolds responded that Texas convenes a meeting of all stakeholders when a dramatic event occurs. The stakeholders try to determine what went wrong and how the event could be prevented in the future. He offered to provide recommendations on this issue.

In response to questions, Mr. Reynolds explained that he will request that he be allowed to continue to staff the CSG team in New Mexico after the legislative session and through the implementation process of whatever legislation is passed.

The members also discussed achievements over the past eight years, including Medicaid expansion; making Bernalillo County crime a statewide issue; and recent improvements in the county. They also discussed and applauded the LFC's efforts to analyze criminal justice issues.

Discussion of Proposed Legislation

.211435 — Probation and Parole Best Practices

Mr. Reynolds presented the bill. In response to questions, he stated that the CSG

recommends that the CD should be required to implement a system of sanctions for technical violations that does not result in the offender being sent back to prison. The bill allows for administrative sanctions instead of sending the matter to a court. He noted that this is consistent with most states that do not revoke parole except for a new crime or for a serious violation, such as carrying a weapon or violating a protective order. He noted that "absconding" is not currently defined in statute, so it is defined in the bill.

A member noted that it is often difficult for an offender to obtain release from work to attend a hearing; can this be addressed? Mr. Reynolds responded that it is impossible to address every contingency. Success in the process depends on the cooperation and good faith of the participants, including the parole officer.

A member of the public noted that a hearing is required within 10 days of a violation. Most retail jobs have 14-day or longer schedules, so extending the deadline would enable better compliance.

Mr. Reynolds noted that the proposed bill would increase probation and parole supervision costs but would reduce court costs and reduce the need for expensive prison beds.

.211468 — Crime Victims Reparation

Mr. Reynolds explained that the general intent of the bill is to expand victim access to services. In response to a question, Mr. Reynolds explained that the Crime Victims Reparation Commission determines whether a person has been the victim of a crime through its investigators. This is current law and the system has worked well. However, the CSG has not reviewed the process closely and will likely recommend additional amendments.

.211415 and .211366 — Pre-Prosecution Diversion

These bills are similar and were discussed together. Each would expand the ability of a district attorney (DA) to divert an offender to a pre-prosecution diversion program but would allow the DA broad discretion whether to do so. This discretion recognizes that necessary services may not be available to allow diversion.

A key difference between the bills is that document .211415 does not allow a DA to impose the costs of a program on the offender. This recognizes that offenders may not have the funds to pay the costs. It also allows better tracking of costs because the funds would come out of the annual budget of the DA.

The members discussed deletion of language regarding controlled substances. A member noted that the language was removed because it is consistent with the purpose of the bill to allow the DA to determine whether a person should go to diversion. A member suggested that removing the provision would render its application inconsistent.

The members endorsed .211415 "for discussion" because it deletes the requirement that the offender pay for services, and they will leave the issue of controlled substances for later debate.

.211192 — Create Central Criminal Justice Data Repository in the New Mexico Sentencing Commission (NMSC)

Representative Ely explained the bill, noting that it is intended to address two major problems — entities that do not communicate with each other and poor recordkeeping. The bill requires the assignment of a consistent statewide identifying number (ID) for certain arrestees and establishes the NMSC as the data repository. The NMSC is designated because it is the only entity in the justice system that is entirely neutral. The NMSC would have the authority and duty to collect and ensure good data. He stated that the New Mexico Institute of Mining and Technology (NM Tech) and other entities will do the actual data analysis. NM Tech will contract with stakeholders as needed.

A member asked when and where the ID would be assigned. He suggested that it should be done at the time and place of fingerprinting. He also suggested that this should be in statute, not left to rule. A member noted that this could be difficult because not all counties have the necessary resources. The subcommittee discussed the need for sufficient funding and incentives to ensure that the counties comply.

.211420 — Create a Crime Reduction Fund

Representative Ely explained the bill. The bill would create a criminal justice coordinating council in each judicial district. The bill would formalize and make mandatory a program that has been informally and successfully instituted by the New Mexico Supreme Court. The bill also provides for funding criminal justice programs requested by local entities. Representative Ely explained that mandates from the legislature often fail. This bill would grant communities the flexibility to determine their needs, thus ensuring local support, and would also allow for program review.

A member noted that designating councils using judicial districts instead of counties may be problematic, as some districts contain counties with diverse needs. Representative Ely agreed it would be useful to discuss this issue with stakeholders. He also noted that the council members should include line staff and not just senior officials, as the former are aware of the practical problems that must be addressed.

The members discussed the funding issue extensively. A member noted that the proposed fund is recurring and does not revert to the General Fund. There was concern that, as drafted, the proposed fund could grow without limitation. Further, the General Fund is the only source of funding; creating a new fund is unnecessary. A member suggested that the proposed fund be limited to five years to assist passage. The proposed fund could be reconstituted later, prior to expiration.

A member noted that the proposed funds necessary to meet all of the actual needs are probably between \$40 million and \$50 million. The members discussed this estimate, noting the necessity to present a reliable estimate to the Senate Finance Committee. The discussion included an observation that the investment would be returned in lower prison costs but that would take four to five years. A member also noted that trained behavioral health professionals may not be available in rural areas to provide services, regardless of funding, and the members discussed the need to engage with universities and consider school loan forgiveness to encourage professionals to remain in or return to the state and rural areas.

The members discussed the technical problems with biometric machines and internet availability. Steve Kopelman, executive director, New Mexico Counties, stated that the organization conducted a survey on this issue. The survey revealed a number of problems, including that some counties do not have personnel who know how to operate the machines and that each jail has its own different information technology system. New Mexico Counties is working with each county to fix the problems, but it will take time. Mr. Kopelman noted that high-population counties do not have these problems and deal with the bulk of the offenders.

In response to a question regarding confidentiality, Representative Ely explained that the bill allows increased access to behavioral health records but only in the aggregate for the purposes of research.

Douglas Carver, deputy director, NMSC, suggested giving the NMSC monitoring authority to allow the NMSC to confirm compliance with the data-sharing requirements.

.211461 — Loan Repayment for Law Enforcement and Corrections Officers

Representative Ely summarized the bill, but noted that the bill is not ready for consideration.

. 211078 — Resources for Nonviolent Offenders with Behavioral Health Diagnoses

Representative Stapleton and Mr. Kopelman explained the bill. The bill would allow counties to modify services to meet local needs and to apply for funds. Mr. Kopelman noted that the bill is a high priority for counties, explaining that behavioral health issues are a significant challenge for counties and the state and are driving the high operating costs of jails. Offenders get little or no treatment as there are few or no professionals in rural communities. This bill would authorize treatment before offenders are released from jail. It also provides housing, job training and other services.

A member argued that the counties should maximize their use of gross receipts tax revenue before they are allowed to obtain funding from the legislature. Otherwise, poorer counties that have maxed out their gross receipts tax increments essentially subsidize the richer counties that have not.

Mr. Kopelman observed that the lack of providers, not lack of money, is often the issue. The bill would require the Human Services Department to help provide professionals.

.211486 — No Mandatory Parole for Certain Sentences

Representative Maestas explained the bill. A member suggested the bill should require parole for a firearm enhancement.

.211488 — Reduce Probation Time for Good Behavior

Representative Maestas explained the bill, noting that the national standard for caseloads for probation officers is 80. That standard is regularly exceeded in New Mexico. The bill would remove low-risk offenders from these caseloads and allow officers to focus on the most dangerous offenders.

.211494 — Medical or Geriatric Parole

Senator McSorley explained the bill. A member suggested that the CD should be required to assist offenders who lack the skills to complete the application process. Members also agreed that "incapacity" should be defined.

.211495 — Parole Board Procedures

Senator McSorley explained the bill. The bill would offer the Parole Board more flexibility to grant paroles. A member noted that the determining factor should not be what the offender did in the past, but whether the offender presents a public safety risk today. He suggested that the board should provide written findings justifying refusal. A member suggested that the bill should be shared with victim advocacy groups and the Parole Board.

.211489 — Post-Conviction DNA Testing Act

Senator McSorley explained the bill. He noted that the bill would allow convicted felons to petition a court to perform DNA tests to seek exculpatory evidence. He noted that there would be few cases, as DNA testing has been common over the past 20 years.

The members generally agreed to delete the requirement for a "full, fair and prompt" hearing, as judges are presumed to act accordingly.

.211492 — Halfway House and Transitional Facility Act

Senator McSorley explained the bill. He noted that the CD has contracted with facilities that provide no support services. The bill would require support services, such as education and job training.

.211506 — Accuracy of Eyewitness Procedures

Senator McSorley explained the bill. He explained that research has shown that eyewitness evidence is often unreliable. The bill includes national standards for increasing reliability. He noted that no law enforcement agency opposed the bill and that the procedures are not mandatory.

.211483 — Safe House Act

Senator McSorley explained the bill. A member noted that changing an individual's behavior is a slow process and relapse is part of the treatment process. He said that the treatment process should not be piecemeal and must address the overall needs of the offender. A member also noted that, currently, an individual who needs assistance may need to commit a crime to obtain services.

.211484 — Behavioral Health Investment Zones

Senator McSorley explained the bill. He noted that the bill supports non-Medicaid assistance, but he observed that the bill may not represent current best practices. A member suggested that the subcommittee might consider compiling a group of bills that specifically address behavioral health issues. Another member warned that the bills must be carefully coordinated, otherwise they will not work together.

Public Comment

Mr. Carver noted that the discussion did not include a bill addressing collateral consequences. Studies have shown that collateral consequences can cause high barriers to reintegration and affect recidivism. The members agreed that the issue should be considered in the future.

William Zunkel discussed a proposed memorial to consider converting a prison facility to a treatment center that would include incarceration. He said that the CD and other agencies support the concept.

Adjournment

There being no further business before the subcommittee, the seventh meeting of the Criminal Justice Reform Subcommittee adjourned at 3:45 p.m.