

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

**October 10, 2017  
Bernalillo County Metropolitan Court  
401 Lomas Boulevard NW  
Albuquerque**

The third meeting of the Criminal Justice Reform Subcommittee (CJRS) of the Courts, Corrections and Justice Committee (CCJ) was called to order by Representative Antonio Maestas, co-chair, on October 10, 2017 at 9:05 a.m. at the Bernalillo County Metropolitan Court (BCMC) 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 Legislator**

Sen. Linda M. Lopez

**Staff**

Monica Ewing, Staff Attorney, Legislative Council Service (LCS)  
Diego Jimenez, Research Assistant, LCS  
Celia Ludi, Staff Attorney, LCS

**Guests**

The guest list is in the meeting file.

**Handouts**

Handouts and other written materials are in the meeting file.

**Tuesday, October 10**

**Call to Order and Introductions**

Representative Maestas and Senator Rue welcomed everyone to the meeting, and the subcommittee members introduced themselves. Senator Rue said that the next meeting of the CJRS would be on October 27, 2017 in Albuquerque.

**BCMC Specialty Court Programs**

Courtney B. Weaks, presiding judge, Domestic Violence Early Intervention Program (DVEIP) and Mental Health Court, BCMC, provided an overview of the BCMC. The BCMC has 16 criminal judges who oversee 3,000 to 4,500 cases each year and three civil judges who oversee about 5,000 cases per year. The court averages 4,000 visitors per day. Plans to renovate the fourth floor are in their final phase. Judge Weaks mentioned that the room in which they were meeting is a ceremonial courtroom.

The BCMC is one of few courts with its own probation department. The probation department employs 45 probation officers. Judge Weaks told the subcommittee that pretrial services at the court are always open and that some low-risk offenders may be eligible for release through pretrial services programs.

In response to a question, Judge Weaks told the subcommittee that the building was constructed in 2004 at a cost of \$88 million. Jonathan Ash, deputy court executive officer, BCMC, explained that the construction bond term ends in June 2025. He noted that the fourth floor has space to house two more courtrooms before the courthouse reaches its capacity.

Robert Padilla, court executive officer, BCMC, explained in response to a question that the court's parking garage does not generate revenue for the BCMC. Money received from parking garage fees pays for contract services related to the garage, and remaining revenue is directed to the state General Fund.

A member of the subcommittee inquired about the number of judgeships provided for in similar-size cities and discussed the decrease in DWI cases in Bernalillo County. In response, Mr. Padilla stated that he was unsure of the number of judgeships in similar-size cities but told the subcommittee that civil cases have increased recently and that the BCMC is identifying resources that would add to the civil division. He explained that the BCMC hears civil cases for which the amount in dispute is at \$10,000 or less and that cases with greater amounts in dispute are heard at the district court. He said that the majority of civil cases involve pro se litigants who are not represented by lawyers and who are unfamiliar with court procedures and the law. These cases generally take longer to resolve.

Judge Weaks discussed her work with the Criminal Court Division since the end of 2014 and said that she presides over the DVEIP. While her role focuses on just a few specialty courts,

the court operates many programs unlike other magistrates in the state. She commended the BCMC for its work helping people.

Judge Weeks is a backup judge for the Community Veterans Court Program (Veterans Court) over which Judge Sandra Engel presides. The Veterans Court has a two-tracked system. Track one, for lower-risk and lower-need defendants, is a pre-adjudication diversion program that does not require participants to plead guilty before participating. If the program is completed successfully, the participant receives an order of dismissal. She noted that many first-time domestic violence offenders are on track one. Track two, for higher-risk and higher-need defendants, is commonly used for chronic DWI and domestic violence offenders. Track two is based around treatment and rehabilitation to ensure that the veterans receive the resources they need and is similar to a drug court model.

The court works with the U.S. Department of Veterans Affairs (VA) to facilitate participants' psychiatric and other counseling services. In order to be eligible for VA services, participants must have received an honorable discharge; however, the Veterans Court will accept dishonorably discharged individuals. The court requires that participants work with a mentor whose role is similar to an Alcoholics Anonymous sponsor. Judge Weeks stressed the importance of veteran camaraderie and community.

Judge Weeks described the DVEIP and the Batterer Intervention Program. The Batterer Intervention Program requires completion of 26 domestic violence group therapy sessions, avoidance of drugs and alcohol and oversight by a probation officer. Domestic violence courts are not modeled after drug courts.

The DVEIP is for low-risk and low-need individuals who do not need close monitoring. The purpose of the program is to get to the root of a person's domestic violence. The program is not appropriate for individuals with significant substance abuse issues.

Judge Weeks described the Domestic Violence Solutions Treatment and Education Program (DVSTEP) for domestic violence offenders with a history of chronic abuse and multiple arrests and convictions. The DVSTEP functions similarly to a drug court with close supervision, including monthly contact with judges and group and individual therapy. Offenders in the program frequently have a history of substance abuse. The program focuses on participants' sobriety before addressing the participants' domestic violence issues.

Judge Weeks recently took over the Mental Health Court, a voluntary pre-adjudication diversion program. Admission to the program is determined by the relevant district attorney and public defender and is focused on those with a mental health diagnosis or a developmental disability. An in-house provider participates in preliminary interviews to help determine eligibility. The court works with Albuquerque Behavioral Health, LLC, psychiatrists and counselors.

Participants in the Mental Health Court program see a psychiatrist and are given intensive counseling and treatment. The program is a minimum of six months, and participants are entitled to a dismissal of criminal charges upon successful completion. Most participants also struggle with homelessness and addiction. Participants are subject to random drug testing, and while sanctions for failed tests are determined on a case-by-case basis, they most often do not include incarceration for first violations.

Judge Weaks discussed the Behavioral Health DWI Court program, which operates on a drug court model and is overseen by Judge Vidalia Chavez. The program was established to assist people with mental health issues and DWI charges. The program facilitates counseling and treatment services with Albuquerque Behavioral Health. The program is not a pre-adjudication program and requires participants to plead guilty to DWI before participating. Sentencing for participants is postponed until the end of the program, and credit is given for time spent in the program. Participants are often monitored via ankle bracelets.

In response to a question, Judge Weaks explained that the DWI and Mental Health courts consolidate their costs by using the same probation and behavioral health services. The two programs are not consolidated because one is pre-adjudication and the other is not. The specialty court uses First Nations Community HealthSource for specialty court participants needing culturally specific services. Specialty court programs are tailored to participants' specific needs, which research shows is most effective. For example, the Veterans Court proceedings include presentation of the flags and recitation of the pledge of allegiance. Judge Weaks said that utilizing the VA for qualified participants saves on court costs. A member noted that veterans in particular benefit from a court specifically tailored to their needs.

In response to a question, Judge Weaks said that specialty court judges volunteer to run specialty courts, in addition to their regular dockets. She added that a Veterans Court volunteer performs community outreach and assists veterans with a variety of issues, including finding service animals.

In response to a question, Judge Weaks explained that court early intervention programs are completely self-funded and participants pay out of pocket for treatment and services. Many participants are eligible for Medicaid, so the court helps them enroll. Other funding sources include funds from federal Violence Against Women Act grants for training and services. Each funding source has limitations, and some prohibit the use of funds for pre-adjudication programs. Offering a court program participant a potential case dismissal is a great incentive.

A member explained that since the court of record for domestic violence and DWI charges is the magistrate court, the district court is the appeals court for those cases. The member reminded the subcommittee that the legislature passed a joint resolution during the 2017 regular session (<https://goo.gl/ecGMRj>) that, if approved by the voters in November 2018, would amend the Constitution of New Mexico to give the legislature authority to provide for appellate jurisdiction by statute.

A member expressed satisfaction that specialty courts allow for misdemeanants and nonviolent defendants to receive treatment.

The member also discussed that a participants' arrest and court records will reflect that an arrest was made but will show that the case was dismissed after a program is successfully complete. The member added that domestic violence convictions can affect housing, employment and other opportunities in the same way a felony conviction can.

A member provided an explanation of the Santa Fe Law Enforcement Assisted Diversion (LEAD) Program. In the LEAD Program, before an arrest occurs on a drug-related charge, a law enforcement officer may divert the defendant from the criminal justice system to treatment through the LEAD Program. The Santa Fe LEAD Program is operated by the law enforcement, not the courts. The member discussed legislation to make the LEAD Program available throughout the state. The bill was vetoed despite near unanimous support by the legislature.

In response to a question, Judge Weaks discussed conduct that can lead to a domestic violence charge. The subcommittee discussed the repercussions of a domestic violence victim calling emergency services. Regardless of the extent of the caller's alleged abuse or who called for protection, an arrest is almost always made. The effects of a domestic violence arrest on future employment and on possession of firearms were discussed. A member noted that domestic violence offenders often tell victims that the offender's and victim's lives will be ruined if the police are called.

In response to a question, Judge Weaks stated that various screening tools are used to identify the likelihood of a defendant's future criminal behavior. She said that it is likely that an event triggers an individual to commit most criminal offenses.

Judge Weaks explained that each specialty court develops unique screening tools and training. Risk assessment tools should be developed and used in coordination with the district attorney to create a consistent scoring system. In response to a question, she said that the court does not use Samaritan Counseling Center services. It uses counseling providers from a list of referrals from the Children, Youth and Families Department. A member noted that the Samaritan Counseling Center is closing.

The subcommittee discussed the collapsed behavioral health system in the state and the shootings that occurred at the library in Clovis. A member reflected that the alleged shooter only ever received informal counseling from his girlfriend's father.

Judge Weaks discussed other specialty court contracts with specific providers, including ABQ Health Partners, and those providers' commitment to have a staff person attend court proceedings. She said that the arrangement is funded with grant money earmarked for psychiatric services. The courts also need funding for sobriety monitoring and other services. The Drug Court Advisory Committee provides funding from liquor excise taxes, and most

funding for other specialty courts is from federal funds. A member requested that the court provide information on funding sources and recidivism rates for each of the specialty courts and noted that issues could arise if federal funding is cut.

A member noted that an increase in police presence in Albuquerque will lead to increased dockets unless pre-arrest programs like LEAD are instituted. Judge Weaks said that she believes that DWI arrests will be affected most significantly. She noted that domestic violence calls must be responded to, which will produce an increase in arrests. She said that the Albuquerque Police Department (APD) is so short-staffed that it is unable to answer 35 calls during peak hours. Decreases in police presence have resulted in fewer traffic stops. Judge Weaks stated that the courts are prepared for the potential increase in workloads as APD increases staffing.

Mr. Padilla announced that the Drug Court Advisory Committee met with staff from Santa Fe on the LEAD Program, and the court supports the concept.

The subcommittee discussed a recent Legislative Finance Committee report that domestic violence batterer programs are not working (<https://goo.gl/kcCGXe>). Judge Weaks responded that only 3% of the early intervention program's graduates reoffend for domestic violence. She noted that the DVSTEP is better for intervening with repeat offenders.

The subcommittee discussed a correlation between animal abuse and domestic violence. Bernalillo County is now training its officers on domestic violence calls to recognize certain animal behaviors that could signal abuse in a home. 2017 House Joint Memorial 6 (<https://goo.gl/tbvyj6>) requested that the Department of Public Safety and the Children, Youth and Families Department consider similar training. The memorial did not pass, but the sponsor will reintroduce the memorial.

In response to a question, Judge Weaks explained that the Behavioral Health DWI Court's title is based on the connection between the Behavioral Health Court and DWI Recovery Court. For both the DWI Recovery and Behavioral Health DWI courts, qualification is based on a person's substance abuse issues.

The subcommittee discussed the Bernalillo County Behavioral Health Initiative. The initiative began in 2014 and sought to use a one-eighth percent tax increase for addressing behavioral health problems. In 2016, the initiative was approved by voters. Estimates show that \$20 million in revenue should accrue each year. Judge Weaks said that she is unaware of judges or court staff being consulted on how funds from the initiative should be used.

The subcommittee requested that legislative staff draft a letter to the Bernalillo County Commission and the county manager to inquire as to the status of the initiative funds; how much of the tax revenue will be used for BCMC specialty courts and Second Judicial District Court probation services; and whether any money will be used for counseling and addiction services through the courts in Bernalillo County or for adverse childhood experiences.

In response to a question, Judge Weaks explained that she works with the head of probation and specialty court program managers. They notify her if any change occurs in a participant's case. She noted that drug courts operate nationwide, and they started in the 1980s.

In response to a question, Judge Weaks reflected that she has not seen a judge lose an election due to participation in a specialty court and said that judges who participate are generally commended.

### **Tour of the BCMC**

The subcommittee toured the BCMC, guided by Chief Judge Edward Benavidez and Mr. Padilla.

### **Felony Cases — Arrest Through Indictment**

Mr. Padilla summarized what takes place after a felony arrest. Once arrested, the defendant is taken to the Bernalillo County Metropolitan Detention Center and interviewed by staff. Most nonviolent fourth and third degree felony offenders are considered for immediate release.

If the defendant is released on the defendant's own recognizance, the defendant will see a custody judge within 24 hours. If the defendant is not released, he or she will be held for up to 72 hours before seeing a judge. The judge determines whether the defendant is released or kept in custody. The district attorney has the option of filing for a detention hearing to keep a defendant in custody.

A member noted that the officer files the criminal complaint with BCMC staff at the jail. When in jail, the defendant is most often seen by a judge remotely via a videoconference. The member noted that if the person is arrested for a felony, the complaint does not include any misdemeanor offenses that may have been part of the person's criminal conduct.

The district attorney has 10 business days to indict or release and dismiss a defendant who has been held. If the defendant is released and charges are not brought by the district attorney, those charges may be brought back within five years.

If the defendant is in custody for longer than 10 days, a defense attorney will likely request the defendant's release. Mr. Padilla discussed the 60-day rule that gives the court jurisdiction over a person. On day 61 following the arrest, charges are dropped and the court loses jurisdiction.

In response to a question, Mr. Padilla said that prior to October 3, 2017, the BCMC only heard first court appearances for misdemeanor cases, but now it hears felony first appearances, too. If a motion for detention is filed in a felony case, the BCMC loses jurisdiction and the case is transferred to district court.

Judge Benavidez said that through the date of the meeting, there have been 650 felony filings in the BCMC. Sixty percent of those filings result in some type of supervision by probation officers. Sixty percent to 70% of the felony detention filings will require supervision to be provided by the BCMC, and the BCMC is not staffed adequately to absorb the new felony workload. It is also important to consider the needs for support staff, leadership, equipment and supplies. Mr. Padilla said that he has three full-time employees on contracts with Bernalillo County through June 2018.

Mr. Padilla said that a probation officer's optimum caseload depends on the level of supervision of offenders in the caseload. An all-intensive supervision caseload should be no more than 40 cases; average supervision should be about 80 cases; and light supervision should be about 120 cases per probation officer. Mr. Padilla said that the BCMC was very fortunate that many of its probation officers came from the Corrections Department (CD), so they are familiar with probation processes. Judge Benavidez added that higher-skilled probation officers are required to deal with certain offenders.

In response to a question, Mr. Padilla confirmed that the court has already presented its budget request to the Legislative Finance Committee and to the Administrative Office of the Courts. He said that the BCMC requested a 9.1% budget increase to about \$25 million. Rachel Monarch, chief financial officer, BCMC, explained that in the last few years, the courts have collected \$3.4 million to \$3.6 million in fines and fees. Of those collected funds, 9% is kept for the court and the remainder is dispersed to other funds. The General Fund appropriation for the court for the current fiscal year was \$23 million.

In response to a question, Mr. Padilla said that the court has not consulted with the county about what services the court might need, but he reminded the subcommittee that the BCMC just began hearing felony cases and providing felony supervision on October 3, 2017. The costs for ankle bracelets and GPS tracking are paid for by the county.

Ana-Lisa Torres, grant administrator, BCMC, explained that the cost of operating a sobriety monitoring device varies. A device without a GPS could cost as little as \$7.00 per day and \$9.00 per day with GPS. The BCMC has very few misdemeanants on ankle-bracelet monitoring. Mr. Padilla compared those costs to the \$74.00 to \$86.00 per day it costs to incarcerate a person at the Bernalillo County Metropolitan Detention Center. The CD reports a cost of \$127 per day to incarcerate a felon. Mr. Padilla explained that the BCMC currently has 45 people on felony supervision.

Judge Benavidez explained that the new pretrial detention rules have been in place for several months, and related data should be available soon.

The subcommittee discussed the misconception by defendants that the court is against them, when the court functions more as an umpire than an adversary. Judge Benavidez stressed that for all BCMC judges, the main concern is public safety. The judges voted to take over

supervision in felony first appearances. He told the subcommittee that at the time the BCMC's budget was submitted, it had not yet assumed supervision of felony cases. He stated that the BCMC does not ask for more than what is necessary to function and said that pretrial services are now a huge component of the felony release proceedings.

The subcommittee discussed information that would be helpful in making improvements to the state's criminal justice system. Those items included an analysis of Bernalillo County crime statistics and the number of days it takes to process a case.

With recent rule changes, only about 6% of those arrested are held in jail before charges are filed.

In response to a question, Judge Benavidez said that the courts generally receive 2.7% of the state's total budget. This year, the judiciary requested 3% of the state's budget. The increase would give the courts an additional \$24 million.

A member said that the judiciary has been reasonable since the recession, and budget decreases happened. The absence of Albuquerque-based representation on the legislature's finance committees was discussed as problematic, and the member suggested the finance committees consult with the judiciary committees when considering the judiciary's budget.

The subcommittee discussed Representative Maestas' bill to move probation from the CD to judicial management. He believes that parole is a function of the CD and that probation is a function of the judiciary.

About 50% of states have probation as a function of the courts, and the other 50% have it in corrections. In New Mexico, probation and parole have the same culture because they are both operated by the CD.

In response to a question, Judge Benavidez explained that the BCMC's budget request did not include funding for any additional civil judges, but he noted that staffing issues will likely surface when APD is fully staffed. He anticipates requesting one additional judgeship in the next year. A member expressed that several constituents have complained about civil cases progressing slowly through the courts.

In response to a question, Mr. Padilla explained that the BCMC is currently trying to predict added costs for pretrial services since the court added felony supervision. He said that felony supervision alone is going to cost at least \$200,000 per year. He is unsure of misdemeanor supervision cost predictions but anticipates twice as many misdemeanants will be on supervision.

Mr. Padilla explained that the BCMC has about 30 GPS monitors for felony supervision.

Mr. Padilla will meet with Bernalillo County Sheriff Manuel Gonzales to develop new procedures for individuals who fail to appear at court. Failures to appear are a huge cost to the court, and they inconvenience judges, police and witnesses.

Mr. Padilla explained that the average landlord/tenant dispute case takes less than 30 days, and first hearings in those cases are held, on average, 21 days after the case is filed. He explained that the process established by the legislature requires two hearings, one for rent and another on damages, usually after the tenant has vacated the property. The time line for the second hearing is much more open and depends on tenant or landlord filings. Together, the three civil judges handle around 15,000 to 18,000 cases per year. This year, they are expected to exceed 20,000. About 40% of those cases are landlord/tenant disagreements.

### **Discussion — Preliminary Hearings/Pre-Indictment Pleas**

Judge Benavidez told the subcommittee that preliminary hearings and pre-indictment pleas do not currently occur in the BCMC, but there is discussion about holding preliminary hearings at the BCMC. Judge Benavidez has considered a drug court-type program aimed at rehabilitation for nonviolent repeat car thieves. He noted, however, that the program is not a top priority of the court.

In response to a question about specialty court funding, Ms. Torres said that drug court funding sources include Substance Abuse and Mental Health Services Administration and Bureau of Justice Assistance grants. The BCMC is a member of the National Center for State Courts, which allows the court access to information on other jurisdictions' best practices and standards. Ms. Torres said that grant money is used to ensure that those individuals most likely to complete court programs have access to them. She noted that accepting grants opens the court to audits and sometimes results in uncomfortable conversations about funding and operations, but the court willingly participates.

A member discussed the differences between grand jury proceedings and preliminary hearings. A grand jury hearing can often be completed in 15 to 20 minutes at the district court. The district court provides the jurors and space for preliminary hearings, which are closed proceedings that consist of a meeting with 12 jurors and the prosecutor. The jurors sometimes get a copy of the allegedly violated law.

Preliminary hearings, by contrast, are more labor intensive and may last for hours. Judge Benavidez explained that a preliminary hearing is used to determine whether a prosecution should move forward, and hearsay is allowed. The state may call one or more witnesses at the hearing. He stressed that the BCMC is prepared to take over the proceedings if it is asked to do so by the district attorney. Preliminary hearings may incentivize plea deal negotiations, and cases are often settled through plea agreements.

A member discussed the 10,000-plus cars stolen annually in the Albuquerque metropolitan area. Judge Benavidez agreed that the problem must be addressed or it will continue to worsen.

In response to a member's comment, Judge Benavidez said that the purpose of screening potential participants for drug court is to select those who are most likely to be helped by and to complete the program. Individuals with long criminal histories are often not selected.

### **Where to Go from Here**

A co-chair of the subcommittee discussed the Council of State Governments' willingness and ability to do research that would assist the legislature with criminal justice reform. He noted that all three branches of government must fully commit to begin such a process. He stated that the subcommittee will be reconvened in 2018 to begin identifying legislative solutions.

The subcommittee discussed the possible addition of a high misdemeanor to the current sentencing structure.

Douglas Carver, New Mexico Sentencing Commission, stated that in his previous work for the LCS, he conducted research on the possibility of creating additional levels of crimes. He agreed to share that research with the subcommittee.

The subcommittee discussed potential agenda items for its next and final meeting.

A member of the subcommittee noted that doing criminal justice reform in a piecemeal fashion could be inefficient and inhibit true reform.

### **Public Comment**

Senator Martinez announced to the subcommittee that the CD is hosting the 2017 Penitentiary of New Mexico Craftsmanship and Trades Fair from 9:00 a.m. to 3:00 p.m. at the corrections facility on State Road 14 in Santa Fe on Saturday, October 14.

### **Adjournment**

The subcommittee adjourned at 4:27 p.m.