



NEW MEXICO LEGISLATURE

COURTS, CORRECTIONS AND JUSTICE COMMITTEE

2017 INTERIM FINAL REPORT

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INTERIM SUMMARY

**Courts, Corrections and Justice Committee
and
Criminal Justice Reform Subcommittee
2017 Interim Summary**

The Courts, Corrections and Justice Committee (CCJ) met six times during the 2017 interim in Santa Fe, Las Vegas, Springer and Albuquerque to discuss and receive presentations about issues ranging from sexual assault and juvenile justice to medical cannabis and campaign donations.

The Criminal Justice Reform Subcommittee (CJRS) of the CCJ, a bipartisan group of eight members of the CCJ, met four times in Albuquerque to discuss and receive presentations about the state's criminal justice system and the need for reforms to improve that system.

This interim, the CCJ heard from many state officials and advocates about how the state's economic struggles have affected corrections facilities and jails, incarceration rates, the incidence of substance use disorders and the prioritization of funding among criminal justice-related agencies. State officials updated the committee about the progress on work to reduce the state's backlog of untested sexual assault examination kits and to implement policies to reduce future backlogs. Several presenters addressed bail reform efforts in the state, including the passage and effect of a related constitutional amendment approved by voters in 2016 and rules promulgated by the New Mexico Supreme Court following that amendment. As in past years, the committee welcomed groups of advocates that presented a variety of legislative priorities for the CCJ's consideration.

The CJRS chose to meet at the Law Offices of the Public Defender in Albuquerque, the Office of the Second Judicial District Attorney and the Bernalillo County Metropolitan Court to hear from and directly observe issues affecting stakeholders in the criminal justice system. A similar message was delivered by many who made presentations to the CJRS: the system is struggling from a lack of funding. Several presenters offered suggestions for programs that could help reduce the number of offenders who recidivate and for ways to save money through reforms to various aspects of the system. The CJRS concluded its interim work with an acknowledgment that significant legislative reform efforts are needed to improve criminal justice in New Mexico and with expressing an interest in continuing its work in 2018.

The CCJ's interim concluded, as in past years, with the presentation of several pieces of legislation for the committee's consideration and possible endorsement. The committee endorsed legislation related to DWI-related blood tests, resources for victims of human trafficking, funding for drug courts, uniform legislation related to directed trusts and guardianship, bail considerations for certain offenders, immigration reform and the federal Deferred Action for Childhood Arrivals law and requirements related to campaign donations made online using credit cards.

WORK PLAN AND MEETING SCHEDULE

**2017 APPROVED
WORK PLAN AND MEETING SCHEDULE
for the
COURTS, CORRECTIONS AND JUSTICE COMMITTEE
and the
CRIMINAL JUSTICE REFORM SUBCOMMITTEE**

Members

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

Advisory Members

Rep. Deborah A. Armstrong	Sen. William H. Payne
Sen. William F. Burt	Sen. John Pinto
Rep. Brian Egolf	Rep. Patricia Roybal Caballero
Rep. Doreen Y. Gallegos	Sen. Mimi Stewart
Sen. Daniel A. Ivey-Soto	Rep. Christine Trujillo
Sen. Bill B. O'Neill	Sen. Peter Wirth

Criminal Justice Reform Subcommittee

Members

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

Work Plan

The Courts, Corrections and Justice Committee was created by the New Mexico Legislative Council on June 5, 2017. During the 2017 interim, and as time permits, the committee will receive presentations on the following:

1. an update from the Corrections Department, including discussion of the status of efforts to reduce recidivism and improve public safety using the New Mexico Results First initiative, the department's budget, department staffing and staff training, inmate housing, gender-specific policies and practices of the department, inmate health care and other department programs and legislative priorities;

2. an update from the Department of Public Safety, including discussion of sexual assault examination kit testing and related policies developed by law enforcement agencies, other forensic evidence testing backlog and related policies and department staffing and legislative priorities;
3. an update from the Children, Youth and Families Department, including discussion of juvenile justice and the school-to-prison pipeline, the use of isolated confinement and community corrections for juveniles and department programs and legislative priorities;
4. the Administrative Office of the Courts unified budget and court updates and legislative priorities;
5. an update from the Public Defender Department, including discussion of the department's legislative priorities;
6. an update from the Administrative Office of the District Attorneys and the office's legislative priorities;
7. an update from the New Mexico Association of Counties, including discussion of issues affecting county jails and the association's legislative priorities;
8. an update from the New Mexico Sentencing Commission, including a presentation of the commission's *New Mexico Prison Population Forecast*;
9. criminal justice reform, including the Criminal Justice Reform Subcommittee's work on criminal justice reform issues and related legislation;
10. funding for sexual assault services and review of sexual-assault-related legislation;
11. domestic violence, including effects on children and programs for survivors and perpetrators and related funding;
12. the work of the state's Juvenile Justice Improvement Initiative Task Force;
13. human trafficking;
14. medical cannabis;
15. substance abuse, including drug decriminalization and legalization and substance abuse treatment;

16. parole, including release eligibility, "in-house" parole and community corrections and reentry programs;
17. Albuquerque Police Department reforms and crime rates and methods used for crime reduction in cities comparable to Albuquerque;
18. government accountability;
19. bail and pretrial detention system and information technology systems reforms;
20. regulation of towing service providers;
21. law enforcement eyewitness identification procedures;
22. a report from the Office of the State Auditor on its pay equity audit;
23. legislation related to insurance risk and solvency assessments; and
24. legislation for committee consideration.

The Criminal Justice Reform Subcommittee will focus on reforms to the state's Criminal Code and the state's criminal justice system.

**Courts, Corrections and Justice Committee
2017 Approved Meeting Schedule**

<u>Date</u>	<u>Location</u>
June 21	Santa Fe
July 31-August 1	Las Vegas, Springer
August 23-24	Santa Fe
September 12-13	Hernandez, Santa Fe
October 16-18*	Albuquerque
November 8-9	Santa Fe

*A joint meeting with the Legislative Health and Human Services Committee will be held on October 18.

**Criminal Justice Reform Subcommittee
2017 Approved Meeting Schedule**

<u>Date</u>	<u>Location</u>
August 14	Albuquerque
September 27	Albuquerque
October 10	Albuquerque
October 27	Albuquerque

COURTS, CORRECTIONS & JUSTICE COMMITTEE
AGENDAS AND MINUTES

Revised: June 16, 2017

**TENTATIVE AGENDA
for the
FIRST MEETING
of the
COURTS, CORRECTIONS AND JUSTICE COMMITTEE**

**June 21, 2017
State Capitol, Room 322
Santa Fe**

Wednesday, June 21

- 10:00 a.m. **Call to Order and Introductions**
—Representative Gail Chasey, Co-Chair
—Senator Richard C. Martinez, Co-Chair
- 10:15 a.m. (1) **Criminal Justice Reform: National Overview**
—Alison Lawrence, Criminal Justice Program Director, National
Conference of State Legislatures
- 11:15 a.m. (2) **Review of 2017 Committee-Endorsed Legislation**
—Monica Ewing, Staff Attorney, Legislative Council Service (LCS)
- 11:30 a.m. (3) **Work Plan and Meeting Schedule Discussion**
—Monica Ewing, Staff Attorney, LCS
- 12:15 p.m. **Public Comment**
- 12:30 p.m. **Adjourn**

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

**June 21, 2017
State Capitol, Room 322
Santa Fe**

The first meeting of the Courts, Corrections and Justice Committee (CCJ) was called to order by Representative Gail Chasey, co-chair, on June 21, 2017 at 10:09 a.m. in Room 322 of the State Capitol in Santa Fe.

Present

Rep. Gail Chasey, Co-Chair
Sen. Richard C. Martinez, Co-Chair
Rep. Eliseo Lee Alcon
Sen. Gregory A. Baca
Sen. Linda M. Lopez
Rep. Antonio Maestas
Rep. Sarah Maestas Barnes
Sen. Cisco McSorley
Rep. Angelica Rubio
Sen. Sander Rue

Advisory Members

Rep. Deborah A. Armstrong
Sen. Bill B. O'Neill
Sen. John Pinto
Sen. Mimi Stewart
Sen. Peter Wirth

Staff

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

Guests

The guest list is in the meeting file.

Absent

Sen. Jacob R. Candelaria
Rep. Zachary J. Cook
Rep. Jim Dines
Rep. Javier Martínez
Rep. William "Bill" R. Rehm

Sen. William F. Burt
Rep. Brian Egolf
Rep. Doreen Y. Gallegos
Rep. Daniel A. Ivey-Soto
Sen. William H. Payne
Rep. Patricia Roybal Caballero
Rep. Christine Trujillo

Handouts

Copies of all handouts are in the meeting file.

Wednesday, June 21

Call to Order

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

Criminal Justice Reform

Alison Lawrence, director, Criminal Justice Program, National Conference of State Legislatures (NCSL), explained that much of the sentencing and corrections reform information in her presentation materials (Item (1)) is based on research performed by the Public Safety Performance Project (PSPP) of The Pew Charitable Trusts (Pew) to support policies developed by the Justice Reinvestment Initiative with participating states. The initiative is a public-private partnership that includes the U.S. Department of Justice (DOJ) Bureau of Justice Assistance, Pew and other governmental and nongovernmental organizations. The PSPP helps states advance fiscally sound, data-driven policies and practices in the criminal and juvenile justice systems to protect public safety, hold offenders accountable and control corrections costs. Ms. Lawrence added that many states have initiated corrections and sentencing reforms because of the enormous expenses associated with a skyrocketing prison population that has resulted from state policies that place more offenders behind bars for longer periods of time. The PSPP has worked directly with more than a dozen states to help them develop research-based sentencing and corrections policies and practices that slow the growth of prison costs while reducing recidivism rates and keeping communities safer.

Referring to her presentation materials (Slide 2), Ms. Lawrence noted that the violent crime rate has been decreasing steadily since the early 1990s, but the prison population has been steadily increasing. As a result, prisons now hold more nonviolent offenders; prison populations are higher than ever; and the costs of corrections systems have steadily increased.

Ms. Lawrence said that prison admissions are driven both by sentencing and by penalties for probation and parole violations. Accordingly, two ways to decrease admissions are to impose community-based sentences instead of incarceration and to use an alternative to incarceration for probation and parole violations. Both approaches require improvements in the quality of community-based supervision to support rehabilitation and reduce recidivism.

Time spent in prison can be reduced through early release and by establishing professional standards for members of parole boards. Ms. Lawrence remarked that many states now set professional qualifications and require training for parole board members to ensure that parole decisions are based on research that supports decisions and not on any particular ideology.

Ms. Lawrence stated that research on states where corrections reforms have been in place for some time shows that reducing prison populations by use of community-based sentences, alternatives for rule violations and accelerated release has not resulted in an increase in violent crime; in fact, most states that have enacted reforms are seeing drops in crime rates of all kinds, mostly because of the intensive supervision and support that are provided in lieu of incarceration. For example, South Carolina's prison population decreased by 30 percent after it instituted alternatives to incarceration for administrative probation and parole violations.

Ms. Lawrence explained the six successive phases of criminal justice reform, which are related but which are usually implemented through separate legislation. Those phases are: policing; pretrial; sentencing; supervision; release; and reentry.

Ms. Lawrence commented (referring to Slide 4) that community policing is a current trend, and she added that community policing was not addressed heavily through legislation until about three years ago. She noted that the City of Santa Fe's Law Enforcement Assisted Diversion program is a nationally recognized and studied approach to diversion from incarceration and the criminal justice system. She observed that research shows that a pretrial stay in jail for as few as two days can have cascading negative economic and social effects both for an offender and a community, and it dramatically increases the chances that the offender will reoffend. The primary purpose of pretrial diversion programs is to hold offenders accountable for their offenses and, ideally, to reduce the number of offenders with convictions on their records. New Mexico's courts have been closely involved in development of pretrial release protocols, as well as a proposed constitutional amendment that would allow release of certain offenders without bail, which passed the 2016 legislature.

Ms. Lawrence addressed sentencing and supervision and said that a number of states have made substantial revisions to their criminal codes, primarily to clarify and redefine elements of criminal offenses and to restructure penalties to align with the seriousness of offenses. She referred to her materials (Slide 5), which showed some of the necessary elements of a successful supervision and diversion program. She said that a government cannot just divert offenders from prison; it must also provide effective supervision to achieve success and reduce recidivism. The use of evidence-based programs is especially important in this regard; for example, "boot camps" are popular proposals, but research shows that while a few such models have been successful, most, especially the more punitive models, fail to affect participants' recidivism rates.

Ms. Lawrence remarked that research shows that after seven years in prison, prisoners are likely to remain in prison; even if they are released, chances are great that they will reoffend and return to prison. This is why early release is an important component of reducing total prison populations. Early release must be combined, though, with strong support for offenders' reentry into their communities, including employment support. She added that many reentry programs have strong grassroots community support from churches and chambers of commerce. Some states have begun to explore a policy by which offenders may obtain a certificate of rehabilitation or employability upon release. Early reports show that such certificate programs, along with

policies that limit employer liability for hiring ex-offenders and a state's liability for issuing the certificates, are effective in helping a released offender obtain employment. She added that the Collateral Consequences Resource Center is monitoring the use of certificates.

Ms. Lawrence said that an important and growing issue in prison populations is behavioral health, particularly drug addiction and mental illness. States are already strengthening their behavioral health programs, and new federal money will be available soon to support those efforts.

In summary, Ms. Lawrence said that prison reform is expensive and essential. States are funding criminal justice reform by reallocating real or projected savings into treatment programs, performance incentive funding, training and the use of risk and needs assessments and by reinvesting in justice systems and programming. Ms. Lawrence reported that states that have been enacting reforms for a few years are now starting to see savings. For example, in 2010, South Carolina enacted a criminal justice reform bill that prioritized prison space for violent offenders and focused on reducing recidivism by diverting some offenders from prison and increasing community supervision and support. The reforms added to the list of violent crimes; expanded diversion, treatment and prison "good time" programs; required evidence-based community supervision; and created alternatives for probation and parole rule violations. By 2013, South Carolina saw an eight percent decline in its prison population and has closed three prisons.

Prison reforms occur on three levels: local, state and federal. Ms. Lawrence reported that there is a nationwide effort called the Safety and Justice Challenge, which aims to support local jail reforms and to reduce over-incarceration by changing the way America thinks about and uses jails. The initiative is supported by a five-year, \$100 million investment by the John D. and Catherine T. MacArthur Foundation. The 34 counties, four cities and two statewide systems participating in the initiative will develop and model effective ways to ensure that people who do not belong in jail are kept out, to more effectively reintegrate those who must be confined into the community upon release and to help offenders stay out of jail after release.

Ms. Lawrence observed that the U.S. Congress has an appetite for criminal justice reform on the federal level, which is not shared by the DOJ. She noted that a May 12, 2017 memorandum from U.S. Attorney General Jeff Sessions to all federal prosecutors establishes the charging and sentencing policy for the DOJ and instructs prosecutors to charge and prosecute the most serious and readily provable offenses in each case, which offenses carry substantial sentences, including "mandatory minimum" sentences that limit an offender's ability to obtain early release through good behavior. She does not expect significant federal criminal justice reform action for two or three years, except as it may relate to border security and human trafficking.

A member asked if there are any national studies on community policing and criminal justice reforms as they relate to Ferguson, Missouri. Ms. Lawrence said there is one, but it has not yet been published.

Members asked for more information regarding legal cannabis, including information on tax revenue, the effects on and any savings for criminal justice systems and changes in levels of drug-related offenses.

Members also asked for more information on the effects on accused people when they are arrested and jailed, including lost employment, asset forfeiture, garnished wages, warrant and other fees and the ability to pay child support. A member also asked for additional information on issues collateral to conviction, including interruptions in child custody responsibilities and arrangements. Ms. Lawrence responded that the NCSL is working on a study related to those requests.

A committee member asked about criminal justice issues specific to women, including relationships with children and families and the opportunity to breastfeed while incarcerated. Ms. Lawrence replied that the National Institute of Corrections, an agency within the DOJ, has considerable information on the topic. She noted that a number of issues arise because women are a small proportion of total prison populations. Housing female inmates is of particular importance because there are fewer facilities to accommodate women, so women are more likely to be housed in facilities far from their homes, which affects familial relationships.

A member expressed interest in whether the U.S. attorney general's proposed budget includes an increase in funding for processing sexual assault examination kits.

Referring to Ms. Lawrence's materials (Slide 7), a member commented that Albuquerque has not experienced a reduction in subsequent offenses when offenders are released from jail pending trial. The member noted that there have been a couple of widely reported cases in which an offender released from pretrial detention committed several subsequent offenses after release. Ms. Lawrence responded that the Laura and John Arnold Foundation's Criminal Justice Initiative has compiled considerable research on pretrial release and recidivism.

Another member commented that criminal justice reforms are sometimes criticized as being a "soft-on-crime" approach because reforms might benefit offenders. Ms. Lawrence said that the best approach is to base reforms on evidence showing the effectiveness of the changes. She added that states whose legislative, executive and judicial branches cooperate with each other experience good results from criminal justice reforms. She also observed that some states have referred to reforms as being "right on crime" or "smart on crime" rather than "soft on crime", and she said that a comprehensive public education approach — including town hall meetings, op-ed pieces and public polling — is important in providing the public with information on why criminal justice reforms are important.

Review of 2017 Committee-Endorsed Legislation

Ms. Ewing presented a summary of the outcomes of bills that the CCJ endorsed in 2016 and that were introduced during the 2017 session. She highlighted that of the 18 committee-endorsed bills that were introduced, 10 passed the legislature and four were signed into law, including Senate Bill 60, Senate Bill 65, House Bill 12 and House Bill 181. She added that another piece of legislation — Senate Joint Resolution 1, which proposed a constitutional amendment to give the legislature authority to establish appellate jurisdiction in certain cases — also passed the legislature and will be voted on in the 2018 general election. Finally, she said that five of the committee-endorsed bills were vetoed, another five did not pass the legislature and three were not introduced in the 2017 session.

Work Plan and Meeting Schedule Discussion

The committee discussed its proposed work plan and agreed to include the following additional topics to those proposed:

- the Corrections Department budget, staffing and staff training;
- funding for sexual assault programs and a review of procedures related to the processing of sexual assault examination kits as required by Senate Bill 474 and Senate Bill 475 from the 2017 session;
- the "school-to-prison" pipeline and mental health as those items relate to the Children, Youth and Families Department;
- funding of domestic violence programs;
- medical cannabis;
- the Office of Superintendent of Insurance's risk and solvency assessments;
- law enforcement eyewitness identification procedures; and
- the Office of the State Auditor's pay equity audit.

Public Comment

Meredith Machen, president of the League of Women Voters of New Mexico, offered the league's help with public awareness campaigns on criminal justice reform issues, and she expressed strong support for specialty and problem-solving courts.

Lucy River, director of policy and communications for New Mexico Ethics Watch, and Heather Ferguson, legislative director, Common Cause, expressed support for the inclusion of ethics and government accountability on the committee's work plan.

A lobbyist for the Bail Bond Association of New Mexico offered to provide information on the work of the association and the association's impact on the state's economy and on society.

A representative of Gerald Madrid Bail Bonds commented that the bail bonds industry contributes to New Mexico's economy and public safety. He said the industry has a lot to offer the state but is disappointed that the industry is just 10 percent as large as it was a few years ago.

Adjournment

There being no further business before the committee, the first meeting of the CCJ for the 2017 interim adjourned at 12:37 p.m.

Revised: July 25, 2017

**TENTATIVE AGENDA
for the
SECOND MEETING
of the
COURTS, CORRECTIONS AND JUSTICE COMMITTEE**

**July 31, 2017
New Mexico Highlands University
Student Union Building Ballroom
Las Vegas**

**August 1, 2017
Springer Correctional Center
Springer**

Monday, July 31

- 10:00 a.m. **Call to Order — Introductions**
—Senator Richard C. Martinez, Co-Chair
—Representative Gail Chasey, Co-Chair
- 10:10 a.m. **Welcome — New Mexico Highlands University (NMHU)**
—Dr. Sam Minner, Jr., President, NMHU
- 10:30 a.m. (1) **[Corrections Department Updates — Results First Review — Budget Update — Staffing and Staff Training](#)**
—David Jablonski, Secretary of Corrections
- 12:15 p.m. **Lunch**
- 1:15 p.m. **Approval of Minutes**
- 1:20 p.m. (2) **[New Mexico Association of Counties Update](#)**
—Grace Philips, General Counsel, New Mexico Association of Counties
- 2:15 p.m. (3) **[Rising Incarceration Rates for Women](#)**
—Denicia Cadena, Policy Director, Young Women United
—Cory Lee, Program Director, The Pavilions, Crossroads for Women
—KC Quirk, Board Member, New Mexico Women's Justice Project
- 3:30 p.m. (4) **[Government Accountability](#)**
—Douglas Carver, Executive Director, New Mexico Ethics Watch

4:30 p.m. **Public Comment**

5:00 p.m. **Recess**

Tuesday, August 1

10:00 a.m. **Reconvene**

10:10 a.m. (5) [Springer Correctional Center — Inmate Housing — Department Policies](#)

—David Jablonski, Secretary of Corrections

—Ebeth Cruz-Martinez, Warden, Springer Correctional Center

11:00 a.m. **Tour of Springer Correctional Center**

12:00 noon **Adjourn**

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

**July 31-August 1, 2017
Las Vegas and Springer**

The second meeting of the Courts, Corrections and Justice Committee was called to order by Senator Richard C. Martinez, co-chair, on July 31, 2017 at 10:08 a.m. at the Student Union Building ballroom at New Mexico Highlands University in Las Vegas.

Present

Rep. Gail Chasey, Co-Chair
Sen. Richard C. Martinez, Co-Chair
Rep. Eliseo Lee Alcon
Sen. Gregory A. Baca (7/31)
Sen. Jacob R. Candelaria (7/31)
Rep. Jim Dines
Sen. Linda M. Lopez (7/31)
Rep. Antonio Maestas
Rep. Sarah Maestas Barnes
Rep. Javier Martínez
Sen. Cisco McSorley
Rep. William "Bill" R. Rehm
Rep. Angelica Rubio
Sen. Sander Rue (7/31)

Absent

Rep. Zachary J. Cook

Advisory Members

Sen. Bill B. O'Neill
Sen. John Pinto (8/1)
Rep. Patricia Roybal Caballero
Sen. Mimi Stewart (7/31)
Rep. Christine Trujillo

Rep. Deborah A. Armstrong
Sen. William F. Burt
Rep. Brian Egolf
Rep. Doreen Y. Gallegos
Sen. Daniel A. Ivey-Soto
Sen. William H. Payne
Sen. Peter Wirth

(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 are in the meeting file.

Monday, July 31**Call to Order**

Senator Martinez welcomed members of the committee, staff and guests to the meeting and asked the members and staff to introduce themselves.

Welcome — New Mexico Highlands University (NMHU)

Dr. Sam Minner, Jr., president, NMHU, informed the committee that NMHU's three most important features for the recruitment and retention of students are its affordability, the social mobility it offers graduates and student engagement. NMHU is the most affordable university in the state, the third most affordable in the Southwest and the eighth most affordable for out-of-state students in the country. The campus has been improved by the steady implementation of building and renovation projects; most recently the on-time and under-budget renovation of the McCaffrey Historic Trolley Building and the imminent renovation of Rodgers Hall to preserve historic features. A new football field with a new scoreboard is under construction.

NMHU has recruited five students from Chicago to play football for the school next fall. One of those students was his high school's valedictorian. The university just signed the number-one scorer in New Mexico to play basketball, and the student-athlete is from Las Vegas. NMHU's rugby club team has twice been national champions and placed fifth this year. Many rugby players have gone on to professional rugby careers after graduation.

NMHU offers students extensive recreational opportunities, including skiing and hiking trips. The university provides students with hands-on experience in many study areas; for example, anthropology fieldwork and participation in health care projects in Africa. A partnership with Los Alamos National Laboratory (LANL) has resulted in a K-12 makerspace, volcano research in the Czech Republic and the purchase of a mobile science lab to take to surrounding community schools, all of which were funded by LANL. NMHU also offers a range of arts courses and supports the arts through initiatives such as the invitational New Mexico Painters exhibition.

On questioning, Dr. Minner and Max Baca, vice president, finance and administration and government relations, NMHU, addressed the following topics.

Tracking student outcomes. Dr. Minner confirmed that the university tracks graduation rates and has begun to monitor students' post-graduation employment.

Infrastructure. Mr. Baca said that the university has a 10-year capital improvement plan that includes addressing the campus' sewer lines. It has installed new roofs, a boiler and geothermal cooling and heating systems, which have reduced the university's carbon footprint, maintenance expenses and electric bills.

Effect of lottery scholarship reductions. Dr. Minner informed the committee that the American Association of University Presidents is working on a unified response to the reduction of lottery scholarships to cover just 60% of tuition. He said the reduction is having a very negative effect on NMHU students. Many students have great financial need, and federal Pell grants and work-study jobs will not provide enough assistance to cover tuition for those students in the scholarship program. He added that the reduced scholarship amounts may have an impact on the school's social mobility outcomes.

Corrections Department (CD) Updates — Pew-MacArthur Results First Initiative Review — Budget Update — Staffing and Staff Training

David Jablonski, secretary, CD, informed the committee that the department is working with the Pew-MacArthur Results First Initiative project to identify and invest in programs offered to inmates that help reduce recidivism. Currently, 31 of 38 of the CD's programs are evidence-based, and 90% of the department's funds allocated to recidivism reduction initiatives are used for those 31 programs. It is especially important that the department employ evidence-based programming that is cost-effective because of the CD's budget cuts. All programming is state-funded except for the sober living communities, which are funded through a grant.

One of the biggest budgetary challenges the department faces is the cost of inmate health care. For fiscal year (FY) 2018, the department has a \$42.6 million contract with Centurion Managed Care (Centurion) to provide health care in the state's prison facilities; has an \$11 million contract with Boswell Pharmacy Services for pharmacy services; and is negotiating an agreement with Christus St. Vincent Regional Medical Center, which would enable the CD to access the federal 340B drug pricing program. The department does not currently employ staff to perform audits of health care services within the CD's facilities, but it has contracted with HealthInsight New Mexico to provide nurse-auditors to perform those audits beginning in the first quarter of FY 2018. The department plans to hire a full-time clinical nurse-auditor in the first quarter of FY 2018. The cost of prescription medication consumes the majority of the department's health care budget. Routine dental care is provided in CD facilities through contracts with dentists in the communities where the facilities are located.

Secretary Jablonski highlighted the following safety and security measures that the CD has implemented:

- creation of fugitive apprehension units to arrest probation and parole absconders, which has resulted in an increase in apprehensions from 117 in 2011 to over 2,700 in 2016;

- installation of full-body scanners to help identify contraband that a visitor might attempt to bring into a facility. The scanners were installed at the Central New Mexico Correctional Facility in Los Lunas, the Penitentiary of New Mexico in Santa Fe and the Springer Correctional Center in Springer;
- creation of a new offender management services office; and
- the use of a new victim notification system, under contract with a private company, to ensure that all victims are timely notified of an offender's release.

In addition, the department has provided an increase in pay for its corrections officers working in rural areas, such as Grants and Roswell, in an effort to reduce officer vacancies and incentivize employee retention. The Cibola County Correctional Center in Grants is closing, and the CD is hoping to hire as many of the employees from that center as possible at the Western New Mexico Correctional Facility (Western), also located in Grants. That hiring effort could reduce the officer vacancy rate at Western from 30% to 15%.

On questioning, Secretary Jablonski and other CD employees addressed the following topics.

Inmate health care. Secretary Jablonski explained that Medicaid is implicated in inmate health care in two ways: first, if an inmate is hospitalized, after 24 hours in a hospital, the inmate becomes eligible for Medicaid; and second, most inmates are eligible for Medicaid upon their release from prison. The department pre-enrolls inmates who are close to their release dates, and 95% of inmates are eligible for Medicaid upon their release, which is especially important for inmates with chronic conditions that need consistent management.

Dr. Wendy Price, chief, Behavioral Health Bureau, CD, explained that Centurion asserts that it is exempt from the provisions of the state's Inspection of Public Records Act (IPRA), with respect to information requests related to inmate health care, because Centurion is a private entity. Jim Brewster, general counsel, CD, said that despite that assertion, Centurion does provide redacted documents to the CD in response to IPRA requests.

Staff vacancy rates. Of the approximately 2,500 full-time employees in the CD, 1,400 are corrections officers. Secretary Jablonski reported that corrections officers work an average of eight to 12 mandatory overtime hours per week because of the CD's high officer vacancy rates. While the mandatory overtime increases officers' income, it also contributes to employee burnout and fatigue on the job. The department is constantly recruiting employees, but attrition in corrections officer positions is highest in the first year of employment. Secretary Jablonski added that if a corrections officer stays on the job for five years, the CD's data shows that the officer will likely stay with the department through retirement. Secretary Jablonski said that it costs the CD approximately \$17,000 to recruit and train each new corrections officer it hires.

Department budget. Phillipe Rodriguez, acting director, Administrative Services Division, CD, affirmed that, two years ago, the CD reported \$200 million in deferred

maintenance on its facilities. This year, the deferred maintenance amount exceeds \$300 million. The department requested \$53 million for maintenance in FY 2017 and \$47 million in FY 2018, but neither request was included in Governor Susana Martinez's budget request for the department. The General Services Department is performing an independent assessment of the CD's facilities, and it may conclude that some facilities are past their useful life.

A committee member observed that only two members of this committee also serve on the Legislative Finance Committee (LFC), and, as a result, the information the LFC has about the CD's programming and budgetary needs is not as complete as it would be if there were more overlap in the committees' membership.

Inmate programming and pre-release services. Dr. Price explained that assessing the effectiveness of mental health programming, such as addiction treatment, is largely subjective, but the department is working with the Results First Initiative to develop more objective performance measures.

Rose Bobchak, director, Probation and Parole Division, CD, reported that all inmates who do not have a high school diploma work toward obtaining a general equivalency diploma (GED) while they are incarcerated. The pass rate for GEDs in CD facilities is 72%, while the national average is 79%. Ms. Bobchak said that 180 days before an inmate is released, the department works with the inmate to identify the services the inmate will need upon release and to connect the inmate with community service providers.

Anna Martinez, acting director, Corrections Industries Division, CD, informed the committee that revenue from the sale of products made in CD facilities is placed in the state's Crime Victims Reparation Fund. Gross receipts tax is also paid on those sales. Some of the products are name plates, furniture, state seals for public buildings, clothing and hoop houses to grow food for consumption in prison and for sale. A bakery to produce items, including cake, tortillas and donuts, will open in October 2017. The Corrections Industries Division operates with an enterprise fund and does not receive General Fund money.

Members requested additional information from the CD on the following:

- the amount of funding requested in the governor's budget for FY 2018 for deferred maintenance;
- staffing levels and vacancy rates, compaction rates and retirement rates for each facility as of August 1, 2017;
- the cost of medical care for HIV-positive inmates;
- the number of inmates at the Springer Correctional Center who have a diagnosis of diabetes, and the cost for those inmates' health care;
- the number of inmates released who qualify for Medicaid;
- whether the Community Corrections Grant Fund has a remaining balance following the fund sweeps during the past several legislative sessions; and

- a breakdown of costs per inmate for every facility.

New Mexico Association of Counties Update

Grace Philips, general counsel, New Mexico Association of Counties, provided an update on county detention facilities. Ms. Philips provided a list of adult and juvenile county detention centers along with information about each facility's population capacity and the average daily population. She noted that the number of juvenile detention facilities is decreasing and that McKinley, Quay and Eddy counties have all closed their juvenile facilities in the last two years. Ms. Philips added that Cibola County will close its juvenile facility in November 2017, and Taos and Otero counties are currently reducing their juvenile populations. Juveniles who were formerly housed in facilities that are closed are now being held in other counties, which results in longer transport times for those juveniles and makes it more difficult for family visits.

Until 2013, New Mexico had more people in county jails than in state prisons. As of 2016, the state's prison population was significantly higher than the county jail population. The recent amendment to the Constitution of New Mexico, related to bail, along with new Supreme Court rules relating to that amendment, are expected to reduce the populations in county jails. Studies by the New Mexico Sentencing Commission show that the median length of stay for an inmate arrested on a misdemeanor charge and held in a county detention facility has decreased in all facilities included in the report. The single most influential factor in increasing an inmate's length of stay in a county facility is whether the inmate's competency to stand trial is raised. A challenge to competency increases an inmate's stay by an average of 300 days.

Nationwide, county jails have been asked by federal Immigration and Customs Enforcement (ICE) to hold persons arrested for up to 48 hours after those persons are eligible for release. That 48-hour detention allows ICE to determine whether it will pursue deportation proceedings against the person. Since 2007, county facilities in New Mexico have not honored such requests from ICE, based on several federal court cases that found that compliance with such detainer requests is not mandatory and that aspects of those detentions violate constitutionally guaranteed rights to due process.

The goal of House Bill 370 (2017 regular session) was to help reduce the number of opioid-related overdose deaths by making the antidote naloxone more available. An appropriation of \$440,196 was made to fund the purchase of naloxone as part of a pilot program. Nine counties, including Chaves, Colfax, Luna, Rio Arriba, Roosevelt, San Juan, Sandoval, Sierra and Taos, have volunteered to partner with the Office of Substance Abuse Prevention of the Human Services Department's Behavioral Health Services Division for the pilot program. The program will make a naloxone kit available to any inmate upon request, following training in the use of the kit.

On questioning, the following topics were addressed.

Inmate health care. Ms. Philips said that providing sufficient funding for community-based mental health services and an evidence-based risk assessment instrument are the two most effective actions the legislature could undertake to create more equity and justice in the county detention system. A committee member said that jails and prisons should not hold opioid-addicted offenders who are pregnant past the time they are eligible for release because the facility believes it would benefit the offender's health.

Staffing. Ms. Philips said that recruiting and retaining good staff is always a challenge, but the facilities that are managed most effectively and safely are easier to keep fully staffed. Wages for staff at county detention facilities are typically lower than for many other jobs, especially those in the oil and gas industry. However, there are good benefits associated with work in county corrections, and it is a stable employment opportunity.

Approval of Minutes

The committee approved the minutes for its June 21, 2017 meeting with no amendments.

Rising Incarceration Rates for Women

Denicia Cadena, policy director, Young Women United, referred to her presentation materials and informed the committee that Bernalillo County is one of four sites in the United States that is participating in "Deep End Youth" as part of the Juvenile Detention Alternatives Initiative (JDAI), a project sponsored and funded by the Annie E. Casey Foundation to reduce reliance on local confinement of court-involved youth without sacrificing public safety. The project addresses gender disparity in detention rates and average length of stay. Between FY 2012 and FY 2014, detention rates for girls in Bernalillo County increased 8%, while it decreased 26% for boys. During the same time period, the average length of stay for girls increased 12% and decreased 22% for boys. In FY 2014, the majority of girls who were detained came from areas of Albuquerque that are the most economically challenged and have the highest populations of youth of color. Boys with the same or higher risk scores as girls are being released into community programs, but risk assessment overrides are applied to girls disproportionately, resulting in girls' detention, primarily for four reasons:

- a lack of adequate supervision or care;
- the girls' parents refusal of custody;
- domestic violence issues in the case; and
- the girls' parents are located but unavailable.

Some judges are detaining girls longer than boys "for their own good" in a misguided attempt to protect them. According to the JDAI website, "Detention is a crucial early phase in the juvenile court process. Placement into a locked detention center pending court significantly increases the odds that youth will be found delinquent and committed to corrections facilities and can seriously damage their prospects for future success. Yet many detained youth pose little or no threat to public safety.". The Bernalillo County JDAI program has safely reduced the

unnecessary use of detention by 74% over the last 15 years, and the juvenile crime rate, measured through a reduction of law enforcement referrals over the past 16 years, has decreased by 72%.

The most notable trend in incarceration in New Mexico is the continuing, significant increase in the female inmate population. Total prison capacity for female inmates is 781 beds: 424 at the Springer Correctional Center, which houses level 1 and 2 inmates; and 357 at Western, which houses level 2, 3 and 4 inmates. To date, in FY 2017, there are approximately 764 female inmates. The female inmate population is expected to exceed capacity for housing female inmates in FY 2018, with 810 female inmates projected for FY 2018 and 833 projected for FY 2019. The majority of incarcerated women are serving sentences for crimes connected to underlying substance use issues, primarily drug crimes and property crimes, although long-term trends indicate that incarceration of women for violent crimes has increased. The annual and daily costs of keeping an inmate in prison depend on the classification level of the inmate and where they are housed, and averages \$100 a day. A 2012 report from the CD stated that reducing recidivism could save the state \$8.3 million in prison costs alone and reduce losses suffered by victims by \$40 million.

Alternatives to detention are effective, but New Mexico lacks programming options, especially for girls and women. For substance abuse treatment, residential treatment centers (RTCs) and nonresidential treatment programs are necessary, but there are very few such programs for girls and women. There is only one RTC for young people with serious mental health issues, and it does not accept young women. There are currently no detox facilities for young people. There are very few shelter beds for young people, and fewer for young women; only one group home accepts expectant and parenting women.

Adverse childhood experiences (ACEs) are predictive of substance abuse and involvement in the criminal justice system as well as assorted other health issues. A national study of adults found that individuals who experienced five or more ACEs were seven to 10 times more likely to report illicit drug use and addiction, and individuals with four or more ACEs were more likely to report health conditions and had shorter life spans. Eighty-six percent of incarcerated juveniles in New Mexico have experienced more than four ACEs. Certain traumas are disproportionately experienced by girls and women: 63% of females experienced sexual abuse compared to 21% of males, and 70% of females experienced physical abuse compared with 49% of males. A 2013 study of women incarcerated in New Mexico reported high rates of lifetime victimization: 67% experienced sexual assault; 89% experienced physical assault; and 62% experienced stalking or harassment. Youth in detention and correctional settings who identify as lesbian, gay, bisexual or other report being sexually victimized by peers at a rate that is nearly 10 times higher than their heterosexual counterparts. Mental health services are desperately needed but are not widely available for girls and women in the detention and correctional systems.

There are more young parents and expectant parents in the juvenile justice system than in the general population of the same age. Nationally, there are more than 120,000 incarcerated mothers and 1.1 million incarcerated fathers of minor children.

To address some of the issues highlighted in the presentation, Ms. Cadena recommended:

- consideration of the specific needs of girls and women in any discussion about juvenile justice and criminal justice systems, child welfare systems and mental and behavioral health care and treatment;
- identification of opportunities for the development of juvenile justice reform policies to positively impact system-involved girls and young women of color; and
- the collection of and evaluation of data, so disparities faced by women can be identified and addressed.

Cory Lee, program director, The Pavilions, Crossroads for Women, said that Crossroads for Women's mission is to provide comprehensive, integrated services to support women who are working to break the cycle of homelessness and incarceration and to achieve healthy, stable and self-sufficient lives in the community for themselves and their children. Through four housing programs, Crossroads for Women provides housing and intensive support services for homeless and formerly incarcerated women with co-occurring mental and addictive disorders who are working toward self-sufficiency. Ms. Lee advocated for the use of evidence-based practices and said that if the goal is to reduce the number of women and girls entering the criminal justice system and to reduce recidivism, the focus must be on gender-responsive, trauma-informed programs. KC Quirk, board member, New Mexico Women's Justice Project, added that women who participate in the various programs at the Springer Correctional Center are more successful upon release and less likely to re-offend.

On questioning, the following topics were addressed.

Reducing incarceration and recidivism. Ms. Lee said that involving women in their own treatment plans is essential to compliance. Ms. Cadena suggested special group treatment for domestic violence victims and more communication between law enforcement and the courts to support early diversion of girls from the criminal justice system. All of the presenters agreed that it is better to place girls into appropriate programs than to detain them in a juvenile justice facility in an effort to protect them from substance abuse or abusive homes. Ms. Cadena observed that because girls cannot stay in an overnight shelter without parental consent, they often end up on the street after conflict in the home, which makes them vulnerable to recruitment by traffickers and could expose them to prostitution and property and drug crimes.

Disproportionate numbers of Native Americans. Ms. Cadena confirmed that 33% of girls committed in Bernalillo County are Native American even though Native Americans make up only 5% of the general population of 10- to 17-year-old youth. She added that there are similar disparities for Native American adults. She suggested that there should be more data

sharing between the CD and the Children, Youth and Families Department to gain a better understanding of the effects on children of having an incarcerated parent. She noted that suicide rates are also higher among Native Americans and there is a lack of culturally relevant programming in juvenile and adult corrections systems.

Government Accountability

Douglas Carver, executive director, New Mexico Ethics Watch (NMEW), briefly informed the committee that NMEW is a nonpartisan, nonprofit organization dedicated to promoting ethics and accountability in government and public life in New Mexico. NMEW advances its mission through research, litigation, policy advocacy and media outreach.

Recess

The committee recessed at 4:56 p.m.

Tuesday, August 1

Call to Order

Senator Martinez reconvened the meeting at 10:20 a.m. at the Springer Correctional Center.

Springer Correctional Center — Inmate Housing — Department Policies

Ebeth Cruz-Martinez, warden, Spring Correctional Center, briefly recounted the history of the correctional center, which opened in 1909 as the New Mexico Boys School housing male juvenile offenders. The boys school was operated by the Children, Youth and Families Department, which closed it in November 2005. In 2006, the CD requested and received funding from the legislature to operate a facility to house level 1 and 2 male inmates and completed renovations at the facility to improve safety and security. The facility re-opened in January 2007. In October 2016, the Springer Correctional Center began housing lower-level female inmates. The center has a capacity of 424 inmates and currently houses 398. The correctional center property consists of approximately 4,000 acres, with the main compound covering approximately 40 acres and including eight dormitories, two single-cell living units, several multi-program buildings, maintenance buildings and kitchen, dining units and warehouses and a gym with a full basketball court and weight room.

The Springer Correctional Center's security staff includes: one captain, eight lieutenants, eight sergeants, 50 correctional officers and three juvenile probation correctional officers. Of those positions, the captain and lieutenant positions are filled, there is one sergeant vacancy and 27 correctional officer vacancies. The facility's overall employment vacancy rate is 46%.

In June 2017, the Springer Correctional Center installed a body scanner to screen inmates and visitors who might transport contraband into or out of the facility. The scanner not only detects metal, but also other materials such as ceramic knives, plastic explosives, glass, narcotics, tobacco and other organic materials. The scanner provides internal body images and, therefore,

eliminates the need for cavity searches. To date, there have been positive scans of four inmates and one visitor, who was bringing earrings to an inmate.

The education programming at the Springer Correctional Center includes the following programs: adult education and GED education; re-entry programs for inmates to be released; Moral Reconciliation Therapy (MRT); MRT parenting education; "Charting a New Course"; "C-Tech", an introduction to network cabling; college-level courses; automotive technology; culinary arts; and equine therapy. Currently, 83 inmates are enrolled in the adult education and the GED program, for which attendance is mandatory for those inmates who do not have a high school diploma. All of the other programs are optional.

The Springer Correctional Center's health care services include health care monitoring through Project ECHO. Many inmates at the center receive treatment for chronic conditions such as high blood pressure, chronic obstructive pulmonary disorder, emphysema and diabetes. Ms. Cruz-Martinez noted that many inmates enter the facility with untreated health conditions, are treated and are taught how to monitor their health.

On questioning, the following topics were addressed.

Staffing and vacancy rates. Ms. Cruz-Martinez explained that the primary reason for the high vacancy rates among corrections officers is the lack of housing in the town of Springer. The closest towns to Springer are Raton and Las Vegas, which are 45 minutes to an hour away. The Springer Correctional Center has been working with the town of Springer to resolve the housing shortage. The lack of housing and relatively low wages make it hard to recruit officers. The starting corrections officer salary is \$16.80 per hour, and after a one-year probationary period, officers are eligible for participation in the Public Employees Retirement Association. Jerry Roark, deputy secretary of facility operations, CD, added that a lieutenant's salary is \$20.00 to \$21.00 per hour, and it would take a corrections officer about 18 months to be promoted to sergeant and another two years to be promoted to a lieutenant position.

Another recruitment issue is the small and older population of Springer. The town has approximately 1,000 people and the graduating class in 2017 was 14 students. Mr. Roark said that the CD has not considered constructing housing on the correction center's property.

Ms. Cruz-Martinez said that there are six female corrections officers at the center, so they usually have two or three female officers working per shift. Mr. Roark explained that because of the high officer vacancy rate, overtime is necessary. Most officers work an average of 24 overtime hours per week, compared to an average of 16 overtime hours per week in other state facilities.

A committee member commented that full staffing, especially for programming, is essential to reducing recidivism and suggested that recruitment incentives could include signing

bonuses, payment of moving expenses and mileage reimbursement for employees who live out of town in return for longevity commitments.

Inmate health care. Mr. Roark said that about 40% of the center's population is taking prescription psychotropic medications, which is a reduction from previous years when 68% were on such medications. Inmates taking psychotropic medications are provided a 30-day supply when they are released to help with transition to receiving care outside the facility. He did not have information on the percentage of the inmate population that was eligible for Medicaid before their incarceration or on the percentage that qualified for Medicaid upon release.

Female inmate housing. Ms. Cruz-Martinez observed that about one-half of the female inmates are still in Western, including all of the female inmates who are categorized as level 3 or 4. In order to transfer all female inmates to the Springer Correctional Center, Mr. Roark said that the facility would need additional buildings.

Committee members asked for additional information on the last month's menu for inmates at the center and related nutritional information as well as a copy of the facility's inmate classification policy.

Adjournment

There being no further business before the committee, the second meeting of the Courts, Corrections and Justice Committee for the 2017 interim adjourned at 11:45 a.m. The meeting was followed by a tour of the Springer Correctional Center for committee members, staff and members of the public in attendance at the meeting.

Revised: August 22, 2017

**TENTATIVE AGENDA
for the
THIRD MEETING
of the
COURTS, CORRECTIONS AND JUSTICE COMMITTEE**

**August 23-24, 2017
State Capitol, Room 322
Santa Fe**

Wednesday, August 23

- 9:30 a.m. **Call to Order — Introductions — Notice of Rulemaking**
—Representative Gail Chasey, Co-Chair
—Senator Richard C. Martinez, Co-Chair
- 9:40 a.m. (1) **Restorative Justice: Balanced Justice for Victims, Offenders and Communities**
—Thomas Allena, Ph.D., Managing Partner, Thom Allena Associates;
 Professor, Peace and Global Justice Studies Program, University of
 New Mexico
- 10:45 a.m. (2) **Update from New Mexico District Attorney's Association (NMDAA)**
—Henry Valdez, Director, Administrative Office of the District Attorneys
—Robert P. "Rick" Tedrow, President, NMDAA
- 12:00 noon **Lunch**
- 1:30 p.m. (3) **State Auditor's Pay Equity Audit**
—Timothy M. Keller, State Auditor
—Sarita Nair, Chief Government Accountability Officer and General
 Counsel, Office of the State Auditor
- 2:30 p.m. (4) **Medical Cannabis — Treatment for Opioid Addiction**
—Jessica Gelay, Policy Manager, Drug Policy Alliance (DPA)
—Emily Kaltenbach, State Director, DPA
—Anita Briscoe, M.S., A.P.R.N.-B.C.
—Michael DeBernardi, Psy.D., Director of Behavioral Health Services,
 The Life Link
- 4:00 p.m. (5) **Lynn and Erin Compassionate Use Act — Policy Recommendations**
—Jessica Gelay, Policy Manager, DPA
—Emily Kaltenbach, State Director, DPA

4:45 p.m. **Public Comment**

5:00 p.m. **Recess**

Thursday, August 24

9:00 a.m. **Reconvene**

9:10 a.m. (6) **Government Accountability**
—Maggie Toulouse Oliver, Secretary of State
—Peter St. Cyr, Executive Director, New Mexico Foundation for Open
Government
—Doug Nickle, Director of Development, Take Back Our Republic
—Heather Ferguson, Legislative Director, Common Cause New Mexico

10:45 a.m. (7) **Bail and Pretrial Detention System Changes**
—Arthur W. Pepin, Director, Administrative Office of the Courts
—Robert P. "Rick" Tedrow, President, NMDAA (*invited*)
—Bennett Baur, Chief Public Defender, Law Offices of the Public Defender
—Richard Pugh, District Defender, Law Offices of the Public Defender
—Gerald Madrid, President, Bail Bond Association of New Mexico

1:00 p.m. **Public Comment**

1:15 p.m. **Adjourn**

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

**August 23-24, 2017
State Capitol, Room 322
Santa Fe**

The third meeting of the Courts, Corrections and Justice Committee (CCJ) was called to order by Senator Richard C. Martinez, co-chair, on August 23, 2017 at 9:44 a.m. in Room 322 of the State Capitol in Santa Fe.

Present

Rep. Gail Chasey, Co-Chair
Sen. Richard C. Martinez, Co-Chair
Rep. Eliseo Lee Alcon
Sen. Gregory A. Baca
Sen. Jacob R. Candelaria (8/23)
Rep. Jim Dines
Sen. Linda M. Lopez (8/23)
Rep. Antonio Maestas
Rep. Sarah Maestas Barnes
Rep. Javier Martínez (8/23)
Sen. Cisco McSorley
Rep. William "Bill" R. Rehm
Rep. Angelica Rubio

Absent

Rep. Zachary J. Cook
Sen. Sander Rue

Advisory Members

Rep. Deborah A. Armstrong
Sen. John Pinto
Rep. Christine Trujillo
Sen. Peter Wirth

Sen. William F. Burt
Rep. Brian Egolf
Rep. Doreen Y. Gallegos
Sen. Daniel A. Ivey-Soto
Sen. Bill B. O'Neill
Sen. William H. Payne
Rep. Patricia Roybal Caballero
Sen. Mimi Stewart

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

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

Copies of all handouts are in the meeting file.

Wednesday, August 23

Call to Order

Senator Martinez welcomed members of the committee, staff and guests to the meeting. Ms. Ewing informed the committee that a copy of a rulemaking notice was available for the committee's review.

Restorative Justice: Balanced Justice for Victims, Offenders and Communities

Thom Allena, Ph.D., professor, Peace and Global Justice Studies Program, University of New Mexico, said that a nationwide poll showed that only 27% of Americans have confidence in the criminal justice system. Communities are finding innovative ways to improve public safety. Dr. Allena recently heard about residents in one Albuquerque neighborhood who are taking turns monitoring their neighborhood from their rooftops to help prevent crime.

Dr. Allena discussed Denver's community justice councils — a public safety system that gives communities a role in their own criminal justice system — and suggested that a system like it could be used in Albuquerque neighborhoods. The Denver program is overseen by district attorneys' offices and provides for offenders to sit with community boards composed of residents who tell offenders how their crimes affected the community. Collectively, the boards and the offenders decide how to repair damage, restore victims' trust and assist offenders in making better choices. Dr. Allena said that when people have direct involvement in a system, as with restorative justice practices, people have greater confidence in the system. Restorative justice allows people to be personally involved with and invested in community justice.

The model for restorative justice that Dr. Allena proposes addresses three principles: public safety, repairing harm to victims and community and building offenders' competencies. In restorative justice systems, instead of immediately sentencing an offender to prison or jail, offenders have a chance to meet the victims of their crimes, which can provide more effective rehabilitation for offenders. He said he believes that a balanced approach that addresses the needs of victims, offenders and communities is needed.

Restorative justice programs, currently implemented in 37 states, view crime, delinquency and other violations through a different lens than traditional juvenile and criminal justice approaches. Rather than considering criminal acts as violations against the state, those acts are viewed as violations of the relationship between individuals and their communities. Offenders are held accountable by encouraging their understanding and repair of the harm they caused, while encouraging them to become more productive citizens.

Dr. Allena discussed an example of a restorative justice program in Vermont that has resulted in 88% of nonviolent adult offenders being sanctioned by a community panel rather than sentenced by a judge. The panel is staffed by trained citizens, and the goal of the panel's sanctions is to repair harm, restore community and build offenders' competencies. Vermont also uses a reparative model for its parole and community reentry programs, in which trained citizens meet with parolees to provide support and ensure parolees' accountability upon reentering their communities. Dr. Allena said that involving communities when offenders reenter society is very important.

Dr. Allena highlighted a program in Longmont, Colorado, in which city police have the option to refer first- and second-time juvenile offenders to the Longmont Community Justice Partnership (www.lcjp.org). The partnership uses a model called community group conferencing, in which offenders are offered the opportunity to be diverted from traditional juvenile justice systems and to instead meet with victims, family and community members to discuss the harm and residual impacts of their actions. Collectively, the offender and members of the community determine sanctions for the offender. There is a 7% recidivism rate among offenders who participate in that process, compared to the 70% recidivism rate for similar offenders who participate in non-restorative programs.

Dr. Allena explained that restorative practices can be implemented at any stage of the criminal justice system. A few of the models currently in use in the country include: victim-offender mediation; high-risk victim-offender dialogue; family and community group conferences; sentencing circles; community accountability boards; reparative panels; community impact panels; and reparative reentry.

Restorative justice is also applicable outside of the criminal justice context and has been used in schools, universities and workplaces to manage conflict and as part of the disciplinary process. A member noted that the U.S. Department of Justice recently made a \$4.2 million grant to the Albuquerque Public School District for the purpose of implementing restorative practices in 12 middle schools to address behavior that would otherwise likely result in a student's suspension or expulsion. The schools are in the process of planning their restorative programs, and program coordinators at six schools have been hired.

Dr. Allena described retired state district court judge Peggy Nelson's practice that employs sentencing circles and community reentry circles in cases involving high-impact crimes; the Children, Youth and Families Department's use of juvenile justice boards; and the Corrections Department's pilot project for women offenders returning to Albuquerque and Santa Fe from incarceration.

Dr. Allena said that a 2012 study found that restorative programs helped to lower rates of recidivism, future police contacts and juvenile probation referrals. Other long-term effectiveness measures shown in the study suggest that victim satisfaction following participation in most restorative practices exceeds 90%. Restorative justice practices have been endorsed by

organizations that include the American Bar Association and the National Council of Juvenile and Family Court Judges.

Dr. Allena recommended that the committee consider policies that incorporate restorative justice elements, particularly in the area of juvenile justice. He also recommended funding for the creation of a restorative justice coordinating council that would include elected officials, justice system leaders, representatives from relevant agencies, restorative justice practitioners and interested citizens.

A member recalled the story of Amy Biehl, a young woman who was killed in South Africa and whose mother traveled the world with the man who killed her daughter. The experience shared by the man and Ms. Biehl's mother made significant impacts on their lives.

In response to a member's question, Dr. Allena confirmed that restorative justice models are based on justice practices developed and used by tribal communities. Another member asked whether the effectiveness of restorative justice programs varies by offender type, and Dr. Allena said that the most promising results are found in juvenile programs.

Another member noted that one of the most important things for victims of crime is to have their voices heard and to be a part of the criminal justice process. Dr. Allena noted that an offender cannot be forced to participate in a restorative justice process, and the process is not effective unless the participants fully understand it and willingly participate. He added that a restorative justice program does not require a prosecutor to relinquish authority to later prosecute and that there must be consequences for offenders who do not successfully complete the requirements in a restorative justice program.

In response to a member's question about the restorative justice program in Vermont that is used for 88% of nonviolent offenders' cases, Dr. Allena said that those offenses are often property crimes and that the program is run by Vermont's corrections department.

Update from New Mexico District Attorney's Association (NMDAA)

Rick Tedrow, president, NMDAA, commented that voluntary restorative justice programs can be useful, but that it is important for courts to have a way to intervene when a restorative justice process fails. He added that pre-prosecution diversion programs should be under district attorneys' management, in part for recordkeeping purposes. He said that it is often assumed that a prosecutor's priority is to send offenders to jail, but prosecutors and many victims actually seek accountability for crimes. He reminded the committee that district attorneys throughout the state are eager to assist with improving the criminal justice system and criminal laws. He noted that his tenure as president of the NMDAA ends after the 2018 session.

Mr. Tedrow introduced Henry Valdez, director, Administrative Office of the District Attorneys (AODA), and the district attorneys for the Eighth, Fifth and First judicial districts who were also in attendance. Mr. Tedrow said that, currently, most of the state's prosecution

diversion programs are established by district attorneys' offices and not through statute. He invited committee members to take a tour of any district attorney's office to meet local prosecutors and to learn about pre-prosecution diversion programs.

Mr. Tedrow said that because the 2018 legislative session is a budget-related short session, the NMDAA will request that a number of initiatives it supports be placed among those issues the governor approves for consideration during the session. The NMDAA will pursue the following pieces of legislation because it believes they are essential to public safety:

- House Bill 129 (2017), referred to as the "*Birchfield* fix" because it puts necessary statute language in place following the *Birchfield v. North Dakota* case before the United States Supreme Court, will be reintroduced and would allow law enforcement officers to obtain warrants to perform blood tests on persons in cases that involve driving while under the influence of drugs or alcohol;
- House Bill 560 (2015), which was signed into law; the NMDAA supports the law but believes it needs some revision;
- a bill to remove the statute of limitations for second degree murder prosecutions and to potentially increase the penalty for second degree murder convictions; and
- a bill to protect police officers by increasing the penalty for great bodily harm against a police officer from a third degree felony to a second degree felony.

Mr. Tedrow said that procedures are being developed to deal with concerns about restitution that were raised in a report by investigative journalist Larry Barker, and he does not believe legislation is needed at this point to address the concerns.

Mr. Valdez briefly explained the distinct roles of the NMDAA and the AODA, which he said is not an oversight agency, except with respect to the compensation and personnel plans for district attorneys, which the AODA administers.

New Mexico is one of only a few states with a statewide case management system. The system is available free of charge to all prosecutors in the state, including the attorney general and agencies with prosecutorial functions. Mr. Valdez noted that the state's victim notification system was developed by the AODA, which saved significant state resources.

In response to a question from a member, Mr. Tedrow said that the most significant criminal justice system issue in the state is that the state's Criminal Code has been developed in "piecemeal" fashion since 1978 and is in need of revision. In addition, the case management rules in Bernalillo County are a significant concern for district attorneys.

In response to a question about increased crime in the state, Mr. Tedrow said that the increase is statewide and is related to methamphetamine and heroin in many cases, which leads to an increase in property crime.

Responding to a question about the district attorneys' budgets, Mr. Tedrow said that their budgets were significantly reduced during the recession and some federal funding has been lost, so they are in need of additional funding. The greatest expense relates to personnel, he said, and a starting prosecutor is paid approximately \$48,000 per year.

State Auditor's Pay Equity Audit

Tim Keller, state auditor, introduced Sarita Nair, chief government accountability officer and general counsel, Office of the State Auditor, and other staff members in attendance. He introduced his recently released report, "Transparency Report on Pay Equity Vendor Reporting". He noted that women in America are more likely to be poor than men, and more than one-half of all people in poverty are women. He said that women are poorer than men in this country because women with the same qualifications as men are paid less and because of job segregation, which he described as a divide among genders represented in various professions. Nationwide, women are paid, on average, \$.78 per \$1.00 paid to men in equal positions, and Hispanic women are paid \$.55 per \$1.00 paid to men in equal positions. This gender wage gap results in \$2.3 billion in wages lost by women each year.

In 2009, Executive Order 2009-049 was issued and included a mandate that contractors submit pay equity information when applying to do business with the General Services Department (GSD). The information submitted in response to that executive order provided the data set analyzed by the auditor's office in preparing the pay equity report. He said that just 267 vendors submitted the required pay equity information out of thousands of applications received by the GSD. The data show that there is significant work to be done to improve pay equity in the state, including improving reporting and compliance with the executive order.

Ms. Nair said that the office's analysis of pay equity issues is part of its many efforts to review procurement in the state. She said that in addition to the required reporting by potential state vendors, the executive order also requires the State Personnel Office (SPO) to monitor pay equity within the state's workforce, a requirement, she added, that has not been met in seven years.

Ms. Nair said that the pay equity data was reviewed through three lenses:

- 1) the difference in earnings between men and women;
- 2) the difference in representation of genders within industries; and
- 3) compliance with the executive order.

The data analysis shows that service worker positions have the lowest average wage gap between genders at 10%, while officer and manager positions have the greatest average wage gap between genders at 26%. To demonstrate the effect of a wage gap of 26%, Ms. Nair said that a woman would have to work a full year plus three additional months — through April 1 of the next year — to make the same salary her male counterparts made during a 12-month period. "Technicians" had the highest reported wage gap by industry at 171%. Regarding job

segregation, Ms. Nair said that women hold just 6% of semiskilled operatives positions and 3% of skilled craft worker positions.

Ms. Nair said that, at the time, the issuance of the executive order was a progressive move toward pay equity; however, the lack of enforcement of the order's provisions reduces its effectiveness.

The committee discussed several issues, including difficulties in obtaining data on pay equity; opposition to pay equity measures from certain groups; and various approaches to enforcing the executive order, including denial of contracts for vendors whose applications do not comply with the order or whose pay equity gaps are above a certain level.

A member noted that women are often the primary caregivers for children, and being underpaid can lead to lifelong poverty for those who care for children. Auditor Keller agreed and noted that policies that require disclosure of a person's past salaries are structural barriers that also work to perpetuate pay disparity.

In response to a member's question, Auditor Keller said that the governor responded to his inquiries regarding the lack of compliance with the pay equity executive order by stating that pay equity is important to the governor's administration. He noted the disconnect between policies and the results that come from lack of enforcement.

In response to a question from a committee member, Auditor Keller said that because his office had so little data to analyze due to lack of compliance with the executive order, it is difficult to draw conclusions about pay equity issues in the state. He said that his office will request that the SPO comply with the executive order, but he added that his office is unable to force the SPO to comply.

In response to a member's comment, Ms. Nair agreed that the state's Fair Pay for Women Act is a good tool to help improve pay equity; however, she added that the private cause of action created in the act is less effective if a plaintiff is unable to prove a claim because of a lack of pay data. Auditor Keller noted that compliance with pay equity policies can be encouraged by the legislature by making appropriations to certain agencies contingent on compliance with pay equity policies.

Medical Cannabis — Treatment for Opioid Addiction

Emily Kaltenbach, state director, Drug Policy Alliance (DPA), told the committee that medical cannabis should be available as a tool to treat opioid addiction in the state. She said that legislation to create that tool was passed during the 2017 regular session, but was vetoed by the governor. She noted that New Mexico no longer leads the country in drug overdoses but said that the number of drug overdose deaths continues to increase. Prescription drugs and heroin are the primary causes of overdose deaths nationwide and in New Mexico.

Ms. Kaltenbach referred to a study that found that mental health and substance use disorders were the leading causes of disease burden in the United States in 2015 and told the committee that the use of medical cannabis can help people successfully transition off opioids. Cannabis is currently being used to treat opioid addiction in California and Massachusetts, but New Mexico would have been the first state to provide for that use explicitly in statute.

Jessica Gelay, policy manager, DPA, said that in 2016, the DPA submitted a statement in support of a petition submitted by Anita Briscoe, M.S., A.P.R.N.-B.C., requesting the addition of opioid use disorder to the list of medical conditions for which medical cannabis may be used in treatment. In November 2016, the state's Medical Cannabis Advisory Board voted 5-1 to recommend the addition of the disorder as a qualifying medical condition. The Department of Health, however, did not choose to add the disorder to the list of qualifying conditions.

In the 2017 regular session, the DPA worked with legislators on several bills that included a provision to add opioid use disorder as a qualifying medical condition. A bill introduced by Representative Nate Gentry, House Bill 527, is the bill that passed the legislature and was vetoed. In her veto message, the governor noted concern that the bill would bypass an important responsibility of the Medical Cannabis Advisory Board, which is charged with revising the list of qualifying medical conditions, and said that including opioid use disorder would result in a rapid increase in program enrollment that the Department of Health could not manage. The governor also noted that chronic pain is already a qualifying condition. In response to the concerns noted in the veto message, the DPA reminded the committee that the Medical Cannabis Advisory Board had voted to recommend the inclusion of opioid use disorder before the 2017 legislative session and noted that the Department of Health received over \$2.1 million in licensing fees under the existing program, which could be used to expand the program. Ms. Gelay also noted that opioid use disorder and chronic pain are distinct medical conditions.

Ms. Briscoe said that in her work with patients seeking recertification for the medical cannabis program, she noticed that from those patients who suffer from posttraumatic stress disorder (PTSD), she was regularly receiving feedback that one of the benefits those patients experienced from the use of medical cannabis was the patients' ability to stop the use of heroin and other opioids. She consulted with professional peers on the issue and asked them to report any similar feedback from patients. Together, Ms. Briscoe and her peers found that approximately 400 patients, many of whom were diagnosed with PTSD, had stopped taking heroin and other opioids while using medical cannabis. She said that she spoke with the secretary of health about the issue, and the secretary said that more evidence of medical cannabis' utility in treatment of opioid use disorder is needed.

Dr. Michael DeBernardi, Psy.D., director of behavioral health services, The Life Link, said that in its work with homeless women, Life Link staff noticed the significant need for addiction and behavioral health treatment and began to work on those issues. He said that The Life Link uses methods that are shown to be scientifically effective and added that there is not a

significant amount of research on the uses of cannabis because it is a scheduled drug that is tightly regulated by the federal government.

Dr. DeBernardi said that there is a stronger correlation between childhood trauma and opioid abuse than there is between high blood pressure and heart attacks. He said that Life Link staff have developed a harm reduction model, in which clients are encouraged to stop using drugs to help minimize the harm that drugs cause in clients' lives. He noted that clients are afraid of the symptoms of opioid withdrawal, and Life Link staff have found that cannabis can reduce those symptoms. He reported that the states that have medical cannabis programs have collectively reported a 25% decrease in opioid overdoses and said that it appears to be impossible for a human to ingest the amount of cannabis that would be required to cause a fatal cannabis overdose.

The chair noted that the Department of Health was invited to present and to participate in the medical cannabis discussion, but representatives of the department declined the invitation.

In response to a question from a committee member, Dr. DeBernardi said that he is a psychologist focused on addiction among young persons. He further explained that The Life Link recommends the use of medical cannabis for some clients, but it simultaneously requires those clients to participate in other forms of treatment to address issues and trauma that contribute to the clients' addictions.

A committee member noted that the bill that was vetoed by the governor included provisions that would have required a patient using medical cannabis to treat opioid use disorder to use additional forms of treatment as well. The member noted that many people who are addicted to prescription opioid drugs are also on Medicaid and there could be considerable savings when those people stop using opioids. Ms. Briscoe said that she has noted that the costs of Suboxone and naloxone are increasing, which could cause Medicaid expenses to also increase.

Lynn and Erin Compassionate Use Act — Policy Recommendations

Ms. Kaltenbach discussed several policy recommendations that she said are a priority for the DPA. She said that the civil protections for medical cannabis patients should be improved and recalled the provisions of House Bill 527 (2017) and a recent law passed in Colorado to ensure that custody of a medical cannabis patient's children is not in jeopardy because of participation in the program.

Ms. Gelay said that many medical cannabis program participants from other states visit New Mexico and are unable to legally transport their cannabis medicine over state lines and could be subject to criminal liability in New Mexico if they do. Ten states have implemented reciprocity programs to address this issue.

Ms. Kaltenbach and Ms. Gelay made other recommendations for revising the state's medical cannabis law, including:

- codifying of qualifying medical conditions in the Lynn and Erin Compassionate Use Act;
- adding opioid use disorder to the list of qualifying conditions;
- adding neurodegenerative dementias to the list of qualifying conditions;
- allowing patients to grow medicine cooperatively to enable patients to share the costs of growing and to improve crop yields;
- allowing patients to possess the entire harvest grown by the patient; and
- allowing patients to sell their personal harvests to licensed nonprofit producers.

The committee discussed the potential impact on the medical cannabis program of the creation of a recreational cannabis program. A member noted that incentives could be used to encourage medical producers to remain in the medical market to ensure that patients have access to medical cannabis and to maintain reasonable prices for medical cannabis.

Recess

The committee recessed at 4:20 p.m.

Thursday, August 24

The committee reconvened at 9:18 a.m.

Government Accountability

Maggie Toulouse Oliver, secretary of state, discussed government ethics and transparency efforts undertaken by her office. Her office began posting financial disclosure statements online to give the public a better sense of where appointed and elected officials' funds come from and where potential conflicts of interest could exist.

The Secretary of State's Office is underfunded and understaffed, but even so, the office has focused on automating and streamlining Campaign Reporting Act compliance, which has resulted in an increase in voluntary compliance and the payment of fines and penalties to the state when late and incorrect reports are filed. The office has also been working on creating guides for political action committees and others to help improve compliance.

One of the most significant projects in the Secretary of State's Office is the proposal of new campaign finance rules. She recalled that the legislature passed Senate Bill 96 (2017), but that bill was vetoed. In areas in which the Secretary of State's Office has applicable rulemaking authority, it has taken provisions from that bill and proposed rules with similar provisions. One important section of the proposed rules addresses independent expenditure reporting and is intended to incorporate those sections of existing law that are enforceable and constitutional and put them into rule. The draft rule was published, and public comment was taken at three public hearings. A total of 327 comments were received in person and via faxes, emails and letters. Of those comments, six were neutral on the proposed policies, 34 opposed the policies and 88% of the comments supported the new rules. The second draft of the rule has been published, and the

30-day comment period has not concluded. The final hearing on the rule will be on August 30, 2017. The rule should be promulgated and effective on October 3, 2017.

Secretary Toulouse Oliver recalled House Bill 105 (2016), which became law and requires the secretary of state to take actions to improve and modernize lobbyist disclosure and campaign finance reporting processes. An appropriation intended to help the secretary to implement those changes was removed from the bill and a later capital outlay provision for the same purpose was vetoed, but the Secretary of State's Office is still obligated to make those improvements. Secretary Toulouse Oliver said her office is making the modifications internally using existing resources. She has also sought financial and technical support from outside organizations, and she noted that financial support will be required to complete the project.

Regarding public funding for some statewide elections, Secretary Toulouse Oliver said that the Public Election Fund has been significantly depleted. Money in the fund has been used to help the Secretary of State's Office cover shortages in elections; however, there are five statewide judicial vacancies and three Public Regulation Commission vacancies that will be eligible for public financing, meaning that public funding of upcoming elections is in jeopardy. Secretary Toulouse Oliver will propose a way to restore the fund in the 2018 session.

Heather Ferguson, legislative director, Common Cause New Mexico, said that good government and accountability are important to the public and to the legislature and expressed appreciation for the proposed disclosure rules. She noted that some of the opposition to those rules focuses on issues of free speech and privacy.

Ms. Ferguson recalled that the constitutional amendment introduced by Representative Dines in the 2017 regular session to create an ethics commission passed the legislature and will be voted on in 2018. The amendment, she said, represents 40 years of work on the issue. She highlighted some of the complexities involved in creating an ethics commission, including creating a balance between accessibility of information about ethics complaints filed and ensuring that complaints are not filed frivolously or for political advantage. She noted that systems in other states similar to that established by the constitutional amendment have not resulted in a reported increase of frivolous complaints.

Doug Nickle, director of development, Take Back Our Republic (TBOR), informed the committee that TBOR is the nation's only conservative organization addressing government transparency and disclosure issues. He said that common sense campaign finance reform is important, and TBOR believes that transparency and disclosure are nonpartisan issues that are important to the political process. More people are becoming informed about the financial aspect of politics and want to know if elected officials are being influenced by contributions. He said that he believes special interest groups have heavily influenced politics and democracy, and TBOR works across the political spectrum on the issue.

TBOR is working on two federal bills that address foreign influence in elections. Mr. Nickle said that the primary work on accountability issues should be done at the state level and that states should inform the federal government's direction on the issue. He added that TBOR is working on legislation to close loopholes that enable anonymity in online campaign donations made with credit cards. Mr. Nickle noted that in the 2008 election, over \$100,000 was donated to the Obama campaign through online contributions in one woman's name, but the contributions were actually fraudulent and not made by that woman. The legislation that TBOR supports would require an online donation to be verified by the donor using a credit card "CVV code" on the back of a credit card. He noted that he has worked with Common Cause New Mexico and the Rio Grande Foundation on the issue.

Mr. Nickle said that increased access to information reduces citizen apathy, which can result in greater citizen participation in the political process.

Peter St. Cyr, executive director, New Mexico Foundation for Open Government, expressed his support for the secretary of state's proposed campaign finance rules. He referred to the state's Inspection of Public Records Act (IPRA) and said that it is important in enabling citizens to understand government affairs. He said that the act helps uncover waste, fraud and abuse in government and deters corruption. He referred to a bill introduced during the 2017 regular session that would have narrowed the scope of the IPRA and protected certain records related to Spaceport America from disclosure. Although the bill died during the session, Mr. St. Cyr reported that requests for records that would have been protected by the bill's provisions have been denied. He said that he believes there is not enough funding available for the enforcement of the IPRA.

Mr. St. Cyr said that providing information to the public is a duty of governments and responding to IPRA requests should not be considered a burden. He recommended that legislation could be introduced to provide that 1% of every bond issued by the state be used to fund compliance with the IPRA and other open government infrastructure.

In response to a question from a committee member, Secretary Toulouse Oliver explained how her office and the state auditor work together on issues of government accessibility and are working to develop best practices on how her office conducts its records examinations.

The committee discussed the high cost of litigation related to the release of public information and the fact that accessible public information should be a nonpartisan issue. A member of the committee expressed concern about the lack of funding available for publicly financed campaigns, and Secretary Toulouse Oliver said that one solution could be to allow for unspent campaign money to remain in the fund rather than reverting to the General Fund. She added that with upcoming public financing-eligible races, the Public Election Fund's shortfall is projected to be \$1.5 million, which will have to be remedied during the upcoming legislative session. The lack of money in the fund could discourage candidates from seeking public financing.

A member expressed appreciation for the presentations on accountability and noted that it is difficult to have a full discussion on the IPRA, the Open Meetings Act and other issues related to accountability during busy legislative sessions. Another member shared his experience with litigating against governments that refused to disclose records subject to disclosure under the IPRA and emphasized how costly it is for the public when a government chooses to litigate rather than disclose records in accordance with the IPRA.

A member recalled that legislation introduced in the 2017 regular session included language that could be used as a model for implementing legislation for an ethics commission if voters approve the constitutional amendment creating the commission.

In response to a member's question, Secretary Toulouse Oliver said that she has addressed those issues within her office's authority in the rules she has proposed; however, there are several aspects of the state's campaign finance laws that should be addressed legislatively.

Proposed Topics for CCJ Discussion in 2018

Representative Chasey noted several topics that could be considered by the committee during the 2018 interim, including the intersection of technology and traffic safety; technology and crime prevention; guardianship; autonomous vehicles; and the creation and disclosure of corrections-related documents and records.

Bail and Pretrial Detention System Changes

Arthur Pepin, director, Administrative Office of the Courts, recalled that the constitutional amendment revising the state's bail system passed the legislature and was approved by 87% of voters. He noted that the amendment revised provisions related to pretrial release of a person accused of a crime and how persons who pose a flight risk or who are dangerous may be held before their trials. Following the adoption of the amendment, the New Mexico Supreme Court (NMSC) adopted rules to implement the changes to the Constitution of New Mexico, and those rules went into effect on July 1, 2017.

Mr. Pepin said that the new rules do not change the conditions of release that may be imposed by a court. If a court finds that release of a person on that person's own recognizance is insufficient, the court may impose a number of conditions on the person's release, including the payment of a surety bond. The new rules do not allow for the use of a "bail bond schedule", by which a court would set a person's bond amount based on a schedule of crimes and correlating bond amounts. He noted that when a court requires payment of a bond, the court is trying to guarantee a person's appearance at a later court date, not trying to increase public safety.

Regarding the amendment to the Constitution of New Mexico, Mr. Pepin said that the new language provides that a person is entitled to release before trial, unless certain conditions exist, and the person may not be held before trial solely because the person is unable to pay the bond amount set by the court.

Mr. Tedrow expressed the NMDAA's dissatisfaction with the rules adopted by the NMSC. He noted that before July 1, 2017, in San Juan County, just 2% of accused persons failed to appear in court following their pretrial release, but since the implementation of the NMSC's new rules, during two separate weeks, the courts in that county found that 20% and 17% of accused persons failed to appear after being released. He acknowledged that the data were collected over a short period of time, so he is unsure whether the increase in failures to appear in court is attributable to the rules change, but he noted that the increase is concerning to the NMDAA.

Mr. Tedrow said that because of the rules change, the NMDAA is now required to dedicate 26 hours per week to pretrial release court hearings. He said that the hearings amount to an additional full-time position, and he anticipates additional personnel will be needed for the purpose of those hearings. Regarding the substance of the hearings, he noted that there is confusion among defense attorneys, district attorneys and judges regarding the evidence that must be shown to establish that a person should not be released before trial.

Mr. Tedrow said that sheriffs have reported an increase in their operations costs, which they attribute to additional work to extradite and retrieve offenders on bench warrants. He said that fewer bail bonds professionals are involved in retrieving offenders, which results in increased law enforcement costs.

Bennett Baur, chief public defender, Law Offices of the Public Defender (LOPD), noted that his office is charged by the Constitution of New Mexico with securing the rights of clients and the office also wants an effective and efficient criminal justice system. He said there are many consequences when a person is arrested for, but legally innocent of, a crime and is held in jail for that crime; the person often loses employment, family relationships or the person's home. He said that every person should be released before trial unless a person is a flight risk or is a danger to the community. He also added that some people who are arrested are innocent of the crimes for which they were arrested. He acknowledged that the NMSC's new rules have created additional work for the LOPD but said that his office is optimistic that the new processes will function well.

Richard Pugh, district defender, LOPD, told the committee that at one time, New Mexico was second only to Georgia with respect to the number of people incarcerated before trial. He noted that the Laura and John Arnold Foundation has developed a "gold standard" tool (Arnold tool) for use in making pretrial release determinations, and it is used in many states and in large cities throughout the United States. The tool, he said, is used to determine who should and should not be held in jail pretrial. He said that the cumulative disadvantage of being in jail should be considered and jail time should be minimized for many of those arrested. He noted that district attorneys' decisions to hold a large number of arrested persons have increased the workload for the district attorneys, public defenders and the courts, all of which must participate in expedited hearings processes with tight deadlines.

Gerald Madrid, president, Bail Bond Association of New Mexico, said that the bail bond industry appreciates being part of the discussion of this issue. He said that the industry was represented on the NMSC's committee that considered and recommended rules related to the constitutional amendment. He told the committee that there was a surge in crime in New Mexico in late 2014 and that surge has persisted. As a result of the constitutional amendment, he said, the population of the Bernalillo County Metropolitan Detention Center has significantly decreased.

Mr. Madrid noted that bail bond professionals are effective at their jobs and they try to ensure a person's appearance before the court by taking great personal, financial and other risks. Bail bond professionals are small business owners, and many have been forced to close their businesses now that fewer people are being released on bond and instead are being released on their own recognizance. He said he has laid off most of his staff.

Mr. Madrid said that the increase in crime rates can be attributed to the use of the Arnold tool and noted that the tool was validated in Kentucky, where the bail bond industry does not exist. He added that the tool's effectiveness has not been scientifically proven.

In response to a committee member's question, Mr. Madrid explained that when a bail bond professional posts bond for a person released from jail, the professional forfeits the bond to the court if the professional is unable to return the released person to court as required. He added that if the professional is unable to find a released person on the date of a court appearance, the court will generally allow 30 days for the professional to locate the person, and the professionals will go to great lengths to return a person to court.

In response to another question, Mr. Pepin noted that the Administrative Office of the Courts has trained judges and courts on issues related to the constitutional amendment and new rules to help with the transition and will continue to provide training.

A member commented that the court management order that established deadlines for certain cases in the Second Judicial District Court might have impaired public safety, and Mr. Pepin noted that, while cases might have been dismissed in order to meet deadlines set by the order, those cases are not required to be dismissed with prejudice and may be prosecuted when the district attorney chooses.

Regarding the Arnold tool and in response to a member's question, Mr. Pepin noted that the Arnold tool does not give any weight to a person's arrest history, and he said that a judge is able to make a decision that does not align with the Arnold tool's recommendation regarding release.

A member noted that the legislature needs to continue to consider the issue of pretrial release as the facts around the issue evolve. The member said that the constitutional amendment aligned the Constitution of New Mexico with similar federal provisions and the changes will

require many adjustments. The new language offers courts new tools with respect to dangerous persons.

Adjournment

There being no further business before the committee, the third meeting of the CCJ for the 2017 interim adjourned at 1:00 p.m.

Revised: September 11, 2017

**TENTATIVE AGENDA
for the
FOURTH MEETING
of the
COURTS, CORRECTIONS AND JUSTICE COMMITTEE**

**September 12-13, 2017
State Capitol, Room 322
Santa Fe**

Tuesday, September 12

- 9:30 a.m. **Call to Order — Introductions**
—Rep. Gail Chasey, Co-Chair
—Sen. Richard C. Martinez, Co-Chair
- 9:45 a.m. (1) **Public Defender Department Update and Legislative Priorities**
—Bennett Baur, Chief Public Defender, Law Offices of the Public Defender
- 10:45 a.m. (2) **Domestic, Intimate Partner and Gender-Based Violence in New Mexico**
—Kim Alaburda, Executive Director, New Mexico Coalition of Sexual
Assault Programs (NMCSAP)
—Betty Caponera, Director of Research, NMCSAP
—Adriann Barboa, Field Director, Strong Families New Mexico
- 12:30 p.m. **Lunch**
- 1:45 p.m. (3) **Domestic Violence Programs for Victims and Batterers — Legislative
Finance Committee (LFC) Staff Report**
—Sarah Dinces, Program Evaluator, LFC
—Annamarie Luna, Program Deputy Director, Protective Services Division,
Children, Youth and Families Department
- 3:15 p.m. (4) **Own Risk and Solvency Assessment — Office of Superintendent of
Insurance (OSI)**
—Vicente Vargas, General Counsel, OSI
- 4:15 p.m. **Recess**

Wednesday, September 13

- 9:30 a.m. **Reconvene**

- 9:40 a.m. (5) [New Mexico Sentencing Commission \(NMSC\) Prison Population Forecast](#)
—Linda Freeman, Executive Director, NMSC
- 10:45 a.m. (6) [Parole Board — Parole Hearings and Revocation Hearings — Parole Eligibility](#)
—Sandy Dietz, Chair, Parole Board
—Joann Martinez, Executive Director, Parole Board
—Abram Anaya, Board Member, Parole Board
- 12:15 p.m. **Public Comment**
- 12:30 p.m. **Adjourn**

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

**September 12-13, 2017
State Capitol, Room 322
Santa Fe**

The fourth meeting of the Courts, Corrections and Justice Committee (CCJ) was called to order by Representative Gail Chasey, co-chair, on September 12, 2017 at 9:46 a.m. in Room 322 of the State Capitol.

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. Jim Dines
Sen. Linda M. Lopez (9/13)
Rep. Antonio Maestas (9/13)
Rep. Sarah Maestas Barnes
Rep. Javier Martínez
Sen. Cisco McSorley
Rep. Angelica Rubio (9/12)
Sen. Sander Rue

Advisory Members

Sen. Bill B. O'Neill
Sen. Mimi Stewart (9/12)
Sen. Peter Wirth (9/12)

Absent

Rep. Zachary J. Cook
Rep. William "Bill" R. Rehm

Rep. Deborah A. Armstrong
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
Rep. Christine Trujillo

(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 meeting materials are in the meeting file.

Tuesday, September 12**Call to Order**

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

Public Defender Department Update and Legislative Priorities

Bennett Baur, chief public defender, Law Offices of the Public Defender (LOPD), introduced Shelley Espinoza, the LOPD's chief financial officer; Cydni Sanchez, administrative services director, LOPD; Judge Michael E. Vigil and Hugh Dangler, commissioners, Public Defender Commission; Philip Larragoite, deputy chief public defender, LOPD; and Henry Valdez, director, Administrative Office of the District Attorneys.

Mr. Baur noted that in 2012, voters amended the Constitution of New Mexico to create the independent Public Defender Department to provide representation to indigent criminal defendants and the Public Defender Commission to provide oversight and set performance standards for public defense. Before 2012, the public defender was an executive agency under the control of the governor. The constitution provides all persons the right to counsel in criminal cases to ensure equality before the law, and the LOPD's constitutional obligation is to provide representation at no charge to persons accused of crimes who cannot afford to pay a lawyer.

The LOPD is the largest law office in the state, with nearly 200 LOPD attorney employees and 150 contract attorneys in offices in eight of the 13 judicial districts. Altogether, the LOPD represents criminal defendants in 70,000 new cases each year. Due to the volume of cases, there is a significant shortage of attorneys and support staff, meaning the LOPD struggles to fulfill its constitutional obligation to provide effective assistance of counsel to its clients. Referring to his handouts, Mr. Baur described in detail the LOPD's systemic weaknesses and the fiscal year (FY) 2019 measures the LOPD is taking to address some of those issues.

Mr. Baur asserted that the LOPD needs either more money or fewer cases. He suggested that one way to reduce the number of cases the LOPD is obliged to take would be for a bill, such as House Bill (HB) 428 (2017), to be signed into law. That bill, which passed the house 64-1 and

passed the senate unanimously, but was vetoed by the governor, revised certain criminal penalties for misdemeanor offenses to administrative penalties for which the LOPD does not provide counsel because an offender would not face possible incarceration. Mr. Baur estimated that a law like HB 428 would reduce the LOPD's caseload by five percent to 10 percent and would have a positive impact on prosecutors' and judges' caseloads and budgets as well. District attorneys' offices are also not adequately funded and are facing staffing and resource shortages similar to the LOPD's, and courts are also overburdened. In Lea County, 80 percent to 85 percent of felony jury trials result in a not guilty verdict because the prosecutors' offices are overwhelmed and lack the resources to construct strong cases.

The LOPD's budget increased by 20.8 percent between FY 2013 and FY 2018, but the LOPD is still seriously underfunded. If adequately funded to provide constitutionally guaranteed assistance of counsel in all cases, the LOPD's budget would need to be doubled to allow the hiring of at least 116 additional attorneys and 68 additional support staff and to implement a payment structure to compensate contract attorneys fairly. Given the state's current financial situation, for FY 2019, the LOPD is requesting a budget increase of approximately 13 percent, which is a two percent increase to the base budget and a 10.5 percent expansion increase, totaling \$4,847,200. Mr. Baur emphasized that these resources are necessary to provide adequate representation to all LOPD clients, and he warned that failure to fund the LOPD adequately would likely result in future litigation.

Mr. Baur also requested legislation that would remove the prohibition on payment of hourly rates to contract criminal defense attorneys. He observed that the Risk Management Division of the General Services Department does not prohibit hourly rates for contract attorneys who defend against civil lawsuits and pays hourly rates in the hundreds of dollars per hour.

On questioning, the following topics were addressed.

Detention and bail. There was general discussion about the impact of the recent constitutional amendment relating to bail and pretrial detention and the related rules promulgated by the New Mexico Supreme Court. The committee discussed the New Mexico Supreme Court's case management order that governs the process of criminal cases in the Second Judicial District Court. It was alleged that the effective pretrial detention rate in Bernalillo County is one-half the average seen in state and federal courts in other parts of the state. Mr. Baur noted that it does seem to be lower than in other parts of the state, but it is not likely 50 percent lower, and he suggested that the low rate could be caused by prosecutors unsuccessfully seeking detention in more cases than necessary. He noted that release conditions usually include ankle monitors and drug or alcohol treatment. He commented that a more informative measure of the impact on public safety would be the number of people who have been released and who have committed new offenses unrelated to the conditions of their release.

Certified interpreters. The need for interpreters in many languages, and especially Spanish, is growing. The courts are required to provide certified interpreters for court

proceedings, but the LOPD also pays for interpreters to work with attorneys who represent non-English-speaking clients. There is a dearth of certified interpreters, and they are expensive. Anecdotal information is that a statutory exception to Section 38-10-3(B) NMSA 1978 to allow employment of non-certified interpreters if no certified interpreters are available is being used to justify employment of non-certified interpreters because the non-certified interpreters charge a lower hourly rate than certified interpreters.

Payment of public defenders. Contract public defenders are paid a flat rate of \$180 for defense of a misdemeanor, \$700 for defense of a first degree felony and \$5,400 for defense in a capital felony case. The number of hours required to provide an adequate defense at all levels, but especially for capital felony cases, far outstrips the compensation allowed per case. Flat rates per case result in contract public defenders either working without compensation to provide an adequate defense or not providing an adequate defense because of the lack of resources. The low pay rates also affect the LOPD's ability to attract contract public defenders.

Public defender caseload/workload. The LOPD is seeking matching funding for a workload study to be performed with an American Bar Association working group. The study would entail all public defenders keeping detailed time records for a couple of years to provide data to analyze. The study would hopefully lead to insights and recommendations to help the LOPD provide effective counsel at a reasonable cost. Anecdotal evidence shows that more and better representation early in a case produces the biggest cost savings for defenders, prosecutors and courts overall, but the problem for both prosecutors and defenders is that due to staffing and budgetary constraints, cases cannot be addressed sufficiently early in the process.

LOPD budget. Mr. Baur was asked to provide one-, three- and five-year budget projections for the LOPD.

Domestic, Intimate Partner and Gender-Based Violence in New Mexico

Kim Alaburda, executive director, New Mexico Coalition of Sexual Assault Programs (NMCSAP), referring to her handouts, "Addressing Sexual Violence in NM" and "The Costs of Sexual Violence", emphasized that sexual violence is not the same thing as domestic violence (DV). There may sometimes be overlap between the two areas, but they require different responses from law enforcement, health care providers and social service providers. Sexual violence costs New Mexico almost \$1 billion per year in tangible victim costs, such as medical care, mental health services and economic productivity loss; intangible victim costs, such as psychological pain and suffering and generalized fear of victimization; criminal justice costs; and offender productivity costs. A 2010 study estimated the cost of rape at \$151,423 per victim in tangible and intangible victim costs and criminal justice and offender productivity costs. In 2013, New Mexico law enforcement agencies reported 1,445 incidents of rape, and the number of unreported rapes is estimated to be approximately four times the number of reported rapes. The total costs associated with rape in New Mexico in 2013 were close to \$1 billion.

The NMCSAP suggests prioritizing underserved sexual violence survivors for supportive services. Underserved and unserved communities include people who are incarcerated; Native Americans; Spanish-speaking New Mexicans or immigrants; Asian Americans; African Americans; lesbian, gay, bisexual, transgender or queer individuals; and children. Particular focus should be on improving responses to child survivors of sexual violence because children aged 17 and under represent 53 percent of all criminal sexual penetration cases in New Mexico. Funding for trauma-informed training for law enforcement personnel, prosecuting and defense attorneys and health care providers is essential to prevent re-victimization.

Specific policy concerns include:

- support for the sexual exploitation of children statute, Section 30-6A-3 NMSA 1978, which was revised to exclude youth aged 14 to 18 who engage in consensual sexting so that adolescents who share explicit photos with each other do not face the unintended consequence of child pornography charges, prison sentences and a damaging criminal record; and
- unintended consequences of the sex offender registry.

Recommendations for actions to decrease the incidence of sexual violence include:

- expansion of services for survivors in correctional facilities and in underserved communities;
- training of sexual violence prevention specialists and criminal justice teams on the consequences of the trauma inflicted by child sexual assault;
- fully funding full-time, specially trained sexual violence prevention specialists and criminal justice professionals in each judicial district; and
- re-funding the University of New Mexico Prevention Research Center as the sexual violence prevention technical assistance provider for the state.

Betty Caponera, director of research, NMCSAP, referring to her handout, "New Mexico Interpersonal Violence Data Central Repository: A Program of the New Mexico Coalition of Sexual Assault Programs", explained the methodology for collecting and analyzing standardized data on the crimes of domestic violence, sexual assault and stalking. The NMCSAP received a \$200,000 grant from the Department of Health in 2005 for a victimization survey, making New Mexico one of only two states that collected and analyzed that data. She commented that sexual violence in general is vastly underreported, and stalking is the most overlooked and is similarly underreported, probably because it is hard to document and prove. Not all victims want to make reports to the police, and colleges and universities do not report rapes on campus that are handled by campus police. If a rape victim goes to an emergency room, the hospital does not report the crime unless the police are called. The best way to get an accurate picture of the incidence of sexual violence and stalking is to study victimization surveys instead of crime reports.

Adriann Barboa, field director, Strong Families New Mexico, referring to her handout, "A Path Forward: Ending Gender-Based Violence in New Mexico", explained that multiple strategies and approaches are needed to end gender-based violence, but at the core of antiviolence work is cultural competency and community participation. She stressed that the communities most affected by gender-based violence have the best insight in solving the issue and must be involved in decision making at all levels. Funding for services for survivors is essential.

Specific recommendations include:

- access to comprehensive sexuality education for young people;
- safe and supportive schools for all students;
- police training on mental health, deescalation, cultural awareness and anti-oppression policies that protect transgender and undocumented people;
- shifting focus away from criminalization and, instead, funding alternatives to incarceration;
- addressing needs specific to rural communities;
- access to shelters for a range of family formations;
- building partnerships with tribal governments and organizations;
- supporting statewide coalitions that provide technical assistance; and
- increased funding, especially in rural areas, for prevention services.

On questioning, the following topic was addressed.

Status of rape kit backlogs. The state's forensic laboratory is making progress on processing sexual assault examination kits, but the Albuquerque Police Department (APD) laboratory is not. Federal money to process the kits is available, but APD declined to participate in a grant application last year. This year, it did apply, but the application was incomplete and was rejected. The multidisciplinary working group on the issue is meeting regularly, but APD does not participate. Beginning in May 2018, the state's forensic laboratory will be able to assist APD in processing Albuquerque's backlog. Every month, 40 new cases are added to the backlog. An initial appropriation of \$400,000 for victim notification has been spent. Some of the money was spent on trauma-informed training for those who notify victims and to respond to calls from victims who saw media reports on the issue. Victims are not notified until a kit has been processed, and the rate of processing is relatively slow. In addition, 20 percent of the unprocessed kits are from children, and the protocol for notifying victims who are children or who were children at the time of the rape is different than for adults. The state's forensic laboratory has notified approximately 600 victims, and the Federal Bureau of Investigation has notified approximately 80 victims in Albuquerque.

DV Programs for Victims and Batterers — Legislative Finance Committee (LFC) Staff Report

Travis McIntyre, program evaluator, LFC, provided an overview of the LFC's report, referring to the executive summary.

Sarah Dinces, program evaluator, LFC, reviewed the report in more detail, emphasizing the following.

- Page 36: victim services are inconsistent throughout the state, and more services are needed for child survivors of DV. DV shelters and survivor services are essential because survivors often do not have a safe place to stay after a DV incident. Shelter care accounted for 65 percent of DV service provider expenditures reported to the Children, Youth and Families Department (CYFD) in FY 2016. Shelters focus on the immediate safety and well-being of survivors because it is unknown how long they will be in the shelter or if they will continue a relationship with the perpetrator. Most shelters are operating at capacity level, which allows them to serve those who need shelter. However, shelters in Albuquerque and Gallup have a significantly higher percentage of unmet shelter nights.
- Page 37: safety plans are critical for survivors' safety upon leaving the shelter, but the CYFD lacks uniform criteria for what the plans should include. Safety plans are developed to keep victims safe while they are in the shelter or at intake. These plans focus on the safety of the survivor and any children. Currently, there is no written information providing instructions for creating an effective safety plan, but the CYFD is developing a plan to address the issue. The current performance measure of safety planning is not valid because it is based on a survey given to survivors that asks if they know how to plan for their safety rather than if there is a documented safety plan in place. The CYFD is working to change the way it is collecting this performance measure.
- Page 37: mental health services received in shelters use a mix of evidence-based and non-evidence-based programs to address the needs of survivors. Survivors of DV are more likely to have posttraumatic stress disorder, depression and anxiety, precipitating the need for mental health services. Seven of the 23 approaches mentioned in the survey were evidence-based, with the most frequently used evidence-based approach being solution-focused therapy, which is goal-directed therapy focusing on solutions rather than the problem that brought the client into therapy. Based upon a survey of DV service providers, most use trauma-informed, strength-based, client-centered, solution-focused approaches. Adult DV survivors had an average of nine counseling sessions in FY 2016.
- Page 39: chart 16 shows the various services that providers may include. Services vary by provider but mainly include shelter, peer support, social services and legal assistance.
- Page 40: children are present in one-third of DV incidents that occur in New Mexico, underscoring the need for services to address child trauma. Children who witness DV have an increased risk of abuse and neglect, as well as increased mental health disorders; therefore, services should be provided to children to decrease this risk. Substantiated cases of DV involving children may lead to children being removed from the care of their non-perpetrating parent for failure to protect the child from DV. Also, children may be in a shelter with their survivor parent, leading to the

involvement of the CYFD's Protective Services Division. Currently, Protective Services Division staff members do not receive DV training, potentially leading to miscommunication between them and DV service providers. The CYFD has engaged a consultant to assess communication and collaboration challenges between the Protective Services Division and DV service providers and to work with both groups to address barriers to effective collaboration.

- Page 40: increased coordination between the Protective Services Division and DV therapeutic service providers is needed to create collaborative safety plans for child survivors of DV. Collaboration between the Protective Services Division and DV service providers may be difficult due to confidentiality laws that restrict what information can be shared. Families may need to sign two releases, and some information may still not be shared because of confidentiality restrictions under the federal Violence Against Women Act of 1994. Since safety plans are made by both the Protective Services Division and DV service providers, representatives of both groups of service providers should be present during safety planning to ensure consistency and that the family is able to follow the plan.
- Page 41: all DV service providers should use evidence-based programs or rigorously evaluated home-grown programs to address child survivor needs. Involvement in a DV incident causes trauma, and as explained in the LFC's "Children's Behavioral Health" Report, the most costly mental health problems facing children in New Mexico are related to trauma.
- Page 46: the amount of outreach and training by New Mexico's DV service providers varies greatly, but data are limited for what providers bill to the CYFD.

Ms. Dinces reviewed the key recommendations on page 4 of the LFC Report, suggesting that the legislature should consider:

- contingent on improved collection of fees into the Domestic Violence Offender Treatment or Intervention Fund, authorizing a pilot project involving the implementation and evaluation of a formalized coordinated community response involving various stakeholders, including the local DV service provider and the CYFD. The pilot site should be selected jointly by the CYFD and the New Mexico Coalition Against Domestic Violence through a request for proposals process and should have the goals of increasing the number of batterers who attend and complete a batterer intervention program (BIP), connecting victims and children to the services they need and evaluating program outcomes;
- enacting legislation to include misdemeanor DV offenders convicted under the Crimes Against Household Members Act among those required to undergo misdemeanor compliance monitoring and requiring BIPs to include misdemeanor compliance officers among those to whom the programs are required to submit monthly reports on offender enrollment and progress; and

- replacing the existing statutory requirement for BIPs to be at least 52 weeks long with a requirement that they be a minimum of 26 weeks long, with the authority for courts to lengthen treatment based on offender risk.

The CYFD should:

- work with LFC and Department of Finance and Administration (DFA) staff to establish new performance measures for DV offenders, including the percentage of court-ordered offenders who successfully complete a BIP in the court-mandated time frame, and a performance measure on the percentage of participants who successfully complete BIPs rearrested for a new DV offense within two years;
- work with the Administrative Office of the Courts and the DFA to develop a strategy to maximize collection of fees for the Domestic Violence Offender Treatment or Intervention Fund;
- create standardized, written safety plan instructions to ensure consistency across the state and adjust the performance measures to require documented safety plans; and
- stipulate in DV service provider contracts that outreach activities include primary prevention services and that some funds should be allocated to provide secondary prevention services to child survivors.

The CYFD and DV service providers should:

- work with the Human Services Department to leverage Medicaid funds for all appropriate mental health, screening and assessment services provided to offenders and adult and child DV survivors by ensuring that providers of eligible services are Medicaid-certified and can bill Medicaid while taking appropriate precautions to ensure the privacy and confidentiality of survivors' personal information;
- ensure that services provided to both child and adult survivors are evidence-based programs shown to decrease the effects of trauma; and increase evaluations of current non-evidence-based practices used in the state; and
- work together to increase coordination with the Protective Services Division through collaborative safety planning for children involved with the division and a DV service provider.

On questioning, the following topics were addressed.

BIPs. Colorado classifies offenders by risk level, not by how much time they take to complete a BIP. Ms. Dinces will provide more information regarding the cost of the Colorado program. Annamarie Luna, program deputy director, Protective Services Division, CYFD, noted that the CYFD wants to allow providers to choose among different evidence-based models rather than requiring all providers to follow the same model. A recommended statutory change is to amend Section 31-12-12(D)(8) NMSA 1978 to replace the requirement that BIPs be at least 52 weeks with a requirement that they be a minimum of 26 weeks, with the authority for courts to

lengthen treatment based on offender risk. There is no evidence that a 52-week program is effective, and completion rates are low, but there is evidence that a 26-week program is effective and less expensive.

Recommendations. Mr. McIntyre emphasized that the focus of the recommendations is to encourage and support communication among the various DV "silos" illustrated in Figure 3 on page 17. The LFC analysis found that in every community, there is at least one entity that addresses a piece of the overall puzzle. Better coordination and communication will make all entities more effective and efficient. Ms. Luna affirmed that the CYFD is in agreement with the recommendations and has started working on them, and she noted that the CYFD is not the only government agency involved. Jon Courtney, program evaluator manager, LFC, explained that, keeping in mind the state's fiscal situation, the LFC's recommendations are as actionable as possible. Since they primarily have to do with improving communication among the various entities, there is little expected additional cost. There may be some costs in the future associated with improving data collection and analysis.

Own Risk and Solvency Assessment — Office of Superintendent of Insurance (OSI)

Vicente Vargas, general counsel, OSI, introduced John Franchini, superintendent of insurance, and Margaret Moqui, chief staff counsel, OSI. Referring to his handout, "Own Risk and Solvency Assessment (ORSA)", Mr. Vargas said that Senate Bill (SB) 105 (2017) providing for the ORSA did not pass in the 2017 session. He explained that the bill is based on a model act promulgated by the National Association of Insurance Commissioners (NAIC). New Mexico is currently accredited by the NAIC, but it is the only state that has not enacted the ORSA legislation. Loss of accreditation because of failure to enact the ORSA legislation would require insurers that write insurance in other states to undergo costly and disruptive examinations by the insurance departments of each state in which they write, resulting in insurers leaving New Mexico to domicile in other states.

The ORSA bill is consumer protection legislation resulting from the 2008 insurance crash; if it had been in place then, the crash would have been prevented. It establishes consistent risk management and reporting requirements for certain large or financially troubled insurers by requiring the insurers to submit confidential risk assessment summary reports and future business plans to the OSI. The summary reports are shared only with the NAIC; state, federal and international financial regulatory agencies; and third-party consultants designated by the OSI. Confidentiality is important because the information shared on the summary reports is considered protected "trade secrets" pursuant to Rule 11 of the federal Rules of Civil Procedure and the Uniform Trade Secrets Act and should be protected from disclosure pursuant to the Inspection of Public Records Act or subpoenas.

Any legislation that does not provide confidentiality of the summary reports will result in loss of accreditation by the NAIC. SB 105 was substantially amended in the Senate Judiciary Committee, resulting in a committee substitute. Some of the amendments are harmless to accreditation, but the confidentiality provisions were amended such that the NAIC would not

consider that the legislation meets its requirements. In particular, on page 9, line 15, the language indicating that information provided pursuant to ORSA "shall constitute trade secrets" was changed to "may constitute trade secrets". The bill passed the senate unanimously, but because of that amendment, the OSI requested that the bill not be heard in the subsequent committee. Superintendent Franchini commented that because all other states provide confidentiality for the summary reports, if New Mexico does not, OSI requests for information from other states will not be responded to because confidentiality will be lost if the information is provided to New Mexico, and the OSI will lose control of reviews of companies doing business in New Mexico.

Approval of Minutes

The committee approved the minutes of its July 31-August 1, 2017 meeting with no amendments.

Recess

The committee recessed at 4:15 p.m.

Wednesday, September 13

Reconvene

Representative Chasey reconvened the meeting at 9:43 a.m.

New Mexico Sentencing Commission (NMSC) Prison Population Forecast

Linda Freeman, executive director, NMSC, introduced Douglas Carver, deputy director, NMSC. Ms. Freeman explained that the Corrections Department (CD) contracts with the NMSC to develop an annual prison population forecast based on historical prison population data to assist the CD in assessing immediate and future inmate populations. The report includes national and state prison population trends and factors that influence prison populations, such as arrest rates, number of criminal cases filed in district courts, conviction rates, availability of diversion programs, sentence lengths, admission and release rates, earned meritorious deductions and parole readiness.

Nationally, total prison populations have decreased for three years in a row, with female prison populations decreasing by 1.4 percent overall. In New Mexico, however, total prison populations rose steadily until FY 2017, when the female prison population decreased by 3.4 percent and the male prison population decreased by 1.3 percent. New Mexico jails are seeing similar increases. New Mexico has historically had similar population numbers in county jails and state prisons, but currently, there are fewer inmates in jails than in prisons because of the decline in the number of inmates at the Bernalillo County Metropolitan Detention Center.

The most notable trend in New Mexico is the significant increase in the female inmate population over the past five years, driven largely by increases in lengths of stay rather than by new admissions. Long-term trends indicate that incarceration of females for violent crimes, and

for drug trafficking as opposed to drug possession, has increased. There are also more returns or new admissions for new offenses compared to returns or new admissions for probation/parole violations. Currently, female inmates are housed at the Western New Mexico Correctional Facility (Western) in Grants and at the Springer Correctional Facility (Springer).

Operational capacity for men is close to the maximum and exceeds the capacity for women. At the end of June 2017, there were 7,101 beds for males, with a projected high count of 6,853 in FY 2018 and 6,950 in FY 2019. There were 781 beds for women, with a projected high count of 810 in FY 2018 and 833 in FY 2019.

Long-term forecasts are based on current sentencing statutes and current CD policies and practices, which may change.

On questioning, the following topics were addressed.

Capacity issues in prisons and jails. The state's women's facilities are currently almost at capacity. National prison capacity recommendations suggest a three percent vacancy rate, which is not occurring in New Mexico's facilities. Springer has a lot of vacant land but no existing unused buildings, so expansion would require constructing additional buildings. The male facilities are not as close to capacity as the women's facilities, but they are close to 90 percent capacity. The female population is increasing while the male population is decreasing.

There may be some increase in the Tarrant County jail population from the closing of the federal prison in Moriarty, but it is expected to be minimal.

Inmates with non-firearm-related offenses who are within 12 months of eligibility for release may be paroled into community-based settings, but the lack of halfway houses and transitional housing affects both male and female prison populations. As a result, inmates are being held longer than necessary because there is no place for them to go when they are released on parole. Also, some inmates prefer to serve their entire sentence in a facility to avoid supervised release.

Another factor is paroled inmates who are re-incarcerated for parole violations.

Programs for inmates in the women's facilities. Springer offers more program options than Western. Springer houses lower-level offenders than Western, and because of its physical setting, Springer is able to provide a less-confining environment that is amenable to more varied programming, including an equine therapy program, with horses stabled on site. In general, female offenders are less violent than male offenders, and much of the increase in incarcerated women is for nonviolent drug-related offenses. Accordingly, there is substance abuse recovery programming in both of the women's facilities.

Parole Board (PB) — Parole Hearings and Revocation Hearings — Parole Eligibility

Joann Martinez, executive director, PB, noted that she had only been in her position for two months. She reviewed the year-end statistics for FY 2017 in her handout, "Adult Parole Board Presentation Packet", explaining that revocation hearings are conducted by a three-member panel, and hearings for inmates with 30-year-to-life sentences are conducted by a panel of three voting PB members.

Sandy Dietz, chair, PB, said the state does not have the facilities and resources to address issues affecting successful parole, such as substance abuse services, mental health services and housing, so the PB has limited effectiveness because the necessary services are sparsely distributed and are not within the PB's control. Many smaller communities do not have services available that help parolees meet the conditions of their parole, resulting in revocation of parole for violations of those conditions. Alternatively, some parolees go to Albuquerque even though they do not have a supportive social network there because most of the halfway houses are located there. Another problem inmates encounter is that they get transferred from one facility to another during the time they are incarcerated and are unable to complete prison programming, such as education and substance abuse treatment. This makes successful parole more difficult as well.

Ms. Dietz noted that the PB is an all-volunteer, 15-member board whose members are appointed to seven-year terms by the governor with the consent of the senate. Members are paid per diem and mileage for attendance at hearings but receive no other compensation. Participation requires hundreds of unpaid hours spent preparing for hearings. The PB hears approximately twice as many parole applications as revocation requests. The board's policy is not to revoke parole for the first or second violation, unless the violation is the commission of a new felony offense. The third violation triggers a hearing, which may result in revocation with the promise to reconsider the inmate for release with a new parole plan addressing the board's concerns. The goal is to release inmates with good parole plans. She observed that the majority of parolees have drug problems that need to be addressed if parole is to be successful.

Abram Anaya, board member, PB, who is a retired law enforcement officer (LEO), remarked that the difference between law enforcement and the PB is that LEOs are only concerned with the immediate offense, but the PB looks at an offender's whole history, with the goal of developing a plan for successful reintegration into the community.

On questioning, the following topics were addressed.

Parole hearings. Parole applications by sex offenders are heard by three-member panels. Hearings are conducted by video unless it is unavailable. Victims may participate telephonically. Offenders do not have the right to counsel at the parole hearing. The same standard applies to parole hearings as to preliminary hearings, i.e., whether the offender is able to understand the proceedings. Each inmate is assigned a CD case manager to develop a parole plan to present at

the parole hearing, but after release, supervision and assistance in implementing the parole plan are provided by a parole officer.

"30-year lifer" applications. There was extensive discussion about the very rare instance of parole being granted to offenders who have completed serving 30 years of a 30-year-to-life sentence. Just three out of 23 applications were granted. Concern was expressed by committee members about the demands on the prisons and the expense of caring for geriatric prisoners. Under the previous statute, "30-year lifers" were sentenced under a statute that had two choices: death, or life with the possibility of parole. Since repeal of the death penalty, the sentencing choices are 30 years with the possibility of parole or 30 years without the possibility of parole. Section 31-21-25 NMSA 1978 gives victims the right to make a statement at a parole hearing. The Constitution of New Mexico gives victims the right to make a statement at a court hearing but does not mention parole hearings. Section 31-21-10 NMSA 1978 lists the information the PB shall consider in making parole decisions, but it does not require the PB to take into account the victim's statement or to make the decision requested by the victim.

Important factors in successful parole. Ideally, every inmate would be released to supported transitional housing for six to nine months and provided education, medical and mental health treatment, parenting education and support and job training. More extensive and varied education and training opportunities in prison would give inmates a head start. In particular, access on release to medical and mental health care, including substance abuse treatment, can be very difficult, with long waiting times for appointments. Some mental health service providers do not accept parolees.

Circumstances of parole violations. Many parole violations do not involve committing new offenses but, rather, an inability to comply with parole conditions. Various committee members have received complaints that some imposed conditions are difficult to meet; for instance, requiring in-person meetings with parolees who live in rural areas without public transportation when the distance the parolee has to travel for the meeting is more than is reasonable to do on foot.

Public Comment

A member of the public said that she is related to a victim of the murders committed at a Hollywood Video location in Albuquerque. The offenders in that case received life sentences and are now eligible for parole. She wants a voice in whether parole is granted and thinks the PB should focus on releasing less-violent offenders. She noted that one of the perpetrators, Shane Harrison, was on parole when he committed the crimes at Hollywood Video.

Louis Trujillo, who is related to a murder victim, commented that the pain of a victim's loved ones never goes away. He opposes any bill or policy that would allow release before the entire sentence is served, especially for violent offenders.

Don Johnston informed the committee that Titus Health Ministries is a faith-based program for sex offenders. He said that there is one halfway house in the state for sex offenders, and housing is a huge problem for them. The CD and PB do not allow sex offenders to parole to a private residence because of statutory restrictions on where a sex offender can live.

Another member of the public expressed support for victims having a voice in parole decisions but believes that the victim's wishes should not be the deciding factor in whether parole is granted.

Adjournment

There being no further business before the committee, the fourth meeting of the CCJ for the 2017 interim adjourned at 1:36 p.m.

Revised: October 13, 2017

**TENTATIVE AGENDA
for the
FIFTH MEETING
of the
COURTS, CORRECTIONS AND JUSTICE COMMITTEE**

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

**October 18, 2017
John E. Brown Juvenile Justice Center
5100 Second Street NW
Albuquerque**

Monday, October 16 — Science and Technology Center Rotunda, University of New Mexico

- 9:30 a.m. **Call to Order — Introductions — Approval of Minutes**
—Sen. Richard C. Martinez, Co-Chair
—Rep. Gail Chasey, Co-Chair
- 9:40 a.m. (1) **[New Mexico SAFE — 2017 Legislative Report](#)**
—Adriann Barboa, Field Director, Strong Families New Mexico
—Steve Allen, Director, Public Policy, American Civil Liberties Union of
New Mexico
—Dalilah Naranjo, Community Engagement Specialist, Crossroads for
Women
—Kim Chavez Cook, Appellate Attorney, Law Offices of the Public Defender
- 10:30 a.m. (2) **[Albuquerque Police Department \(APD\) Update on Status of APD
Reforms — Monitor's Reports — Officer Recruitment](#)**
—Jessica Hernandez, City Attorney, City of Albuquerque
- 12:30 p.m. (3) **[Working Lunch — Sexual Assault Examination Kits Update — Status of
Kit Processing — 2017 Legislative Changes — Evidence Lab Staffing](#)**
—Timothy M. Keller, State Auditor
—Sarita Nair, Chief Government Accountability Officer and General
Counsel, Office of the State Auditor
—Scott Weaver, Secretary, Department of Public Safety
—Jeff McDonald, Commander, Scientific Evidence Division, APD
—Jay Stuart, Laboratory Director, Scientific Evidence Division, APD
—Connie Monahan, Statewide Coordinator, Sexual Assault Nurse
Examiner, New Mexico Coalition of Sexual Assault Programs

- 2:30 p.m. (4) [Funding Needs for Sexual Assault Services — Services in Rural Communities and for Communities of Color](#)
—Karen Herman, Director, Sexual Assault Services, New Mexico Coalition of Sexual Assault Programs
—Deleana OtherBull, Executive Director, Coalition to Stop Violence Against Native Women
- 3:15 p.m. (5) [Human Trafficking in New Mexico](#)
—Anthony Maez, Special Agent in Charge, Internet Crimes Against Children Unit, Office of the Attorney General
- 4:15 p.m. **Public Comment**
- 4:30 p.m. **Recess**

Tuesday, October 17 — Science and Technology Center Rotunda, University of New Mexico

- 9:00 a.m. **Reconvene**
—Rep. Gail Chasey, Co-Chair
—Sen. Richard C. Martinez, Co-Chair
- 9:05 a.m. (6) [University of New Mexico School of Law \(UNMSOL\) Update](#)
—Alfred Mathewson, Co-Dean, UNMSOL
—Sergio Pareja, Co-Dean, UNMSOL
- 9:45 a.m. (7) [New Mexico's Ignition Interlock Program](#)
—Sarita Nair, Chief Government Accountability Officer and General Counsel, Office of the State Auditor
—Michael Sandoval, Director, Modal Division, Department of Transportation (DOT)
—Franklin Garcia, Chief, Traffic Safety Bureau, DOT
- 11:00 a.m. (8) [Fathers Building Futures \(FBF\)](#)
—Stanley Mount, President, Board of Directors, FBF
—Joseph Shaw, Father of Three Children; and Operations Manager, FBF
—Ada Garay, Mother of Two Children; and Office Manager, FBF
—Willie Rankin, Father of Four Children; and Manager, Auto Detailing and Mobile Power Washing, FBF
- 12:00 noon **Lunch**
- 1:30 p.m. (9) [Immigration Policies — Deferred Action for Childhood Arrivals](#)
—Jennie Lusk, Director, Consumer and Family Advocacy Services Division, Office of the Attorney General
—Allegra Love, Director, Santa Fe Dreamers Project
—Cindy Nava, President and Policy Analyst, American Mexican Binational Association

3:00 p.m. (10) [Proposed Revisions to Child Abuse Statute](#)
—Rep. Antonio Maestas
—Carlos F. Pacheco, Former Child Abuse Prosecutor

4:00 p.m. **Public Comment**

4:30 p.m. **Recess**

Wednesday, October 18 — John E. Brown Juvenile Justice Center, Albuquerque (joint meeting with the Legislative Health and Human Services Committee)

9:00 a.m. **Reconvene**
—Sen. Richard C. Martinez, Co-Chair
—Rep. Gail Chasey, Co-Chair
—Rep. Deborah A. Armstrong, Chair, Legislative Health and Human Services Committee

9:10 a.m. **Tour — Bernalillo County Youth Services Center**

10:00 a.m. (11) [Welcome — Bernalillo County Youth Services Center — Juvenile Detention Alternative Initiative](#)
—Craig Sparks, Director, Bernalillo County Youth Services Center

10:45 a.m. (12) [Update on Improving Outcomes for Youth Statewide — Juvenile Justice Initiative in New Mexico](#)
—Nancy Arrigona, Research Manager, the Council of State Governments Justice Center (CSGJC)
—Nina Salomon, Project Manager, CSGJC
—Monique Jacobson, Secretary, Children, Youth and Families Department
—Judge John J. Romero, Jr., Presiding Children's Court Judge, Second Judicial District Court

12:15 p.m. (13) [Working Lunch — 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, Inc.

1:30 p.m. (14) [Health Care and Medical Personnel in Corrections](#)
—David Jablonski, Secretary, Corrections Department

3:00 p.m. (15) [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
—Candice Rae Padilla, B.P.C., I.B.C.L.C., Board Member, New Mexico
Breastfeeding Task Force

4:15 p.m. **Public Comment**

4:45 p.m. **Adjourn**

**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 Centurian 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.

Revised: November 13, 2017

**TENTATIVE AGENDA
for the
SIXTH MEETING
of the
COURTS, CORRECTIONS AND JUSTICE COMMITTEE**

**November 8-9, 2017
State Capitol, Room 322
Santa Fe**

Wednesday, November 8

- 9:00 a.m. **Call to Order — Introductions**
—Representative Gail Chasey, Co-Chair
—Senator Richard C. Martinez, Co-Chair
- 9:15 a.m. (1) **Judiciary's Unified Budget and Proposed Legislation**
—Chief Justice Judith K. Nakamura, New Mexico Supreme Court
—Arthur W. Pepin, Director, Administrative Office of the Courts
- 10:45 a.m. (2) **Law Enforcement Recruitment, Hiring and Retention**
—Rich Williams, Policy Specialist, National Conference of State
Legislatures
- 12:00 noon **Lunch**
- 1:00 p.m. (3) **Legislative Priority — Drug Policy Alliance — Defelonization of
Certain Drugs**
—Emily Kaltenbach, State Director, Drug Policy Alliance
—Paul Haidle, Criminal Justice Advocate, American Civil Liberties Union
of New Mexico
—Aaron Knott, Legislative Director, Oregon Office of the Attorney General
- 2:00 p.m. (4) **Legislative Proposal — Blood Tests and DWI — "*Birchfield v. North
Dakota Fix*" — .208738.1**
—Representative Sarah Maestas Barnes
- 2:45 p.m. (5) **Legislative Priorities of the New Mexico Criminal Defense Lawyers
Association (NMCDLA)**
—Rikki-Lee G. Chavez, Legislative Coordinator, NMCDLA
—Bennett J. Baur, Chief Public Defender, Law Offices of the Public
Defender

3:30 p.m. (6) [Legislative Proposals — Appropriations — Study Shelters for Human Trafficking Victims — .208881.2 — Services for Human Trafficking Victims — .208956.1](#)
—Representative Gail Chasey
—Representative Christine Trujillo
—Susan Loubet, Public Policy Professional

4:00 p.m. (7) [Appropriation for Civil Legal Services](#)
—Conrad Rocha, Executive Director, Law Access New Mexico

4:30 p.m. **Public Comment**

4:45 p.m. **Recess**

Thursday, November 9

9:00 a.m. **Reconvene**

9:05 a.m. (8) [Report from Criminal Justice Reform Subcommittee \(CJRS\)](#)
—Senator Sander Rue, Co-Chair, CJRS
—Representative Antonio Maestas, Co-Chair, CJRS

10:00 a.m. (9) [Legislative Proposals — Uniform Laws](#)
• **Uniform Directed Trust Act — .208816.2**
• **Uniform Guardianship, Conservatorship and Other Protective Arrangements Act — .208901.3**
—Jack Burton, Commissioner, Uniform Law Commission

10:45 a.m. (10) [Legislative Proposal — Public Records — .208978.1](#)
—Representative Gail Chasey
—Jim Ogle, Co-Chair, Legislative Committee, National Alliance on Mental Illness-New Mexico
—Barri Roberts, Executive Director, Forensic Intervention Consortium

11:30 a.m. **Lunch**

12:45 p.m. (11) [Legislative Proposal — Bail — Presumption of Flight Risk — Violation of Section 66-7-201 NMSA 1978 — .208655.1](#)
—Senator Richard C. Martinez

1:30 p.m. (12) [Legislative Proposal — Memorial in Support of Dreamers — .208880.3](#)
—Representative Javier Martínez

- 2:00 p.m. (13) [Legislative Proposal — Campaign Donations by Credit or Debit Card — Proposed Requirements — .208754.2](#)
—Senator Cisco McSorley
—Doug Nickle, Executive Director, Dare To Be United
- 2:45 p.m. (14) [Secretary of State's Legislative Priorities](#)
—John Blair, Deputy Secretary of State
—Kari Fresquez, Elections Director, Office of the Secretary of State
- 3:30 p.m. (15) [Why Election Reform?](#)
—Bob Perls, Founder and President, New Mexico Open Primaries
- 4:00 p.m. (16) [Nurse Licensure Compact](#)
- 4:15 p.m. **Public Comment**
- 4:30 p.m. **Adjourn**

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

**November 8-9, 2017
State Capitol, Room 322
Santa Fe**

The sixth meeting of the Courts, Corrections and Justice Committee (CCJ) was called to order by Representative Gail Chasey, co-chair, on November 8, 2017 at 9:14 a.m. in Room 322 of the State Capitol in Santa Fe.

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. Jim Dines
Sen. Linda M. Lopez
Rep. Antonio Maestas
Rep. Sarah Maestas Barnes
Rep. Javier Martínez
Sen. Cisco McSorley
Rep. William "Bill" R. Rehm
Sen. Sander Rue

Absent

Rep. Zachary J. Cook
Rep. Angelica Rubio

Advisory Members

Sen. Bill B. O'Neill (11/9)
Sen. John Pinto
Sen. Mimi Stewart
Rep. Christine Trujillo

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

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

Minutes Approval

Because the committee will not meet again this year, the minutes for this meeting have not been officially approved by the committee.

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 presentation materials are in the meeting file.

Wednesday, November 8**Call to Order — Introductions**

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

Judiciary's Unified Budget and Proposed Legislation

Chief Justice Judith K. Nakamura, New Mexico Supreme Court, noting the court's awareness of New Mexico's budget situation, said that the court's focus is on efficient and effective administration of the court system, and it has reorganized to create its own resources. Addressing recent news articles regarding decreasing criminal caseloads and increased budget requests, she explained that caseloads are only decreasing in criminal cases in a few courts, particularly the Bernalillo County Metropolitan Court. The decreased caseload in that court is probably temporary because of the proposed increase in Albuquerque Police Department (APD) staffing. The Second Judicial District Court had a criminal caseload drop of 2,700 cases, but in every other district court in the state, the number of criminal cases has either increased or remained flat. In addition, despite the drop in the number of cases, the number of hearings in criminal cases has increased. Civil cases, on the other hand, which are often more complicated and time-consuming than criminal cases, have increased statewide. Many civil cases involve self-represented parties, particularly in family cases, which adds to the time required to adjudicate the cases.

Referring to the chart on page 23 of "New Mexico Judicial Branch: FY 2019 Unified Budget Legislative Agenda" (Budget Book), Chief Justice Nakamura explained the judiciary's unified budget process. The court has not requested new judges or staff, new specialty courts or the restoration of funding previously cut. Chief Justice Nakamura said that the courts need help to rebuild a crumbling judicial structure.

The judiciary's budget requests are summarized on page 6 of the Budget Book, with details on pages 16 through 19. The judiciary is funded primarily by various fees, collections of which have decreased, which leads to funding deficits and requests for supplemental funding. The Conference of State Court Administrators and other national organizations are urging

legislatures to stop funding courts with fees and instead to primarily fund courts using general governmental revenue and charging court users reasonable fees to offset the cost of the courts borne by the general public.

The largest part of the budget request is for personnel costs to reduce the turnover and vacancy rates among employees, from clerks to judges, in courts across the state. The judicial branch's 10-year average turnover rate is 35 percent, compared with a 17 percent turnover rate in the executive branch. In the lowest-paid court positions, there is a 52 percent turnover rate. Turnover is caused by high stress and work demands and low average pay that is not competitive with local governments, the executive or legislative branches or the private sector. The high turnover has led to a reduction in both court access and services. Many courts have reduced their hours to allow employees time to do their work; in two district courts, the court clerk's office is open only four hours a day. Court-operated self-help centers, child and family mediation programs, drug court programs and other specialty courts have all reduced services. Salaries for judges are the lowest in the country, and courts are not attracting applicants from the private sector because of the low pay relative to income in the private sector. The majority of applicants come from government, especially prosecutors and public defenders. This leads to a gap in knowledge of civil law, which comprises the majority of cases.

Arthur W. Pepin, director, Administrative Office of the Courts (AOC), reviewed the deficiency and supplemental requests listed on page 13 of the Budget Book, noting that there is no supplemental request for jury, witness and interpreters funds because they were fully funded last year and there were no deficiencies. Regarding the special requests and data processing requests on page 14, he drew attention to a request for a judge and court staff weighted caseload study, explaining that the last study was in 2006 and needs to be updated.

Referring to page 22 of the Budget Book, Mr. Pepin reviewed the legislation the judiciary will be seeking for the 2018 session.

On questioning, the following topics were addressed.

Cost of meeting constitutional mandates and providing access to courts. The fiscal year (FY) 2019 budget request is 7.9 percent higher than the FY 2018 request (pages 16 and 17 of the Budget Book) and still reflects internal cuts of \$11.5 million. An informal estimate of the amount necessary to get the courts back on a solid foundation is approximately \$22 million. The courts are paying jurors the statutory amount of \$7.50 per hour and have minimized problems in the jury system by using a new statewide jury management system. Jury costs are not an issue at present, and the courts' focus is on improving the juror experience. Mileage for court employees who use their own vehicles to travel to hold court is paid at \$.29 per mile, compared with the legislative and federal rate of \$.54 per mile; the executive rate is 80 percent of the federal rate. Fines differ from fees in that fines are a penalty imposed for violation of laws. Because they are imposed by a court as a penalty, fines cannot be directed to court funds because that creates an inherent conflict of interest for the court.

Caseloads. The impact of self-represented litigants on judicial time is not currently quantifiable, but the caseload study should be able to answer that. Caseloads, especially criminal cases, are driven by policies of other entities that the judiciary does not control and cannot predict, such as law enforcement and prosecutors.

Court services. Courts are prioritizing services for people already in the system, so, for example, court-based self-help centers are closed before specialty courts.

Bail reform. When New Jersey amended its constitution and judicial system similarly to New Mexico, it took two years and \$35 million to prepare. The New Mexico Supreme Court had nine months between passage by the legislature of the constitutional amendment and adoption by the voters to consider commensurate rules, and no additional money was allocated. The comment period for the proposed rules has closed, and the court is considering the comments and possible changes to the rules. The bail-related issues in the Second Judicial District Court are compounded by a case management order (CMO) that only applies to criminal procedures in that district to address a backlog of cases. The supreme court is open to making changes to both the bail rules and the CMO. A proposed new provision in Rule 403 allows revocation of pretrial release conditions if there is a new arrest while the old case is pending trial, and proposed new provisions in Rule 409 will allow courts to keep dangerous people in jail without bail.

Law Enforcement Recruitment, Hiring and Retention

Rich Williams, policy specialist, National Conference of State Legislatures, referring to his handout at item (2), said that minimum standards for law enforcement officers are set by state law and so these standards vary from state to state. In New Mexico, the New Mexico Law Enforcement Academy was established by Section 29-7-2 NMSA 1978 and is governed by a board with wide-ranging powers and duties. In addition to the state board, local department regulations govern qualifications for law enforcement officers. Qualifications may include citizenship, age, education, criminal record and drug testing. Various states are funding pilot programs to promote diversity in cadet and hiring programs, and there is some federal funding available as well. States are also increasingly shifting from a "warrior" culture to a "guardian" culture to foster public trust in law enforcement. States are also encouraging state and local law enforcement agencies to share information across jurisdictions to prevent problematic law enforcement officers from leaving one place and going somewhere else to avoid disciplinary action. Centralized in-state certification and sharing information among states facilitate this. Most important in improving the quality of law enforcement officers is intentionality in hiring decisions. The importance of setting well-considered standards for recruiting and hiring is illustrated by the problems that result when standards are relaxed in response to shortages of qualified applicants.

On questioning, the following topics were discussed:

- arguments for and against minimum education standards;

- psychological screening to weed out candidates with strong dominant or authoritarian tendencies or biases;
- excluding applicants with any history of domestic violence; and
- the importance of crisis intervention training and de-escalation training.

Legislative Priority — Drug Policy Alliance — Defelonization of Certain Drugs

Emily Kaltenbach, state director, Drug Policy Alliance (DPA), explained that the DPA is not advocating decriminalization of drugs but rather defelonization; that is, reducing the penalties for drug possession from felonies to misdemeanors. Several states have reduced penalties with resultant cost savings. California and Oklahoma changed their laws through ballot initiatives, and Oregon changed its laws legislatively to reduce penalties and reinvest some savings of incarceration costs into rehabilitation and substance abuse treatment programs. A primary issue is that penalties for drug possession do not discriminate by drug weight, so the residue inside a syringe is treated the same as several ounces, and users who are not distributors are treated the same as distributors.

Aaron Knott, legislative director, Oregon Office of the Attorney General, explained the history of Oregon's House Bill (HB) 2355, which was proposed and supported by law enforcement as well as other advocates.

The Oregon Criminal Justice Commission (OCJC) was requested to review drug sentencing laws and practices because of concerns about discrepancies in sentencing. Although White, Black and Hispanic people possess and use drugs at about the same rates, there were discrepancies in stopping, charging and sentencing, with Black and Hispanic people being stopped, charged with more serious offenses and sentenced more severely than White people. Unintended and collateral consequences and disparate impacts were driving concerns. HB 2355 includes a definition and prohibition against "profiling", i.e., "the targeting of an individual by a law enforcement agency or a law enforcement officer, on suspicion of the individual's having violated a provision of law, based solely on the individual's real or perceived age, race, ethnicity, color, national origin, language, sex, gender identity, sexual orientation, political affiliation, religion, homelessness or disability, unless the agency or officer is acting on a suspect description or information related to an identified or suspected violation of a provision of law". Referring to his handout at item (3), "Oregon Law Enforcement Support for HB 2355 with Dash-13 Amendments", he noted the specific support of law enforcement for the profiling provisions, which require the OCJC to develop and implement a standardized method for law enforcement to record officer-initiated pedestrian and traffic stops.

HB 2355 also reduces penalties for several drug-related offenses from felonies to misdemeanors. Oregon wrestled with determining how much of a drug a person should be allowed to possess before being liable for felony penalties, while at the same time having no tolerance for dealers. Ultimately, the state is allowing possession of "usable quantities", with upper limits of specific drugs. Another question was how to deal with residue, including such

issues as expensive-to-get lab reports, that marijuana is legal in Oregon and that some drugs are hard to distinguish from opiates. It was finally decided that residue is never a felony.

Paul Haidle, criminal justice advocate, American Civil Liberties Union of New Mexico, reviewed his handout at item (3), "Racial and Ethnic Bias in New Mexico Drug Law Enforcement". Preliminary findings showed that, "in line with national trends ... people of color in Bernalillo County are arrested and booked into jail on drug charges at disproportionately high rates, despite having similar rates of drug use and sales as white people...". He also referred to a June 19, 2017 report by The Pew Charitable Trusts, which found no correlation between penalties for drug offenses and drug use. The report is at item (3).

The committee and Mr. Knott discussed Oregon's HB 2355. Oregon does not yet adequately fund drug treatment at all levels. Costs of supervision, including drug treatment of persons with felony convictions, are paid for by state, but misdemeanor supervision is paid for by counties. Oregon is still working on ways to supplement county budgets to provide drug treatment in the wake of defelonizing some drug offenses. The law has not been in effect long enough to produce reliable data on its effects. A report is due in September 2018. Oregon's prevention efforts consist of an array of approaches, including emphasizing earlier treatment for addicts, targeting the types of drugs and the age of users and maintaining harsh treatment of drug dealers because breaking the chain of use and supply is crucial. The redacted portion of the bill (pages 2-6) describes law enforcement requirements regarding profiling, e.g., logging and analyzing every discretionary stop for information to determine who is being cited, searched or let off with a warning.

Legislative Proposal — Blood Tests and DWI — "*Birchfield v. North Dakota* Fix" — .208738.1

Representatives Maestas Barnes requested the committee's endorsement of a bill that duplicates HB 129 (2017), which would amend the statutory requirements for a law enforcement officer to obtain a blood sample from a suspected impaired driver. The bill would bring the procedure in line with the constitutional protections outlined by the United States Supreme Court in *Birchfield v. North Dakota*, 136 S.Ct. 2160, by requiring a warrant to be issued, in most cases, before a blood sample may be taken from a person suspected of driving under the influence of intoxicating liquor and/or drugs. HB 129 passed the house of representatives and both senate committees to which it was referred, but it was not taken up on the senate floor before the legislature adjourned. The committee voted to endorse the bill.

Legislative Priorities of the New Mexico Criminal Defense Lawyers Association (NMCDLA)

Rikki-Lee G. Chavez, legislative coordinator, NMCDLA, referring to her handout at item (5), described the NMCDLA's three legislative priorities:

1. addressing high caseloads by avoiding initial introduction to the criminal justice system, increasing rehabilitative efforts and options and addressing and limiting collateral consequences;
2. limiting the use of incarceration by removing minor traffic infractions from the Criminal Code, utilizing probation for reform and education, supporting re-entry programs and reclassifying certain fourth degree felonies to misdemeanors; and
3. alternative crime prevention by preprosecution diversion, providing for alternatives to conviction for substance abuse and expungement of certain offenses under certain conditions.

The NMCDLA is not proposing legislation for the upcoming session but will work to prevent any legislation that does not support its legislative priorities from being passed. Bennett J. Baur, chief public defender, Public Defender Department (PDD), and Kim Chavez-Cook, appellate defender, PDD, explained that juvenile crime prevention initiatives are being developed by a working group with representatives from the Children, Youth and Families Department (CYFD), prosecutors and defenders and may not result in proposed legislation.

Legislative Proposals — Appropriations — Study Shelters for Human Trafficking Victims — .208881.2; Services for Human Trafficking Victims — .208956.1

Representative Chasey requested the committee's endorsement of an appropriation to fund a study of the needs related to sheltering victims of human trafficking, and Representative Trujillo requested endorsement of an appropriation for money for emergency shelter services for human trafficking victims who are cooperating with law enforcement. Susan Loubet, public policy professional, explained that victims who are stabilized and have their basic needs for shelter, food and medical attention met are better witnesses, are more likely to be available to testify and are less vulnerable to being re-trafficked. She predicted that human trafficking will get worse because there is so much money in it for traffickers, and the risks are lower than for drug trafficking. The committee voted to endorse both bills after a change was made to Representative Trujillo's proposed bill to insert "not" on line 20 after "shall".

Appropriation for Civil Legal Services

Ed Marks, executive director, New Mexico Legal Aid (NMLA), after reviewing his handout at item (7), requested the committee's support for continued and increased funding for the state's two largest providers of legal services to the poor. He cited an Arizona study showing that for every \$1.00 spent on civil legal services for the poor, the state saved \$3.00 in other state expenses, including court expenses. NMLA provides legal services regarding housing and eviction; family law where domestic violence is involved; Medicaid and social security; and consumer protections. He pointed out that loss of housing can start a downward spiral of family homelessness that often leads to children in a family becoming clients of the PDD years later. The poverty burden falls mostly on women, especially single mothers, who are less likely to be able to climb out of poverty because of the demands and expenses of raising children. NMLA handled more than 13,000 cases last year, of which more than 4,000 were family law cases arising from domestic violence. Because the number of requests for legal assistance far

outnumbers NMLA's capacity, NMLA prioritizes the types of cases it can handle. It first serves clients needing family law assistance resulting from domestic violence and assistance with housing issues, then other issues as possible. The priority policy is revised every five years, and the 2017 revision is in the works. NMLA also maintains a list, currently numbering approximately 700, of private attorneys who will handle a referral from NMLA free of charge.

Conrad Rocha, executive director, Law Access New Mexico, concurred on the request for the committee's support for an appropriation in FY 2019 for \$2.5 million for civil legal services. An analysis over several years of legal services needs identified 700,000 New Mexico households at or below federal poverty levels. Those households need such legal services as assistance with family, housing, consumer, disability, immigration, income maintenance and health care access issues.

On questioning, Mr. Rocha opined that adequate funding to meet all needs identified in the handout would probably run around \$8 million annually. That figure is derived not from agency budgets but rather from data regarding population and types of issues. Mr. Marks added that NMLA would need an increase of approximately 20 percent to adequately handle all requests it receives.

Public Comment

Chris Mechels alleged that the New Mexico Law Enforcement Academy Board and the attorney general did not comply with the provisions of HB 58 (2017) regarding the rulemaking process. He commented that many agencies have not revised their rulemaking procedures to comply with the new law and, further, that many agencies are not posting information on the Sunshine Portal as required.

Bette Fleishman introduced herself as the new executive director at Pegasus Legal Services for Children.

Recess

The committee recessed at 4:45 p.m.

Thursday, November 9

Reconvene

Representative Chasey reconvened the meeting at 9:11 a.m.

Legislative Proposal — Liquor Excise Tax Distribution — .209011.1

Mr. Pepin requested the committee's endorsement of a bill that would create a "drug court fund" administrated by the AOC for drug courts and that would redirect revenues from the liquor excise tax to the proposed drug court fund. The bill would result in a \$900,000 increase in funding for drug courts statewide. Drug courts are located in all district courts except in the Tenth Judicial District, which is the smallest and least-populated district, as well as in magistrate

and metropolitan courts. Mr. Pepin noted that the New Mexico Association of Counties (NMAC) supports the bill. He said the bill will be sponsored by Representative Carl Trujillo. The committee voted to endorse the bill.

Report from Criminal Justice Reform Subcommittee (CJRS)

Representative Maestas, co-chair, CJRS, reported that the CJRS met four times in Albuquerque during the interim — at the PDD, the Office of the Second Judicial District Attorney, Bernalillo County Metropolitan Court and the Ladera Golf Course. He commented that public safety is not a partisan issue and affects all residents statewide. The subcommittee laid the groundwork for a major overhaul of the criminal justice system in 2019, and he noted that the 2018 session would not allow enough time to thoroughly address the larger issues, but some issues may be addressed.

Senator Rue, co-chair, CJRS, noted that the CJRS first convened in 2014 with a different focus, i.e., modernizing antiquated statutes. The current focus is on a comprehensive approach to public safety because of the crime spike, especially in Albuquerque. He said that one piece of the puzzle, the constitutional amendment allowing pretrial detention of some accused persons who are determined to be a danger to themselves or someone else, is in place. The New Mexico Supreme Court is working on rules to implement the new provision, which will take some time. It is clear that substantial additional funding will be necessary to adequately address comprehensive criminal justice reform.

Representative Maestas enumerated some of the topics that will be addressed in the 2018 interim: reformation of the Criminal Code to clarify the lines between felonies and misdemeanors; minimization of collateral consequences of convictions; reviewing the Albuquerque situation vis-a-vis the settlement agreement between the federal Department of Justice and the APD resulting from a finding of a pattern and practice of excessive force at the APD. He expressed confidence that if the criminal justice system is properly codified and adequately funded, it will be efficient at delivering the swift and certain justice the public demands and deserves.

The subcommittee expressed interest in focusing on prevention of crime at both the juvenile and adult levels. Research has shown that the best response to domestic violence is not harsher penalties and better programming but, rather, early intervention in families to prevent it happening at all. A systemic problem is lack of communication among various players such as law enforcement, the CYFD and private service providers. More broadly, improving education and improving the economic picture are essential. The number-one way to fight crime is with a job. The CJRS will develop a framework to set goals and then develop legislation to achieve the goals.

Minutes

The minutes from the September 12-13 and October 16-18 CCJ meetings and the September 27 and October 10 CJRS meetings were approved without amendment.

Nurse Licensure Compact

Shawna Casebier, staff attorney, LCS, reviewed the status of the current Nurse Licensure Compact, which was enacted in 2003 and took effect in 2004. The compact is an agreement between New Mexico and 24 other states to recognize nursing licenses issued in any of the states that are parties to the compact. Twenty-one of the 25 states party to the current Nurse Licensure Compact have enacted legislation to join the new "enhanced Nurse Licensure Compact" and will leave the current Nurse Licensure Compact on January 19, 2018. In addition to New Mexico, the remaining current compact states are Colorado, Rhode Island and Wisconsin. Unless New Mexico enacts the new Nurse Licensure Compact legislation on or before January 19, 2018, when the new Nurse Licensure Compact becomes effective, New Mexico will only have the legal authority to recognize licenses from the three remaining states. Wisconsin has pending legislation to join the new Nurse Licensure Compact, and Rhode Island and Colorado intend to introduce legislation in their upcoming sessions.

If New Mexico enacts the new Nurse Licensure Compact by 11:59 p.m. on January 19, 2018, all nurses holding New Mexico-issued multistate licenses as of July 20, 2017 will be grandfathered into the new compact, and nurses practicing in New Mexico on licenses issued by other enhanced Nurse Licensure Compact states will be able to continue practicing in New Mexico without interruption.

Further, after January 19, 2018, the current Nurse Licensure Compact will dissolve when fewer than two states are party to the compact. If the compact dissolves before New Mexico enacts the new Nurse Licensure Compact, nurses holding New Mexico-issued multistate licenses will not be grandfathered into the new compact and will have to apply for a new multistate license in compliance with the licensure requirements of the new compact if and when New Mexico enacts the new compact.

A letter from the director of the Nurse Licensure Compact to Senator Peter Wirth providing clarification on "grandfathering" is at item (16).

The committee expressed general support for acting quickly to adopt the new compact.

Legislative Proposals — Uniform Laws

- **Uniform Directed Trust Act (UDTA) — .208816.2**

Jack Burton, commissioner, Uniform Law Commission, explained that New Mexico needs the new UDTA because, as more states have enacted statutes to allow management and administration of trusts by third parties, trusts are not just turned over to banks to act as trustees as often as in the past. The result is that state statutes have wide discrepancies, which make administering trusts with property in different states difficult, necessitating adoption of a UDTA. The UDTA's focus is on the settlor, preserving the settlor's authority to make decisions and allowing the settlor to confer as much or as little authority on the trustee as desired. The bill also safeguards beneficiaries by imposing fiduciary duties on trustees, and it addresses tax treatment

and technological innovations. The committee voted to endorse the bill. Representative Cook will likely sponsor it.

• **Uniform Guardianship, Conservatorship and Other Protective Arrangements Act — .208901.3**

Mr. Burton explained that a complete overhaul of existing uniform guardianship acts is necessary because of current disarray in practice and procedures and, in particular, the secrecy imposed on court proceedings and the ability of guardians to prevent visits from loved ones. The new act would make it clear that the powers of a guardian or conservator should be as narrow and limited as possible, given the particular circumstances, and that the guardian or conservator should use the least-restrictive means available to protect the protected person. The replacement act provides procedures for family members to access information about guardians' and conservators' activities; gives family members an absolute right to visit the protected person, barring a court order prohibiting visits; and provides clear guidance to guardians and conservators.

Senator James P. White, who expects to sponsor the bill, remarked that the issue has been on the radar in New Mexico since a series of news articles drew attention to the issue. The Uniform Law Commission has been working on a rewrite of the act for three or four years because many other states have been experiencing similar issues as in New Mexico. There are two major issues with the current guardianship laws: inadequate monitoring and oversight of guardians and conservators; and a resulting abuse of authority by commercial guardians and conservators. The replacement act is like a bill of rights for protected persons and their families. It also limits a conservator's power to amend an existing power of attorney or undo a protected person's prior planning, and it requires guardians and conservators to post bond securing their performance. His information is that Judge Wendy York, chair, New Mexico Adult Guardianship Study Commission, is supportive of the proposed legislation, but the commission has not formally endorsed it at this time; a meeting is scheduled for December 8, when it will be considered. At some point, additional funding will be required to perform the oversight functions required by the bill.

The committee voted to endorse the bill.

Legislative Proposal — Public Records — .208978.1

Representative Chasey and Senator Rue said they intend to co-sponsor a bill that would amend the Inspection of Public Records Act (IPRA) to restrict the disclosure of certain law enforcement records related to a person with a mental illness. An early draft was provided to the committee, but no endorsement was requested because it was not in final form.

Jim Ogle, co-chair, Legislative Committee, National Alliance on Mental Illness-New Mexico, referring to the handout at item (10), explained that when law enforcement is called for assistance, as opposed to when a crime has been or is being committed, the call is recorded and becomes a public record, even when there is no arrest or charges. When the call is for assistance

for a person experiencing a mental health episode, the person's health care records relating to the person's mental health may be subject to disclosure under the IPRA. This is in contrast to medical records, which are protected from disclosure, because mental health records are not specifically excluded from IPRA requests. The federal Health Insurance Portability and Accountability Act of 1996 does not apply in this situation because it applies to records maintained by health care providers, not by law enforcement. The proposed legislation would protect mental health records and privacy in the same way that medical records and privacy are protected under the IPRA. This is an issue statewide, with widely varying local responses to mental health assistance calls.

The issue was first raised in Albuquerque at a meeting of the City of Albuquerque's Mental Health Response Advisory Committee (MHRAC), established as part of the consent decree governing the APD. The MHRAC was reviewing the APD's policies regarding use of lapel cameras, which require that lapel cameras are always turned on, including during interactions with people living with mental illness. The cameras may therefore be capturing mental health information that should be kept private. The MHRAC reached out to other organizations, including the Bernalillo County Forensic Intervention Consortium (BCFIC) and the NMCDLA to consider the issue and to draft legislation to clarify protection of mental health information in the IPRA.

Barri Roberts, executive director, BCFIC, described the issue as one of parity in how to treat medical and mental health information.

Legislative Proposal — Bail — Presumption of Flight Risk — Violation of Section 66-7-201 NMSA 1978 — .208655.1

Senator Martinez described proposed legislation that would add a new criminal procedure provision to require that a driver involved in an accident involving injuries who leaves the scene of the accident should be considered a flight risk when a court considers setting bail or other conditions of release. Leaving the scene of an accident with injuries without providing the required information and rendering aid is currently a fourth degree felony. Being considered a flight risk could result in a judge ordering the driver held without bail pending trial. The committee voted to endorse the bill.

Legislative Proposal — Campaign Donations by Credit or Debit Card — Proposed Requirements — .208754.2

Senator McSorley explained that this proposed legislation would close loopholes that enable anonymity in online campaign donations that are made with credit or debit cards by requiring campaign contributions made with those cards to include the security code ("CVV" number) on the card and the billing address associated with the card for contributors living in the United States, or for contributors that are United States citizens living outside the country, the mailing address used by the contributor for voter registration. The bill also would require an entity that processes a contribution made by credit or debit card to register with the Office of the

Secretary of State (OSS). He said the secretary of state supports the proposed legislation. The committee voted to endorse the bill.

Legislative Proposal — Memorial in Support of Dreamers — .208880.3

Representative Martínez requested the committee's endorsement of a proposed joint memorial expressing support for "dreamers" and requesting the United States Congress to pass comprehensive immigration reform. The legislation was inspired by testimony the committee heard at its meeting on October 17.

Allegra Love, director, Santa Fe Dreamers Project, explained that the deferred action for childhood arrivals (DACA) program is an immigration policy that was established by executive order in 2012 and was rescinded in 2017, effective March 1, 2018. DACA allowed some individuals — those who entered or remained in the country illegally as minors and lived in the United States continually for 10 years, who were either in school or completed high school and who had no felony or significant misdemeanor convictions — to enroll in the program to receive a renewable two-year period of deferred action from deportation and to be eligible for a work permit. There are now more than 800,000 residents who have enrolled under the DACA program whose immigration status is uncertain. There is no clear path to citizenship for these individuals — the majority of whom have spent their entire lives in the United States and some of whom are now old enough that they are educated in professions, are employed or have their own businesses — because application for citizenship begins with legal residency. DACA does not confer legal residency for the purpose of citizenship. Persons who have enrolled in the DACA program are referred to as "dreamers", a reference to the DREAM (Development, Relief, and Education for Alien Minors) Act of 2017, a federal bill introduced in 2001 that would first grant conditional residency and, upon meeting further qualifications, permanent residency to individuals who were brought to the United States illegally as minors. Dreamers do not qualify for any government benefits, but they do receive a social security number and a work permit so they can pay taxes and apply for loans such as student loans, car loans or mortgages. The DACA program has been in place long enough now that there is longitudinal data that shows regular steady income improvement in most dreamers. When DACA ceases on March 1, 2018, work permits will be revoked and dreamers will be unable to work legally in the United States.

The committee voted to endorse the memorial.

Secretary of State's Legislative Priorities

John Blair, deputy secretary of state, reported that the secretary of state has broad budget priorities for fiscal year 2019, including funding the OSS from the General Fund instead of from fees. This would provide consistent, predictable revenue, which is important because elections happen every fiscal year and need adequate funding. Legislation has not been prepared so the OSS is not asking for endorsement, only support when it is introduced.

The first priority is reintroduction of HB 174 (2017), which passed both chambers but was pocket-vetoed. The bill would have enacted the Local Election Act, which, among other

things, would have provided for a single election day every year for nonpartisan elections and uniform election processes. This is a top priority for the OSS and for the NMAC, which expect that it would increase turnout because elections would be consistent and predictable and would reduce expenses because all elections would be on one day. Kari Fresquez, elections director, OSS, commented that if the bill does not get a governor's message in 2018, the OSS would introduce it again in 2019.

Another legislative priority is enacting the Confidential Address Program (CAP), which would offer victims of domestic violence the option to receive their mail through the OSS, which would forward it to the addressee and keep the victim's address confidential. Persons in the CAP would also be able to keep their voter record addresses confidential. The OSS has piloted the program and would like to formalize it. Senate Bill 245 (2017) was passed by both chambers but pocket-vetoed.

The third legislative priority is a bill that would elevate the importance of election security and enshrine best practices to ensure fair elections with verifiable results. The bill has not yet been drafted.

Why Election Reform?

Bob Perls, founder and president, New Mexico Open Primaries, said he is concerned about how to improve elections in general and not just by opening primaries to voting by persons who have identified as members of one party. He provided many handouts, which are available at item (15), as background. He proposed an interim committee or task force to focus on comprehensive election reform and said he is looking for a sponsor for a memorial that would do that.

Public Comment

Mr. Mechels alleged that women and people over age 30 are discriminated against by New Mexico Law Enforcement Academy physical fitness standards. He noted that New Mexico has nine different police training academies, each with its own standards, providing training that ranges from 600 to 100 hours.

Tim Gardner, legal director, Disability Rights New Mexico, opined that the proposed Uniform Guardianship, Conservatorship and Other Protective Arrangements Act is better than the existing law, but it could be improved by allowing the conservator, with court approval, to change trusts as well as wills to use the trust assets for care for a protected person. Regarding the bill that would amend the IPRA, he suggested adding an exception for the City of Albuquerque's Police Oversight Board.

Mark Donatelli, attorney, opposed any increase in funding for the judiciary and suggested, instead, that all proposed increases be directed to the PDD. He opined that the judiciary's unified budget approach has increased the gap between the PDD's funding and its needs, and he said that the New Mexico Supreme Court has shirked its responsibility to ensure

that the Sixth and Fourteenth Amendments to the United States Constitution are properly applied. Further, he believes that scarce resources have been significantly misallocated from crime prevention services and substance abuse treatment to funding for keeping more people in prisons.

Adjournment

There being no further business before the committee, the sixth meeting of the CCJ for the 2017 interim adjourned at 4:31 p.m.

CRIMINAL JUSTICE REFORM SUBCOMMITTEE
AGENDAS AND MINUTES

- 1:00 p.m. (2) **The "Front End" of the Criminal Justice System**
- **Criminal Statutes**
 - **Elements of a Crime**
 - **Uniform Jury Instructions**
 - **Prosecution**
 - **Criminal Penalties**
 - Rep. Antonio Maestas
 - Richard Pugh, District Defender, LOPD
 - Patricia Anders, Attorney, LOPD
- 2:30 p.m. (3) **Potential Front-End Reforms**
- **Statutory Changes**
 - ***Mens Rea* Requirements**
 - **Pre-Prosecution Diversion**
 - Leo M. Romero, Professor Emeritus, University of New Mexico School of Law
 - Liz Holmes, Attorney, LOPD
 - Craig Acorn, Attorney, LOPD
- 4:00 p.m. **Summary of Day's Work, Preview of Next Meeting**
- 4:30 p.m. **Adjourn**

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

**August 14, 2017
Law Offices of the Public Defender
Training Room, 17th Floor
505 Marquette NW, Ste. 120
Albuquerque**

The first 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 August 14, 2017 at 9:10 a.m. at the Law Offices of the Public Defender (LOPD) in Albuquerque.

Present

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

Absent

Rep. Gail Chasey

Guest Legislator

Rep. Javier Martínez

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.

Monday, August 14

Call to Order and Introductions

Representative Maestas and Senator Rue welcomed everyone to the meeting, and the subcommittee members introduced themselves. The co-chairs discussed the purpose and goals of the CJRS and its focus on both short-term reforms and more significant long-term reforms.

Welcoming Remarks

Richard Pugh, district defender, LOPD, thanked the subcommittee for visiting his offices and said that his staff includes seven lawyers assigned to juvenile cases and 40 lawyers assigned to felony cases. A public defender's initial work with a client includes discussing the client's personal and educational history to gain an understanding of the client's background and particular needs and any adverse childhood experiences.

Ben Baur, chief public defender, LOPD, said that the Public Defender Department was created by a constitutional amendment passed in 2012, and it is overseen by an independent commission. The LOPD has about 400 employees, one-half of whom are attorneys, and the department employs another 160 contract attorneys. In several New Mexico counties, public defense services are available only through contract attorneys.

Mr. Baur said that the state's criminal courts are being asked to solve social problems that the criminal justice system is not designed to solve. He specifically noted the lack of mental health resources and substance abuse services in the state. He said that law enforcement officers might not want to send an offender into the system, but that is frequently the only option available. He stressed that prosecutors, defense attorneys and policymakers need to take a careful look at the criminal justice system and the causes of crime to achieve effective reforms.

Subcommittee Itinerary and Goals

Senator Rue said that he hopes the subcommittee's 2017 work will be educational for the members and will help identify where criminal justice reforms are needed. He added that he hopes the subcommittee will reconvene during the 2018 interim with a goal of preparing comprehensive reform legislation for introduction during the 2019 legislative session.

Representative Maestas concurred with Senator Rue's comments and noted that he hopes the subcommittee's work will increase understanding and awareness of the criminal justice system and the areas in most need of reform. He said that the information gathered by members during the interim will help them and the whole legislature when considering legislation.

Opportunities for Justice Reinvestment in New Mexico

Carl Reynolds, senior legal and policy advisor, the Council of State Governments Justice Center (CSGJC), said that he relies on district attorneys and public defenders to learn about a state's criminal justice system. He described his experience working on criminal justice issues for the Texas Legislature and his later work as general counsel for the Texas Department of

Criminal Justice. His current work with the CSGJC involves assisting lawmakers in various states with identifying ways to effectively invest in criminal justice reforms. For about a year, his colleagues have been working in New Mexico on reforms to the state's juvenile justice system, and he is currently in communication with leaders in New Mexico about the possibility of working on reforms in the adult criminal justice system.

Mr. Reynolds reviewed crime statistics in New Mexico and nationwide, and he noted that the Federal Bureau of Investigation's 2015 Uniform Crime Reporting Program data show that New Mexico had the third-highest violent crime rate in the nation, with 656 reported violent crimes compared to the national average of 373 reported violent crimes per state. Nevada and Alaska had greater numbers of reported violent crimes, and Maine and Vermont had the lowest rates of violent crime for that year. The data also show that New Mexico's reported property crime rate was also significantly higher than the national average. In the period between 2005 and 2015, property-crime-related arrests in New Mexico increased by 57% and violent crime reports increased by 10%.

A 2015 report by the U.S. Bureau of Justice Statistics shows that New Mexico's imprisonment rate of 335 prisoners per 100,000 people was lower than the national average imprisonment rate of 442 per 100,000 people in that year. The same report shows that the state's supervision rates for parolees and probationers are also lower than the national averages. New Mexico is among a few states that saw growth in their prison populations between 2010 and 2015.

In response to a question from a subcommittee member, Mr. Reynolds confirmed that the statistics he reported relate to prisons and not county jails. In response to another question, Mr. Reynolds discussed the relationship between private prisons and prison populations and the fact that some private prisons are reimbursed based on prison occupancy.

A subcommittee member asked about the possible relationship between incarceration rates and crime rates. Mr. Reynolds said that there does not appear to be a correlation between the two. He said that data do not confirm that states with low incarceration rates have high rates of crime, and several states that have successfully decreased crime rates have taken various approaches; increased incarceration is not a common factor among those states.

The subcommittee expressed an interest in seeing data regarding the number of police officers present in communities and crime rates in those communities and rural versus urban crime rates. A subcommittee member also noted that it would be helpful to have a tool that projects crime rates and related statistics under various state budgeting conditions so that policymakers could see how appropriation of funding might affect crime statistics and public safety.

In the second portion of his presentation, Mr. Reynolds discussed the CSGJC's Justice Reinvestment Initiative, a data-driven approach to reducing corrections spending and reinvesting

the savings into policies and programs that reduce recidivism and increase public safety. The initiative is funded by the United States Department of Justice and The Pew Charitable Trusts. The initiative's four priorities are to reduce recidivism, repair harm, prevent offenses and build trust. He added that "preventing offenses" means that a state's criminal justice strategies are used to decrease crime and violence rather than simply to respond to reported crimes. He added that recidivism reduction approaches that respond to probation or parole violations swiftly, and with less severe sanctions, have been shown to increase efficiencies and reduce incarceration costs. Mr. Reynolds said that savings from a reduced prison population can be used to develop strategies to interrupt criminal behavior among persons who are awaiting trial, are incarcerated or are serving a period of probation or parole. He suggested that investments could be used for pretrial assessment tools, diversion programs and effective supervision programs.

Regarding sentencing, Mr. Reynolds said that more than 95% of cases result in sentencing through plea negotiations that are often negotiated hastily and with insufficient information, and the sentences are oriented toward retribution and incarceration rather than changing offenders' behaviors. He suggested that the approaches used in collaborative and problem-solving courts, such as drug courts, could be employed in other situations to achieve more positive resolutions in many cases.

Mr. Reynolds said that before it began justice reinvestment work, Alabama was facing prison overcrowding and related litigation. In 2008, Alabama's prison population was 25,874, and its prison system was designed for 13,138. That state's justice reinvestment goals were met by creating a new category of crime for lower-level felonies, many of which result in participation in community corrections programs. The state also added tools used in parole decision making and imposed a 45-day limit on certain supervision violations. With the money it saved, Alabama reinvested in victims' services, community treatment programs and programs to improve its probation and parole workforce.

Mr. Reynolds highlighted North Carolina's justice reinvestment work, which had outcomes that exceeded initial CSGJC projections. At the start of its reinvestment work, North Carolina's prison population was projected to exceed 43,000 by 2017. The CSGJC projected that with changes made through reinvestment work, the prison population could be reduced to 38,264. By 2015, following implementation of justice reinvestment policies in 2011, the state's actual prison population was well below projections at 37,794. He noted that during the course of that state's reforms, a new political party assumed administration of the state, but the work continued and the results were very positive. The primary policies implemented in North Carolina were the imposition of caps on penalties for supervision violations and increasing supervision personnel by 175 well-trained officers.

Mr. Reynolds reported that the results of West Virginia's justice reinvestment also included a decline in prison population that exceeded projections, without any significant changes to the state's sentencing laws. Mr. Reynolds said that the state is responsible for operation of county jails, and the operation is funded by county contributions to the state. In its

reinvestment work, the state prioritized funding for substance abuse, and that funding, along with the expansion of Medicaid, allowed for the provision of substance abuse services in all 34 counties in the state. The state's unique geographical, transportation and workforce issues resulted in a more localized approach to reforms.

Mr. Reynolds explained the two phases involved in the CSGJC's justice reinvestment work. Phase one usually takes about a year and involves working with the CSGJC on data analysis, engaging system stakeholders, developing policy options and estimating impacts. Phase two usually takes one to two years, includes federal funding assistance and focuses on implementation of new policies, targeting reinvestment strategies and monitoring outcomes. Policy issues that are commonly addressed through reform efforts include arrest and jail diversion options, training law enforcement officers to work effectively with people with mental illness, bail reforms and addressing lower-level felonies through intervention.

Mr. Reynolds said that it is critical to justice reinvestment work that all three branches of a state's government support and engage in the work. Common elements in successful criminal justice reform efforts include strong leadership, broad stakeholder engagement, comprehensive data analysis, evidence-based practices and strengthening of community supervision. He suggested that New Mexico could benefit from justice reinvestment work and said that a bipartisan consensus across all three branches of government should be established before the state embarks on justice reinvestment.

In response to a question from a subcommittee member, Mr. Reynolds explained that the CSGJC acquires data from many state agencies, including state sentencing commissions.

The subcommittee discussed previous reform efforts in New Mexico and the lack of support from all three branches of government. Mr. Reynolds added that, often, a state will embark on justice reinvestment in response to a prison overcrowding crisis or to increasing crime rates. Several members noted the strains on the state's probation and parole officers and the need for personnel that serve a social work function among those officers.

In response to a question about how justice reinvestment work progresses, Mr. Reynolds said that first a working group is established, and then the CSGJC makes several presentations over approximately 12 months to that group. The group will work to establish consensus on a broad package of reforms. The CSGJC will then meet with legislators and other stakeholders while continuing to brief the working group. The CSGJC's work is done both in-state and remotely.

In response to a question, Mr. Reynolds said that a good incarceration strategy emphasizes the need to house offenders who pose a threat to public safety. He also noted that successful reform strategies include reducing the use of mandatory minimums in sentencing because mandatory minimums have not been shown to be effective in reducing crime. With respect to community corrections, he added that significant savings can be realized because

incarceration costs an average of about \$60.00 per day, while community corrections costs closer to \$5.00 per day.

The subcommittee voted to send a letter to the Legislative Finance Committee (LFC) to request that the LFC include Mr. Reynolds' presentation at an upcoming meeting.

Public Comment

Susan Loubet, a representative of New Mexico's Women's Agenda, discussed the need to address human trafficking and services for victims. She informed the subcommittee of an interview she conducted with Melissa Ortiz, deputy director of administration and female facilities, Corrections Department, that aired on Saturday, August 12, 2017, a recording of which is accessible at KUNM.org. In response to a question, Ms. Loubet noted that the population in women's facilities increases in the winter months, which could indicate a need for housing.

Denicia Cadena, policy and cultural strategy director for Young Women United, noted that all female inmates in New Mexico prisons are currently held in the state-run facilities in Grants and Springer.

Paul Haidle, criminal justice advocate, American Civil Liberties Union New Mexico, said that the New Mexico SAFE (Supports and Assessments for Feeding and Eating) project includes 29 member organizations, and it recently released its 2017 legislative report, which assigned grades to legislation introduced in the 2017 session. He said he would provide copies of the report to subcommittee members.

Philip Larragoite, deputy chief public defender, LOPD, said that the communication of information and ideas among the CCJ, the CJRS and the LFC is necessary to ensure that funding decisions are made with full consideration of the impacts on the criminal justice system.

The "Front End" of the Criminal Justice System

Chris Dodd, public defender, LOPD, discussed concerns related to cases that involve digital evidence, such as data from cell phones. Digital evidence is used in an increasing number of cases and will likely be relied on in a majority of cases within the next several years. Mr. Dodd is one of two lawyers at the LOPD with expertise working with digital evidence, and he travels around the state to educate other public defenders on digital evidence. There are currently insufficient resources available to criminal defense lawyers to obtain and analyze digital evidence. Prosecutors use the assistance of 10 full-time employees at an FBI-affiliated facility — the Regional Computer Forensics Laboratory (RCFL) — to analyze digital evidence. However, there is no similar resource available to the LOPD.

Mr. Dodd said that discovery in a homicide case often involves several gigabytes of digital evidence. Last year, the RCFL processed approximately 252 terabytes of digital evidence for prosecutions. He noted that in its analysis, the RCFL searches for evidence based on instructions from prosecutors, but it does not search simultaneously for exculpatory evidence, the

presence of computer viruses or other evidence that could help a defense attorney. He noted that a public defender's ability to analyze digital evidence will be critical in the coming years, and financial provisions for analysis software and related resources will be needed.

In response to a question about a public defender's ability to review data analyzed using the RCFL's software, Mr. Dodd said that a public defender is permitted to review evidence identified by the RCFL and the prosecution by taking a computer with a clean hard drive to the RCFL's facility for on-site review of the evidence. The public defender is not permitted to take anything into the facility other than the computer and is not permitted to remove any evidence or files when leaving the facility. In some cases, public defenders have been unable to review digital evidence until a trial has begun.

Mr. Dodd said that defending a case involving digital evidence can be very expensive. He recalled a case in which a British politician was framed using digital evidence, and it cost the politician approximately \$500,000 to clear his name.

Jonathan Ibarra, public defender, LOPD, talked about his experience as a prosecutor and public defender and said that the use of evidence-based programs and sentencing approaches is important in a state like New Mexico, which has few resources. He also believes that the state should consider a revision of the entire Criminal Code, which includes provisions that in some ways support the prosecution and incarceration of low-level drug offenders over more violent offenders. Mr. Ibarra echoed Mr. Dodd's concerns about digital evidence resources for public defenders and said that clarity is needed on when a warrant is required for a law enforcement officer to collect items that could contain digital evidence. In response to a question, he said that supporting pre-prosecution diversion programs should be the state's priority in its reform of the criminal justice system. A few members noted that federal funding for specialty courts, such as DWI and drug courts, that was available in past years has been phased out and was never replaced with state funding to sustain the operation of the courts.

Representative Maestas said that the Criminal Code needs to be rewritten, and particular consideration should be given to the penalties associated with crimes. He offered a brief review of the structure of the state's crimes — petty misdemeanor, misdemeanor and four levels of felonies — and the incarceration time associated with each level. He noted that magistrate and municipal courts handle cases that involve, among other things, petty misdemeanors and misdemeanors, and for the most part, felony cases and hearings are held in the state's district courts.

Representative Maestas said that legislatures give priority to certain crimes by assigning penalties and sentences to those crimes. He said that it would be helpful if New Mexico had more than four felony levels to allow for more appropriate sentencing. He said that the penalties for certain crimes appear to be misaligned when compared with other crimes and their associated penalties, and he attributed that misalignment to the fact that the Criminal Code has been revised

by individual pieces of legislation over a number of years, often without consideration of the whole code.

Mr. Pugh said that many LOPD clients are being charged with crimes that do not necessarily fit their conduct, and he believes certain jury instructions contribute to the issue. He noted that in some cases, a prostitute will be asked by an undercover officer to obtain drugs for the officer, who will allow the prostitute to keep a portion of the drugs. If the prostitute agrees and obtains the drugs, the prostitute will often be charged with drug possession with intent to distribute, which is a second degree felony. He said that the statute and jury instructions for that offense allow for prosecution of drug abusers when the target of that statute is actually drug dealers. He referred to several examples of uniform jury instructions for several crimes and noted that in several cases, the language of uniform jury instructions should more closely track statutory language to ensure that only the targeted offenders are captured within the scope of a criminal law.

A subcommittee member suggested that the language of the distribution statute and jury instructions could include reference to the sale of a substance to try to capture drug dealers, rather than drug users, for distribution.

Regarding the promulgation of jury instructions, Mr. Pugh explained that the New Mexico Supreme Court's (NMSC's) Uniform Jury Instructions for Criminal Cases Committee is composed of eight to 12 attorneys from around the state. The committee drafts proposed instructions, and the NMSC revises the rules, if necessary, and approves them. He added that some offenses in the Criminal Code do not have related uniform jury instructions, so attorneys on both sides of a case involving those offenses spend a significant amount of time debating the proper form of the instructions that should be given to a jury.

Another example of a statute that Mr. Pugh suggested could use revision is Section 30-3-9.2 NMSA 1978, which relates to battery on a health care worker. He said that charges brought under that section result in conviction in fewer than 5% of cases, primarily because offenders charged with the crime often have mental illnesses. Despite the infrequent convictions under the statute, charges are still brought under the statute, and the LOPD expends considerable resources defending those cases.

Patricia Anders, managing attorney, LOPD, said that the approximate 60,000 misdemeanor cases in the metropolitan court each year are a growing and expensive part of the LOPD's work. Many of those cases involve other issues that would be addressed more effectively outside the criminal justice system. Regarding criminal justice reforms, she said that although the use of cannabis for medical purposes is legal in the state and efforts have been made to reduce penalties for possession of marijuana, the law on possession of drug paraphernalia, especially as paraphernalia relates to the use of medical cannabis, needs to be revised.

Ms. Anders said that potential reforms could include the reallocation of law enforcement resources used in connection with lower-level offenses to address more serious and violent offenses. The current criminal justice system disproportionately affects people who have lower incomes, who are members of racial minority groups or who have mental health issues. She said that incarceration should be used for those who pose a danger to the public, and she expressed appreciation for the legislature's work on bail reform.

Ms. Anders suggested that people who are indigent should be exempted from payment of court fees and fines, and she noted that processes to identify indigent defendants already exist in statute and could be used to assess court costs. If indigent defendants were exempted at the front end of a criminal proceeding, then the issuance of warrants later in the case for late payments and failure to pay the fees, which commonly occurs in cases involving poor defendants, could be avoided. When a person is jailed for failure to pay a fee that the person cannot afford to pay, even just three days in jail can bring ruin to the person's life through loss of housing, employment and family relations.

A subcommittee member noted that there was an effort to increase the bench warrant fine from \$100 to \$200, and a compromise was negotiated that would have allowed for an increase in the fine if all bench warrants issued to one person could be consolidated into one fine. Although that compromise was not realized, it presents a possible future solution. The subcommittee suggested that the LOPD meet with prosecutors to continue identifying areas for potential reform.

The subcommittee discussed the ways in which the current criminal justice system can amount to a "debtors' prison" and referred to Section 33-3-11 NMSA 1978, which relates to the service of time in jail to "work off" a fine or fee.

In response to a question, Ms. Anders explained that if indigent offenders were exempted from payment of court fees, a majority of fees would not be paid because so many offenders are indigent. She noted that the state would have to identify another funding source to replace the lost revenue from fees.

The subcommittee discussed the fact that significant law enforcement resources are expended when an officer stops a person on an open warrant and calls for a backup officer. A backup officer is often called because there is insufficient information about why warrants are issued, whether for a reason that justifies multiple officers or simply for nonpayment of court fines.

Another issue that could be addressed through reforms is the drug-free school zone policy that increases penalties for drug offenses that occur within approximately two-tenths of a mile of a school. Mr. Pugh noted that almost all charges in school zones are for conduct that occurs at night, not during school hours. The subcommittee discussed that the time of day during which an offense in a school zone occurs could be included as an element of the crime.

The subcommittee discussed institutional racism in the criminal justice system and the need for training on the subject, as well as the need for public defenders who speak Spanish. Ms. Anders said that diversity is a priority for the LOPD, and the office's attorneys participate in continuing education on working with Native American communities.

Representative Maestas noted that several battery statutes have been written to relate to particular victims in an effort to emphasize the importance of deterring crimes against those victims. Instead, he said, those statutes add elements to the crime — e.g., the profession or other status of the victim — making prosecution of the crimes more complicated rather than creating effective deterrents to crime.

Potential Front-End Reforms

Leo M. Romero, professor emeritus, University of New Mexico School of Law, addressed the issues of criminal culpability and *mens rea*. He said the Criminal Code is the foundation of the state's criminal justice system, and it establishes what conduct will be penalized. The code drives the work of law enforcement officers and authorizes prosecution in the state's courts. For these reasons, it is crucial that the code is just, effective and clear in describing criminal conduct and penalties.

Mr. Romero said that crimes consist of an act or omission that is committed under certain circumstances and with a certain *mens rea*, or mental state. He gave an example in which a person swings a bat and hits someone, explaining that the conduct could be considered assault, a negligent act or an accident depending on the person's mental state when swinging the bat; the person's mental state helps to determine the level of culpability that applies. He said that criminal statutes often do not specify a required *mens rea*.

Mr. Romero said that the American Law Institute (ALI) is composed of judges, lawyers and academics who draft model laws on a variety of issues, including criminal law. The ALI drafted a model penal code, which includes guidance for states on how to define crimes and *mens rea* requirements in criminal laws.

In response to a question about culpability, Mr. Romero used robbery as an example and said that robbery — theft committed upon a person in which the use of violence or a threat of violence occurs — does not include a *mens rea* requirement. By contrast, the crime of child abuse includes distinctions in levels of culpability, depending on whether a person purposely, recklessly or negligently brought harm to a child.

Liz Holmes, public defender, LOPD, said that pre-prosecution diversion programs that are currently in place allow a district attorney to send an offender through the program instead of proceeding with a prosecution. She noted that the purpose of the law is to remove from the criminal justice system offenders who are amenable to treatment. She said that the sections of law that relate to pre-prosecution programs could be revised to include more offenders who might be served well by the programs. She said that in some cases, admission to a pre-

prosecution diversion program requires an offender to admit to certain conduct or to the commission of the crime for which the offender was arrested, which many offenders will not do because they fear that the admissions will be used against them in the future.

John See, an attorney with the LOPD, said that the human brain does not stop developing until approximately 25 years of age, which means that impulse control and decision-making skills are not mature in young adults. That fact and the success of a specialty court in San Francisco are guiding the development of a pre-prosecution diversion program in New Mexico that aims to encourage young adults to accept accountability for their actions rather than proceed into the criminal justice system. The program would provide tools to young adults, including assistance with writing a resume, housing, addiction services and parenting classes. He also referred to a veterans court model that he and other representatives from New Mexico observed in Orange County, California. The training in California stressed the importance of considering the collateral consequences of conviction and the fact that sealing a formerly incarcerated person's criminal records could enable the person to obtain employment after release. He added that California permits all records from misdemeanor offenses to be sealed.

Craig Acorn, an attorney with the LOPD, told the subcommittee that he would not likely have become an attorney if not for a pre-prosecution diversion program that he participated in when he was 18 years old. He recalled House Bill 471 (2017), which addressed pre-sentencing and pre-conviction incarceration time credit toward sentences, and he encouraged the subcommittee to continue work on that kind of legislation. He also expressed support of legislation related to specialty courts, pre-prosecution diversion programs and substance abuse treatment programs, which are effective in addressing the causes of criminal behavior.

Mr. Acorn told the subcommittee that one of his clients is a young man who has a severe drug problem and was arrested five times in one month. His client is currently participating in a drug program in jail, and his client has expressed determination to complete substance abuse treatment. Mr. Acorn said that the data show that when a person like his client receives effective substance abuse treatment, it is unlikely the person will reoffend. The prosecutor in that case offered his client a plea agreement that provides for three to six years of incarceration, but his client will not receive credit for the time he has spent in jail and in substance abuse treatment programs there.

The subcommittee discussed legislation that would expand programs like Santa Fe's Law Enforcement Assisted Diversion program around the state. Mr. Acorn agreed that pre-prosecution programs that provide services to offenders are important criminal justice tools.

The subcommittee discussed how victims' needs are considered in the criminal justice system. Mr. Acorn said that restorative justice approaches are helpful in holding offenders accountable and in giving victims a voice in criminal cases. He added that successful pre-prosecution diversion programs offer close supervision of participants, and he added that an offender can still be prosecuted if the person fails to successfully complete the program.

The subcommittee co-chairs announced the dates for upcoming meetings: September 27, October 10 and October 27. The subcommittee will discuss back-end criminal justice reforms at its September 27 meeting. A subcommittee member requested that the Corrections Department be asked to present at a future meeting to discuss how addiction is treated in its facilities and how the department's probation and parole programs work.

Adjournment

There being no further business before the subcommittee, the first meeting of the CJRS of the CCJ adjourned at 4:43 p.m.

Revised: September 26, 2017

**TENTATIVE AGENDA
for the
SECOND MEETING
of the
CRIMINAL JUSTICE REFORM SUBCOMMITTEE
of the
COURTS, CORRECTIONS AND JUSTICE COMMITTEE**

**September 27, 2017
Office of the Second Judicial District Attorney
520 Lomas Boulevard NW
Albuquerque**

Wednesday, September 27

- 8:00 a.m. **Morning Reception — Refreshments**
- 9:00 a.m. **Call to Order — Welcome — Introductions**
—Sen. Sander Rue, Co-Chair
—Rep. Antonio Maestas, Co-Chair
- 9:20 a.m. (1) **[District Attorney Reform Efforts, Challenges, Strategy and Resources](#)**
—Raul Torrez, Second Judicial District Attorney
—Rachel Eagle, Deputy District Attorney, Second Judicial District
- 11:30 a.m. **Lunch**
- 1:00 p.m. **Tour of District Attorney's Office — Legislators Only**
- 2:00 p.m. (2) **[Bernalillo County Metropolitan Court's Drug Court Program](#)**
—Edward Benavidez, Chief Judge, Bernalillo County Metropolitan Court
—Renée Torres, Judge, Bernalillo County Metropolitan Court
- 3:30 p.m. **Public Comment**
- 4:30 p.m. **Adjourn**

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

**September 27, 2017
Office of the Second Judicial District Attorney
520 Lomas Boulevard NW
Albuquerque**

The second meeting of the Criminal Justice Reform Subcommittee (CJRS) of the Courts, Corrections and Justice Committee was called to order by Representative Antonio Maestas, co-chair, on September 27, 2017 at 9:10 a.m. at the Office of the Second Judicial District Attorney in Albuquerque.

Present

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

Absent

Guest Legislators

Sen. Linda M. Lopez
Rep. Sarah Maestas Barnes

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.

Wednesday, September 27

Welcome — Introductions

Raul Torrez, second judicial district attorney, welcomed the subcommittee and announced that the meeting would be broadcast over Facebook Live. Members of the subcommittee and staff introduced themselves.

District Attorney Reform Efforts, Challenges, Strategy and Resources

Mr. Torrez introduced his staff and co-presenters Rachel Eagle, deputy district attorney, and Adolfo Mendez, chief of policy and planning. Mr. Torrez acknowledged that while the subcommittee looks at statewide criminal justice reform, it is important to scrutinize Bernalillo County as a case study due to the high volume, nature and myriad types of crime, multiple institutions and urban, suburban and rural environments in the county. The Office of the Second Judicial District Attorney is the largest law office in the state and is exclusively funded at the state level. Mr. Torrez said that the Second Judicial District handles approximately 50% of the state's criminal cases but receives just 26% of the total prosecutorial budget. Individuals living in the metropolitan area should expect to see a 25% to 30% increase in their auto insurance costs due to the area's high car theft rates. With a staff of 97, the Office of the Second Judicial District Attorney screens approximately 25,000 cases per year and files charges in nearly 19,000 cases. He stressed the need to review current challenges before looking to future reforms.

Mr. Torrez discussed the following crime rates:

- between 2014 and 2016, auto thefts increased 117%;
- in 2016, more than 27 vehicles were stolen daily, giving the metropolitan area the highest per capita auto theft rate in the nation;
- beginning in 2014, auto theft, property and violent crime incidents per 100,000 people in the Second Judicial District were higher than state and nationwide rates;
- New Mexico's violent crime rate is consistently above the national rate;
- 61 homicides were committed in 2016 in the Second Judicial District, which is a 103% increase from 2014;
- through the first nine months of 2017, there were more than 57 homicides in the Second Judicial District, and 2017 is on track to see the highest number of homicides in a single year; and
- 47.9% of the state's violent crime, 50.4% of the state's homicides, 50.5% of property crime in the state and 69.6% of auto theft crimes in the state take place in the Second Judicial District.

Mr. Torrez discussed a recent survey from Research & Polling, Inc. that was featured in the *Albuquerque Journal* and that indicated that Albuquerque's high crime rate is the top issue for 70% of those polled.

Mr. Torrez described the current legal landscape in the Second Judicial District, including the case management order from the New Mexico Supreme Court (NMSC) and the pretrial detention environment following the 2016 constitutional amendment and related rules promulgated by the NMSC. He has taken a public stance on the case management order and on pretrial detention issues. He wants to convey the urgency of the issues and encourage conversation about revising the rules and court procedures.

Regarding the case management order, Mr. Torrez said that for several years prior to the order, criminal cases in the Second Judicial District were taking too long to resolve and the Bernalillo County Metropolitan Detention Center's (MDC's) inmate population reached an all-time high. After years of seeking solutions, the NMSC worked with a local coordinating council to create the order. As a result of the order, standard processes that take up to two years in the other districts in the state now must meet deadlines of six, nine and 12 months. The deadlines are strict, and mandatory sanctions are imposed by the court if the district attorney's office fails to comply. He believes that the order has had the effect of decreasing trial dockets and the population of the MDC, which is down 60%. He added that several unintentional and unforeseen issues have arisen and ought to be discussed. One of the new mandates relating to pretrial witness interviews has caused a notable increase in pretrial work hours, and his office is now required to interview every witness before going to trial. He said that his office has not been provided additional attorneys to help the office meet deadlines.

Mr. Torrez said that his office has seen an increase in defendants refusing or otherwise missing transport from the MDC to court for pretrial interviews, which has led to their cases being dismissed. Some have suggested that defense attorneys advise their clients to refuse transportation to get their cases dismissed.

Mr. Torrez stated that discussions on crime in the Albuquerque metropolitan area need to focus on court rules and resources. If resources to triple the size of his office and increase police presence were available, the criminal justice system in Albuquerque would function properly, he said. Before the case management order was put in place, prosecutors typically handled a caseload of 100 to 130 active cases. After the order's implementation, a district attorney caseload is between 30 and 50 cases to allow the district attorney to keep up with deadlines. Victim services advocates currently have between 500 and 600 cases per advocate. He noted that all of the mayoral candidates are calling for increased police presence on the streets, which will produce greater stresses on his office if his staff is not proportionately increased.

According to Mr. Torrez, inadequate resources have put a strain on the criminal justice system that causes it to perform inefficiently. His office is operating with 80 positions fewer than the number recommended by the Administrative Office of the District Attorneys. He noted that the Law Offices of the Public Defender receives about \$65,000 per full-time employee while the Second Judicial District receives less than \$57,000 per full-time employee. Ninety-two percent of his staff are paid hourly rates below the midpoint for their respective positions. As a result, the office has been unable to recruit and retain experienced prosecutors and support staff.

Additionally, high turnover has led to a staff that includes 65% of prosecutors with less than five years of experience, and employees who work a second job to make ends meet. In addition, his staff has no designated parking, so numerous staff members have to leave the building twice a day to move their cars to avoid parking tickets.

Mr. Torrez discussed the images on slide 36 of his presentation that show the most common structure for district attorneys' offices. Under that structure, once a person is arrested, that person's case goes through intake and is assigned by the type of crime involved, such as violent, property/narcotics, crimes against children, white collar and felony DWI. That structure is no longer used in his office. He recognized a need to reorganize the office to focus on criminals rather than types of crimes. His reorganization included physical relocations and new teams, structures and communication tools. The office now divides cases into major crimes and general crimes. Major crimes include rape and other violent or dangerous crimes.

Data and utilization of data are key to criminal justice reform, diversion efforts, incarceration and treatment options, Mr. Torrez said. Adequate and thorough measurements are critical to reform but there is a severe lack of criminal justice-related data collection and sharing in New Mexico. His office utilizes data to prioritize cases based upon an empirical assessment of defendants to allocate prosecutorial resources accordingly. He discussed how sending low-risk offenders to jail does not treat those with addictions or mental health issues and can actually expose them to more serious criminals and they then return to their communities with unresolved addiction or mental health issues and more criminal resources.

Mr. Torrez said that crimes on Albuquerque's West Side do not generally occur for the same reasons as crime in the Northeast Heights. His office assigns prosecution teams to specific geographic areas in Albuquerque, and each team is tasked with developing tailored crime reduction strategies for that team's area. He has vertically integrated his office to increase the personal responsibility each person takes for a case, from start to finish.

In response to a question, Mr. Torrez said that data-driven prosecution began in the New York Police Department in the 1990s. The department assigned officers to walk their beats where particular crimes were more common and ensured that area commanders were held responsible for their respective areas. The approach helped with collection and analysis of data and saved resources for the New York County District Attorney's Office. Mr. Torrez's office is currently working on a data analytics program utilizing a grant from the mayor's office and a data scientist.

Mr. Torrez discussed adult diversion programs and his justice reform program that will examine drivers of crime to leverage tools to mitigate social harms. He explained that the program will maximize resources such as specialty courts but will also create new alternative paths in and outside of the justice system.

Mr. Torrez will meet with Bernalillo County Commissioner Maggie Hart Stebbins and the Santa Fe Police Department to discuss the Law Enforcement Assisted Diversion (LEAD) Program.

Mr. Torrez said that the school-to-prison pipeline must be broken. He discussed the "make it right" program in San Francisco, which allows juvenile non-violent offenders to have direct contact with victims of their crimes and with their community members over a six-month process that leads to a resolution between the juvenile and community.

Mr. Torrez discussed the establishment of a crime strategies unit that will facilitate an intelligence-driven strategy to predict crime and that relies on geographic hot spots and dissemination of real-time criminal intelligence. He said that gun violence is scientifically regarded as an epidemic. Using a mapped network of more than 130,000 subjects to analyze the spread of violence, gun violence was measured using an epidemiological model that assumed that shootings were likely to spread among arrestees who have close social ties and engage in risky behavior together. The findings of that analysis include that 63% of the 11,123 total shootings in the network were part of a longer chain of gun victimization. The data showed that the closer an individual is to a victim, the higher the risk that the victim will be shot. Slide 52 of Mr. Torrez's presentation provides a visualization of the predictive tool.

Mr. Torrez discussed the need to establish an independent investigations bureau in Albuquerque and in similarly sized offices. The bureau would work only on officer-involved shootings and officer-involved conduct leading to death or great bodily harm. The bureau would be separate from day-to-day operations of his office, would not have contact with law enforcement and would instead have its own investigative support. He stressed the importance of the public understanding that the bureau would ensure an objective and fair process with no internal conflicts of interest. Within the bureau, Mr. Torrez intends to create the first conviction integrity unit in New Mexico to conduct reviews of post-conviction claims of innocence or claims of police or prosecutorial misconduct that resulted in a miscarriage of justice. The primary goal of the unit would be to identify structural deficiencies in the investigative or prosecutorial process and to correct issues by developing new policies and training.

The subcommittee noted that members of the CJRS are not members on budget-related committees. It also noted the advantages of identifying the problem geographic areas to dispel rumors that crime is surging in rural areas, which is contrary to statistics.

In response to a question, Mr. Torrez said that he had to decrease his attorney caseload to increase efficiency. He said that the district had 865 felony cases submitted for processing between January and August 2017, and he added that 50 to 60 additional attorneys in his office would be required to keep pace with crime in the city. His office is unable to more effectively track detention motions and follow crimes due to its reliance on an outdated case management system.

Ms. Eagle said that all attorneys in Mr. Torrez's office now screen incoming and inactive cases to determine whether they can be prosecuted under the terms of the case management order. Mr. Torrez said that outside of the Second Judicial District, charges are filed before screening and are not subject to the same time constraints. In response to a question, Mr. Mendez said that denied motions to detain have resulted in the release of more than 150 individuals. He opined that the case management order has also caused an increase in early plea deals that are favorable to offenders.

Nick Costales, deputy director, field services, Children, Youth and Families Department (CYFD), informed the subcommittee that representatives of the district attorney's office will visit CYFD facilities on Friday to discuss juvenile justice reforms and to meet with Council of State Governments (CSG) Justice Center representatives.

Mr. Torrez said he was unsure how Bernalillo County tax revenue for behavioral health is being allocated, but he has heard that some of the revenue could be used for a transitional center to assist recently released inmates with housing and transportation.

In response to a question, Mr. Torrez discussed his budget submitted to the Legislative Finance Committee and said that a one-time investment of \$9 million would allow his office to pilot an independent investigations bureau. Mr. Torrez stressed the importance of spending public dollars on efficient programming. He suggested the need for additional prosecutors and police officers and for extended judicial hours as efficient ways to address crime. Investments in the criminal justice system to decrease violent crime could help spur economic growth.

In response to a question, Mr. Torrez said that investment in data-driven tools would go toward personnel for analytics and not exclusively computers and software. He said that the data-based approach has been proven successful when used with ground-level intelligence. He referred to the program in New York City, and he noted that the city is one of the safest big cities in the world and gun, violent and property crimes there have decreased since implementing data-driven techniques. New York City notifies prosecutors via text messaging when a high-priority offender has reoffended. Every major city district attorney, regardless of political association, is moving toward data-driven decision making.

A member inquired about slide 15 and noted that the budget for district attorneys in New Mexico appears to be divided to reflect population rather than crime rates. In response, Mr. Torrez suggested that it would be more appropriate to divide resources to reflect problem areas in the state rather than to reflect an area's population. He would support a needs-based spending package. The lack of Albuquerque-based legislators on the state's finance committees was discussed along with the issue that criminal and finance policies are considered separately.

The subcommittee discussed generational drug abuse in some parts of the state and whether it is more efficient to treat drug-addicted offenders than to incarcerate them. Members

suggested that highly effective prosecution could focus on the few frequent offenders in a community-oriented deterrence approach.

The subcommittee discussed some unintended consequences of the case management order. Mr. Torrez explained that Arthur W. Pepin, director, Administrative Office of the Courts (AOC), chairs the case management order council that is composed of defense lawyers, district attorneys, representatives of the Albuquerque Police Department and the Bernalillo County Sheriff's Office and district court officials. He said that some members of the council do not agree that problems have arisen since the order was issued. Since the 1930s, the NMSC has had full authority to make court rules, while in the federal system, Congress is directly involved in determining court processes.

The subcommittee discussed potential work with the CSG to improve statistical analytics in New Mexico and the difficulty in taking low-risk offenders out of the criminal justice system without the appearance of a "soft on crime" approach. The subcommittee also discussed House Bill 428 from the 2017 regular session that reclassified many crimes as penalty assessment misdemeanors and that was vetoed.

Ms. Eagle said that preprosecution offers from the district attorney's office are being refused in some cases due to defendants' assumptions that their cases are likely to be dismissed. She agreed that there are a variety of reasons why missing transportation could arise and acknowledged that defense attorneys are performing their jobs in the best interest of their clients. She said the district attorney's office no longer has leverage in offering pleas, nor do defense attorneys have incentive to work with prosecutors if their clients' cases could be dismissed.

Bernalillo County Metropolitan Court Drug Court Program

Edward Benavidez, chief judge, Bernalillo County Metropolitan Court (BCMC), introduced his co-presenters, Judge Renée Torres, BCMC, and Martin Burkhart, administrator, Bernalillo County Metropolitan Drug Court. Judge Benavidez informed the subcommittee that the DWI/drug court program has been renamed the DWI Recovery Court upon recommendation of a successful client.

Judge Benavidez said that nationwide, drug court programs help increase community safety and save money and lives. Drug courts originated about 30 years ago in Dade County, Florida, with a focus on rehabilitation and recovery before incarceration. He referred to the National Association of Drug Court Programs for additional information on the success of the programs. Drug courts are a unique approach to criminal justice that have a cornerstone approach of reducing recidivism and breaking the cycle of substance abuse. He said that currently, New Mexico has 43 drug courts in operation, including about 10 DWI courts. Nationally, DWI and drug courts have recidivism rates less than 10%. Since taking over the program, he has seen only four participants out of 330 reoffend.

Judge Benavidez described the national drug court model used by his program. To be eligible for a program, a defendant must be a repeat offender and fully commit to the program or face imprisonment. The first 90 days of the program are focused on counseling. He said that alcohol abuse is most often associated with trauma, and it is essential to understand what is causing a person to abuse alcohol.

Participants in the program are required to:

- attend group and independent counseling, usually with First Nations Community HealthSource or the Evolution Group, which were contracted through a request for proposals process;
- attend Alcoholics Anonymous meetings;
- find a sponsor, typically within a month;
- have employment or perform community service 20 hours a week;
- regularly attend appointments with numerous entities, including the court;
- be regularly tested for alcohol use; and
- acquire points for successful completion of each item above to progress to the next phase of the program.

Judge Benavidez explained that the model keeps participants accountable for their own lives. Most participants report enjoying and appreciating the communal aspect of the program.

Judge Benavidez discussed the Urban Native American Healing to Wellness Court that typically serves about 130 participants. The court, which costs about \$21.00 per participant per day, is a significant cost saver for Bernalillo County and is primarily funded with federal dollars. The program saves the county nearly \$3 million per year. The alternative to the program, incarceration, does not allow offenders to get treatment for their addictions and increases the chances they will offend again. First Nations has a clinic to assist with medical, dental and vision care.

Mr. Burkhart informed the subcommittee that since its inception, the DWI Recovery Court has graduated more than 3,000 of 5,000 total participants. He stressed that the program has immeasurable benefits, such as the prevention of future arrests and harm or death to self or others, and if those reciprocal benefits were measured, the program would be widely regarded as a success.

Mr. Burkhart reported that several grants expire at the end of the week, including those from the U.S. Department of Justice and Substance Abuse and Mental Health Services Administration for mental health and recovery courts. He discussed other grants funded by the same entities for the Urban Native American Healing to Wellness Court and Community Veterans Court.

Mr. Burkhart also discussed the courts' efforts to provide trauma-informed care, reporting that a majority of clients have experienced trauma. Mr. Burkhart told the subcommittee that the purpose of the Urban Native American Healing to Wellness Court is for clients to achieve full wellness, not just to quit using alcohol. Case managers assist participants with identifying employment options.

Mr. Burkhart said that participants are separated into three groups: high risk/high need; low risk/low need; and high risk/low need. This allows for better outcomes. Every effort is made to ensure that Medicaid-eligible clients are qualified for the assistance. In the current fiscal year, only five participants were funded by the state.

Judge Torres recently assumed management of the Urban Native American Healing to Wellness Court pre-adjudication program, which is for people who self-identify as Native American, who have two or more DWI charges and who live within 45 miles of Albuquerque. Under her direction, participants now receive a medical needs assessment to ensure that all health and wellness needs are addressed. She stressed that the program seeks to focus clients on sobriety and wellness and includes Native American-specific healing practices. First Nations Community HealthSource provides traditional healing and treatment services, including meditation and Native American-centered therapy with a focus on the principles of family, harmony and accountability to community. She explained that many participants have never learned to take care of themselves in the manner that they are required to in the program. Nearly all of her clients have experienced trauma.

Judge Torres said that frequently, receiving praise from an authority figure suffices as an incentive for program participants because many of them have never had an authority figure empathize with or support them. Other incentives include gift cards funded by grants. She said that increased reporting, community service, sobriety devices and expected relapses are all part of the program that focuses on stability and sobriety. Jail is a last resort for participants in the program. She added that the cost per day to incarcerate is substantially higher than the cost for treatment, with an advantage of community-building that does not exist in jail.

Judge Torres said that a team of staff members — including the judge and representatives of defense counsel, prosecution, probation, treatment facilities, case managers and others — meets to discuss each participant's progress through the program. She always considers the opinion of the team but makes the final decisions on a course of action. The program now consists of five phases because staff found that participants who go through the program too quickly are more likely to offend again. She would rather have participants make a mistake during the program than to offend after the program, and she stressed that 90 days of sobriety are required for graduation.

Judge Benavidez said that approximately 20% of participants in drug court programs leave their marriages or partnerships during the program because those partners are unable or unwilling to also stop using alcohol. He said that with the incoming mayoral administration

DWI enforcement will likely increase. In recent years, the DWI caseload has been reduced to about one-half of what it once was. It will be more effective to increase the use of specialty courts to reduce recidivism and address increased DWI enforcement.

Judge Torres explained that the specialty courts average around an 80% graduation rate, and the other 20% of participants who do not complete the program face a jail sentence. She reminded the subcommittee that the courts discussed today are for individuals with one or two previous convictions, noting that first-time offenders are referred to the first-time offenders program.

The BCMC maintains jurisdiction over participants while they participate in specialty courts. Judge Benavidez said that the primary incentive to participate in specialty courts is to avoid jail time. Mr. Burkhart said that in the past, drug court programs would require incarceration for drug court violations, but that did not work. Research has since shown that such sanctions are less effective. Judge Benavidez noted that there are addiction treatment programs at the MDC that are used for participants who are unable to comply with the terms of the program.

In response to a question, Mr. Burkhart said that screening is the most important part of the specialty courts process. He assured members that the Level of Service/Case Management Inventory assessment funnels participants to the appropriate track.

In response to a question, Judge Torres said that the final phase of the Urban Native American Healing to Wellness Court is known as "aftercare" and focuses on a participant's needs after program completion that may include education, employment, health and Medicaid enrollment.

In response to a question, Mr. Burkhart said that since the inception of his program, he has been tracking and sending recidivism rates, among other statistics, to the AOC. The retention rate for the program is now at 80%, which is an improvement from 60% before sanction changes were made.

Judge Benavidez said that when looking at the programs' recidivism rates, it is hard to argue against the DWI Recovery Court. He is a strong advocate of the programs and believes the recidivism rates would be even better if the program was available to first-time offenders. Mr. Burkhart stated that the first-time offenders program is a far less stringent deferred sentence program that allows for the case to be dismissed after the program's completion. If an individual completes the first-time offenders program and is granted a dismissal, the charge is still counted as a first offense should another occur. The first-time offenders program includes screening, victim impact panels and DWI school.

The subcommittee discussed the revenue sent to the General Fund from fines and fees collected by the BCMC. In response to a question, Judge Benavidez said that he believes that

90% of DWI Recovery Court participants gain employment rather than lose it during the program. When first beginning the program, many participants are unemployable due to myriad issues.

Jason Greenlee, deputy attorney, Office of the Second Judicial District Attorney, explained that due to funding rules, participation in a drug court cannot be moved across county lines. There is discussion about changing the rules to allow funding to follow individuals if they need to change courts.

The subcommittee requested data on how many DWI second offenders do not enter specialty court programs.

In response to a question, Judge Torres said that she has been trying to get tribal court judges to place defendants in local drug court programs and said that she has shared jurisdiction with some tribal courts.

The subcommittee asked the judges about any legislative recommendations they had, and Judge Benavidez said he is interested in the possibility of a specialty court for repeat car thieves. He believes that the vast majority of those offenders are likely substance abusers who steal vehicles to use them as a safe haven for using drugs. He recommended that ignition interlock device installers should be allowed to install devices upon a person's request and not just following a DWI arrest. He will inquire with other BCMC judges for additional recommendations.

In response to a question, Judge Benavidez said that victim impact panels required for DWI-related specialty programs are very successful.

The subcommittee thanked the judges for their work and recommended keeping the subcommittee and the Legislative Finance Committee informed on how to replicate the specialty courts' success on a larger scale.

Judge Torres informed the subcommittee that the Urban Native American Healing to Wellness Court is the only one of its kind in the country and will be featured on the Center for Court Innovation's website (www.courtinnovation.org). The feature segment involved interviews with graduates and staff and filmed court sessions. She also provided the subcommittee with a story about a client who was so affected by the program that she invited her arresting officers to her graduation. She reminded the subcommittee that graduations start every Thursday at 8:00 a.m. and members are always welcome to attend.

Approval of Minutes

The minutes from the first meeting of the CJRS were approved without objection.

Public Comment

Paul Gessing, president, Rio Grande Foundation, expressed support of the pretrial release-related 2016 constitutional amendment. He stated that New Mexico is in an important shift following the amendment and associated rules. He reminded the subcommittee that the courts can order pretrial supervision and that more work and analysis need to be done, but results in other states with similar approaches are promising.

Mr. Greenlee noted the importance of using alternatives to imprisonment. Among other suggestions he discussed allowing individuals enrolled in drug court to drive vehicles to work without an ignition interlock.

Mr. Torrez closed the meeting by commending the subcommittee for its work, and he noted that he is always present as a resource for the subcommittee.

Adjournment

The co-chairs discussed the next CJRS meeting on October 10 at the BCMC. The subcommittee adjourned at 4:20 p.m.

Revised: October 10, 2017

**TENTATIVE AGENDA
for 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**

Tuesday, October 10

- 9:00 a.m. **Call to Order — Introductions**
—Rep. Antonio Maestas, Co-Chair
—Sen. Sander Rue, Co-Chair
- 9:15 a.m. (1) **Metropolitan Court Specialty Court Programs**
—Courtney B. Weaks, Presiding Judge, Domestic Violence Early
Intervention Program and Mental Health Court, Bernalillo County
Metropolitan Court (BCMC)
- 10:30 a.m. **Tour of BCMC**
- 11:30 a.m. **Lunch**
- 1:00 p.m. (2) **Felony Cases — Arrest Through Indictment**
—Robert Padilla, Court Executive Officer, BCMC
—Edward Benavidez, Chief Judge, BCMC
- 2:00 p.m. (3) **Discussion — Preliminary Hearings/Pre-Indictment Pleas**
—Robert Padilla, Court Executive Officer, BCMC
—Edward Benavidez, Chief Judge, BCMC
- 3:00 p.m. (4) **Where Do We Go from Here?**
—Rep. Antonio Maestas, Co-Chair
—Sen. Sander Rue, Co-Chair
- 3:30 p.m. **Public Comment**
- 4:00 p.m. **Adjourn**

**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.

Revised: October 26, 2017

**TENTATIVE AGENDA
for the
FOURTH MEETING
of the
CRIMINAL JUSTICE REFORM SUBCOMMITTEE
of the
COURTS, CORRECTIONS AND JUSTICE COMMITTEE**

**October 27, 2017
Ladera Golf Course Banquet Hall
3401 Ladera Drive NW
Albuquerque**

Friday, October 27

- 8:30 a.m. **Call to Order — Introductions**
—Representative Antonio Maestas, Co-Chair
—Senator Sander Rue, Co-Chair
- 8:45 a.m. (1) **Collateral Consequences of Conviction**
—Sheila Lewis, Former Public Defender
- 10:00 a.m. (2) **Alleviating Stress on the Criminal Justice System — House Bill 428 (2017)**
—Bennett J. Baur, Chief Public Defender, Law Offices of the Public Defender (LOPD)
—Rikki-Lee G. Chavez, Legislative Coordinator, New Mexico Criminal Defense Lawyers Association
—Marco Serna, First Judicial District Attorney
- 11:00 a.m. (3) **Expungement as an Economic Development Tool**
—Paul Haidle, Criminal Justice Advocate, American Civil Liberties Union of New Mexico
—Representative Antonio Maestas
- 12:00 noon (4) **Working Lunch — How Did We Get Here? — State v. Brown and Court Rule 5-401 NMRA — 2016 Constitutional Amendment and Court Rule 5-409 NMRA**
—Jennifer L. Barela, Attorney, LOPD
—Representative Antonio Maestas

- 1:30 p.m. (5) [Costs and Fees Imposed on Criminal Defendants](#)
—TBD, Corrections Department
—Rosemary McCourt, Magistrate Court Division Director, Administrative
Office of the Courts (AOC)
—Cynthia Pacheco, Manager, Warrant Enforcement Program, AOC
—TBD, Bernalillo County Metropolitan Detention Center
- 2:30 p.m. (6) [Discussion of Criminal Penalty Revisions](#)
—Douglas Carver, Deputy Director, New Mexico Sentencing Commission
- 3:30 p.m. (7) [Where Do We Go from Here? — Community Meeting](#)
- 4:30 p.m. **Public Comment**
- 5:00 p.m. **Adjourn**

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

**October 27, 2017
Ladera Golf Course Banquet Hall
3401 Ladera Drive NW
Albuquerque**

The fourth 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 27, 2017 at 8:55 a.m. 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. Zachary J. Cook
Rep. Jim Dines
Sen. Richard C. Martinez
Sen. Cisco McSorley

Absent

Guest Legislators

Sen. Jacob R. Candelaria
Sen. Linda M. Lopez

Minutes Approval

Because the subcommittee will not meet again this year, the minutes for this meeting have not been officially approved by the subcommittee.

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.

Friday, October 27

Call to Order and Introductions

Representative Maestas and Senator Rue welcomed everyone to the meeting, and the subcommittee members and staff introduced themselves. Senator Rue discussed the future of the subcommittee and an intent for the subcommittee to produce a legislative plan during the next interim.

Collateral Consequences of Conviction

Sheila Lewis, former public defender, discussed her past experience as a public defender and her current work with NM Safe, a public safety organization. Ms. Lewis defined collateral consequences as the many negative things that arise following a person's conviction. Examples of collateral consequences include negative effects on a person's ability to secure work, housing, loans and child custody.

Ms. Lewis said that, according to the Council of State Governments Justice Center (CSGJC), there is a total of 680 collateral consequences in New Mexico statutes and rules. She reports that 90% of job applicants apply for jobs that require a background check that will reveal a previous conviction, and one in four adults in the United States has a felony conviction. Ms. Lewis discussed the need to address collateral consequences in criminal justice reform.

Ms. Lewis discussed the Criminal Offender Employment Act and highlighted the barriers to employment that should be removed to make rehabilitation feasible. Ms. Lewis discussed previous "ban the box" legislation noting that, if convictions unrelated to a person's potential job duties are not taken into consideration until the applicant has been selected as a finalist for a position, it could help people with criminal records to obtain work. Ms. Lewis told the subcommittee that many women are convicted of a felony for fighting back against domestic abuse and a ban-the-box-type law could help those women find post-incarceration employment.

Ms. Lewis discussed voting rights for individuals with a past felony conviction and described the method to regain their voting privileges. She stated that all rehabilitated offenders can register to vote in New Mexico after they have completed their entire sentence, including probation and parole.

Ms. Lewis said that collateral consequences have immediate and lasting effects, including effects on immigration status and sex offender registration. She reported that the New Mexico Supreme Court (NMSC) has held that in order to provide competent counsel, defense attorneys must inform clients, prior to a guilty plea, that collateral consequences may exist that could change their immigration status or require registration as a sex offender. Ms. Lewis stated that a plea could be found invalid if a person's defense counsel fails to provide that information. She said that many people may become nervous or less compliant when their defense attorney inquires about immigration status, but that status must be disclosed to provide competent counsel.

Ms. Lewis discussed options that could help reintegrate the formerly incarcerated to society. She suggested assistance with obtaining proof of identification, positive record building, limiting access to criminal background information for non-law enforcement purposes, enacting the Uniform Collateral Consequences Act, providing notice and education on collateral consequences, encouraging civil engagement and expanding the scope of the ban the box law to include private employers and housing.

Ms. Lewis discussed New Mexico's deferred sentencing statutes. She said that under current statutes, a deferred sentence carries collateral consequences because the criminal case is dismissed and not expunged. She recommended amending a statute to alleviate collateral consequences when a conditional discharge is completed.

Ms. Lewis discussed the "recap of action steps" slide from her presentation materials. She stressed that the most important recommendation that could be adopted is the enactment of an expungement law.

In response to a question, Ms. Lewis discussed methods to encourage companies to alter their practices, such as business incentives and penalties. The subcommittee discussed the level of difficulty to expunge a record under current law and policy; a need for statistical evidence to garner legislative and community support of policy changes; and potential obstacles to using federal funds to assist felons. Ms. Lewis noted that when an individual is released from prison, an inability to secure housing increases recidivism rates sevenfold. She discussed public housing projects in Albuquerque that include both public and market rate housing.

In response to a question, Ms. Lewis discussed collaborative efforts to alleviate collateral consequences, such as criminal justice coordinating councils.

Alleviating Stress on the Criminal Justice System — House Bill (HB) 428 (2017)

Bennet Baur, chief public defender, Public Defender Department (PDD), Ricki-Lee G. Chavez, legislative coordinator, New Mexico Criminal Defense Lawyers Association, and Rick Tedrow, president, New Mexico District Attorneys' Association (NMDAA), introduced themselves. Ms. Chavez provided an overview of HB 428 (2017). The bill sought to shift several crimes listed in the Motor Vehicle Code to become civil penalty assessments rather than misdemeanors. In 2017, the bill passed the legislature, but was vetoed by the governor. Ms. Chavez described how the bill would positively affect the criminal justice system. The members of the subcommittee discussed the governor's veto message of the bill.

Mr. Baur said that the PDD, the courts and district attorneys' offices are underfunded and overworked, noting that the situation worsens with time. He acknowledged other important fiscal priorities of the state, including health care and education. He said that HB 428 served as a way to improve the justice system outside of funding requests. He reported that the bill would decrease incoming cases while placing priority on dangerous criminals and chronic DWI and domestic violence offenders. Mr. Baur noted that the bill did not remove all associated penalties

and only removed the criminal aspect, which does not affect community safety. He stated that a 3% decrease in caseloads, as could be expected if the bill had become law, would be significant for all criminal justice-involved agencies.

Mr. Tedrow stated that the NMDAA did not give an opinion on this bill during the last session but said that there are certain concerns within the bill.

Ms. Chavez and Mr. Tedrow agreed in sharing a desire to work on the language in the bill to garner support and move criminal justice in a positive direction. The subcommittee discussed potential benefits of this bill becoming law, including relief of demands on scarce resources, fewer collateral consequences for offenders and law enforcement time prioritization.

In response to a question, Ms. Chavez explained that she has not reached out to the governor to evaluate options for the bill in the future. A member of the subcommittee referred the panel to the New Mexico Association of Counties for further information and collaboration. Mr. Baur reported that he intends to coordinate efforts with the Administrative Office of the Courts (AOC).

Expungement as an Economic Development Tool

Representative Maestas discussed expungement legislation from 2011 that was vetoed. He discussed a 2016 Kentucky law that provides for low-level felony record expungement. He said that expungement of certain criminal records can help individuals find employment and reduce recidivism. He said that a similar bill in New Mexico could apply to nonviolent felonies and would likely save the state approximately \$91 million.

Paul Haidle, criminal justice advocate, American Civil Liberties Union (ACLU) of New Mexico, discussed past work experience in community legal aid in Chicago, Illinois. He discussed the ACLU materials titled "Back to Business—How Hiring Formerly Incarcerated Job Seekers Benefits Your Company". He told the subcommittee about testimony on a bill by Crossroads for Women that reported success through offering housing, training and job connections.

The subcommittee discussed erroneous information in background checks; erasure of public memory for crimes; libel, public domain, social media and the internet; and private industry initiative to change background check protocol. The subcommittee discussed past bills on expungement and the exclusion or inclusion of DWI offenses and violent felonies from the proposals. In response, Mr. Haidle said that New Mexico is one of the few states without an expungement law and that New Mexico should use the lessons from more than 40 other states to craft a policy. He described the differences between expungement and sealing of records.

Representative Maestas told the subcommittee that in the last decade, states with expungement laws have had more than 91,000 nonviolent felonies, and more than 100,000 misdemeanor offenders became eligible for expungement of their records. He explained that

under most policies in other states, timetables for expungement begin upon completion of a person's sentence. He discussed a former client who lost employment when the employer discovered a previous conviction. The client has since been unable to find another job. Representative Maestas said it is in the best interest of the community for that client to be employed.

In response to a question, Mr. Haidle explained that the National Crime Information Center (NCIC), controlled by the Federal Bureau of Investigation, complies with state orders to expunge records. He also noted that the NCIC is only accessible to certain entities, such as law enforcement, and is not normally available to the public.

Chris Moffat, Fathers Building Futures, discussed his experience working for the nonprofit organization. He reported to the subcommittee that since 2012, the organization has worked with more than 300 individuals, helping them to find employment. In his experience, the "convicted felon" check box on a job application is the first barrier encountered by a formerly incarcerated person trying to find employment.

Joseph Shaw, operations manager, Fathers Building Futures, told the subcommittee of his experience as a former client of the nonprofit. He reported that, due to assistance provided by the organization, he has remained sober and away from crime. He said he is unable to volunteer in his children's schools or participate in school field trips due to his criminal record.

A member of the public and a parent, Mr. Jackson told the subcommittee about his experience witnessing his son struggle with collateral consequences and with a mental illness.

Ms. Lewis told the subcommittee that the "convicted felon" check box on job applications and the whole criminal justice system in the state have disparate impacts on members of certain races.

How Did We Get Here? — *State v. Brown* and Court Rule 5-401 New Mexico Rules Annotated (NMRA) — 2016 Constitutional Amendment and Court Rule 5-409 NMRA

Representative Maestas gave an overview and a history of criminal and detention policy, including review of:

- the Magna Carta, which established that individuals accused of a crime are presumed innocent pending trial;
- the Statute of Westminster, a British law clarifying the powers of Canada's parliament that established bailable offenses, prohibited excessive bail and provided criteria by which an individual should be released;
- the Frame of Government of Pennsylvania of 1682, which established that unless danger is great, all prisoners will be available for bond by sufficient sureties;
- the federal Judiciary Act of 1789, which provided an absolute right to bail except in capital cases;

- the Eighth Amendment to the Constitution of the United States of America, which prohibits excessive bail; and
- *United States v. Salerno*, a court case that allowed for a federal court to detain an arrested person until trial.

Representative Maestas discussed New Mexico's rules related to bail, which were written in 1972 and describe the format of court rules. He explained the NMSC's process for creating and amending rules. The legislature does not write court rules.

Representative Maestas discussed *State of New Mexico v. Brown*, noting that the opinion in that case did not create new law, and said the decision clarified that the bail policy in question was being implemented incorrectly. He said that in that case, the defense alleged that Mr. Brown was not a danger to the community, but the prosecution objected to his release, and he stayed in jail until the NMSC overturned his detention.

Representative Maestas said that a 2015 committee created by the court recommended amending the constitutional provisions on detaining an accused person, noting a need to be able to hold certain individuals without bond. In 2016, the legislature passed a constitutional amendment that was ratified by the voters later that year. The amendment intended to remove the ability to hold defendants due to indigence while providing that other defendants could be held if proven to be a danger to the community. The NMSC promulgated rules to establish procedure for bail and detainment that became effective July 1, 2017.

Jennifer Barela, attorney, PDD, discussed Article 2, Section 13 of the Constitution of New Mexico. She described the process of charging and arresting an individual accused of a crime. Upon being charged, arrested and placed in detention, the defendant is entitled to see a judge within 48 hours. In Bernalillo County, the first appearance before a judge falls under the jurisdiction of the Bernalillo County Metropolitan Court, and the district attorney and a public defender are both present. At that time, the district attorney can file for continued detention, in which instance the case would be transferred to district court. She said the procedure for pretrial detention is outlined in 5-409 NMRA.

Ms. Barela said that if the district attorney does not file for detention, the judge follows procedures outlined in 5-401 NMRA. She told the subcommittee that Bernalillo County uses a public safety assessment tool in connection with detention decisions. Under 5-401 NMRA, there are different tiers for pretrial release. She reported that a majority of arrested individuals are released and subject to conditions that can include pretrial services, and very few are released on their own recognizance. The different tiers include options for a judge to have a defendant report periodically, wear a global positioning system device or participate in other services. The majority of offenders are required to participate in pretrial services and are left on supervision for 60 days, during which time the state must decide how to proceed in the case. After 60 days, if the district attorney has not sought an indictment, the conditions of the person's release and the

jurisdiction of the court no longer apply. If the district attorney does seek an indictment, the case is transferred to district court to determine conditions of release pending trial.

If the defendant is detained under preventive detention, the state has 10 days to indict or bring the case to a preliminary hearing if charges are to proceed. Ms. Barela reported that before the recent constitutional amendment regarding bail, clients who were unable to pay a \$100 minimum bond would stay in custody for up to 10 days.

Ms. Barela said 5-403 NMRA is the method by which a defendant's pretrial release can be revoked or modified. She said that she supports the bail rules and the new constitutional amendment because, as a public defender, her clients are not being held solely because of their economic status. She discussed her clients that are now under preventive holds under the new release and bail environment. Prior to the institution of the new rules, she said, potentially dangerous defendants could post a bond and quickly return to the community. After the institution of the amendment, if the state can produce evidence of dangerousness, the client will be held.

Representative Maestas said that bond is used to ensure a person's appearance in court and discussed bonding options. He noted that if a bonding agency is used, the agency is responsible for paying the bond if the person does not appear, and the agency has a financial incentive to make their clients appear in court.

The subcommittee discussed the constitutional amendment and judges' authority to detain. In response to a question, Ms. Barela said that the procedural rules of 5-409 NMRA are clear. She discussed evidence brought against her clients in motions to detain, including prior criminal complaints and violations of previous conditions of arrest.

Ms. Barela discussed the language of the bail constitutional amendment. She told the subcommittee that the language in the amendment was derived from federal bail reform law.

In response to a question, Ms. Barela noted that some judges consider people who commit property crimes to be a danger to the community and, therefore, they may be ineligible for bail. She told the subcommittee that the statistics indicate that prosecutors file for detention in about 13% of cases and about 4% of offenders are detained.

Mr. Tedrow said the NMDAA is tracking data on detention motions but it has not yet produced a report. The subcommittee recommended particular measures for the NMDAA to track.

Members of the subcommittee discussed their experiences as victims of crime; the clear and convincing evidence standard; previous standards and practices for detention; changes to rules as required by constitutional amendment; and deadlines for prosecuting.

Ken Christensen, sheriff, San Juan County, discussed his experience in law enforcement working with drug addicts and regularly rearresting certain individuals.

Members of the subcommittee discussed *State v. Brown* and Justice Charles Daniels' determination that the state was in violation of the U.S. Constitution under its previous bonding practices. Representative Maestas noted that 48 states have constitutions modeled after Pennsylvania's, in which a defendant does have a right to bail despite that the U.S. Constitution does not explicitly grant a right to bail.

Costs and Fees Imposed on Criminal Defendants

Rose Bobchak, director, Probation and Parole Division, Corrections Department, read from her presentation materials on costs and fees. Costs and fees are assessed by a sentencing authority and are no less than \$25.00 but no more than \$150 per month. She noted that the standard cost amount assessment was raised last year to \$35.00 per month. She told the subcommittee that other fees assessed may include restitution, fines, fees, community corrections fees, global positioning system device fees and sobriety monitoring fees.

Ms. Bobchak told the subcommittee that the agency places a priority on fees and encourages offenders to make restitution a priority. She said that as required by statute, payments are collected monthly by designated personnel in the agency. She said that probation and parole officers assess an offender's ability to pay costs based on financial status.

Cynthia Pacheco, manager, Warrant Enforcement Program, AOC, told the subcommittee that current statutes list requirements for judges to assess and collect fees and the law prevents them from taking certain actions with respect to those fees. Fees may vary based on charges, and contested and uncontested cases have different fees. She provided examples of several fees, including those related to certain traffic offenses, petty misdemeanors and misdemeanors, and certain fines.

In response to a question, Ms. Pacheco told the subcommittee that statutes require magistrates to assess and collect court costs. She discussed the section that prevents judges from waiving or suspending court cost fees. She said that if a defendant is unable to pay, the magistrate has options to avoid incarcerating a person for inability to pay, including payment arrangements and community service. She told the subcommittee that defendants are sometimes incarcerated due to unwillingness to pay.

Ms. Pacheco told the subcommittee that the state is owed more than \$18 million in fines and fees, and, of that amount, many thousands of dollars are owed by persons who live out of state. Ms. Pacheco said there are 43,000 active warrants in the state, of which 37,000 were issued for a failure to appear in court. Ninety percent of failure to appear warrants are for cases where the individual never appeared for the individual's first court appearance. Ms. Pacheco told the subcommittee that efforts to find defendants are frequently unsuccessful. Ms. Pacheco told the subcommittee that, during the last fiscal year, \$3.1 million was collected on 36,000 cases.

Ms. Pacheco told the subcommittee that in 2016, the United States Department of Justice required the state to reconsider protocols for determining indigence, alternatives to incarceration, meaningful notice and access to counsel.

The subcommittee discussed the Brain Injury Services Fund managed by the Human Services Department. Ms. Pacheco said that balances from brain injury and related funds are transmitted monthly to the AOC, which distributes the amounts to the state treasurer for disbursements to appropriate funds.

Ms. Pacheco told the subcommittee that the brain injury fee is \$5.00, the judicial education fee is \$3.00 and the court automation fee is \$10.00. She discussed other fees such as the corrections fee, DWI crime lab fee, domestic violence treatment fee, warrant enforcement fee and a substance abuse fee. Ms. Pacheco said that with the exception of the magistrate fund, none of the fees or 21 funds have a sunset provision.

Ms. Pacheco told the subcommittee that due to extraordinary demands on the courts, administrative funds have been used to cover operational costs for magistrates over the last year. The administrative funds currently have insufficient balances to cover additional operational expenses and that has been a driver in some efforts to increase some fees.

The subcommittee discussed methods for issuing warrants and ensuring court appearances; previous legislative attempts to increase fines and fees; charging of fines per warrant issued; repercussions of outstanding warrants; monthly \$35.00 probation costs for defendants; accumulation of fees per criminal or civil charge; civil forfeiture; tax policy; and court funding.

In response to a question from the subcommittee, Ms. Bobchak said that the Corrections Department does not get involved in child support issues, but that it tries to assist offenders to stabilize personal finances. Ms. Bobchak discussed warrant roundups, noting that results from past attempts were financially unsupportable. She discussed New Mexico's "safe surrender" program that was adopted from similar federal programs. The program uses an automated dialer, letters and postcards to notify offenders to appear in court on a specified date. She told the subcommittee that the courts are unable to promise that the defendant will not be arrested, but that the offender will see a judge with a recommendation of favorable consideration. In 2016, the courts hosted safe surrender events in six locations throughout the state.

Discussion of Criminal Penalty Revisions

Douglas Carver, deputy director, New Mexico Sentencing Commission, discussed past legislative attempts to revise criminal penalties. Mr. Carver also discussed public perception of crime and designation of felonies.

Mr. Carver spoke about the commission's 2008 publication on collateral consequences in New Mexico and the CSGJC's collateral consequences tracker. He said that collateral

consequences are being addressed nationwide and detailed the United States Government Accountability Office summary sheet on nonviolent drug convictions.

Mr. Carver noted a criminal case out of the eastern district of New York where the judge determined that the collateral consequences were so severe that they could be considered punishment without imprisonment. Mr. Carver told the subcommittee that, in his research, he has learned that some states are reconsidering collateral consequences.

Mr. Carver commented on the piecemeal-style of amendment of the state's Criminal Code and the addition of crimes as a result of public attention. He discussed felony theft threshold amounts in other states. He addressed New Mexico's fourth degree felony for unauthorized reporting of campaign expenditures.

Mr. Carver suggested that the Criminal Code may have too many felonies and requested that the subcommittee consider which felonies could be reduced to misdemeanors, recommending nonviolent felonies as a starting point. Mr. Carver discussed other sentencing options and said that five states use misdemeanors with jail sentences in excess of one year.

Mr. Carver told the subcommittee that past legislatures made felonies out of certain actions without realizing the consequences that would exist today. He said that other states have up to five levels of misdemeanors and up to seven levels of felonies. He recommended that defelonization may be a more efficient way to address collateral consequences instead of finding all 680 instances in statute and rule.

In response to a question from the subcommittee, Mr. Carver explained that the last time the Criminal Code was revised was in the 1940s. The subcommittee discussed legislative strategy under the current administration; crime prioritization by courts; misdemeanor and felony classification; elevation of charges upon recidivating; automatic probation for low-level crimes; court dockets; the likelihood of legislative success for front- and back-end criminal justice system changes; a model penal code; and discretionary abilities of judges.

Public Comment

Gerald Madrid, president, Bail Bond Association of New Mexico, discussed court rules in relation to bonding and release.

Ms. Lewis discussed victims of domestic violence, batterer intervention programs and their role in criminal justice.

Juan Chavez, Metropolitan Bail Bonds, discussed court rules, bonding and ethics within the bonding industry.

Erin Muffaletto Baca discussed the high rate of New Mexicans with active warrants in their names.

Adjourn

The subcommittee adjourned at 4:27 p.m.

ENDORSED LEGISLATION

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HOUSE BILL

53RD LEGISLATURE - STATE OF NEW MEXICO - SECOND SESSION, 2018

INTRODUCED BY

FOR THE COURTS, CORRECTIONS AND JUSTICE COMMITTEE

AN ACT

RELATING TO DRIVING UNDER THE INFLUENCE OF INTOXICATING LIQUOR OR DRUGS; AMENDING THE REQUIREMENTS FOR TESTING THE BLOOD OF A PERSON SUSPECTED OF OPERATING A MOTOR VEHICLE WHILE UNDER THE INFLUENCE OF INTOXICATING LIQUOR OR DRUGS.

BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF NEW MEXICO:

SECTION 1. Section 66-8-102 NMSA 1978 (being Laws 1953, Chapter 139, Section 54, as amended) is amended to read:

"66-8-102. DRIVING UNDER THE INFLUENCE OF INTOXICATING LIQUOR OR DRUGS--AGGRAVATED DRIVING UNDER THE INFLUENCE OF INTOXICATING LIQUOR OR DRUGS--PENALTIES.--

A. It is unlawful for a person who is under the influence of intoxicating liquor to drive a vehicle within this state.

B. It is unlawful for a person who is under the

1 influence of any drug to a degree that renders the person
2 incapable of safely driving a vehicle to drive a vehicle within
3 this state.

4 C. It is unlawful for:

5 (1) a person to drive a vehicle in this state
6 if the person has an alcohol concentration of eight one
7 hundredths or more in the person's blood or breath within three
8 hours of driving the vehicle and the alcohol concentration
9 results from alcohol consumed before or while driving the
10 vehicle; or

11 (2) a person to drive a commercial motor
12 vehicle in this state if the person has an alcohol
13 concentration of four one hundredths or more in the person's
14 blood or breath within three hours of driving the commercial
15 motor vehicle and the alcohol concentration results from
16 alcohol consumed before or while driving the vehicle.

17 D. Aggravated driving under the influence of
18 intoxicating liquor or drugs consists of:

19 (1) driving a vehicle in this state with an
20 alcohol concentration of sixteen one hundredths or more in the
21 driver's blood or breath within three hours of driving the
22 vehicle and the alcohol concentration results from alcohol
23 consumed before or while driving the vehicle;

24 (2) causing bodily injury to a human being as
25 a result of the unlawful operation of a motor vehicle while

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1 driving under the influence of intoxicating liquor or drugs; or
2 (3) refusing to submit to chemical breath
3 testing, as provided for in the Implied Consent Act, and in the
4 judgment of the court, based upon evidence of intoxication
5 presented to the court, the driver was under the influence of
6 intoxicating liquor or drugs.

7 E. A first conviction pursuant to this section
8 shall be punished, notwithstanding the provisions of Section
9 31-18-13 NMSA 1978, by imprisonment for not more than ninety
10 days or by a fine of not more than five hundred dollars (\$500),
11 or both; provided that if the sentence is suspended in whole or
12 in part or deferred, the period of probation may extend beyond
13 ninety days but shall not exceed one year. Upon a first
14 conviction pursuant to this section, an offender shall be
15 sentenced to not less than twenty-four hours of community
16 service. In addition, the offender may be required to pay a
17 fine of three hundred dollars (\$300). The offender shall be
18 ordered by the court to participate in and complete a screening
19 program described in Subsection L of this section and to attend
20 a driver rehabilitation program for alcohol or drugs, also
21 known as a "DWI school", approved by the bureau and also may be
22 required to participate in other rehabilitative services as the
23 court shall determine to be necessary. In addition to those
24 penalties, when an offender commits aggravated driving under
25 the influence of intoxicating liquor or drugs, the offender

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1 shall be sentenced to not less than forty-eight consecutive
2 hours in jail. If an offender fails to complete, within a time
3 specified by the court, any community service, screening
4 program, treatment program or DWI school ordered by the court
5 or fails to comply with any other condition of probation, the
6 offender shall be sentenced to not less than an additional
7 forty-eight consecutive hours in jail. Any jail sentence
8 imposed pursuant to this subsection for failure to complete,
9 within a time specified by the court, any community service,
10 screening program, treatment program or DWI school ordered by
11 the court or for aggravated driving under the influence of
12 intoxicating liquor or drugs shall not be suspended, deferred
13 or taken under advisement. On a first conviction pursuant to
14 this section, any time spent in jail for the offense prior to
15 the conviction for that offense shall be credited to any term
16 of imprisonment fixed by the court. A deferred sentence
17 pursuant to this subsection shall be considered a first
18 conviction for the purpose of determining subsequent
19 convictions.

20 F. A second or third conviction pursuant to this
21 section shall be punished, notwithstanding the provisions of
22 Section 31-18-13 NMSA 1978, by imprisonment for not more than
23 three hundred sixty-four days or by a fine of not more than one
24 thousand dollars (\$1,000), or both; provided that if the
25 sentence is suspended in whole or in part, the period of

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1 probation may extend beyond one year but shall not exceed five
2 years. Notwithstanding any provision of law to the contrary
3 for suspension or deferment of execution of a sentence:

4 (1) upon a second conviction, an offender
5 shall be sentenced to a jail term of not less than ninety-six
6 consecutive hours, not less than forty-eight hours of community
7 service and a fine of five hundred dollars (\$500). In addition
8 to those penalties, when an offender commits aggravated driving
9 under the influence of intoxicating liquor or drugs, the
10 offender shall be sentenced to a jail term of not less than
11 ninety-six consecutive hours. If an offender fails to
12 complete, within a time specified by the court, any community
13 service, screening program or treatment program ordered by the
14 court, the offender shall be sentenced to not less than an
15 additional seven consecutive days in jail. A penalty imposed
16 pursuant to this paragraph shall not be suspended or deferred
17 or taken under advisement; and

18 (2) upon a third conviction, an offender shall
19 be sentenced to a jail term of not less than thirty consecutive
20 days, not less than ninety-six hours of community service and a
21 fine of seven hundred fifty dollars (\$750). In addition to
22 those penalties, when an offender commits aggravated driving
23 under the influence of intoxicating liquor or drugs, the
24 offender shall be sentenced to a jail term of not less than
25 sixty consecutive days. If an offender fails to complete,

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1 within a time specified by the court, any community service,
2 screening program or treatment program ordered by the court,
3 the offender shall be sentenced to not less than an additional
4 sixty consecutive days in jail. A penalty imposed pursuant to
5 this paragraph shall not be suspended or deferred or taken
6 under advisement.

7 G. Upon a fourth conviction pursuant to this
8 section, an offender is guilty of a fourth degree felony and,
9 notwithstanding the provisions of Section 31-18-15 NMSA 1978,
10 shall be sentenced to a term of imprisonment of eighteen
11 months, six months of which shall not be suspended, deferred or
12 taken under advisement.

13 H. Upon a fifth conviction pursuant to this
14 section, an offender is guilty of a fourth degree felony and,
15 notwithstanding the provisions of Section 31-18-15 NMSA 1978,
16 shall be sentenced to a term of imprisonment of two years, one
17 year of which shall not be suspended, deferred or taken under
18 advisement.

19 I. Upon a sixth conviction pursuant to this
20 section, an offender is guilty of a third degree felony and,
21 notwithstanding the provisions of Section 31-18-15 NMSA 1978,
22 shall be sentenced to a term of imprisonment of thirty months,
23 eighteen months of which shall not be suspended, deferred or
24 taken under advisement.

25 J. Upon a seventh conviction pursuant to this

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1 section, an offender is guilty of a third degree felony and,
2 notwithstanding the provisions of Section 31-18-15 NMSA 1978,
3 shall be sentenced to a term of imprisonment of three years,
4 two years of which shall not be suspended, deferred or taken
5 under advisement.

6 K. Upon an eighth or subsequent conviction pursuant
7 to this section, an offender is guilty of a second degree
8 felony and, notwithstanding the provisions of Section 31-18-15
9 NMSA 1978, shall be sentenced to a term of imprisonment of
10 twelve years, ten years of which shall not be suspended,
11 deferred or taken under advisement.

12 L. Upon any conviction pursuant to this section, an
13 offender shall be required to participate in and complete,
14 within a time specified by the court, an alcohol or drug abuse
15 screening program approved by the department of finance and
16 administration and, if necessary, a treatment program approved
17 by the court. The requirement imposed pursuant to this
18 subsection shall not be suspended, deferred or taken under
19 advisement.

20 M. Upon a second or third conviction pursuant to
21 this section, an offender shall be required to participate in
22 and complete, within a time specified by the court:

23 (1) not less than a twenty-eight-day
24 inpatient, residential or in-custody substance abuse treatment
25 program approved by the court;

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1 (2) not less than a ninety-day outpatient
2 treatment program approved by the court;

3 (3) a drug court program approved by the
4 court; or

5 (4) any other substance abuse treatment
6 program approved by the court.

7 The requirement imposed pursuant to this subsection shall
8 not be suspended, deferred or taken under advisement.

9 N. Upon a felony conviction pursuant to this
10 section, the corrections department shall provide substance
11 abuse counseling and treatment to the offender in its custody.
12 While the offender is on probation or parole under its
13 supervision, the corrections department shall also provide
14 substance abuse counseling and treatment to the offender or
15 shall require the offender to obtain substance abuse counseling
16 and treatment.

17 O. Upon a conviction pursuant to this section, an
18 offender shall be required to obtain an ignition interlock
19 license and have an ignition interlock device installed and
20 operating on all motor vehicles driven by the offender,
21 pursuant to rules adopted by the bureau. Unless determined by
22 the bureau to be indigent, the offender shall pay all costs
23 associated with having an ignition interlock device installed
24 on the appropriate motor vehicles. The offender shall operate
25 only those vehicles equipped with ignition interlock devices

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1 for:

2 (1) a period of one year, for a first
3 offender;

4 (2) a period of two years, for a second
5 conviction pursuant to this section;

6 (3) a period of three years, for a third
7 conviction pursuant to this section; or

8 (4) the remainder of the offender's life, for
9 a fourth or subsequent conviction pursuant to this section.

10 P. Five years from the date of conviction and every
11 five years thereafter, a fourth or subsequent offender may
12 apply to a district court for removal of the ignition interlock
13 device requirement provided in this section and for restoration
14 of a driver's license. A district court may, for good cause
15 shown, remove the ignition interlock device requirement and
16 order restoration of the license; provided that the offender
17 has not been subsequently convicted of driving a motor vehicle
18 under the influence of intoxicating liquor or drugs. Good
19 cause may include an alcohol screening and proof from the
20 interlock vendor that the person has not had violations of the
21 interlock device.

22 Q. An offender who obtains an ignition interlock
23 license and installs an ignition interlock device prior to
24 conviction shall be given credit at sentencing for the time
25 period the ignition interlock device has been in use.

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1 R. In the case of a first, second or third offense
2 under this section, the magistrate court has concurrent
3 jurisdiction with district courts to try the offender.

4 S. A conviction pursuant to a municipal or county
5 ordinance in New Mexico or a law of any other jurisdiction,
6 territory or possession of the United States or of a tribe,
7 when that ordinance or law is equivalent to New Mexico law for
8 driving under the influence of intoxicating liquor or drugs,
9 and prescribes penalties for driving under the influence of
10 intoxicating liquor or drugs, shall be deemed to be a
11 conviction pursuant to this section for purposes of determining
12 whether a conviction is a second or subsequent conviction.

13 T. In addition to any other fine or fee that may be
14 imposed pursuant to the conviction or other disposition of the
15 offense under this section, the court may order the offender to
16 pay the costs of any court-ordered screening and treatment
17 programs.

18 U. With respect to this section and notwithstanding
19 any provision of law to the contrary, if an offender's sentence
20 was suspended or deferred in whole or in part and the offender
21 violates any condition of probation, the court may impose any
22 sentence that the court could have originally imposed and
23 credit shall not be given for time served by the offender on
24 probation.

25 V. As used in this section:

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1 (1) "bodily injury" means an injury to a
2 person that is not likely to cause death or great bodily harm
3 to the person, but does cause painful temporary disfigurement
4 or temporary loss or impairment of the functions of any member
5 or organ of the person's body; and

6 (2) "commercial motor vehicle" means a motor
7 vehicle or combination of motor vehicles used in commerce to
8 transport passengers or property if the motor vehicle:

9 (a) has a gross combination weight
10 rating of more than twenty-six thousand pounds inclusive of a
11 towed unit with a gross vehicle weight rating of more than ten
12 thousand pounds;

13 (b) has a gross vehicle weight rating of
14 more than twenty-six thousand pounds;

15 (c) is designed to transport sixteen or
16 more passengers, including the driver; or

17 (d) is of any size and is used in the
18 transportation of hazardous materials, which requires the motor
19 vehicle to be placarded under applicable law."

20 SECTION 2. Section 66-8-111 NMSA 1978 (being Laws 1978,
21 Chapter 35, Section 519, as amended) is amended to read:

22 "66-8-111. REFUSAL TO SUBMIT TO CHEMICAL TESTS--TESTING--
23 GROUNDS FOR REVOCATION OF LICENSE OR PRIVILEGE TO DRIVE.--

24 A. If a person under arrest for violation of an
25 offense enumerated in the Motor Vehicle Code refuses upon

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1 request of a law enforcement officer to submit to chemical
2 tests designated by the law enforcement agency as provided in
3 Section 66-8-107 NMSA 1978, none shall be administered except
4 when a municipal judge, magistrate or district judge issues a
5 search warrant authorizing chemical tests as provided in
6 Section 66-8-107 NMSA 1978 upon finding in a law enforcement
7 officer's written affidavit that there is probable cause to
8 believe that the person has driven a motor vehicle while under
9 the influence of alcohol or a controlled substance [~~thereby~~
10 ~~causing the death or great bodily injury of another person, or~~
11 ~~there is probable cause to believe that the person has~~
12 ~~committed a felony while under the influence of alcohol or a~~
13 ~~controlled substance and that chemical tests as provided in~~
14 ~~Section 66-8-107 NMSA 1978 will produce material evidence in a~~
15 ~~felony prosecution~~].

16 B. The department, upon receipt of a statement
17 signed under penalty of perjury from a law enforcement officer
18 stating the officer's reasonable grounds to believe the
19 arrested person had been driving a motor vehicle within this
20 state while under the influence of intoxicating liquor or drugs
21 and that, upon request, the person refused to submit to a
22 chemical test after being advised that failure to submit could
23 result in revocation of the person's privilege to drive, shall
24 revoke the person's New Mexico driver's license or any
25 nonresident operating privilege for a period of one year or

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1 until all conditions for license reinstatement are met,
2 whichever is later.

3 C. The department, upon receipt of a statement
4 signed under penalty of perjury from a law enforcement officer
5 stating the officer's reasonable grounds to believe the
6 arrested person had been driving a motor vehicle within this
7 state while under the influence of intoxicating liquor and that
8 the person submitted to chemical testing pursuant to Section
9 66-8-107 NMSA 1978 and the test results indicated an alcohol
10 concentration in the person's blood or breath of eight one
11 hundredths or more if the person is twenty-one years of age or
12 older, four one hundredths or more if the person is driving a
13 commercial motor vehicle or two one hundredths or more if the
14 person is less than twenty-one years of age, shall revoke the
15 person's license or permit to drive or [~~his~~] the person's
16 nonresident operating privilege for a period of:

17 (1) six months or until all conditions for
18 license reinstatement are met, whichever is later, if the
19 person is twenty-one years of age or older;

20 (2) one year or until all conditions for
21 license reinstatement are met, whichever is later, if the
22 person was less than twenty-one years of age at the time of the
23 arrest, notwithstanding any provision of the Children's Code;
24 or

25 (3) one year or until all conditions for

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1 license reinstatement are met, whichever is later, if the
2 ~~[person has previously had his]~~ person's license has been
3 revoked previously pursuant to the provisions of this section,
4 notwithstanding the provisions of Paragraph (1) of this
5 subsection.

6 D. The determination of alcohol concentration shall
7 be based on the grams of alcohol in one hundred milliliters of
8 blood or the grams of alcohol in two hundred ten liters of
9 breath.

10 E. If the person subject to the revocation
11 provisions of this section is a resident or will become a
12 resident within one year and is without a license to operate a
13 motor vehicle in this state, the department shall deny the
14 issuance of a license to ~~[him]~~ the person for the appropriate
15 period of time as provided in Subsections B and C of this
16 section.

17 F. A statement signed by a law enforcement officer,
18 pursuant to the provisions of Subsection B or C of this
19 section, shall be sworn to by the officer or shall contain a
20 declaration substantially to the effect: "I hereby declare
21 under penalty of perjury that the information given in this
22 statement is true and correct to the best of my knowledge."
23 The statement may be signed and submitted electronically in a
24 manner and form approved by the department. A law enforcement
25 officer who signs a statement knowing that the statement is

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1 untrue in any material issue or matter is guilty of perjury as
2 provided in Section 66-5-38 NMSA 1978."

3 SECTION 3. Section 66-8-111.1 NMSA 1978 (being Laws 1984,
4 Chapter 72, Section 7, as amended) is amended to read:

5 "66-8-111.1. LAW ENFORCEMENT OFFICER AGENT FOR
6 DEPARTMENT--WRITTEN NOTICE OF REVOCATION AND RIGHT TO
7 HEARING.--On behalf of the department, a law enforcement
8 officer requesting a chemical test or directing the
9 administration of a chemical test pursuant to [~~Section~~]
10 Sections 66-8-107 and 66-8-111 NMSA 1978 shall serve immediate
11 written notice of revocation and of right to a hearing before
12 the administrative hearings office pursuant to the Implied
13 Consent Act on a person who refuses to permit chemical testing
14 or on a person who submits to a chemical test the results of
15 which indicate an alcohol concentration in the person's blood
16 or breath of eight one hundredths or more if the person is
17 twenty-one years of age or older, four one hundredths or more
18 if the person is driving a commercial motor vehicle or two one
19 hundredths or more if the person is less than twenty-one years
20 of age. Upon serving notice of revocation, the law enforcement
21 officer shall take the license or permit of the driver, if any,
22 and issue a temporary license valid for twenty days or, if the
23 driver requests a hearing pursuant to Section 66-8-112 NMSA
24 1978, valid until the date the administrative hearings office
25 issues the order following that hearing; provided that a

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1 temporary license shall not be issued to a driver without a
2 valid license or permit. The law enforcement officer shall
3 send the person's driver's license to the department along with
4 the signed statement required pursuant to Section 66-8-111 NMSA
5 1978."

6 SECTION 4. EFFECTIVE DATE.--The effective date of the
7 provisions of this act is July 1, 2018.

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HOUSE BILL

53RD LEGISLATURE - STATE OF NEW MEXICO - SECOND SESSION, 2018

INTRODUCED BY

FOR THE COURTS, CORRECTIONS AND JUSTICE COMMITTEE

AN ACT

MAKING AN APPROPRIATION TO THE CRIME VICTIMS REPARATION
COMMISSION TO STUDY NEEDS RELATED TO SHELTERING VICTIMS OF
HUMAN TRAFFICKING.

BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF NEW MEXICO:

SECTION 1. APPROPRIATION.--Seventy-five thousand dollars
(\$75,000) is appropriated from the general fund to the crime
victims reparation commission for expenditure in fiscal year
2019 to study needs related to sheltering victims of human
trafficking. Any unexpended or unencumbered balance remaining
at the end of fiscal year 2019 shall revert to the general
fund.

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HOUSE BILL

53RD LEGISLATURE - STATE OF NEW MEXICO - SECOND SESSION, 2018

INTRODUCED BY

FOR THE COURTS, CORRECTIONS AND JUSTICE COMMITTEE

AN ACT

MAKING AN APPROPRIATION TO THE CRIME VICTIMS REPARATION
COMMISSION TO FUND SERVICES FOR VICTIMS OF HUMAN TRAFFICKING.

BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF NEW MEXICO:

SECTION 1. APPROPRIATION.--One hundred forty-five
thousand dollars (\$145,000) is appropriated from the general
fund to the crime victims reparation commission for expenditure
in fiscal year 2019 to fund services for victims of human
trafficking. Any unexpended or unencumbered balance remaining
at the end of fiscal year 2019 shall revert to the general
fund.

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HOUSE BILL

53RD LEGISLATURE - STATE OF NEW MEXICO - SECOND SESSION, 2018

INTRODUCED BY

FOR THE COURTS, CORRECTIONS AND JUSTICE COMMITTEE AND
THE REVENUE STABILIZATION AND TAX POLICY COMMITTEE

AN ACT

RELATING TO TAXATION; INCREASING THE DISTRIBUTION OF THE LIQUOR
EXCISE TAX TO THE LOCAL DWI GRANT FUND; DISTRIBUTING A PORTION
OF THAT TAX TO THE DRUG COURT FUND; CREATING THE DRUG COURT
FUND; MAKING AN APPROPRIATION.

BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF NEW MEXICO:

SECTION 1. Section 7-1-6.40 NMSA 1978 (being Laws 1997,
Chapter 182, Section 1, as amended) is amended to read:

"7-1-6.40. DISTRIBUTION OF LIQUOR EXCISE TAX--LOCAL DWI
GRANT FUND--CERTAIN MUNICIPALITIES--~~[LOTTERY TUITION]~~ DRUG
COURT FUND---

A. A distribution pursuant to Section 7-1-6.1 NMSA
1978 [~~shall be made to the local DWI grant fund~~] in an amount
equal to [~~the following percentages~~] forty-five percent of the
net receipts attributable to the liquor excise tax

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1 [~~(1) prior to July 1, 2015, forty-one and one-~~
2 ~~half percent;~~
3 ~~(2) from July 1, 2015 through June 30, 2018,~~
4 ~~forty-six percent; and~~
5 ~~(3) on and after July 1, 2018, forty-one and~~
6 ~~one-half percent]~~ shall be made to the local DWI grant fund.

7 B. A distribution pursuant to Section 7-1-6.1 NMSA
8 1978 of twenty thousand seven hundred fifty dollars (\$20,750)
9 monthly from the net receipts attributable to the liquor excise
10 tax shall be made to a municipality that is located in a class
11 A county and that has a population according to the most recent
12 federal decennial census of more than thirty thousand but less
13 than sixty thousand [~~The distribution pursuant to this~~
14 ~~subsection]~~ and shall be used by the municipality only for the
15 provision of alcohol treatment and rehabilitation services for
16 street inebriates.

17 C. [~~From July 1, 2015 through June 30, 2017]~~ A
18 distribution pursuant to Section 7-1-6.1 NMSA 1978 [~~of thirty-~~
19 ~~nine]~~ in an amount equal to five percent of the net receipts
20 attributable to the liquor excise tax shall be made to the
21 [~~lottery tuition]~~ drug court fund."

22 SECTION 2. [NEW MATERIAL] DRUG COURT FUND--CREATED.--The
23 "drug court fund" is created in the state treasury. The fund
24 consists of appropriations, distributions, gifts, grants,
25 donations and bequests made to the fund and income from

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1 investment of the fund. The administrative office of the
2 courts shall administer money in the fund to offset client
3 service costs of drug court programs, consistent with standards
4 approved by the supreme court. Money in the fund shall be
5 expended on warrants of the secretary of finance and
6 administration pursuant to vouchers signed by the director of
7 the administrative office of the courts. Balances in the fund
8 shall not revert to the general fund at the end of a fiscal
9 year.

10 SECTION 3. EFFECTIVE DATE.--The effective date of the
11 provisions of this act is July 1, 2018.

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SENATE BILL

53RD LEGISLATURE - STATE OF NEW MEXICO - SECOND SESSION, 2018

INTRODUCED BY

FOR THE COURTS, CORRECTIONS AND JUSTICE COMMITTEE

AN ACT

RELATING TO PROPERTY; ENACTING THE UNIFORM DIRECTED TRUST ACT;
MAKING CONFORMING AND TECHNICAL AMENDMENTS TO THE UNIFORM TRUST
DECANTING ACT AND THE UNIFORM TRUST CODE; REPEALING SECTION
46A-8-808 NMSA 1978 (BEING LAWS 2003, CHAPTER 122, SECTION
8-808).

BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF NEW MEXICO:

SECTION 1. [NEW MATERIAL] SHORT TITLE.--Sections 1
through 18 of this act may be cited as the "Uniform Directed
Trust Act".

SECTION 2. [NEW MATERIAL] DEFINITIONS.--As used in the
Uniform Directed Trust Act:

A. "breach of trust" includes a violation by a
trust director or trustee of a duty imposed on that director or
trustee by the terms of the trust, by the Uniform Directed

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1 Trust Act or by another law of New Mexico pertaining to trusts;

2 B. "directed trust" means a trust for which the
3 terms of the trust grant a power of direction;

4 C. "directed trustee" means a trustee that is
5 subject to a trust director's power of direction;

6 D. "person" means an individual; estate; business
7 or nonprofit entity; public corporation; government;
8 governmental subdivision, agency or instrumentality; or other
9 legal entity;

10 E. "power of direction":

11 (1) means a power over a trust granted to a
12 person by the terms of the trust to the extent the power is
13 exercisable while the person is not serving as a trustee;

14 (2) includes a power over the investment,
15 management or distribution of trust property or other matters
16 of trust administration; and

17 (3) excludes the powers described in
18 Subsection B of Section 5 of the Uniform Directed Trust Act;

19 F. "settlor" means a person, including a testator,
20 that creates, or contributes property to, a trust. If more
21 than one person creates or contributes property to a trust,
22 each person is a settlor of the portion of the trust property
23 attributable to that person's contribution except to the extent
24 another person has the power to revoke or withdraw that
25 portion;

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1 G. "state" means a state of the United States, the
2 District of Columbia, Puerto Rico, the United States Virgin
3 Islands or any other territory or possession subject to the
4 jurisdiction of the United States;

5 H. "terms of a trust" means:

6 (1) except as otherwise provided in Paragraph
7 (2) of this subsection, the manifestation of the settlor's
8 intent regarding a trust's provisions as:

9 (a) expressed in the trust instrument;
10 or

11 (b) established by other evidence that
12 would be admissible in a judicial proceeding; or

13 (2) the trust's provisions as established,
14 determined or amended by:

15 (a) a trustee or trust director in
16 accordance with applicable law;

17 (b) court order; or

18 (c) a nonjudicial settlement agreement
19 under Section 46A-1-111 NMSA 1978;

20 I. "trust director" means a person that is granted
21 a power of direction by the terms of a trust to the extent the
22 power is exercisable while the person is not serving as a
23 trustee. The person is a trust director whether or not the
24 terms of the trust refer to the person as a trust director and
25 whether or not the person is a beneficiary or settlor of the

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1 trust; and

2 J. "trustee" includes an original, additional and
3 successor trustee and a cotrustee.

4 SECTION 3. [NEW MATERIAL] APPLICATION--PRINCIPAL PLACE OF
5 ADMINISTRATION.--

6 A. The Uniform Directed Trust Act applies to a
7 trust, whenever created, that has its principal place of
8 administration in New Mexico, subject to the following rules:

9 (1) if the trust was created before January 1,
10 2019, that act applies only to a decision or action occurring
11 on or after that date; and

12 (2) if the principal place of administration
13 of the trust is changed to New Mexico on or after January 1,
14 2019, that act applies only to a decision or action occurring
15 on or after the date of the change.

16 B. Without precluding other means to establish a
17 sufficient connection with the designated jurisdiction in a
18 directed trust, the terms of the trust that designate the
19 principal place of administration of the trust are valid and
20 controlling if:

21 (1) a trustee's principal place of business is
22 located in, or a trustee is a resident of, the designated
23 jurisdiction;

24 (2) a trust director's principal place of
25 business is located in, or a trust director is a resident of,

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1 the designated jurisdiction; or

2 (3) all or part of the administration occurs
3 in the designated jurisdiction.

4 SECTION 4. [NEW MATERIAL] COMMON LAW AND PRINCIPLES OF
5 EQUITY.--The common law and principles of equity supplement the
6 Uniform Directed Trust Act, except to the extent modified by
7 that act or another law of New Mexico.

8 SECTION 5. [NEW MATERIAL] EXCLUSIONS.--

9 A. As used in this section, "power of appointment"
10 means a power that enables a person acting in a nonfiduciary
11 capacity to designate a recipient of an ownership interest in,
12 or another power of appointment over, trust property.

13 B. The Uniform Directed Trust Act does not apply to
14 a:

15 (1) power of appointment;

16 (2) power to appoint or remove a trustee or
17 trust director;

18 (3) power of a settlor over a trust to the
19 extent the settlor has a power to revoke the trust;

20 (4) power of a beneficiary over a trust to the
21 extent the exercise or nonexercise of the power affects the
22 beneficial interest of:

23 (a) the beneficiary; or

24 (b) another beneficiary represented by

25 the beneficiary under Sections 46A-3-301 through 46A-3-305 NMSA

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1 1978 with respect to the exercise or nonexercise of the power;
2 or

3 (5) power over a trust if:

4 (a) the terms of the trust provide that
5 the power is held in a nonfiduciary capacity; and

6 (b) the power must be held in a
7 nonfiduciary capacity to achieve the settlor's tax objectives
8 under the United States Internal Revenue Code of 1986, as
9 amended, and regulations issued thereunder, as amended.

10 C. Unless the terms of a trust provide otherwise, a
11 power granted to a person to designate a recipient of an
12 ownership interest in, or power of appointment over, trust
13 property that is exercisable while the person is not serving as
14 a trustee is a power of appointment and not a power of
15 direction.

16 SECTION 6. [NEW MATERIAL] POWERS OF TRUST DIRECTOR.--

17 A. Subject to Section 7 of the Uniform Directed
18 Trust Act, the terms of a trust may grant a power of direction
19 to a trust director.

20 B. Unless the terms of a trust provide otherwise:

21 (1) a trust director may exercise any further
22 power appropriate to the exercise or nonexercise of a power of
23 direction granted to the director under Subsection A of this
24 section; and

25 (2) trust directors with joint powers shall

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1 act by majority decision.

2 SECTION 7. [NEW MATERIAL] LIMITATIONS ON TRUST

3 DIRECTOR.--A trust director is subject to the same rules as a
4 trustee in a like position and under similar circumstances in
5 the exercise or nonexercise of a power of direction or further
6 power under Paragraph (1) of Subsection B of Section 6 of the
7 Uniform Directed Trust Act regarding:

8 A. a payback provision in the terms of the trust
9 necessary to comply with the reimbursement requirements of
10 medicaid law in Section 1917 of the Social Security Act, 42
11 U.S.C. Section 1396p(d)(4)(A), as amended, and regulations
12 issued thereunder, as amended; and

13 B. a charitable interest in the trust, including
14 notice regarding the interest to the attorney general.

15 SECTION 8. [NEW MATERIAL] DUTY AND LIABILITY OF TRUST

16 DIRECTOR.--

17 A. Subject to Subsection B of this section, with
18 respect to a power of direction or a further power under
19 Paragraph (1) of Subsection B of Section 6 of the Uniform
20 Directed Trust Act:

21 (1) a trust director has the same fiduciary
22 duty and liability in the exercise or nonexercise of the power:

23 (a) if the power is held individually,
24 as a sole trustee in a like position and under similar
25 circumstances; or

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1 (b) if the power is held jointly with a
2 trustee or another trust director, as a cotrustee in a like
3 position and under similar circumstances; and

4 (2) the terms of the trust may vary the
5 director's duty or liability to the same extent the terms of
6 the trust could vary the duty or liability of a trustee in a
7 like position and under similar circumstances.

8 B. Unless the terms of a trust provide otherwise,
9 if a trust director is licensed, certified or otherwise
10 authorized or permitted by law other than the Uniform Directed
11 Trust Act to provide health care in the ordinary course of the
12 director's business or practice of a profession, to the extent
13 the director acts in that capacity, the director has no duty or
14 liability under that act.

15 C. The terms of a trust may impose a duty or
16 liability on a trust director in addition to the duties and
17 liabilities imposed by the Uniform Directed Trust Act.

18 SECTION 9. [NEW MATERIAL] DUTY AND LIABILITY OF DIRECTED
19 TRUSTEE.--

20 A. Subject to Subsection B of this section, a
21 directed trustee shall take reasonable action to comply with a
22 trust director's exercise or nonexercise of a power of
23 direction or further power under Paragraph (1) of Subsection B
24 of Section 6 of the Uniform Directed Trust Act, and the trustee
25 is not liable for the action.

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1 B. A directed trustee shall not comply with a trust
2 director's exercise or nonexercise of a power of direction or
3 further power under Paragraph (1) of Subsection B of Section 6
4 of the Uniform Directed Trust Act to the extent that, by
5 complying, the trustee would engage in willful misconduct.

6 C. An exercise of a power of direction under which
7 a trust director may release a trustee or another trust
8 director from liability for breach of trust is not effective
9 if:

10 (1) the breach involved the trustee's or other
11 director's willful misconduct;

12 (2) the release was induced by improper
13 conduct of the trustee or other director in procuring the
14 release; or

15 (3) at the time of the release, the director
16 did not know the material facts relating to the breach.

17 D. A directed trustee that has reasonable doubt
18 about its duty under this section may petition the district
19 court for instructions.

20 E. The terms of a trust may impose a duty or
21 liability on a directed trustee in addition to the duties and
22 liabilities imposed by the Uniform Directed Trust Act.

23 **SECTION 10. [NEW MATERIAL] DUTY TO PROVIDE INFORMATION TO**
24 **TRUST DIRECTOR OR TRUSTEE.--**

25 A. Subject to Section 11 of the Uniform Directed

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1 Trust Act, a trustee shall provide information to a trust
2 director to the extent the information is reasonably related
3 both to:

- 4 (1) the powers or duties of the trustee; and
- 5 (2) the powers or duties of the director.

6 B. Subject to Section 11 of the Uniform Directed
7 Trust Act, a trust director shall provide information to a
8 trustee or another trust director to the extent the information
9 is reasonably related both to:

- 10 (1) the powers or duties of the director; and
- 11 (2) the powers or duties of the trustee or
12 other director.

13 C. A trustee that acts in reliance on information
14 provided by a trust director is not liable for a breach of
15 trust to the extent the breach resulted from the reliance,
16 unless by so acting the trustee engages in willful misconduct.

17 D. A trust director that acts in reliance on
18 information provided by a trustee or another trust director is
19 not liable for a breach of trust to the extent the breach
20 resulted from the reliance, unless by so acting the trust
21 director engages in willful misconduct.

22 SECTION 11. [NEW MATERIAL] NO DUTY TO MONITOR, INFORM OR
23 ADVISE.--

- 24 A. Unless the terms of a trust provide otherwise:
 - 25 (1) a trustee does not have a duty to:

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1 (a) monitor a trust director; or
2 (b) inform or give advice to a settlor,
3 beneficiary, trustee or trust director concerning an instance
4 in which the trustee might have acted differently than the
5 director; and

6 (2) by taking an action described in Paragraph
7 (1) of this subsection, a trustee does not assume the duty
8 excluded by that paragraph.

9 B. Unless the terms of a trust provide otherwise:

10 (1) a trust director does not have a duty to:

11 (a) monitor a trustee or another trust
12 director; or

13 (b) inform or give advice to a settlor,
14 beneficiary, trustee or another trust director concerning an
15 instance in which the director might have acted differently
16 than a trustee or another trust director; and

17 (2) by taking an action described in Paragraph
18 (1) of this subsection, a trust director does not assume the
19 duty excluded by that paragraph.

20 SECTION 12. [NEW MATERIAL] APPLICATION TO COTRUSTEE.--The
21 terms of a trust may relieve a cotrustee from duty and
22 liability with respect to another cotrustee's exercise or
23 nonexercise of a power of the other cotrustee to the same
24 extent that, in a directed trust, a directed trustee is
25 relieved from duty and liability with respect to a trust

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1 director's power of direction under Sections 9 through 11 of
2 the Uniform Directed Trust Act.

3 SECTION 13. [NEW MATERIAL] LIMITATION OF ACTION AGAINST
4 TRUST DIRECTOR.--

5 A. An action against a trust director for breach of
6 trust shall be commenced within the same limitation period
7 provided for in Section 46A-10-1005 NMSA 1978 for an action for
8 breach of trust against a trustee in a like position and under
9 similar circumstances.

10 B. A report or accounting has the same effect on
11 the limitation period for an action against a trust director
12 for breach of trust that the report or accounting would have
13 under Section 46A-10-1005 NMSA 1978 in an action for breach of
14 trust against a trustee in a like position and under similar
15 circumstances.

16 SECTION 14. [NEW MATERIAL] DEFENSES IN ACTION AGAINST
17 TRUST DIRECTOR.--In an action against a trust director for
18 breach of trust, the director may assert the same defenses a
19 trustee in a like position and under similar circumstances
20 could assert in an action for breach of trust against the
21 trustee.

22 SECTION 15. [NEW MATERIAL] JURISDICTION OVER TRUST
23 DIRECTOR.--

24 A. By accepting appointment as a trust director of
25 a trust subject to the Uniform Directed Trust Act, the director

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1 submits to the personal jurisdiction of the courts of New
2 Mexico regarding any matter related to a power or duty of the
3 director.

4 B. This section does not preclude other methods of
5 obtaining jurisdiction over a trust director.

6 SECTION 16. [NEW MATERIAL] OFFICE OF TRUST DIRECTOR.--

7 Unless the terms of a trust provide otherwise, the rules
8 applicable to a trustee apply to a trust director regarding the
9 following matters:

10 A. acceptance under Section 46A-7-701 NMSA 1978;

11 B. giving of bond to secure performance under
12 Section 46A-7-702 NMSA 1978;

13 C. reasonable compensation under Section 46A-7-708
14 NMSA 1978;

15 D. resignation under Section 46A-7-705 NMSA 1978;

16 E. removal under Section 46A-7-706 NMSA 1978; and

17 F. vacancy and appointment of successor under
18 Section 46A-7-704 NMSA 1978.

19 SECTION 17. [NEW MATERIAL] UNIFORMITY OF APPLICATION AND
20 CONSTRUCTION.--In applying and construing the Uniform Directed
21 Trust Act, consideration shall be given to the need to promote
22 uniformity of the law with respect to its subject matter among
23 states that enact it.

24 SECTION 18. [NEW MATERIAL] RELATION TO ELECTRONIC
25 SIGNATURES IN GLOBAL AND NATIONAL COMMERCE ACT.--The Uniform

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1 Directed Trust Act modifies, limits or supersedes the
2 Electronic Signatures in Global and National Commerce Act, 15
3 U.S.C. Section 7001 et seq., but does not modify, limit or
4 supersede Section 101(c) of that act, 15 U.S.C. Section
5 7001(c), or authorize electronic delivery of any of the notices
6 described in Section 103(b) of that act, 15 U.S.C. Section
7 7003(b).

8 SECTION 19. Section 46-12-102 NMSA 1978 (being Laws 2016,
9 Chapter 72, Section 1-102) is amended to read:

10 "46-12-102. DEFINITIONS.--As used in the Uniform Trust
11 Decanting Act:

12 A. "appointive property" means the property or
13 property interest subject to a power of appointment;

14 B. "ascertainable standard" means a standard
15 relating to an individual's health, education, support or
16 maintenance within the meaning of 26 U.S.C. Section
17 2041(b)(1)(A), as amended, or 26 U.S.C. Section 2514(c)(1), as
18 amended, and any applicable regulations;

19 C. "authorized fiduciary" means:

20 (1) a trustee or other fiduciary, other than a
21 settlor, that has discretion to distribute, or direct a trustee
22 to distribute, part or all of the principal of the first trust
23 to one or more current beneficiaries;

24 (2) a special fiduciary appointed under
25 Section [~~1-109 of the Uniform Trust Decanting Act~~] 46-12-109

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1 NMSA 1978; or

2 (3) a special-needs fiduciary under Section
3 [~~1-113 of the Uniform Trust Decanting Act~~] 46-12-113 NMSA 1978;

4 D. "beneficiary" means a person that:

5 (1) has a present or future, vested or
6 contingent, beneficial interest in a trust;

7 (2) holds a power of appointment over trust
8 property; or

9 (3) is an identified charitable organization
10 that will or may receive distributions under the terms of the
11 trust;

12 E. "charitable interest" means an interest in a
13 trust that:

14 (1) is held by an identified charitable
15 organization and makes the organization a qualified
16 beneficiary;

17 (2) benefits only charitable organizations
18 and, if the interest were held by an identified charitable
19 organization, would make the organization a qualified
20 beneficiary; or

21 (3) is held solely for charitable purposes
22 and, if the interest were held by an identified charitable
23 organization, would make the organization a qualified
24 beneficiary;

25 F. "charitable organization" means:

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1 (1) a person, other than an individual,
2 organized and operated exclusively for charitable purposes; or

3 (2) a government or governmental subdivision,
4 agency or instrumentality, to the extent it holds funds
5 exclusively for a charitable purpose;

6 G. "charitable purpose" means the relief of
7 poverty, the advancement of education or religion, the
8 promotion of health, a municipal or other governmental purpose
9 or another purpose the achievement of which is beneficial to
10 the community;

11 H. "court" means the district court;

12 I. "current beneficiary" means a beneficiary that,
13 on the date the beneficiary's qualification is determined, is a
14 distributee or permissible distributee of trust income or
15 principal. "Current beneficiary":

16 (1) includes the holder of a presently
17 exercisable general power of appointment; and

18 (2) does not include a person that is a
19 beneficiary only because the person holds any other power of
20 appointment;

21 J. "decanting power" or "the decanting power" means
22 the power of an authorized fiduciary under the Uniform Trust
23 Decanting Act to distribute property of a first trust to one or
24 more second trusts or to modify the terms of the first trust;

25 K. "expanded distributive discretion" means a

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1 discretionary power of distribution that is not limited to an
2 ascertainable standard or a reasonably definite standard;

3 L. "first trust" means a trust over which an
4 authorized fiduciary may exercise the decanting power;

5 M. "first-trust instrument" means the trust
6 instrument for a first trust;

7 N. "general power of appointment" means a power of
8 appointment exercisable in favor of a powerholder, the
9 powerholder's estate, a creditor of the powerholder or a
10 creditor of the powerholder's estate;

11 O. "jurisdiction", with respect to a geographic
12 area, includes a state or country;

13 P. "person" means an individual; an estate; a
14 business or nonprofit entity; a public corporation; a
15 government or governmental subdivision, agency or
16 instrumentality; or another legal entity;

17 Q. "power of appointment" means a power that
18 enables a powerholder acting in a nonfiduciary capacity to
19 designate a recipient of an ownership interest in or another
20 power of appointment over the appointive property. "Power of
21 appointment" does not include a power of attorney;

22 R. "powerholder" means a person in which a donor
23 creates a power of appointment;

24 S. "presently exercisable power of appointment"
25 means a power of appointment exercisable by the powerholder at

1 the relevant time. "Presently exercisable power of
2 appointment":

3 (1) includes a power of appointment
4 exercisable only after the occurrence of a specified event, the
5 satisfaction of an ascertainable standard or the passage of a
6 specified time only after:

7 (a) the occurrence of the specified
8 event;

9 (b) the satisfaction of the
10 ascertainable standard; or

11 (c) the passage of the specified time;
12 and

13 (2) does not include a power exercisable only
14 at the powerholder's death;

15 T. "qualified beneficiary" means a beneficiary that
16 on the date the beneficiary's qualification is determined:

17 (1) is a distributee or permissible
18 distributee of trust income or principal;

19 (2) would be a distributee or permissible
20 distributee of trust income or principal if the interests of
21 the distributees described in Paragraph (1) of this subsection
22 terminated on that date without causing the trust to terminate;
23 or

24 (3) would be a distributee or permissible
25 distributee of trust income or principal if the trust

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1 terminated on that date;

2 U. "reasonably definite standard" means a clearly
3 measurable standard under which a holder of a power of
4 distribution is legally accountable within the meaning of 26
5 U.S.C. Section 674(b)(5)(A), as amended, and any applicable
6 regulations;

7 V. "record" means information that is inscribed on
8 a tangible medium or that is stored in an electronic or other
9 medium and is retrievable in perceivable form;

10 W. "second trust" means:

11 (1) a first trust after modification under the
12 Uniform Trust Decanting Act; or

13 (2) a trust to which a distribution of
14 property from a first trust is or may be made under the Uniform
15 Trust Decanting Act;

16 X. "second-trust instrument" means the trust
17 instrument for a second trust;

18 Y. "settlor", except as otherwise provided in
19 Section ~~[1-125 of the Uniform Trust Decanting Act]~~ 46-12-125
20 NMSA 1978, means a person, including a testator, that creates
21 or contributes property to a trust. If more than one person
22 creates or contributes property to a trust, each person is a
23 settlor of the portion of the trust property attributable to
24 the person's contribution except to the extent that another
25 person has power to revoke or withdraw that portion;

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1 Z. "sign" means, with present intent to
2 authenticate or adopt a record:

- 3 (1) to execute or adopt a tangible symbol; or
4 (2) to attach to or logically associate with
5 the record an electronic symbol, sound or process;

6 AA. "state" means a state of the United States, the
7 District of Columbia, Puerto Rico, the United States Virgin
8 Islands or any territory or insular possession subject to the
9 jurisdiction of the United States. "State" includes an Indian
10 tribe, pueblo, nation or band located within the United States
11 and recognized by federal law or formally acknowledged by a
12 state of the United States;

13 BB. "terms of the trust" means:

14 (1) except as otherwise provided in Paragraph
15 (2) of this subsection, the manifestation of the settlor's
16 intent regarding a trust's provisions as:

17 (a) expressed in the trust instrument;
18 [~~as may be~~] or

19 (b) established by other evidence that
20 would be admissible in a judicial proceeding; or

21 (2) the trust's provisions as [~~may be~~]
22 established, determined or amended by:

23 (a) a trustee or trust director in
24 accordance with applicable law;

25 (b) court order; or

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1 A of Section 46A-4-405 NMSA 1978;

2 E. "conservator" means a person appointed by the
3 court to administer the estate of a minor or adult individual;

4 F. "environmental law" means a federal, state or
5 local law, rule, regulation or ordinance relating to protection
6 of the environment;

7 G. "guardian" means a person appointed by the court
8 or a parent to make decisions regarding the support, care,
9 education, health and welfare of a minor or adult person.

10 "Guardian" does not include a guardian ad litem;

11 H. "interests of the beneficiaries" means the
12 beneficial interests provided in the terms of the trust;

13 I. "jurisdiction", with respect to a geographic
14 area, includes a state or country;

15 J. "person" means an individual, corporation,
16 business trust, estate, trust, partnership, limited liability
17 company, association, joint venture, government, governmental
18 subdivision, agency or instrumentality, public corporation or
19 any other legal or commercial entity;

20 K. "power of withdrawal" means a presently
21 exercisable general power of appointment other than a power
22 exercisable:

23 (1) by a trustee and limited by an
24 ascertainable standard; or

25 (2) by another person only upon consent of the

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1 trustee or a person holding an adverse interest;

2 L. "property" means anything that may be the
3 subject of ownership, whether real or personal, legal or
4 equitable, or any interest therein;

5 M. "qualified beneficiary" means a beneficiary who,
6 on the date the beneficiary's qualification is determined:

7 (1) is a distributee or permissible
8 distributee of trust income or principal;

9 (2) would be a distributee or permissible
10 distributee of trust income or principal if the interests of
11 the distributees described in Paragraph (1) of this subsection
12 terminated on that date without causing the trust to terminate;
13 or

14 (3) would be a distributee or permissible
15 distributee of trust income or principal if the trust
16 terminated on that date;

17 N. "revocable", as applied to a trust, means
18 revocable by the settlor without the consent of the trustee or
19 a person holding an adverse interest;

20 O. "settlor" means a person, including a testator,
21 who creates or contributes property to a trust. If more than
22 one person creates or contributes property to a trust, each
23 person is a settlor of the portion of the trust property
24 attributable to that person's contribution, except to the
25 extent another person has the power to revoke or withdraw that

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1 portion;

2 P. "spendthrift provision" means a term of a trust
3 that restrains both voluntary and involuntary transfer of a
4 beneficiary's interest;

5 Q. "state" means a state of the United States, the
6 District of Columbia, Puerto Rico, the United States Virgin
7 Islands or any territory or insular possession subject to the
8 jurisdiction of the United States. "State" includes an Indian
9 tribe, pueblo, nation or band recognized by federal law or
10 formally acknowledged by a state;

11 R. "terms of a trust" means:

12 (1) except as otherwise provided in Paragraph
13 (2) of this subsection, the manifestation of the settlor's
14 intent regarding a trust's provisions as:

15 (a) expressed in the trust instrument;
16 or ~~[as may be]~~

17 (b) established by other evidence that
18 would be admissible in a judicial proceeding; or

19 (2) the trust's provisions as established,
20 determined or amended by:

21 (a) a trustee or trust director in
22 accordance with applicable law;

23 (b) court order; or

24 (c) a nonjudicial settlement agreement
25 under Section 46A-1-111 NMSA 1978;

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1 S. "trust instrument" means an instrument executed
2 by the settlor that contains terms of the trust, including any
3 amendments thereto; and

4 T. "trustee" includes an original trustee, an
5 additional trustee, a successor trustee and a co-trustee."

6 SECTION 21. Section 46A-1-105 NMSA 1978 (being Laws 2003,
7 Chapter 122, Section 1-105, as amended) is amended to read:

8 "46A-1-105. DEFAULT AND MANDATORY RULES.--

9 A. Except as otherwise provided in the terms of the
10 trust, the Uniform Trust Code governs the duties and powers of
11 a trustee, relations among trustees and the rights and
12 interests of a beneficiary.

13 B. The terms of a trust prevail over any provision
14 of the Uniform Trust Code except:

15 (1) the requirements for creating a trust;

16 (2) subject to Sections 9, 11 and 12 of the
17 Uniform Directed Trust Act, the duty of a trustee to act in
18 good faith and in accordance with the terms and purposes of the
19 trust and the interests of the beneficiaries;

20 (3) the requirement that a trust and its terms
21 be for the benefit of its beneficiaries and that the trust have
22 a purpose that is lawful, not contrary to public policy and
23 possible to achieve;

24 (4) the power of the court to modify or
25 terminate a trust under Sections 46A-4-410 through 46A-4-416

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1 NMSA 1978;

2 (5) the effect of a spendthrift provision and
3 the rights of certain creditors and assignees to reach a trust
4 as provided in Chapter 46A, Article 5 NMSA 1978;

5 (6) the power of the court under Section
6 46A-7-702 NMSA 1978 to require, dispense with or modify or
7 terminate a bond;

8 (7) the power of the court under Subsection B
9 of Section 46A-7-708 NMSA 1978 to adjust a trustee's
10 compensation specified in the terms of the trust that is
11 unreasonably low or high;

12 (8) the duty under Paragraphs (2) and (3) of
13 Subsection B of Section 46A-8-813 NMSA 1978 to notify qualified
14 beneficiaries of an irrevocable trust who have attained twenty-
15 five years of age of the existence of the trust, of the
16 identity of the trustee and of their right to request reports
17 of the trustee;

18 (9) except as otherwise provided in Subsection
19 F of Section 46A-8-813 NMSA 1978, the duty under Subsection A
20 of Section 46A-8-813 NMSA 1978 to respond to the request of a
21 qualified beneficiary of an irrevocable trust for a trustee's
22 reports and other information reasonably related to the
23 administration of a trust;

24 (10) the effect of an exculpatory term under
25 Section 46A-10-1008 NMSA 1978;

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1 (11) the rights under Sections 46A-10-1010
2 through 46A-10-1013 NMSA 1978 of a person other than a trustee
3 or beneficiary;

4 (12) periods of limitation for commencing a
5 judicial proceeding; provided, however, any such period may be
6 increased;

7 (13) the power of the court to take such
8 action and exercise such jurisdiction as may be necessary in
9 the interests of justice; and

10 (14) the subject-matter jurisdiction of the
11 court and venue for commencing a proceeding as provided in
12 Sections 46A-2-203 and 46A-2-204 NMSA 1978."

13 SECTION 22. Section 46A-6-603 NMSA 1978 (being Laws 2003,
14 Chapter 122, Section 6-603, as amended) is amended to read:

15 "46A-6-603. SETTLOR'S POWERS--POWERS OF WITHDRAWAL.--

16 A. While a trust is revocable, the trustee may
17 follow a direction of the settlor that is contrary to the terms
18 of the trust.

19 [~~A.~~] B. While a trust is revocable and the settlor
20 has capacity to revoke the trust, rights of the beneficiaries
21 are subject to the control of, and the duties of the trustee
22 are owed exclusively to, the settlor.

23 [~~B.~~] C. During the period the power may be
24 exercised, the holder of a power of withdrawal has the rights
25 of a settlor of a revocable trust under this section to the

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1 extent of the property subject to the power."

2 SECTION 23. Section 46A-7-703 NMSA 1978 (being Laws 2003,
3 Chapter 122, Section 7-703) is amended to read:

4 "46A-7-703. CO-TRUSTEES.--

5 A. Co-trustees who are unable to reach a unanimous
6 decision may act by majority decision.

7 B. If a vacancy occurs in a co-trusteeship, the
8 remaining co-trustees may act for the trust.

9 C. Subject to Section 12 of the Uniform Directed
10 Trust Act, a co-trustee [~~must~~] shall participate in the
11 performance of a trustee's function unless the co-trustee is
12 unavailable to perform the function because of absence,
13 illness, disqualification under other law or other temporary
14 incapacity, or the co-trustee has properly delegated the
15 performance of the function to another trustee.

16 D. If a co-trustee is unavailable to perform duties
17 because of absence, illness, disqualification under other law
18 or other temporary incapacity, and prompt action is necessary
19 to achieve the purposes of the trust or to avoid injury to the
20 trust property, the remaining co-trustee or a majority of the
21 remaining co-trustees may act for the trust.

22 E. A trustee [~~may~~] shall not delegate to a co-
23 trustee the performance of a function the settlor reasonably
24 expected the trustees to perform jointly. Unless a delegation
25 was irrevocable, a trustee may revoke a delegation previously

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1 made.

2 F. Except as otherwise provided in Subsection G of
3 this section, a trustee who does not join in an action of
4 another trustee is not liable for the action.

5 G. Subject to Section 12 of the Uniform Directed
6 Trust Act, each trustee shall exercise reasonable care to:

7 (1) prevent a co-trustee from committing a
8 serious breach of trust; and

9 (2) compel a co-trustee to redress a serious
10 breach of trust.

11 H. A dissenting trustee who joins in an action at
12 the direction of the majority of the trustees and who notified
13 any co-trustee of the dissent at or before the time of the
14 action is not liable for the action unless the action is a
15 serious breach of trust."

16 SECTION 24. REPEAL.--Section 46A-8-808 NMSA 1978 (being
17 Laws 2003, Chapter 122, Section 8-808) is repealed.

18 SECTION 25. EFFECTIVE DATE.--The effective date of the
19 provisions of this act is January 1, 2019.

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HOUSE BILL

53RD LEGISLATURE - STATE OF NEW MEXICO - SECOND SESSION, 2018

INTRODUCED BY

DISCUSSION DRAFT

FOR THE COURTS, CORRECTIONS AND JUSTICE COMMITTEE AND
THE LEGISLATIVE HEALTH AND HUMAN SERVICES COMMITTEE

AN ACT

RELATING TO PROTECTIVE ARRANGEMENTS; ENACTING THE UNIFORM
GUARDIANSHIP, CONSERVATORSHIP AND OTHER PROTECTIVE ARRANGEMENTS
ACT; REPEALING AND ENACTING SECTIONS OF THE NMSA 1978.

BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF NEW MEXICO:

ARTICLE 1

GENERAL PROVISIONS

SECTION 101. [NEW MATERIAL] SHORT TITLE.--This act may be
cited as the "Uniform Guardianship, Conservatorship and Other
Protective Arrangements Act".

SECTION 102. [NEW MATERIAL] DEFINITIONS.--As used in the
Uniform Guardianship, Conservatorship and Other Protective
Arrangements Act:

A. "adult" means an individual at least eighteen
years of age or an emancipated individual under eighteen years

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1 of age;

2 B. "adult subject to conservatorship" means an
3 adult for whom a conservator has been appointed under the
4 Uniform Guardianship, Conservatorship and Other Protective
5 Arrangements Act;

6 C. "adult subject to guardianship" means an adult
7 for whom a guardian has been appointed under the Uniform
8 Guardianship, Conservatorship and Other Protective Arrangements
9 Act;

10 D. "claim" includes a claim against an individual
11 or conservatorship estate, whether arising in contract, tort or
12 otherwise;

13 E. "conservator":
14 (1) means a person appointed by a court to
15 make decisions with respect to the property or financial
16 affairs of an individual subject to conservatorship; and

17 (2) includes a co-conservator;

18 F. "conservatorship estate" means the property
19 subject to conservatorship under the Uniform Guardianship,
20 Conservatorship and Other Protective Arrangements Act;

21 G. "full conservatorship" means a conservatorship
22 that grants the conservator all powers available to a
23 conservator under the Uniform Guardianship, Conservatorship and
24 Other Protective Arrangements Act;

25 H. "full guardianship" means a guardianship that

1 grants the guardian all powers available to a guardian under
2 the Uniform Guardianship, Conservatorship and Other Protective
3 Arrangements Act;

4 I. "guardian":

5 (1) means a person appointed by the court to
6 make decisions with respect to the personal affairs of an
7 individual;

8 (2) includes a co-guardian; and

9 (3) does not include a guardian ad litem;

10 J. "guardian ad litem" means a person appointed to
11 inform the court about, and to represent, the needs and best
12 interest of an individual;

13 K. "individual subject to conservatorship" means an
14 adult or minor for whom a conservator has been appointed under
15 the Uniform Guardianship, Conservatorship and Other Protective
16 Arrangements Act;

17 L. "individual subject to guardianship" means an
18 adult or minor for whom a guardian has been appointed under the
19 Uniform Guardianship, Conservatorship and Other Protective
20 Arrangements Act;

21 M. "less restrictive alternative":

22 (1) means an approach to meeting an
23 individual's needs that restricts fewer rights of the
24 individual than would the appointment of a guardian or
25 conservator; and

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1 (2) includes supported decision making,
2 appropriate technological assistance, appointment of a
3 representative payee and appointment of an agent by the
4 individual, including appointment under a power of attorney for
5 health care or power of attorney for finances;

6 N. "letters of office" means a record issued by a
7 court certifying a guardian's or conservator's authority to
8 act;

9 O. "limited conservatorship" means a
10 conservatorship that grants the conservator less than all
11 powers available to a conservator under the Uniform
12 Guardianship, Conservatorship and Other Protective Arrangements
13 Act, grants powers over only certain property or otherwise
14 restricts the powers of the conservator;

15 P. "limited guardianship" means a guardianship that
16 grants the guardian less than all powers available to a
17 guardian under the Uniform Guardianship, Conservatorship and
18 Other Protective Arrangements Act or otherwise restricts the
19 powers of the guardian;

20 Q. "long-term care facility" means a nursing home
21 licensed by the department of health to provide intermediate or
22 skilled nursing care;

23 R. "mental health treatment facility" means an
24 institution, facility or agency licensed, certified or
25 otherwise authorized or permitted by law to provide mental

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1 health treatment in the ordinary course of business;

2 S. "minor" means an unemancipated individual under
3 eighteen years of age;

4 T. "minor subject to conservatorship" means a minor
5 for whom a conservator has been appointed under the Uniform
6 Guardianship, Conservatorship and Other Protective Arrangements
7 Act;

8 U. "minor subject to guardianship" means a minor
9 for whom a guardian has been appointed under the Uniform
10 Guardianship, Conservatorship and Other Protective Arrangements
11 Act;

12 V. "parent" does not include an individual whose
13 parental rights have been terminated;

14 W. "person" means an individual; estate; business
15 or nonprofit entity; public corporation; government;
16 governmental subdivision, agency or instrumentality; or other
17 legal entity;

18 X. "power of attorney for finances" includes a
19 power of attorney signed under the Uniform Power of Attorney
20 Act;

21 Y. "power of attorney for health care" includes:

22 (1) a record signed under the Uniform Health-
23 Care Decisions Act; and

24 (2) a record signed under the Mental Health
25 Care Treatment Decisions Act;

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1 Z. "property" includes tangible and intangible
2 property;

3 AA. "protective arrangement instead of
4 conservatorship" means a court order entered under Section 503
5 of the Uniform Guardianship, Conservatorship and Other
6 Protective Arrangements Act;

7 BB. "protective arrangement instead of
8 guardianship" means a court order entered under Section 502 of
9 the Uniform Guardianship, Conservatorship and Other Protective
10 Arrangements Act;

11 CC. "protective arrangement under Article 5" means
12 a court order entered under Section 502 or 503 of the Uniform
13 Guardianship, Conservatorship and Other Protective Arrangements
14 Act;

15 DD. "record", used as a noun, means information
16 that is inscribed on a tangible medium or that is stored in an
17 electronic or other medium and is retrievable in perceivable
18 form;

19 EE. "respondent" means an individual for whom
20 appointment of a guardian or conservator or a protective
21 arrangement instead of guardianship or conservatorship is
22 sought;

23 FF. "sign" means, with present intent to
24 authenticate or adopt a record:

25 (1) to execute or adopt a tangible symbol; or

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1 (2) to attach to or logically associate with
2 the record an electronic symbol, sound or process;

3 GG. "standby guardian" means a person appointed by
4 the court under Section 207 of the Uniform Guardianship,
5 Conservatorship and Other Protective Arrangements Act;

6 HH. "state":

7 (1) means a state of the United States, the
8 District of Columbia, Puerto Rico, the United States Virgin
9 Islands or any territory or insular possession subject to the
10 jurisdiction of the United States; and

11 (2) includes an Indian tribe, nation, pueblo
12 or band located within the United States and recognized by
13 federal law or formally acknowledged by a state of the United
14 States; and

15 II. "supported decision making" means assistance:

16 (1) from one or more persons of an
17 individual's choosing;

18 (2) in understanding the nature and
19 consequences of potential personal and financial decisions;

20 (3) that enables the individual to make the
21 decisions; and

22 (4) in communicating a decision once made when
23 consistent with the individual's wishes.

24 SECTION 103. [NEW MATERIAL] SUPPLEMENTAL PRINCIPLES OF
25 LAW AND EQUITY APPLICABLE.--Unless displaced by a particular

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1 provision of the Uniform Guardianship, Conservatorship and
2 Other Protective Arrangements Act, the principles of law and
3 equity supplement that act's provisions.

4 SECTION 104. [NEW MATERIAL] SUBJECT-MATTER
5 JURISDICTION.--

6 A. Except to the extent jurisdiction is precluded
7 by the Uniform Child-Custody Jurisdiction and Enforcement Act,
8 the district court has jurisdiction over a guardianship for a
9 minor domiciled or present in New Mexico. The court has
10 jurisdiction over a conservatorship or protective arrangement
11 instead of conservatorship for a minor domiciled or having
12 property in New Mexico.

13 B. The district court has jurisdiction over a
14 guardianship, conservatorship or protective arrangement under
15 Article 5 of the Uniform Guardianship, Conservatorship and
16 Other Protective Arrangements Act for an adult as provided in
17 the Uniform Adult Guardianship and Protective Proceedings
18 Jurisdiction Act.

19 C. After notice is given in a proceeding for a
20 guardianship, conservatorship or protective arrangement under
21 Article 5 of the Uniform Guardianship, Conservatorship and
22 Other Protective Arrangements Act and until termination of the
23 proceeding, the court in which the petition is filed has:

24 (1) exclusive jurisdiction to determine the
25 need for the guardianship, conservatorship or protective

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1 arrangement;

2 (2) exclusive jurisdiction to determine how
3 property of the respondent must be managed, expended or
4 distributed to or for the use of the respondent, an individual
5 who is dependent in fact on the respondent or another claimant;

6 (3) nonexclusive jurisdiction to determine the
7 validity of a claim against the respondent or property of the
8 respondent or a question of title concerning the property; and

9 (4) if a guardian or conservator is appointed,
10 exclusive jurisdiction over issues related to administration of
11 the guardianship or conservatorship.

12 D. A court that appoints a guardian or conservator,
13 or authorizes a protective arrangement under Article 5 of the
14 Uniform Guardianship, Conservatorship and Other Protective
15 Arrangements Act, has exclusive and continuing jurisdiction
16 over the proceeding until the court terminates the proceeding
17 or the appointment or protective arrangement expires by its
18 terms.

19 SECTION 105. [NEW MATERIAL] TRANSFER OF PROCEEDING.--

20 A. This section does not apply to a guardianship or
21 conservatorship for an adult that is subject to the transfer
22 provisions of Article 3 of the Uniform Adult Guardianship and
23 Protective Proceedings Jurisdiction Act.

24 B. After appointment of a guardian or conservator,
25 the court that made the appointment may transfer the proceeding

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1 to a court in another county in New Mexico or another state if
2 transfer is in the best interest of the individual subject to
3 the guardianship or conservatorship.

4 C. If a proceeding for a guardianship or
5 conservatorship is pending in another state or a foreign
6 country and a petition for guardianship or conservatorship for
7 the same individual is filed in a court in New Mexico, the
8 court shall notify the court in the other state or foreign
9 country and, after consultation with that court, assume or
10 decline jurisdiction, whichever is in the best interest of the
11 respondent.

12 D. A guardian or conservator appointed in another
13 state or country may petition the court for appointment as a
14 guardian or conservator in New Mexico for the same individual
15 if jurisdiction in New Mexico is or will be established. The
16 appointment may be made on proof of appointment in the other
17 state or foreign country and presentation of a certified copy
18 of the part of the court record in the other state or country
19 specified by the court in New Mexico.

20 E. Notice of hearing on a petition under Subsection
21 D of this section, together with a copy of the petition, shall
22 be given to the respondent, if the respondent is at least
23 twelve years of age at the time of the hearing, and to the
24 persons that would be entitled to notice if the procedures for
25 appointment of a guardian or conservator under the Uniform

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1 Guardianship, Conservatorship and Other Protective Arrangements
2 Act were applicable. The court shall make the appointment
3 unless it determines the appointment would not be in the best
4 interest of the respondent.

5 F. Not later than fourteen days after appointment
6 under Subsection E of this section, the guardian or conservator
7 shall give a copy of the order of appointment to the individual
8 subject to guardianship or conservatorship, if the individual
9 is at least twelve years of age, and to all persons given
10 notice of the hearing on the petition.

11 SECTION 106. [NEW MATERIAL] VENUE.--

12 A. Venue for a guardianship proceeding for a minor
13 is in:

14 (1) the county in which the minor resides or
15 is present at the time the proceeding commences; or

16 (2) the county in which another proceeding
17 concerning the custody or parental rights of the minor is
18 pending.

19 B. Venue for a guardianship proceeding or
20 protective arrangement instead of guardianship for an adult is
21 in:

22 (1) the county in which the respondent
23 resides;

24 (2) if the respondent has been admitted to an
25 institution by court order, the county in which the court is

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1 located; or

2 (3) if the proceeding is for appointment of an
3 emergency guardian for an adult, the county in which the
4 respondent is present.

5 C. Venue for a conservatorship proceeding or
6 protective arrangement instead of conservatorship is in:

7 (1) the county in which the respondent
8 resides, whether or not a guardian has been appointed in
9 another county or other jurisdiction; or

10 (2) if the respondent does not reside in New
11 Mexico, in any county in which property of the respondent is
12 located.

13 D. If proceedings under the Uniform Guardianship,
14 Conservatorship and Other Protective Arrangements Act are
15 brought in more than one county, the court of the county in
16 which the first proceeding is brought has the exclusive right
17 to proceed unless the court determines venue is properly in
18 another court or the interest of justice otherwise requires
19 transfer of the proceeding.

20 SECTION 107. [NEW MATERIAL] PRACTICE IN COURT.--

21 A. Except as otherwise provided in the Uniform
22 Guardianship, Conservatorship and Other Protective Arrangements
23 Act or the Uniform Probate Code, the New Mexico Rules of
24 Evidence, Rules of Civil Procedure for the District Courts and
25 Rules of Appellate Procedure govern a proceeding under the

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1 Uniform Guardianship, Conservatorship and Other Protective
2 Arrangements Act and appellate review of the proceeding.

3 B. If proceedings for a guardianship,
4 conservatorship or protective arrangement under Article 5 of
5 the Uniform Guardianship, Conservatorship and Other Protective
6 Arrangements Act for the same individual are commenced or
7 pending in the same court, the proceedings may be consolidated.

8 C. A respondent may demand a jury trial in a
9 proceeding under the Uniform Guardianship, Conservatorship and
10 Other Protective Arrangements Act on the issue of whether a
11 basis exists for appointment of a guardian or conservator.

12 SECTION 108. [NEW MATERIAL] LETTERS OF OFFICE.--

13 A. The court shall issue letters of office to a
14 guardian on filing by the guardian of an acceptance of
15 appointment.

16 B. The court shall issue letters of office to a
17 conservator on filing by the conservator of an acceptance of
18 appointment and filing of any required bond or compliance with
19 any other asset-protection arrangement required by the court.

20 C. Limitations on the powers of a guardian or
21 conservator or on the property subject to conservatorship shall
22 be stated on the letters of office.

23 D. The court at any time may limit the powers
24 conferred on a guardian or conservator. The court shall issue
25 new letters of office to reflect the limitation. The court

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1 shall give notice of the limitation to the guardian or
2 conservator, individual subject to guardianship or
3 conservatorship, each parent of a minor subject to guardianship
4 or conservatorship and any other person the court determines.

5 SECTION 109. [NEW MATERIAL] EFFECT OF ACCEPTANCE OF
6 APPOINTMENT.--On acceptance of appointment, a guardian or
7 conservator submits to personal jurisdiction of the court in
8 New Mexico in any proceeding relating to the guardianship or
9 conservatorship.

10 SECTION 110. [NEW MATERIAL] CO-GUARDIAN--CO-
11 CONSERVATOR.--

12 A. The court at any time may appoint a co-guardian
13 or co-conservator to serve immediately or when a designated
14 event occurs.

15 B. A co-guardian or co-conservator appointed to
16 serve immediately may act when that co-guardian or
17 co-conservator complies with Section 108 of the Uniform
18 Guardianship, Conservatorship and Other Protective Arrangements
19 Act.

20 C. A co-guardian or co-conservator appointed to
21 serve when a designated event occurs may act when:

22 (1) the event occurs; and

23 (2) that co-guardian or co-conservator
24 complies with Section 108 of the Uniform Guardianship,
25 Conservatorship and Other Protective Arrangements Act.

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1 D. Unless an order of appointment under Subsection
2 A of this section or subsequent order states otherwise,
3 co-guardians or co-conservators shall make decisions jointly.

4 SECTION 111. [NEW MATERIAL] JUDICIAL APPOINTMENT OF
5 SUCCESSOR GUARDIAN OR SUCCESSOR CONSERVATOR.--

6 A. The court at any time may appoint a successor
7 guardian or successor conservator to serve immediately or when
8 a designated event occurs.

9 B. A person entitled under Section 202 or 302 of
10 the Uniform Guardianship, Conservatorship and Other Protective
11 Arrangements Act to petition the court to appoint a guardian
12 may petition the court to appoint a successor guardian. A
13 person entitled under Section 402 of that act to petition the
14 court to appoint a conservator may petition the court to
15 appoint a successor conservator.

16 C. A successor guardian or successor conservator
17 appointed to serve when a designated event occurs may act as
18 guardian or conservator when:

- 19 (1) the event occurs; and
20 (2) the successor complies with Section 108 of
21 the Uniform Guardianship, Conservatorship and Other Protective
22 Arrangements Act.

23 D. A successor guardian or successor conservator
24 has the predecessor's powers unless otherwise provided by the
25 court.

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1 SECTION 112. [NEW MATERIAL] EFFECT OF DEATH, REMOVAL OR
2 RESIGNATION OF GUARDIAN OR CONSERVATOR.--

3 A. Appointment of a guardian or conservator
4 terminates on the death or removal of the guardian or
5 conservator or when the court under Subsection B of this
6 section approves a resignation of the guardian or conservator.

7 B. To resign, a guardian or conservator shall
8 petition the court. The petition may include a request that
9 the court appoint a successor. Resignation of a guardian or
10 conservator is effective on the date the resignation is
11 approved by the court.

12 C. Death, removal or resignation of a guardian or
13 conservator does not affect liability for a previous act or the
14 obligation to account for:

- 15 (1) an action taken on behalf of the
- 16 individual subject to guardianship or conservatorship; or
- 17 (2) the individual's funds or other property.

18 SECTION 113. [NEW MATERIAL] NOTICE OF HEARING
19 GENERALLY.--

20 A. Except as otherwise provided in Sections 203,
21 207, 303, 403 and 505 of the Uniform Guardianship,
22 Conservatorship and Other Protective Arrangements Act, if
23 notice of a hearing under that act is required, the movant
24 shall give notice of the date, time and place of the hearing to
25 the person to be notified unless otherwise ordered by the court

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1 for good cause. Except as otherwise provided in that act,
2 notice shall be given as provided in Section 45-1-401 NMSA 1978
3 at least fourteen days before the hearing.

4 B. Proof of notice of a hearing under the Uniform
5 Guardianship, Conservatorship and Other Protective Arrangements
6 Act shall be made before or at the hearing and filed in the
7 proceeding.

8 C. Notice of a hearing under the Uniform
9 Guardianship, Conservatorship and Other Protective Arrangements
10 Act shall be in at least sixteen-point font, in plain language
11 and, to the extent feasible, in a language in which the person
12 to be notified is proficient.

13 SECTION 114. [NEW MATERIAL] WAIVER OF NOTICE.--

14 A. Except as otherwise provided in Subsection B of
15 this section, a person may waive notice under the Uniform
16 Guardianship, Conservatorship and Other Protective Arrangements
17 Act in a record signed by the person or person's attorney and
18 filed in the proceeding.

19 B. A respondent, individual subject to
20 guardianship, individual subject to conservatorship or
21 individual subject to a protective arrangement under Article 5
22 of the Uniform Guardianship, Conservatorship and Other
23 Protective Arrangements Act shall not waive notice under that
24 act.

25 SECTION 115. [NEW MATERIAL] GUARDIAN AD LITEM.--The court

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1 at any time may appoint a guardian ad litem for an individual
2 if the court determines the individual's interest otherwise
3 would not be adequately represented. If no conflict of
4 interest exists, a guardian ad litem may be appointed to
5 represent multiple individuals or interests. The guardian ad
6 litem shall not be the same individual as the attorney
7 representing the respondent. The court shall state the duties
8 of the guardian ad litem and the reasons for the appointment.

9 SECTION 116. [NEW MATERIAL] REQUEST FOR NOTICE.--

10 A. A person may file with the court a request for
11 notice under the Uniform Guardianship, Conservatorship and
12 Other Protective Arrangements Act if the person is:

- 13 (1) not otherwise entitled to notice; and
14 (2) interested in the welfare of a respondent,
15 individual subject to guardianship or conservatorship or
16 individual subject to a protective arrangement under Article 5
17 of that act.

18 B. A request under Subsection A of this section
19 shall include a statement showing the interest of the person
20 making the request and the address of the person or an attorney
21 for the person to whom notice is to be given.

22 C. If the court approves a request under Subsection
23 A of this section, the court shall give notice of the approval
24 to the guardian or conservator, if one has been appointed, or
25 the respondent if no guardian or conservator has been

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1 appointed.

2 SECTION 117. [NEW MATERIAL] DISCLOSURE OF BANKRUPTCY OR
3 CRIMINAL HISTORY.--

4 A. Before accepting appointment as a guardian or
5 conservator, a person shall disclose to the court whether the
6 person:

7 (1) is or has been a debtor in a bankruptcy,
8 insolvency or receivership proceeding; or

9 (2) has been convicted of:

10 (a) a felony;

11 (b) a crime involving dishonesty,
12 neglect, violence or the use of physical force; or

13 (c) another crime relevant to the
14 functions the individual would assume as guardian or
15 conservator.

16 B. A guardian or conservator that engages or
17 anticipates engaging an agent the guardian or conservator knows
18 has been convicted of a felony, a crime involving dishonesty,
19 neglect, violence or the use of physical force or another crime
20 relevant to the functions the agent is being engaged to perform
21 promptly shall disclose that knowledge to the court.

22 C. If a conservator engages or anticipates engaging
23 an agent to manage finances of the individual subject to
24 conservatorship and knows the agent is or has been a debtor in
25 a bankruptcy, insolvency or receivership proceeding, the

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1 conservator promptly shall disclose that knowledge to the
2 court.

3 SECTION 118. [NEW MATERIAL] MULTIPLE NOMINATIONS.--If a
4 respondent or other person makes more than one nomination of a
5 guardian or conservator, the latest in time governs.

6 SECTION 119. [NEW MATERIAL] COMPENSATION AND EXPENSES--IN
7 GENERAL.--

8 A. Unless otherwise compensated or reimbursed, an
9 attorney for a respondent in a proceeding under the Uniform
10 Guardianship, Conservatorship and Other Protective Arrangements
11 Act is entitled to reasonable compensation for services and
12 reimbursement of reasonable expenses from the property of the
13 respondent.

14 B. Unless otherwise compensated or reimbursed, an
15 attorney or other person whose services resulted in an order
16 beneficial to an individual subject to guardianship or
17 conservatorship or for whom a protective arrangement under
18 Article 5 of the Uniform Guardianship, Conservatorship and
19 Other Protective Arrangements Act was ordered is entitled to
20 reasonable compensation for services and reimbursement of
21 reasonable expenses from the property of the individual.

22 C. The court shall approve compensation and
23 expenses payable under this section before payment. Approval
24 is not required before a service is provided or an expense is
25 incurred.

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1 D. If the court dismisses a petition under the
2 Uniform Guardianship, Conservatorship and Other Protective
3 Arrangements Act and determines the petition was filed in bad
4 faith, the court may assess the cost of any court-ordered
5 professional evaluation or visitor against the petitioner.

6 SECTION 120. [NEW MATERIAL] COMPENSATION OF GUARDIAN OR
7 CONSERVATOR.--

8 A. Subject to court approval, a guardian is
9 entitled to reasonable compensation for services as guardian
10 and to reimbursement for room, board, clothing and other
11 appropriate expenses advanced for the benefit of the individual
12 subject to guardianship. If a conservator, other than the
13 guardian or a person affiliated with the guardian, is appointed
14 for the individual, reasonable compensation and reimbursement
15 to the guardian may be approved and paid by the conservator
16 without court approval.

17 B. Subject to court approval, a conservator is
18 entitled to reasonable compensation for services and
19 reimbursement for appropriate expenses from the property of the
20 individual subject to conservatorship.

21 C. In determining reasonable compensation for a
22 guardian or conservator, the court, or a conservator in
23 determining reasonable compensation for a guardian as provided
24 in Subsection A of this section, shall consider:

25 (1) the necessity and quality of the services

1 provided;

2 (2) the experience, training, professional
3 standing and skills of the guardian or conservator;

4 (3) the difficulty of the services performed,
5 including the degree of skill and care required;

6 (4) the conditions and circumstances under
7 which a service was performed, including whether the service
8 was provided outside regular business hours or under dangerous
9 or extraordinary conditions;

10 (5) the effect of the services on the
11 individual subject to guardianship or conservatorship;

12 (6) the extent to which the services provided
13 were or were not consistent with the guardian's plan under
14 Section 316 of the Uniform Guardianship, Conservatorship and
15 Other Protective Arrangements Act or conservator's plan under
16 Section 419 of that act; and

17 (7) the fees customarily paid to a person that
18 performs a like service in the community.

19 D. A guardian or conservator need not use personal
20 funds of the guardian or conservator for the expenses of the
21 individual subject to guardianship or conservatorship.

22 E. If an individual subject to guardianship or
23 conservatorship seeks to modify or terminate the guardianship
24 or conservatorship or remove the guardian or conservator, the
25 court may order compensation to the guardian or conservator for

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1 time spent opposing modification, termination or removal only
2 to the extent the court determines the opposition was
3 reasonably necessary to protect the interest of the individual
4 subject to guardianship or conservatorship.

5 SECTION 121. [NEW MATERIAL] LIABILITY OF GUARDIAN OR
6 CONSERVATOR FOR ACT OF INDIVIDUAL SUBJECT TO GUARDIANSHIP OR
7 CONSERVATORSHIP.--A guardian or conservator is not personally
8 liable to another person solely because of the guardianship or
9 conservatorship for an act or omission of the individual
10 subject to guardianship or conservatorship.

11 SECTION 122. [NEW MATERIAL] PETITION AFTER APPOINTMENT
12 FOR INSTRUCTION OR RATIFICATION.--

13 A. A guardian or conservator may petition the court
14 for instruction concerning fiduciary responsibility or
15 ratification of a particular act related to the guardianship or
16 conservatorship.

17 B. On notice and hearing on a petition under
18 Subsection A of this section, the court may give an instruction
19 and issue an order.

20 SECTION 123. [NEW MATERIAL] THIRD-PARTY ACCEPTANCE OF
21 AUTHORITY OF GUARDIAN OR CONSERVATOR.--

22 A. A person shall not recognize the authority of a
23 guardian or conservator to act on behalf of an individual
24 subject to guardianship or conservatorship if:

25 (1) the person has actual knowledge or a

1 reasonable belief that the letters of office of the guardian or
2 conservator are invalid or the conservator or guardian is
3 exceeding or improperly exercising authority granted by the
4 court; or

5 (2) the person has actual knowledge that the
6 individual subject to guardianship or conservatorship is
7 subject to physical or financial abuse, neglect, exploitation
8 or abandonment by the guardian or conservator or a person
9 acting for or with the guardian or conservator.

10 B. A person may refuse to recognize the authority
11 of a guardian or conservator to act on behalf of an individual
12 subject to guardianship or conservatorship if:

13 (1) the guardian's or conservator's proposed
14 action would be inconsistent with the Uniform Guardianship,
15 Conservatorship and Other Protective Arrangements Act; or

16 (2) the person makes, or has actual knowledge
17 that another person has made, a report to the children, youth
18 and families department or the aging and long-term services
19 department stating a good-faith belief that the individual
20 subject to guardianship or conservatorship is subject to
21 physical or financial abuse, neglect, exploitation or
22 abandonment by the guardian or conservator or a person acting
23 for or with the guardian or conservator.

24 C. A person that refuses to accept the authority of
25 a guardian or conservator in accordance with Subsection B of

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1 this section may report the refusal and the reason for refusal
2 to the court. The court on receiving the report shall consider
3 whether removal of the guardian or conservator or other action
4 is appropriate.

5 D. A guardian or conservator may petition the court
6 to require a third party to accept a decision made by the
7 guardian or conservator on behalf of the individual subject to
8 guardianship or conservatorship.

9 SECTION 124. [NEW MATERIAL] USE OF AGENT BY GUARDIAN OR
10 CONSERVATOR.--

11 A. Except as otherwise provided in Subsection C of
12 this section, a guardian or conservator may delegate a power to
13 an agent that a prudent guardian or conservator of comparable
14 skills could delegate prudently under the circumstances if the
15 delegation is consistent with the guardian's or conservator's
16 fiduciary duties and the guardian's plan under Section 316 of
17 the Uniform Guardianship, Conservatorship and Other Protective
18 Arrangements Act or the conservator's plan under Section 419 of
19 that act.

20 B. In delegating a power under Subsection A of this
21 section, the guardian or conservator shall exercise reasonable
22 care, skill and caution in:

- 23 (1) selecting the agent;
24 (2) establishing the scope and terms of the
25 agent's work in accordance with the guardian's plan under

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1 Section 316 of the Uniform Guardianship, Conservatorship and
2 Other Protective Arrangements Act or conservator's plan under
3 Section 419 of that act;

4 (3) monitoring the agent's performance and
5 compliance with the delegation; and

6 (4) redressing an act or omission of the agent
7 that would constitute a breach of the guardian's or
8 conservator's duties if done by the guardian or conservator.

9 C. A guardian or conservator shall not delegate all
10 powers to an agent.

11 D. In performing a power delegated under this
12 section, an agent shall:

13 (1) exercise reasonable care to comply with
14 the terms of the delegation and use reasonable care in the
15 performance of the power; and

16 (2) if the guardian or conservator has
17 delegated to the agent the power to make a decision on behalf
18 of the individual subject to guardianship or conservatorship,
19 use the same decision-making standard the guardian or
20 conservator would be required to use.

21 E. By accepting a delegation of a power under
22 Subsection A of this section from a guardian or conservator, an
23 agent submits to the personal jurisdiction of the courts of New
24 Mexico in an action involving the agent's performance as agent.

25 F. A guardian or conservator that delegates and

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1 monitors a power in compliance with this section is not liable
2 for the decision, act or omission of the agent.

3 SECTION 125. [NEW MATERIAL] TEMPORARY SUBSTITUTE GUARDIAN
4 OR CONSERVATOR.--

5 A. The court may appoint a temporary substitute
6 guardian for an individual subject to guardianship for a period
7 not exceeding six months if:

8 (1) a proceeding to remove a guardian for the
9 individual is pending; or

10 (2) the court finds a guardian is not
11 effectively performing the guardian's duties and the welfare of
12 the individual requires immediate action.

13 B. The court may appoint a temporary substitute
14 conservator for an individual subject to conservatorship for a
15 period not exceeding six months if:

16 (1) a proceeding to remove a conservator for
17 the individual is pending; or

18 (2) the court finds that a conservator for the
19 individual is not effectively performing the conservator's
20 duties and the welfare of the individual or the conservatorship
21 estate requires immediate action.

22 C. Except as otherwise ordered by the court, a
23 temporary substitute guardian or temporary substitute
24 conservator appointed under this section has the powers stated
25 in the order of appointment of the guardian or conservator.

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1 The authority of the existing guardian or conservator is
2 suspended for as long as the temporary substitute guardian or
3 conservator has authority.

4 D. The court shall give notice of appointment of a
5 temporary substitute guardian or temporary substitute
6 conservator, not later than five days after the appointment,
7 to:

8 (1) the individual subject to guardianship or
9 conservatorship;

10 (2) the affected guardian or conservator; and

11 (3) in the case of a minor, each parent of the
12 minor and any person currently having care or custody of the
13 minor.

14 E. The court may remove a temporary substitute
15 guardian or temporary substitute conservator at any time. The
16 temporary substitute guardian or temporary substitute
17 conservator shall make any report the court requires.

18 SECTION 126. [NEW MATERIAL] REGISTRATION OF ORDER--
19 EFFECT.--

20 A. If a guardian has been appointed in another
21 state for an individual and a petition for guardianship for the
22 individual is not pending in New Mexico, the guardian appointed
23 in the other state, after giving notice to the appointing
24 court, may register the guardianship order in New Mexico by
25 filing as a foreign judgment, in a court of an appropriate

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1 county of New Mexico, certified copies of the order and letters
2 of office.

3 B. If a conservator has been appointed in another
4 state for an individual and a petition for conservatorship for
5 the individual is not pending in New Mexico, the conservator
6 appointed for the individual in the other state, after giving
7 notice to the appointing court, may register the
8 conservatorship in New Mexico by filing as a foreign judgment,
9 in a court of a county in which property belonging to the
10 individual subject to conservatorship is located, certified
11 copies of the order of conservatorship, letters of office and
12 any bond or other asset-protection arrangement required by the
13 court.

14 C. On registration under this section of a
15 guardianship or conservatorship order from another state, the
16 guardian or conservator may exercise in New Mexico all powers
17 authorized in the order except as prohibited by the Uniform
18 Guardianship, Conservatorship and Other Protective Arrangements
19 Act or other law of New Mexico. If the guardian or conservator
20 is not a resident of New Mexico, the guardian or conservator
21 may maintain an action or proceeding in New Mexico subject to
22 any condition imposed by New Mexico on an action or proceeding
23 by a nonresident party.

24 D. The court may grant any relief available under
25 the Uniform Guardianship, Conservatorship and Other Protective

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1 Arrangements Act or other law of New Mexico to enforce an order
2 registered under this section.

3 SECTION 127. [NEW MATERIAL] GRIEVANCE AGAINST GUARDIAN OR
4 CONSERVATOR.--

5 A. An individual who is subject to guardianship or
6 conservatorship, or a person interested in the welfare of an
7 individual subject to guardianship or conservatorship, that
8 reasonably believes the guardian or conservator is breaching
9 the guardian's or conservator's fiduciary duty or otherwise
10 acting in a manner inconsistent with the Uniform Guardianship,
11 Conservatorship and Other Protective Arrangements Act may file
12 a grievance in a record with the court.

13 B. Subject to Subsection C of this section, after
14 receiving a grievance under Subsection A of this section, the
15 court:

16 (1) shall review the grievance and, if
17 necessary to determine the appropriate response, court records
18 related to the guardianship or conservatorship;

19 (2) shall schedule a hearing if the individual
20 subject to guardianship or conservatorship is an adult and the
21 grievance supports a reasonable belief that:

22 (a) removal of the guardian and
23 appointment of a successor may be appropriate under Section 318
24 of the Uniform Guardianship, Conservatorship and Other
25 Protective Arrangements Act;

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1 (b) termination or modification of the
2 guardianship may be appropriate under Section 319 of the
3 Uniform Guardianship, Conservatorship and Other Protective
4 Arrangements Act;

5 (c) removal of the conservator and
6 appointment of a successor may be appropriate under Section 430
7 of the Uniform Guardianship, Conservatorship and Other
8 Protective Arrangements Act; or

9 (d) termination or modification of the
10 conservatorship may be appropriate under Section 431 of the
11 Uniform Guardianship, Conservatorship and Other Protective
12 Arrangements Act; and

13 (3) may take any action supported by the
14 evidence, including:

15 (a) ordering the guardian or conservator
16 to provide the court a report, accounting, inventory, updated
17 plan or other information;

18 (b) appointing a guardian ad litem;

19 (c) appointing an attorney for the
20 individual subject to guardianship or conservatorship; or

21 (d) holding a hearing.

22 C. The court may decline to act under Subsection B
23 of this section if a similar grievance was filed within the six
24 months preceding the filing of the current grievance and the
25 court followed the procedures of that subsection in considering

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1 the earlier grievance.

2 SECTION 128. [NEW MATERIAL] DELEGATION BY PARENT.--Unless
3 otherwise provided by law, a parent of a minor, by a power of
4 attorney, may delegate to another person for a period not
5 exceeding six months any of the parent's powers regarding care,
6 custody or property of the minor, other than power to consent
7 to marriage or adoption.

8 ARTICLE 2

9 GUARDIANSHIP OF MINOR

10 SECTION 201. [NEW MATERIAL] BASIS FOR APPOINTMENT OF
11 GUARDIAN FOR MINOR.--

12 A. A person becomes a guardian for a minor only on
13 appointment by the court.

14 B. The court may appoint a guardian for a minor who
15 does not have a guardian if the court finds the appointment is
16 in the minor's best interest and:

17 (1) each parent of the minor, after being
18 fully informed of the nature and consequences of guardianship,
19 consents;

20 (2) all parental rights have been terminated;
21 or

22 (3) there is clear and convincing evidence
23 that no parent of the minor is willing or able to exercise the
24 powers the court is granting the guardian.

25 SECTION 202. [NEW MATERIAL] PETITION FOR APPOINTMENT OF

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1 GUARDIAN FOR MINOR.--

2 A. A person interested in the welfare of a minor,
3 including the minor, may petition for appointment of a guardian
4 for the minor.

5 B. A petition under Subsection A of this section
6 shall state the petitioner's name, principal residence, current
7 street address, if different, relationship to the minor,
8 interest in the appointment, the name and address of any
9 attorney representing the petitioner and, to the extent known,
10 the following:

11 (1) the minor's name, age, principal
12 residence, current street address, if different, and, if
13 different, address of the dwelling in which it is proposed the
14 minor will reside if the appointment is made;

15 (2) the name and current street address of the
16 minor's parents;

17 (3) the name and address, if known, of each
18 person that had primary care or custody of the minor for at
19 least sixty days during the two years immediately before the
20 filing of the petition or for at least seven hundred thirty
21 days during the five years immediately before the filing of the
22 petition;

23 (4) the name and address of any attorney for
24 the minor and any attorney for each parent of the minor;

25 (5) the reason guardianship is sought and

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1 would be in the best interest of the minor;

2 (6) the name and address of any proposed
3 guardian and the reason the proposed guardian should be
4 selected;

5 (7) if the minor has property other than
6 personal effects, a general statement of the minor's property
7 with an estimate of its value;

8 (8) whether the minor needs an interpreter,
9 translator or other form of support to communicate effectively
10 with the court or understand court proceedings;

11 (9) whether any parent of the minor needs an
12 interpreter, translator or other form of support to communicate
13 effectively with the court or understand court proceedings; and

14 (10) whether any other proceeding concerning
15 the care or custody of the minor is pending in any court in New
16 Mexico or another jurisdiction.

17 SECTION 203. [NEW MATERIAL] NOTICE OF HEARING FOR
18 APPOINTMENT OF GUARDIAN FOR MINOR.--

19 A. If a petition is filed under Section 202 of the
20 Uniform Guardianship, Conservatorship and Other Protective
21 Arrangements Act, the court shall schedule a hearing and the
22 petitioner shall:

23 (1) serve notice of the date, time and place
24 of the hearing, together with a copy of the petition,
25 personally on each of the following that is not the petitioner:

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- 1 (a) the minor, if the minor will be
- 2 twelve years of age or older at the time of the hearing;
- 3 (b) each parent of the minor or, if
- 4 there is none, the adult nearest in kinship who can be found
- 5 with reasonable diligence;
- 6 (c) any adult with whom the minor
- 7 resides;
- 8 (d) each person that had primary care or
- 9 custody of the minor for at least sixty days during the two
- 10 years immediately before the filing of the petition or for at
- 11 least seven hundred thirty days during the five years
- 12 immediately before the filing of the petition; and
- 13 (e) any other person the court
- 14 determines should receive personal service of notice; and
- 15 (2) give notice under Section 113 of the
- 16 Uniform Guardianship, Conservatorship and Other Protective
- 17 Arrangements Act of the date, time and place of the hearing,
- 18 together with a copy of the petition, to:
- 19 (a) any person nominated as guardian by
- 20 the minor, if the minor is twelve years of age or older;
- 21 (b) any nominee of a parent;
- 22 (c) each grandparent and adult sibling
- 23 of the minor;
- 24 (d) any guardian or conservator acting
- 25 for the minor in any jurisdiction; and

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1 (e) any other person the court
2 determines.

3 B. Notice required by Subsection A of this section
4 shall include a statement of the right to request appointment
5 of an attorney for the minor or object to appointment of a
6 guardian and a description of the nature, purpose and
7 consequences of appointment of a guardian.

8 C. The court shall not grant a petition for
9 guardianship of a minor if notice substantially complying with
10 Paragraph (1) of Subsection A of this section is not served on:

11 (1) the minor, if the minor is twelve years of
12 age or older; and

13 (2) each parent of the minor, unless the court
14 finds by clear and convincing evidence that the parent cannot
15 with due diligence be located and served or the parent waived,
16 in a record, the right to notice.

17 D. If a petitioner is unable to serve notice under
18 Paragraph (1) of Subsection A of this section on a parent of a
19 minor or alleges that the parent waived, in a record, the right
20 to notice under this section, the court shall appoint a visitor
21 who shall:

22 (1) interview the petitioner and the minor;

23 (2) if the petitioner alleges the parent
24 cannot be located, ascertain whether the parent cannot be
25 located with due diligence; and

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1 (3) investigate any other matter relating to
2 the petition the court directs.

3 SECTION 204. [NEW MATERIAL] ATTORNEY FOR MINOR OR
4 PARENT.--

5 A. The court shall appoint an attorney to represent
6 a minor who is the subject of a proceeding under Section 202 of
7 the Uniform Guardianship, Conservatorship and Other Protective
8 Arrangements Act if:

9 (1) requested by the minor and the minor is
10 twelve years of age or older;

11 (2) recommended by a guardian ad litem; or

12 (3) the court determines the minor needs
13 representation.

14 B. An attorney appointed under Subsection A of this
15 section shall:

16 (1) make a reasonable effort to ascertain the
17 minor's wishes;

18 (2) advocate for the minor's wishes to the
19 extent reasonably ascertainable; and

20 (3) if the minor's wishes are not reasonably
21 ascertainable, advocate for the minor's best interest.

22 C. A minor who is the subject of a proceeding under
23 Section 202 of the Uniform Guardianship, Conservatorship and
24 Other Protective Arrangements Act may retain an attorney to
25 represent the minor in the proceeding.

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1 D. A parent of a minor who is the subject of a
2 proceeding under Section 202 of the Uniform Guardianship,
3 Conservatorship and Other Protective Arrangements Act may
4 retain an attorney to represent the parent in the proceeding.

5 SECTION 205. [NEW MATERIAL] ATTENDANCE AND PARTICIPATION
6 AT HEARING FOR APPOINTMENT OF GUARDIAN FOR MINOR.--

7 A. The court shall require a minor who is the
8 subject of a hearing under Section 203 of the Uniform
9 Guardianship, Conservatorship and Other Protective Arrangements
10 Act to attend the hearing and allow the minor to participate in
11 the hearing unless the court determines, by clear and
12 convincing evidence presented at the hearing or a separate
13 hearing, that:

14 (1) the minor consistently and repeatedly
15 refused to attend the hearing after being fully informed of the
16 right to attend and, if the minor is twelve years of age or
17 older, the potential consequences of failing to do so;

18 (2) there is no practicable way for the minor
19 to attend the hearing;

20 (3) the minor lacks the ability or maturity to
21 participate meaningfully in the hearing; or

22 (4) attendance would be harmful to the minor.

23 B. Unless excused by the court for good cause, the
24 person proposed to be appointed as guardian for a minor shall
25 attend a hearing under Section 203 of the Uniform Guardianship,

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1 Conservatorship and Other Protective Arrangements Act.

2 C. Each parent of a minor who is the subject of a
3 hearing under Section 203 of the Uniform Guardianship,
4 Conservatorship and Other Protective Arrangements Act has the
5 right to attend the hearing.

6 D. A person may request permission to participate
7 in a hearing under Section 203 of the Uniform Guardianship,
8 Conservatorship and Other Protective Arrangements Act. The
9 court may grant the request, with or without hearing, on
10 determining that it is in the best interest of the minor who is
11 the subject of the hearing. The court may impose appropriate
12 conditions on the person's participation.

13 SECTION 206. [NEW MATERIAL] ORDER OF APPOINTMENT--
14 PRIORITY OF NOMINEE--LIMITED GUARDIANSHIP FOR MINOR.--

15 A. After a hearing under Section 203 of the Uniform
16 Guardianship, Conservatorship and Other Protective Arrangements
17 Act, the court may appoint a guardian for a minor, if
18 appointment is proper under Section 201 of that act, dismiss
19 the proceeding or take other appropriate action consistent with
20 that act or other law of New Mexico.

21 B. In appointing a guardian under Subsection A of
22 this section:

23 (1) the court shall appoint a person nominated
24 as guardian by a parent of the minor in a will or other record
25 unless the court finds the appointment is contrary to the best

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1 interest of the minor;

2 (2) if multiple parents have nominated
3 different persons to serve as guardian, the court shall appoint
4 the nominee whose appointment is in the best interest of the
5 minor, unless the court finds that appointment of none of the
6 nominees is in the best interest of the minor; and

7 (3) if a guardian is not appointed under
8 Paragraph (1) or (2) of this subsection, the court shall
9 appoint the person nominated by the minor if the minor is
10 twelve years of age or older unless the court finds that
11 appointment is contrary to the best interest of the minor. In
12 that case, the court shall appoint as guardian a person whose
13 appointment is in the best interest of the minor.

14 C. In the interest of maintaining or encouraging
15 involvement by a minor's parent in the minor's life, developing
16 self-reliance of the minor or for other good cause, the court,
17 at the time of appointment of a guardian for the minor or
18 later, on its own or on motion of the minor or other interested
19 person, may create a limited guardianship by limiting the
20 powers otherwise granted by this article to the guardian.
21 Following the same procedure, the court may grant additional
22 powers or withdraw powers previously granted.

23 D. The court, as part of an order appointing a
24 guardian for a minor, shall state rights retained by any parent
25 of the minor, which may include contact or visitation with the

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1 minor, decision making regarding the minor's health care,
2 education or other matter or access to a record regarding the
3 minor.

4 E. An order granting a guardianship for a minor
5 shall state that each parent of the minor is entitled to notice
6 that:

7 (1) the guardian has delegated custody of the
8 minor subject to guardianship;

9 (2) the court has modified or limited the
10 powers of the guardian; or

11 (3) the court has removed the guardian.

12 F. An order granting a guardianship for a minor
13 shall identify any person in addition to a parent of the minor
14 that is entitled to notice of the events listed in Subsection E
15 of this section.

16 SECTION 207. [NEW MATERIAL] STANDBY GUARDIAN FOR MINOR.--

17 A. A standby guardian appointed under this section
18 may act as guardian, with all duties and powers of a guardian
19 under Sections 209 and 210 of the Uniform Guardianship,
20 Conservatorship and Other Protective Arrangements Act, when no
21 parent of the minor is willing or able to exercise the duties
22 and powers granted to the guardian.

23 B. A parent of a minor, in a signed record, may
24 nominate a person to be appointed by the court as standby
25 guardian for the minor. The parent, in a signed record, may

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1 state desired limitations on the powers to be granted the
2 standby guardian. The parent, in a signed record, may revoke
3 or amend the nomination at any time before the court appoints a
4 standby guardian.

5 C. The court may appoint a standby guardian for a
6 minor on:

7 (1) petition by a parent of the minor or a
8 person nominated under Subsection B of this section; and

9 (2) finding that no parent of the minor likely
10 will be able or willing to care for or make decisions with
11 respect to the minor not later than two years after the
12 appointment.

13 D. A petition under Paragraph (1) of Subsection C
14 of this section shall include the same information required
15 under Section 202 of the Uniform Guardianship, Conservatorship
16 and Other Protective Arrangements Act for the appointment of a
17 guardian for a minor.

18 E. On filing a petition under Paragraph (1) of
19 Subsection C of this section, the petitioner shall:

20 (1) serve a copy of the petition personally
21 on:

22 (a) the minor, if the minor is twelve
23 years of age or older, and the minor's attorney, if any;

24 (b) each parent of the minor;

25 (c) the person nominated as standby

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1 guardian; and

2 (d) any other person the court

3 determines; and

4 (2) include with the copy of the petition
5 served under Paragraph (1) of this subsection a statement of
6 the right to request appointment of an attorney for the minor
7 or to object to appointment of the standby guardian and a
8 description of the nature, purpose and consequences of
9 appointment of a standby guardian.

10 F. A person entitled to notice under Subsection E
11 of this section, not later than sixty days after service of the
12 petition and statement, may object to appointment of the
13 standby guardian by filing an objection with the court and
14 giving notice of the objection to each other person entitled to
15 notice under Subsection E of this section.

16 G. If an objection is filed under Subsection F of
17 this section, the court shall hold a hearing to determine
18 whether a standby guardian should be appointed and, if so, the
19 person that should be appointed. If no objection is filed, the
20 court may make the appointment.

21 H. The court shall not grant a petition for a
22 standby guardian of the minor if notice substantially complying
23 with Subsection E of this section is not served on:

24 (1) the minor, if the minor is twelve years of
25 age or older; and

1 (2) each parent of the minor, unless the court
2 finds by clear and convincing evidence that the parent, in a
3 record, waived the right to notice or cannot be located and
4 served with due diligence.

5 I. If a petitioner is unable to serve notice under
6 Subsection E of this section on a parent of the minor or
7 alleges that a parent of the minor waived the right to notice
8 under this section, the court shall appoint a visitor who
9 shall:

10 (1) interview the petitioner and the minor;

11 (2) if the petitioner alleges the parent
12 cannot be located and served, ascertain whether the parent
13 cannot be located with due diligence; and

14 (3) investigate any other matter relating to
15 the petition the court directs.

16 J. If the court finds under Subsection C of this
17 section that a standby guardian should be appointed:

18 (1) the court shall appoint the person
19 nominated under Subsection B of this section unless the court
20 finds the appointment is contrary to the best interest of the
21 minor; and

22 (2) if the parents have nominated different
23 persons to serve as standby guardian, the court shall appoint
24 the nominee whose appointment is in the best interest of the
25 minor, unless the court finds that appointment of none of the

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1 nominees is in the best interest of the minor.

2 K. An order appointing a standby guardian under
3 this section shall state that each parent of the minor is
4 entitled to notice, and identify any other person entitled to
5 notice, if:

6 (1) the standby guardian assumes the duties
7 and powers of the guardian;

8 (2) the guardian delegates custody of the
9 minor;

10 (3) the court modifies or limits the powers of
11 the guardian; or

12 (4) the court removes the guardian.

13 L. Before assuming the duties and powers of a
14 guardian, a standby guardian shall file with the court an
15 acceptance of appointment as guardian and give notice of the
16 acceptance to:

17 (1) each parent of the minor, unless the
18 parent, in a record, waived the right to notice or cannot be
19 located and served with due diligence;

20 (2) the minor, if the minor is twelve years of
21 age or older; and

22 (3) any person, other than the parent, having
23 care or custody of the minor.

24 M. A person that receives notice under Subsection L
25 of this section or any other person interested in the welfare

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1 of the minor may file with the court an objection to the
2 standby guardian's assumption of duties and powers of a
3 guardian. The court shall hold a hearing if the objection
4 supports a reasonable belief that the conditions for assumption
5 of duties and powers have not been satisfied.

6 SECTION 208. [NEW MATERIAL] EMERGENCY GUARDIAN FOR
7 MINOR.--

8 A. On its own, or on petition by a person
9 interested in a minor's welfare, the court may appoint an
10 emergency guardian for the minor if the court finds:

11 (1) appointment of an emergency guardian is
12 likely to prevent substantial harm to the minor's health,
13 safety or welfare; and

14 (2) no other person appears to have authority
15 and willingness to act in the circumstances.

16 B. The duration of authority of an emergency
17 guardian for a minor shall not exceed sixty days and the
18 emergency guardian may exercise only the powers specified in
19 the order of appointment. The emergency guardian's authority
20 may be extended once for not more than sixty days if the court
21 finds that the conditions for appointment of an emergency
22 guardian in Subsection A of this section continue.

23 C. Except as otherwise provided in Subsection D of
24 this section, reasonable notice of the date, time and place of
25 a hearing on a petition for appointment of an emergency

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1 guardian for a minor shall be given to:

2 (1) the minor, if the minor is twelve years of
3 age or older;

4 (2) any attorney appointed under Section 204
5 of the Uniform Guardianship, Conservatorship and Other
6 Protective Arrangements Act;

7 (3) each parent of the minor;

8 (4) any person, other than a parent, having
9 care or custody of the minor; and

10 (5) any other person the court determines.

11 D. The court may appoint an emergency guardian for
12 a minor without notice under Subsection C of this section and a
13 hearing only if the court finds from an affidavit or testimony
14 that the minor's health, safety or welfare will be
15 substantially harmed before a hearing with notice on the
16 appointment can be held. If the court appoints an emergency
17 guardian without notice to an unrepresented minor or the
18 attorney for a represented minor, notice of the appointment
19 shall be given not later than forty-eight hours after the
20 appointment to the individuals listed in Subsection C of this
21 section. Not later than five days after the appointment, the
22 court shall hold a hearing on the appropriateness of the
23 appointment.

24 E. Appointment of an emergency guardian under this
25 section, with or without notice, is not a determination that a

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1 basis exists for appointment of a guardian under Section 201 of
2 the Uniform Guardianship, Conservatorship and Other Protective
3 Arrangements Act.

4 F. The court may remove an emergency guardian
5 appointed under this section at any time. The emergency
6 guardian shall make any report the court requires.

7 SECTION 209. [NEW MATERIAL] DUTIES OF GUARDIAN FOR
8 MINOR.--

9 A. A guardian for a minor is a fiduciary. Except
10 as otherwise limited by the court, a guardian for a minor has
11 the duties and responsibilities of a parent regarding the
12 minor's support, care, education, health, safety and welfare.
13 A guardian shall act in the minor's best interest and exercise
14 reasonable care, diligence and prudence.

15 B. A guardian for a minor shall:

16 (1) be personally acquainted with the minor
17 and maintain sufficient contact with the minor to know the
18 minor's abilities, limitations, needs, opportunities and
19 physical and mental health;

20 (2) take reasonable care of the minor's
21 personal effects and bring a proceeding for a conservatorship
22 or protective arrangement instead of conservatorship if
23 necessary to protect other property of the minor;

24 (3) expend funds of the minor that have been
25 received by the guardian for the minor's current needs for

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1 support, care, education, health, safety and welfare;

2 (4) conserve any funds of the minor not
3 expended under Paragraph (3) of this subsection for the minor's
4 future needs, but if a conservator is appointed for the minor,
5 pay the funds at least quarterly to the conservator to be
6 conserved for the minor's future needs;

7 (5) report the condition of the minor and
8 account for funds and other property of the minor in the
9 guardian's possession or subject to the guardian's control, as
10 required by court rule or ordered by the court on application
11 of a person interested in the minor's welfare;

12 (6) inform the court of any change in the
13 minor's dwelling or address; and

14 (7) in determining what is in the minor's best
15 interest, take into account the minor's preferences to the
16 extent actually known or reasonably ascertainable by the
17 guardian.

18 SECTION 210. [NEW MATERIAL] POWERS OF GUARDIAN FOR
19 MINOR.--

20 A. Except as otherwise limited by court order, a
21 guardian of a minor has the powers a parent otherwise would
22 have regarding the minor's support, care, education, health,
23 safety and welfare.

24 B. Except as otherwise limited by court order, a
25 guardian for a minor may:

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1 (1) apply for and receive funds and benefits
2 otherwise payable for the support of the minor to the minor's
3 parent, guardian or custodian under a statutory system of
4 benefits or insurance or any private contract, devise, trust,
5 conservatorship or custodianship;

6 (2) unless inconsistent with a court order
7 entitled to recognition in New Mexico, take custody of the
8 minor and establish the minor's place of dwelling and, on
9 authorization of the court, establish or move the minor's
10 dwelling outside New Mexico;

11 (3) if the minor is not subject to
12 conservatorship, commence a proceeding, including an
13 administrative proceeding, or take other appropriate action to
14 compel a person to support the minor or make a payment for the
15 benefit of the minor;

16 (4) consent to health or other care, treatment
17 or service for the minor; or

18 (5) to the extent reasonable, delegate to the
19 minor responsibility for a decision affecting the minor's
20 well-being.

21 C. The court may authorize a guardian for a minor
22 to consent to the adoption of the minor if the minor does not
23 have a parent.

24 D. A guardian for a minor may consent to the
25 marriage of the minor.

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1 SECTION 211. [NEW MATERIAL] REMOVAL OF GUARDIAN FOR
2 MINOR--TERMINATION OF GUARDIANSHIP--APPOINTMENT OF SUCCESSOR.--

3 A. Guardianship under the Uniform Guardianship,
4 Conservatorship and Other Protective Arrangements Act for a
5 minor terminates:

6 (1) on the minor's death, adoption,
7 emancipation or attainment of majority; or

8 (2) when the court finds that the standard in
9 Section 201 of the Uniform Guardianship, Conservatorship and
10 Other Protective Arrangements Act for appointment of a guardian
11 is not satisfied, unless the court finds that:

12 (a) termination of the guardianship
13 would be harmful to the minor; and

14 (b) the minor's interest in the
15 continuation of the guardianship outweighs the interest of any
16 parent of the minor in restoration of the parent's right to
17 make decisions for the minor.

18 B. A minor subject to guardianship or a person
19 interested in the welfare of the minor may petition the court
20 to terminate the guardianship, modify the guardianship, remove
21 the guardian and appoint a successor guardian, or remove a
22 standby guardian and appoint a different standby guardian.

23 C. A petitioner under Subsection B of this section
24 shall give notice of the hearing on the petition to the minor,
25 if the minor is twelve years of age or older and is not the

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1 petitioner, the guardian, each parent of the minor and any
2 other person the court determines.

3 D. The court shall follow the priorities in
4 Subsection B of Section 206 of the Uniform Guardianship,
5 Conservatorship and Other Protective Arrangements Act when
6 selecting a successor guardian for a minor.

7 E. Not later than thirty days after appointment of
8 a successor guardian for a minor, the court shall give notice
9 of the appointment to the minor subject to guardianship, if the
10 minor is twelve years of age or older, each parent of the minor
11 and any other person the court determines.

12 F. When terminating a guardianship for a minor
13 under this section, the court may issue an order providing for
14 transitional arrangements that will assist the minor with a
15 transition of custody and is in the best interest of the minor.

16 G. A guardian for a minor that is removed shall
17 cooperate with a successor guardian to facilitate transition of
18 the guardian's responsibilities and protect the best interest
19 of the minor.

20 ARTICLE 3

21 GUARDIANSHIP OF ADULT

22 SECTION 301. [NEW MATERIAL] BASIS FOR APPOINTMENT OF
23 GUARDIAN FOR ADULT.--

24 A. On petition and after notice and hearing, the
25 court may:

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1 (1) appoint a guardian for an adult if the
2 court finds by clear and convincing evidence that:

3 (a) the respondent lacks the ability to
4 meet essential requirements for physical health, safety or
5 self-care because the respondent is unable to receive and
6 evaluate information or make or communicate decisions, even
7 with appropriate supportive services, technological assistance
8 or supported decision making; and

9 (b) the respondent's identified needs
10 cannot be met by a protective arrangement instead of
11 guardianship or other less restrictive alternative; or

12 (2) with appropriate findings, treat the
13 petition as one for a conservatorship under Article 4 of the
14 Uniform Guardianship, Conservatorship and Other Protective
15 Arrangements Act or protective arrangement under Article 5 of
16 that act, issue any appropriate order or dismiss the
17 proceeding.

18 B. The court shall grant a guardian appointed under
19 Subsection A of this section only those powers necessitated by
20 the demonstrated needs and limitations of the respondent and
21 issue orders that will encourage development of the
22 respondent's maximum self-determination and independence. The
23 court shall not establish a full guardianship if a limited
24 guardianship, protective arrangement instead of guardianship or
25 other less restrictive alternatives would meet the needs of the

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1 respondent.

2 SECTION 302. [NEW MATERIAL] PETITION FOR APPOINTMENT OF
3 GUARDIAN FOR ADULT.--

4 A. A person interested in an adult's welfare,
5 including the adult for whom the order is sought, may petition
6 for appointment of a guardian for the adult.

7 B. A petition under Subsection A of this section
8 shall state the petitioner's name, principal residence, current
9 street address, if different, relationship to the respondent,
10 interest in the appointment, the name and address of any
11 attorney representing the petitioner and, to the extent known,
12 the following:

13 (1) the respondent's name, age, principal
14 residence, current street address, if different, and, if
15 different, address of the dwelling in which it is proposed the
16 respondent will reside if the petition is granted;

17 (2) the name and address of the respondent's:
18 (a) spouse or, if the respondent has
19 none, an adult with whom the respondent has shared household
20 responsibilities for more than six months in the twelve-month
21 period immediately before the filing of the petition;

22 (b) adult children or, if none, each
23 parent and adult sibling of the respondent or, if none, at
24 least one adult nearest in kinship to the respondent who can be
25 found with reasonable diligence; and

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1 (c) adult stepchildren whom the
2 respondent actively parented during the stepchildren's minor
3 years and with whom the respondent had an ongoing relationship
4 in the two-year period immediately before the filing of the
5 petition;

6 (3) the name and current address of each of
7 the following, if applicable:

8 (a) a person responsible for care of the
9 respondent;

10 (b) any attorney currently representing
11 the respondent;

12 (c) any representative payee appointed
13 by the federal social security administration for the
14 respondent;

15 (d) a guardian or conservator acting for
16 the respondent in New Mexico or in another jurisdiction;

17 (e) a trustee or custodian of a trust or
18 custodianship of which the respondent is a beneficiary;

19 (f) any fiduciary for the respondent
20 appointed by the federal department of veterans affairs;

21 (g) an agent designated under a power of
22 attorney for health care in which the respondent is identified
23 as the principal;

24 (h) an agent designated under a power of
25 attorney for finances in which the respondent is identified as

1 the principal;

2 (i) a person nominated as guardian by
3 the respondent;

4 (j) a person nominated as guardian by
5 the respondent's parent or spouse in a will or other signed
6 record;

7 (k) a proposed guardian and the reason
8 the proposed guardian should be selected; and

9 (l) a person known to have routinely
10 assisted the respondent with decision making during the six
11 months immediately before the filing of the petition;

12 (4) the reason a guardianship is necessary,
13 including a brief description of:

14 (a) the nature and extent of the
15 respondent's alleged need;

16 (b) any protective arrangement instead
17 of guardianship or other less restrictive alternatives for
18 meeting the respondent's alleged need that have been considered
19 or implemented;

20 (c) if no protective arrangement instead
21 of guardianship or other less restrictive alternatives have
22 been considered or implemented, the reason they have not been
23 considered or implemented; and

24 (d) the reason a protective arrangement
25 instead of guardianship or other less restrictive alternative

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1 is insufficient to meet the respondent's alleged need;

2 (5) whether the petitioner seeks a limited
3 guardianship or full guardianship;

4 (6) if the petitioner seeks a full
5 guardianship, the reason a limited guardianship or protective
6 arrangement instead of guardianship is not appropriate;

7 (7) if a limited guardianship is requested,
8 the powers to be granted to the guardian;

9 (8) the name and current address, if known, of
10 any person with whom the petitioner seeks to limit the
11 respondent's contact;

12 (9) if the respondent has property other than
13 personal effects, a general statement of the respondent's
14 property, with an estimate of its value, including any
15 insurance or pension, and the source and amount of other
16 anticipated income or receipts; and

17 (10) whether the respondent needs an
18 interpreter, translator or other form of support to communicate
19 effectively with the court or understand court proceedings.

20 **SECTION 303. [NEW MATERIAL] NOTICE OF HEARING FOR**
21 **APPOINTMENT OF GUARDIAN FOR ADULT.--**

22 A. On filing of a petition under Section 302 of the
23 Uniform Guardianship, Conservatorship and Other Protective
24 Arrangements Act for appointment of a guardian for an adult,
25 the court shall set a date, time and place for hearing the

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1 petition.

2 B. A copy of a petition under Section 302 of the
3 Uniform Guardianship, Conservatorship and Other Protective
4 Arrangements Act and notice of a hearing on the petition shall
5 be served personally on the respondent. The notice shall
6 inform the respondent of the respondent's rights at the
7 hearing, including the right to an attorney and to attend the
8 hearing. The notice shall include a description of the nature,
9 purpose and consequences of granting the petition. The court
10 shall not grant the petition if notice substantially complying
11 with this subsection is not served on the respondent.

12 C. In a proceeding on a petition under Section 302
13 of the Uniform Guardianship, Conservatorship and Other
14 Protective Arrangements Act, the notice required under
15 Subsection B of this section shall be given to the persons
16 required to be listed in the petition under Paragraphs (1)
17 through (3) of Subsection B of Section 302 of that act and any
18 other person interested in the respondent's welfare the court
19 determines. Failure to give notice under this subsection does
20 not preclude the court from appointing a guardian.

21 D. After the appointment of a guardian, notice of a
22 hearing on a petition for an order under this article together
23 with a copy of the petition shall be given to:

- 24 (1) the adult subject to guardianship;
25 (2) the guardian; and

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1 (3) any other person the court determines.

2 SECTION 304. [NEW MATERIAL] APPOINTMENT AND ROLE OF
3 VISITOR.--

4 A. On receipt of a petition under Section 302 of
5 the Uniform Guardianship, Conservatorship and Other Protective
6 Arrangements Act for appointment of a guardian for an adult,
7 the court shall appoint a visitor. The visitor shall be an
8 individual with training or experience in the type of
9 abilities, limitations and needs alleged in the petition.

10 B. A visitor appointed under Subsection A of this
11 section shall interview the respondent in person and, in a
12 manner the respondent is best able to understand:

13 (1) explain to the respondent the substance of
14 the petition, the nature, purpose and effect of the proceeding,
15 the respondent's rights at the hearing on the petition and the
16 general powers and duties of a guardian;

17 (2) determine the respondent's views about the
18 appointment sought by the petitioner, including views about a
19 proposed guardian, the guardian's proposed powers and duties
20 and the scope and duration of the proposed guardianship;

21 (3) inform the respondent of the respondent's
22 right to employ and consult with an attorney at the
23 respondent's expense and the right to request a court-appointed
24 attorney; and

25 (4) inform the respondent that all costs and

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1 expenses of the proceeding, including respondent's attorney's
2 fees, may be paid from the respondent's assets.

3 C. The visitor appointed under Subsection A of this
4 section shall:

5 (1) interview the petitioner and proposed
6 guardian, if any;

7 (2) visit the respondent's present dwelling
8 and any dwelling in which it is reasonably believed the
9 respondent will live if the appointment is made;

10 (3) obtain information from any physician or
11 other person known to have treated, advised or assessed the
12 respondent's relevant physical or mental condition; and

13 (4) investigate the allegations in the
14 petition and any other matter relating to the petition the
15 court directs.

16 D. A visitor appointed under Subsection A of this
17 section promptly shall file a report in a record with the court
18 that includes:

19 (1) a summary of self-care and independent-
20 living tasks the respondent can manage without assistance or
21 with existing supports, could manage with the assistance of
22 appropriate supportive services, technological assistance or
23 supported decision making and cannot manage;

24 (2) a recommendation regarding the
25 appropriateness of guardianship, including whether a protective

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1 arrangement instead of guardianship or other less restrictive
2 alternative for meeting the respondent's needs is available
3 and:

4 (a) if a guardianship is recommended,
5 whether it should be full or limited; and

6 (b) if a limited guardianship is
7 recommended, the powers to be granted to the guardian;

8 (3) a statement of the qualifications of the
9 proposed guardian and whether the respondent approves or
10 disapproves of the proposed guardian;

11 (4) a statement whether the proposed dwelling
12 meets the respondent's needs and whether the respondent has
13 expressed a preference as to residence;

14 (5) a recommendation whether a professional
15 evaluation under Section 306 of the Uniform Guardianship,
16 Conservatorship and Other Protective Arrangements Act is
17 necessary;

18 (6) a statement whether the respondent is able
19 to attend a hearing at the location court proceedings typically
20 are held;

21 (7) a statement whether the respondent is able
22 to participate in a hearing and that identifies any technology
23 or other form of support that would enhance the respondent's
24 ability to participate; and

25 (8) any other matter the court directs.

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1 SECTION 305. [NEW MATERIAL] APPOINTMENT AND ROLE OF
2 ATTORNEY FOR ADULT.--

3 A. Unless the respondent in a proceeding for
4 appointment of a guardian for an adult is represented by an
5 attorney, the court shall appoint an attorney to represent the
6 respondent, regardless of the respondent's ability to pay.

7 B. An attorney representing the respondent in a
8 proceeding for appointment of a guardian for an adult shall:

9 (1) make reasonable efforts to ascertain the
10 respondent's wishes;

11 (2) advocate for the respondent's wishes to
12 the extent reasonably ascertainable; and

13 (3) if the respondent's wishes are not
14 reasonably ascertainable, advocate for the result that is the
15 least restrictive in type, duration and scope, consistent with
16 the respondent's interests.

17 SECTION 306. [NEW MATERIAL] PROFESSIONAL EVALUATION.--

18 A. At or before a hearing on a petition for a
19 guardianship for an adult, the court shall order a professional
20 evaluation of the respondent:

21 (1) if the respondent requests the evaluation;
22 or

23 (2) in other cases, unless the court finds
24 that it has sufficient information to determine the
25 respondent's needs and abilities without the evaluation.

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1 B. If the court orders an evaluation under
2 Subsection A of this section, the respondent shall be examined
3 by a licensed physician, psychologist, social worker or other
4 individual appointed by the court who is qualified to evaluate
5 the respondent's alleged cognitive and functional abilities and
6 limitations and will not be advantaged or disadvantaged by a
7 decision to grant the petition or otherwise have a conflict of
8 interest. The individual conducting the evaluation promptly
9 shall file report in a record with the court. Unless otherwise
10 directed by the court, the report shall contain:

11 (1) a description of the nature, type and
12 extent of the respondent's cognitive and functional abilities
13 and limitations;

14 (2) an evaluation of the respondent's mental
15 and physical condition and, if appropriate, educational
16 potential, adaptive behavior and social skills;

17 (3) a prognosis for improvement and
18 recommendation for the appropriate treatment, support or
19 habilitation plan; and

20 (4) the date of the examination on which the
21 report is based.

22 C. The respondent may decline to participate in an
23 evaluation ordered under Subsection A of this section.

24 **SECTION 307. [NEW MATERIAL] ATTENDANCE AND RIGHTS AT**
25 **HEARING.--**

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1 A. Except as otherwise provided in Subsection B of
2 this section, a hearing under Section 303 of the Uniform
3 Guardianship, Conservatorship and Other Protective Arrangements
4 Act shall not proceed unless the respondent attends the
5 hearing. If it is not reasonably feasible for the respondent
6 to attend a hearing at the location court proceedings typically
7 are held, the court shall make reasonable efforts to hold the
8 hearing at an alternative location convenient to the respondent
9 or allow the respondent to attend the hearing using real-time
10 audio-visual technology.

11 B. A hearing under Section 303 of the Uniform
12 Guardianship, Conservatorship and Other Protective Arrangements
13 Act may proceed without the respondent in attendance if the
14 court finds by clear and convincing evidence that:

15 (1) the respondent consistently and repeatedly
16 has refused to attend the hearing after having been fully
17 informed of the right to attend and the potential consequences
18 of failing to do so; or

19 (2) there is no practicable way for the
20 respondent to attend and participate in the hearing even with
21 appropriate supportive services and technological assistance.

22 C. The respondent may be assisted in a hearing
23 under Section 303 of the Uniform Guardianship, Conservatorship
24 and Other Protective Arrangements Act by a person or persons of
25 the respondent's choosing, assistive technology or an

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1 interpreter or translator or a combination of these supports.
2 If assistance would facilitate the respondent's participation
3 in the hearing, but is not otherwise available to the
4 respondent, the court shall make reasonable efforts to provide
5 it.

6 D. The respondent has a right to choose an attorney
7 to represent the respondent at a hearing under Section 303 of
8 the Uniform Guardianship, Conservatorship and Other Protective
9 Arrangements Act.

10 E. At a hearing held under Section 303 of the
11 Uniform Guardianship, Conservatorship and Other Protective
12 Arrangements Act, the respondent may:

13 (1) present evidence and subpoena witnesses
14 and documents;

15 (2) examine witnesses, including any court-
16 appointed evaluator and the visitor; and

17 (3) otherwise participate in the hearing.

18 F. Unless excused by the court for good cause, a
19 proposed guardian shall attend a hearing under Section 303 of
20 the Uniform Guardianship, Conservatorship and Other Protective
21 Arrangements Act.

22 G. A hearing under Section 303 of the Uniform
23 Guardianship, Conservatorship and Other Protective Arrangements
24 Act shall be closed on request of the respondent and a showing
25 of good cause.

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1 H. Any person may request to participate in a
2 hearing under Section 303 of the Uniform Guardianship,
3 Conservatorship and Other Protective Arrangements Act. The
4 court may grant the request, with or without a hearing, on
5 determining that the best interest of the respondent will be
6 served. The court may impose appropriate conditions on the
7 person's participation.

8 SECTION 308. [NEW MATERIAL] CONFIDENTIALITY OF RECORDS.--

9 A. The existence of a proceeding for or the
10 existence of a guardianship for an adult is a matter of public
11 record unless the court seals the record after:

12 (1) the respondent or individual subject to
13 guardianship requests the record be sealed; and

14 (2) either:

15 (a) the petition for guardianship is
16 dismissed; or

17 (b) the guardianship is terminated.

18 B. An adult subject to a proceeding for a
19 guardianship, whether or not a guardian is appointed, an
20 attorney designated by the adult and a person entitled to
21 notice under Subsection E of Section 310 of the Uniform
22 Guardianship, Conservatorship and Other Protective Arrangements
23 Act or a subsequent order are entitled to access court records
24 of the proceeding and resulting guardianship, including the
25 guardian's plan under Section 316 of that act and report under

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1 Section 317 of that act. A person not otherwise entitled to
2 access court records under this subsection for good cause may
3 petition the court for access to court records of the
4 guardianship, including the guardian's report and plan. The
5 court shall grant access if access is in the best interest of
6 the respondent or adult subject to guardianship or furthers the
7 public interest and does not endanger the welfare or financial
8 interests of the adult.

9 C. A report under Section 304 of the Uniform
10 Guardianship, Conservatorship and Other Protective Arrangements
11 Act of a visitor or a professional evaluation under Section 306
12 of that act is confidential and shall be sealed on filing, but
13 is available to:

- 14 (1) the court;
- 15 (2) the individual who is the subject of the
16 report or evaluation, without limitation as to use;
- 17 (3) the petitioner, visitor and petitioner's
18 and respondent's attorneys, for purposes of the proceeding;
- 19 (4) unless the court orders otherwise, an
20 agent appointed under a power of attorney for health care or
21 power of attorney for finances in which the respondent is the
22 principal; and
- 23 (5) any other person if it is in the public
24 interest or for a purpose the court orders for good cause.

25 SECTION 309. [NEW MATERIAL] WHO MAY BE GUARDIAN OF

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1 ADULT--ORDER OF PRIORITY.--

2 A. Except as otherwise provided in Subsection C of
3 this section, the court in appointing a guardian for an adult
4 shall consider persons qualified to be guardian in the
5 following order of priority:

6 (1) a guardian, other than a temporary or
7 emergency guardian, currently acting for the respondent in
8 another jurisdiction;

9 (2) a person nominated as guardian by the
10 respondent, including the respondent's most recent nomination
11 made in a power of attorney;

12 (3) an agent appointed by the respondent under
13 a power of attorney for health care;

14 (4) a spouse of the respondent; and

15 (5) a family member or other individual who
16 has shown special care and concern for the respondent.

17 B. If two or more persons have equal priority under
18 Subsection A of this section, the court shall select as
19 guardian the person the court considers best qualified. In
20 determining the best qualified person, the court shall consider
21 the person's relationship with the respondent, the person's
22 skills, the expressed wishes of the respondent, the extent to
23 which the person and the respondent have similar values and
24 preferences and the likelihood the person will be able to
25 perform the duties of a guardian successfully.

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1 C. The court, acting in the best interest of the
2 respondent, may decline to appoint as guardian a person having
3 priority under Subsection A of this section and appoint a
4 person having a lower priority or no priority.

5 D. A person that provides paid services to the
6 respondent, or an individual who is employed by a person that
7 provides paid services to the respondent or is the spouse,
8 domestic partner, parent or child of an individual who provides
9 or is employed to provide paid services to the respondent,
10 shall not be appointed as guardian unless:

11 (1) the individual is related to the
12 respondent by blood, marriage or adoption; or

13 (2) the court finds by clear and convincing
14 evidence that the person is the best qualified person available
15 for appointment and the appointment is in the best interest of
16 the respondent.

17 E. An owner, operator or employee of a long-term
18 care facility at which the respondent is receiving care shall
19 not be appointed as guardian unless the owner, operator or
20 employee is related to the respondent by blood, marriage or
21 adoption.

22 SECTION 310. [NEW MATERIAL] ORDER OF APPOINTMENT OF
23 GUARDIAN.--

24 A. A court order appointing a guardian for an adult
25 shall:

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1 (1) include a specific finding that clear and
2 convincing evidence established that the identified needs of
3 the respondent cannot be met by a protective arrangement
4 instead of guardianship or other less restrictive alternative,
5 including use of appropriate supportive services, technological
6 assistance or supported decision making;

7 (2) include a specific finding that clear and
8 convincing evidence established that the respondent was given
9 proper notice of the hearing on the petition;

10 (3) state whether the adult subject to
11 guardianship retains the right to vote and, if the adult does
12 not retain the right to vote, include findings that support
13 removing that right; and

14 (4) state whether the adult subject to
15 guardianship retains the right to marry and, if the adult does
16 not retain the right to marry, include findings that support
17 removing that right.

18 B. An adult subject to guardianship retains the
19 right to vote unless the order under Subsection A of this
20 section includes the statement required by Paragraph (3) of
21 Subsection A of this section. An adult subject to guardianship
22 retains the right to marry unless the order under Subsection A
23 of this section includes the findings required by Paragraph (4)
24 of Subsection A of this section.

25 C. A court order establishing a full guardianship

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1 for an adult shall state the basis for granting a full
2 guardianship and include specific findings that support the
3 conclusion that a limited guardianship would not meet the
4 functional needs of the adult subject to guardianship.

5 D. A court order establishing a limited
6 guardianship for an adult shall state the specific powers
7 granted to the guardian.

8 E. The court, as part of an order establishing a
9 guardianship for an adult, shall identify any person that
10 subsequently is entitled to:

11 (1) notice of the rights of the adult under
12 Subsection B of Section 311 of the Uniform Guardianship,
13 Conservatorship and Other Protective Arrangements Act;

14 (2) notice of a change in the primary dwelling
15 of the adult;

16 (3) notice that the guardian has delegated:

17 (a) the power to manage the care of the
18 adult;

19 (b) the power to make decisions about
20 where the adult lives;

21 (c) the power to make major medical
22 decisions on behalf of the adult;

23 (d) a power that requires court approval
24 under Section 315 of the Uniform Guardianship, Conservatorship
25 and Other Protective Arrangements Act; or

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- 1 (e) substantially all powers of the
- 2 guardian;
- 3 (4) notice that the guardian will be
- 4 unavailable to visit the adult for more than two months or
- 5 unavailable to perform the guardian's duties for more than one
- 6 month;
- 7 (5) a copy of the guardian's plan under
- 8 Section 316 of the Uniform Guardianship, Conservatorship and
- 9 Other Protective Arrangements Act and the guardian's report
- 10 under Section 317 of that act;
- 11 (6) access to court records relating to the
- 12 guardianship;
- 13 (7) notice of the death or significant change
- 14 in the condition of the adult;
- 15 (8) notice that the court has limited or
- 16 modified the powers of the guardian; and
- 17 (9) notice of the removal of the guardian.

18 F. A spouse and adult children of an adult subject

19 to guardianship are entitled to notice under Subsection E of

20 this section unless the court determines notice would be

21 contrary to the preferences or prior directions of the adult

22 subject to guardianship or not in the best interest of the

23 adult.

24 SECTION 311. [NEW MATERIAL] NOTICE OF ORDER OF

25 APPOINTMENT--RIGHTS.--

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1 A. A guardian appointed under Section 309 of the
2 Uniform Guardianship, Conservatorship and Other Protective
3 Arrangements Act shall give the adult subject to guardianship
4 and all other persons given notice under Section 303 of that
5 act a copy of the order of appointment, together with notice of
6 the right to request termination or modification. The order
7 and notice shall be given not later than fourteen days after
8 the appointment.

9 B. Not later than thirty days after appointment of
10 a guardian under Section 309 of the Uniform Guardianship,
11 Conservatorship and Other Protective Arrangements Act, the
12 court shall give to the adult subject to guardianship, the
13 guardian and any other person entitled to notice under
14 Subsection E of Section 310 of that act or a subsequent order a
15 statement of the rights of the adult subject to guardianship
16 and procedures to seek relief if the adult is denied those
17 rights. The statement shall be in at least sixteen-point font,
18 in plain language and, to the extent feasible, in a language in
19 which the adult subject to guardianship is proficient. The
20 statement shall notify the adult subject to guardianship of the
21 right to:

22 (1) seek termination or modification of the
23 guardianship, or removal of the guardian and choose an attorney
24 to represent the adult in these matters;

25 (2) be involved in decisions affecting the

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1 adult, including decisions about the adult's care, dwelling,
2 activities or social interactions, to the extent reasonably
3 feasible;

4 (3) be involved in health care decision making
5 to the extent reasonably feasible and supported in
6 understanding the risks and benefits of health care options to
7 the extent reasonably feasible;

8 (4) be notified at least fourteen days before
9 a change in the adult's primary dwelling or permanent move to a
10 nursing home, mental health treatment facility or other
11 facility that places restrictions on the individual's ability
12 to leave or have visitors unless the change or move is proposed
13 in the guardian's plan under Section 316 of the Uniform
14 Guardianship, Conservatorship and Other Protective Arrangements
15 Act or authorized by the court by specific order;

16 (5) object to a change or move described in
17 Paragraph (4) of this subsection and the process for objecting;

18 (6) communicate, visit or interact with
19 others, including receiving visitors and making or receiving
20 telephone calls, personal mail or electronic communications,
21 including through social media, unless:

22 (a) the guardian has been authorized by
23 the court by specific order to restrict communications, visits
24 or interactions;

25 (b) a protective order or protective

1 arrangement instead of guardianship is in effect that limits
2 contact between the adult and a person; or

3 (c) the guardian has good cause to
4 believe restriction is necessary because interaction with a
5 specified person poses a risk of significant physical,
6 psychological or financial harm to the adult and the
7 restriction is: 1) for a period of not more than seven
8 business days if the person has a family or preexisting social
9 relationship with the adult; or 2) for a period of not more
10 than sixty days if the person does not have a family or
11 preexisting social relationship with the adult;

12 (7) receive a copy of the guardian's plan
13 under Section 316 of the Uniform Guardianship, Conservatorship
14 and Other Protective Arrangements Act and the guardian's report
15 under Section 317 of that act; and

16 (8) object to the guardian's plan or report.

17 SECTION 312. [NEW MATERIAL] EMERGENCY GUARDIAN.--

18 A. On its own after a petition has been filed under
19 Section 302 of the Uniform Guardianship, Conservatorship and
20 Other Protective Arrangements Act, or on petition by a person
21 interested in an adult's welfare, the court may appoint an
22 emergency guardian for the adult if the court finds:

23 (1) appointment of an emergency guardian is
24 likely to prevent substantial harm to the adult's physical
25 health, safety or welfare;

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1 (2) no other person appears to have authority
2 and willingness to act in the circumstances; and

3 (3) there is reason to believe that a basis
4 for appointment of a guardian under Section 301 of the Uniform
5 Guardianship, Conservatorship and Other Protective Arrangements
6 Act exists.

7 B. The duration of authority of an emergency
8 guardian for an adult shall not exceed sixty days, and the
9 emergency guardian may exercise only the powers specified in
10 the order of appointment. The emergency guardian's authority
11 may be extended once for not more than sixty days if the court
12 finds that the conditions for appointment of an emergency
13 guardian in Subsection A of this section continue.

14 C. Immediately on filing of a petition for an
15 emergency guardian for an adult, the court shall appoint an
16 attorney to represent the respondent in the proceeding. Except
17 as otherwise provided in Subsection D of this section,
18 reasonable notice of the date, time and place of a hearing on
19 the petition shall be given to the respondent, the respondent's
20 attorney and any other person the court determines.

21 D. The court may appoint an emergency guardian for
22 an adult without notice to the adult and any attorney for the
23 adult only if the court finds from an affidavit or testimony
24 that the respondent's physical health, safety or welfare will
25 be substantially harmed before a hearing with notice on the

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1 appointment can be held. If the court appoints an emergency
2 guardian without giving notice under Subsection C of this
3 section, the court shall:

4 (1) give notice of the appointment not later
5 than forty-eight hours after the appointment to:

- 6 (a) the respondent;
7 (b) the respondent's attorney; and
8 (c) any other person the court
9 determines; and

10 (2) hold a hearing on the appropriateness of
11 the appointment not later than five days after the appointment.

12 E. Appointment of an emergency guardian under this
13 section is not a determination that a basis exists for
14 appointment of a guardian under Section 301 of the Uniform
15 Guardianship, Conservatorship and Other Protective Arrangements
16 Act.

17 F. The court may remove an emergency guardian
18 appointed under this section at any time. The emergency
19 guardian shall make any report the court requires.

20 SECTION 313. [NEW MATERIAL] DUTIES OF GUARDIAN FOR
21 ADULT.--

22 A. A guardian for an adult is a fiduciary. Except
23 as otherwise limited by the court, a guardian for an adult
24 shall make decisions regarding the support, care, education,
25 health and welfare of the adult subject to guardianship to the

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1 extent necessitated by the adult's limitations.

2 B. A guardian for an adult shall promote the self-
3 determination of the adult and, to the extent reasonably
4 feasible, encourage the adult to participate in decisions, act
5 on the adult's own behalf and develop or regain the capacity to
6 manage the adult's personal affairs. In furtherance of this
7 duty, the guardian shall:

8 (1) become or remain personally acquainted
9 with the adult and maintain sufficient contact with the adult,
10 including through regular visitation, to know the adult's
11 abilities, limitations, needs, opportunities and physical and
12 mental health;

13 (2) to the extent reasonably feasible,
14 identify the values and preferences of the adult and involve
15 the adult in decisions affecting the adult, including decisions
16 about the adult's care, dwelling, activities or social
17 interactions; and

18 (3) make reasonable efforts to identify and
19 facilitate supportive relationships and services for the adult.

20 C. A guardian for an adult at all times shall
21 exercise reasonable care, diligence and prudence when acting on
22 behalf of or making decisions for the adult. In furtherance of
23 this duty, the guardian shall:

24 (1) take reasonable care of the personal
25 effects, pets and service or support animals of the adult and

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1 bring a proceeding for a conservatorship or protective
2 arrangement instead of conservatorship if necessary to protect
3 the adult's property;

4 (2) expend funds and other property of the
5 adult received by the guardian for the adult's current needs
6 for support, care, education, health and welfare;

7 (3) conserve any funds and other property of
8 the adult not expended under Paragraph (2) of this subsection
9 for the adult's future needs, but if a conservator has been
10 appointed for the adult, pay the funds and other property at
11 least quarterly to the conservator to be conserved for the
12 adult's future needs; and

13 (4) monitor the quality of services, including
14 long-term care services, provided to the adult.

15 D. In making a decision for an adult subject to
16 guardianship, the guardian shall make the decision the guardian
17 reasonably believes the adult would make if the adult were able
18 unless doing so would unreasonably harm or endanger the welfare
19 or personal or financial interests of the adult. To determine
20 the decision the adult subject to guardianship would make if
21 able, the guardian shall consider the adult's previous or
22 current directions, preferences, opinions, values and actions,
23 to the extent actually known or reasonably ascertainable by the
24 guardian.

25 E. If a guardian for an adult cannot make a

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1 decision under Subsection D of this section because the
2 guardian does not know and cannot reasonably determine the
3 decision the adult probably would make if able, or the guardian
4 reasonably believes the decision the adult would make would
5 unreasonably harm or endanger the welfare or personal or
6 financial interests of the adult, the guardian shall act in
7 accordance with the best interest of the adult. In determining
8 the best interest of the adult, the guardian shall consider:

9 (1) information received from professionals
10 and persons that demonstrate sufficient interest in the welfare
11 of the adult;

12 (2) other information the guardian believes
13 the adult would have considered if the adult were able to act;
14 and

15 (3) other factors a reasonable person in the
16 circumstances of the adult would consider, including
17 consequences for others.

18 F. A guardian for an adult immediately shall notify
19 the court if the condition of the adult has changed so that the
20 adult is capable of exercising rights previously removed.

21 SECTION 314. [NEW MATERIAL] POWERS OF GUARDIAN FOR
22 ADULT.--

23 A. Except as limited by court order, a guardian for
24 an adult may:

25 (1) apply for and receive funds and benefits

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1 for the support of the adult, unless a conservator is appointed
2 for the adult and the application or receipt is within the
3 powers of the conservator;

4 (2) unless inconsistent with a court order,
5 establish the adult's place of dwelling;

6 (3) consent to health or other care, treatment
7 or service for the adult;

8 (4) if a conservator for the adult has not
9 been appointed, commence a proceeding, including an
10 administrative proceeding, or take other appropriate action to
11 compel another person to support the adult or pay funds for the
12 adult's benefit;

13 (5) to the extent reasonable, delegate to the
14 adult responsibility for a decision affecting the adult's well-
15 being; and

16 (6) receive personally identifiable health
17 care information regarding the adult.

18 B. The court by specific order may authorize a
19 guardian for an adult to consent to the adoption of the adult.

20 C. The court by specific order may authorize a
21 guardian for an adult to:

22 (1) consent or withhold consent to the
23 marriage of the adult if the adult's right to marry has been
24 removed under Section 310 of the Uniform Guardianship,
25 Conservatorship and Other Protective Arrangements Act;

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1 (2) petition for divorce, dissolution or
2 annulment of marriage of the adult or a declaration of
3 invalidity of the adult's marriage; or

4 (3) support or oppose a petition for divorce,
5 dissolution or annulment of marriage of the adult or a
6 declaration of invalidity of the adult's marriage.

7 D. In determining whether to authorize a power
8 under Subsection B of this section, the court shall consider
9 whether the underlying act would be in accordance with the
10 adult's preferences, values and prior directions and whether
11 the underlying act would be in the adult's best interest.

12 E. In exercising a guardian's power under Paragraph
13 (2) of Subsection A of this section to establish the adult's
14 place of dwelling, the guardian shall:

15 (1) select a residential setting the guardian
16 believes the adult would select if the adult were able, in
17 accordance with the decision-making standard in Subsections D
18 and E of Section 313 of the Uniform Guardianship,
19 Conservatorship and Other Protective Arrangements Act. If the
20 guardian does not know and cannot reasonably determine what
21 setting the adult subject to guardianship probably would choose
22 if able, or the guardian reasonably believes the decision the
23 adult would make would unreasonably harm or endanger the
24 welfare or personal or financial interests of the adult, the
25 guardian shall choose in accordance with Subsection E of that

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1 section a residential setting that is consistent with the
2 adult's best interest;

3 (2) in selecting among residential settings,
4 give priority to a residential setting in a location that will
5 allow the adult to interact with persons important to the adult
6 and meet the adult's needs in the least restrictive manner
7 reasonably feasible unless to do so would be inconsistent with
8 the decision-making standard in Subsections D and E of Section
9 313 of the Uniform Guardianship, Conservatorship and Other
10 Protective Arrangements Act;

11 (3) not later than thirty days after a change
12 in the dwelling of the adult:

13 (a) give notice of the change to the
14 court, the adult and any person identified as entitled to the
15 notice in the court order appointing the guardian or a
16 subsequent order; and

17 (b) include in the notice the address
18 and nature of the new dwelling and state whether the adult
19 received advance notice of the change and whether the adult
20 objected to the change;

21 (4) establish or move the permanent place of
22 dwelling of the adult to a nursing home, mental health
23 treatment facility or other facility that places restrictions
24 on the adult's ability to leave or have visitors only if:

25 (a) the establishment or move is in the

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1 guardian's plan under Section 316 of the Uniform Guardianship,
2 Conservatorship and Other Protective Arrangements Act;

3 (b) the court authorizes the
4 establishment or move; or

5 (c) the guardian gives notice of the
6 establishment or move at least fourteen days before the
7 establishment or move to the adult and all persons entitled to
8 notice under Paragraph (2) of Subsection E of Section 310 of
9 the Uniform Guardianship, Conservatorship and Other Protective
10 Arrangements Act or a subsequent order and no objection is
11 filed;

12 (5) establish or move the place of dwelling of
13 the adult outside New Mexico only if consistent with the
14 guardian's plan and authorized by the court by specific order;
15 and

16 (6) take action that would result in the sale
17 of or surrender of the lease to the primary dwelling of the
18 adult only if:

19 (a) the action is specifically in the
20 guardian's plan under Section 316 of the Uniform Guardianship,
21 Conservatorship and Other Protective Arrangements Act;

22 (b) the court authorizes the action by
23 specific order; or

24 (c) notice of the action was given at
25 least fourteen days before the action to the adult and all

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1 persons entitled to the notice under Paragraph (2) of
2 Subsection E of Section 310 of the Uniform Guardianship,
3 Conservatorship and Other Protective Arrangements Act or a
4 subsequent order and no objection has been filed.

5 F. In exercising a guardian's power under Paragraph
6 (3) of Subsection A of this section to make health care
7 decisions, the guardian shall:

8 (1) involve the adult in decision making to
9 the extent reasonably feasible, including, when practicable, by
10 encouraging and supporting the adult in understanding the risks
11 and benefits of health care options;

12 (2) defer to a decision by an agent under a
13 power of attorney for health care signed by the adult and
14 cooperate to the extent feasible with the agent making the
15 decision; and

16 (3) take into account:

17 (a) the risks and benefits of treatment
18 options; and

19 (b) the current and previous wishes and
20 values of the adult, if known or reasonably ascertainable by
21 the guardian.

22 SECTION 315. [NEW MATERIAL] SPECIAL LIMITATIONS ON
23 GUARDIAN'S POWER.--

24 A. Unless authorized by the court by specific
25 order, a guardian for an adult does not have the power to

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1 revoke or amend a power of attorney for health care or power of
2 attorney for finances signed by the adult. If a power of
3 attorney for health care is in effect, unless there is a court
4 order to the contrary, a health care decision of an agent takes
5 precedence over that of the guardian and the guardian shall
6 cooperate with the agent to the extent feasible. If a power of
7 attorney for finances is in effect, unless there is a court
8 order to the contrary, a decision by the agent that the agent
9 is authorized to make under the power of attorney for finances
10 takes precedence over that of the guardian and the guardian
11 shall cooperate with the agent to the extent feasible.

12 B. A guardian for an adult shall not initiate the
13 commitment of the adult to a mental health treatment facility
14 except in accordance with the state's procedure for involuntary
15 civil commitment.

16 C. A guardian for an adult shall not restrict the
17 ability of the adult to communicate, visit or interact with
18 others, including receiving visitors and making or receiving
19 telephone calls, personal mail or electronic communications,
20 including through social media or participating in social
21 activities, unless:

- 22 (1) authorized by the court by specific order;
23 (2) a protective order or a protective
24 arrangement instead of guardianship is in effect that limits
25 contact between the adult and a person; or

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1 (3) the guardian has good cause to believe
2 restriction is necessary because interaction with a specified
3 person poses a risk of significant physical, psychological or
4 financial harm to the adult and the restriction is:

5 (a) for a period of not more than seven
6 business days if the person has a family or preexisting social
7 relationship with the adult; or

8 (b) for a period of not more than sixty
9 days if the person does not have a family or preexisting social
10 relationship with the adult.

11 SECTION 316. [NEW MATERIAL] GUARDIAN'S PLAN.--

12 A. A guardian for an adult, not later than sixty
13 days after appointment and when there is a significant change
14 in circumstances, or the guardian seeks to deviate
15 significantly from the guardian's plan, shall file with the
16 court a plan for the care of the adult. The plan shall be
17 based on the needs of the adult and take into account the best
18 interest of the adult as well as the adult's preferences,
19 values and prior directions, to the extent known to or
20 reasonably ascertainable by the guardian. The guardian shall
21 include in the plan:

22 (1) the living arrangement, services and
23 supports the guardian expects to arrange, facilitate or
24 continue for the adult;

25 (2) social and educational activities the

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1 guardian expects to facilitate on behalf of the adult;

2 (3) any person with whom the adult has a close
3 personal relationship or relationship involving regular
4 visitation and any plan the guardian has for facilitating
5 visits with the person;

6 (4) the anticipated nature and frequency of
7 the guardian's visits and communication with the adult;

8 (5) goals for the adult, including any goal
9 related to the restoration of the adult's rights and how the
10 guardian anticipates achieving the goals;

11 (6) whether the adult has an existing plan
12 and, if so, whether the guardian's plan is consistent with the
13 adult's plan; and

14 (7) a statement or list of the amount the
15 guardian proposes to charge for each service the guardian
16 anticipates providing to the adult.

17 B. A guardian shall give notice of the filing of
18 the guardian's plan under Subsection A of this section,
19 together with a copy of the plan, to the adult subject to
20 guardianship, a person entitled to notice under Subsection E of
21 Section 310 of the Uniform Guardianship, Conservatorship and
22 Other Protective Arrangements Act or a subsequent order and any
23 other person the court determines. The notice shall include a
24 statement of the right to object to the plan and be given not
25 later than fourteen days after the filing.

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1 C. An adult subject to guardianship and any person
2 entitled under Subsection B of this section to receive notice
3 and a copy of the guardian's plan may object to the plan.

4 D. A guardian shall petition the court for approval
5 of a plan filed under Subsection A of this section. The court
6 shall review the plan and determine whether to approve it or
7 require a new plan. In deciding whether to approve the plan,
8 the court shall consider an objection under Subsection C of
9 this section and whether the plan is consistent with the
10 guardian's duties and powers under Sections 313 and 314 of the
11 Uniform Guardianship, Conservatorship and Other Protective
12 Arrangements Act. The court shall not approve the plan
13 without:

14 (1) notice to the adult subject to
15 guardianship, a person entitled to notice under Subsection E of
16 Section 310 of the Uniform Guardianship, Conservatorship and
17 Other Protective Arrangements Act or under a subsequent order
18 and any other person the court deems entitled to notice; and

19 (2) a hearing.

20 E. After the guardian's plan filed under this
21 section is approved by the court, the guardian shall provide a
22 copy of the plan to the adult subject to guardianship, a person
23 entitled to notice under Subsection E of Section 310 of the
24 Uniform Guardianship, Conservatorship and Other Protective
25 Arrangements Act or a subsequent order and any other person the

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1 court determines.

2 SECTION 317. [NEW MATERIAL] GUARDIAN'S REPORT--MONITORING
3 OF GUARDIANSHIP.--

4 A. A guardian for an adult, not later than sixty
5 days after appointment and at least annually thereafter, shall
6 file with the court a report in a record regarding the
7 condition of the adult and accounting for funds and other
8 property in the guardian's possession or subject to the
9 guardian's control.

10 B. A report under Subsection A of this section
11 shall state or contain:

12 (1) the mental, physical and social condition
13 of the adult;

14 (2) the living arrangements of the adult
15 during the reporting period;

16 (3) a summary of the supported decision
17 making, technological assistance, medical services, educational
18 and vocational services and other supports and services
19 provided to the adult and the guardian's opinion as to the
20 adequacy of the adult's care;

21 (4) a summary of the guardian's visits with
22 the adult, including the dates of the visits;

23 (5) action taken on behalf of the adult;

24 (6) the extent to which the adult has
25 participated in decision making;

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1 (7) if the adult is living in a mental health
2 treatment facility or living in a facility that provides the
3 adult with health care or other personal services, whether the
4 guardian considers the facility's current plan for support,
5 care, treatment or habilitation consistent with the adult's
6 preferences, values, prior directions and best interest;

7 (8) anything of more than de minimis value
8 that the guardian, any individual who resides with the guardian
9 or the spouse, parent, child or sibling of the guardian has
10 received from an individual providing goods or services to the
11 adult;

12 (9) if the guardian delegated a power to an
13 agent, the power delegated and the reason for the delegation;

14 (10) any business relation the guardian has
15 with a person the guardian has paid or that has benefited from
16 the property of the adult;

17 (11) a copy of the guardian's most recently
18 approved plan under Section 316 of the Uniform Guardianship,
19 Conservatorship and Other Protective Arrangements Act and a
20 statement whether the guardian has deviated from the plan and,
21 if so, how the guardian has deviated and why;

22 (12) plans for future care and support of the
23 adult;

24 (13) a recommendation as to the need for
25 continued guardianship and any recommended change in the scope

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1 of the guardianship; and

2 (14) whether any co-guardian or successor
3 guardian appointed to serve when a designated event occurs is
4 alive and able to serve.

5 C. The court may appoint a visitor to review a
6 report submitted under this section or a guardian's plan
7 submitted under Section 316 of the Uniform Guardianship,
8 Conservatorship and Other Protective Arrangements Act,
9 interview the guardian or adult subject to guardianship or
10 investigate any other matter involving the guardianship.

11 D. Notice of the filing under this section of a
12 guardian's report, together with a copy of the report, shall be
13 given to the adult subject to guardianship, a person entitled
14 to notice under Subsection E of Section 310 of the Uniform
15 Guardianship, Conservatorship and Other Protective Arrangements
16 Act or a subsequent order and any other person the court
17 determines. The notice and report shall be given not later
18 than fourteen days after the filing.

19 E. The court may establish procedures for
20 monitoring a report submitted under this section and may review
21 each report at any time to determine whether:

22 (1) the report provides sufficient information
23 to establish the guardian has complied with the guardian's
24 duties;

25 (2) the guardianship should continue; and

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1 (3) the guardian's requested fees, if any,
2 should be approved.

3 F. If the court determines there is reason to
4 believe a guardian for an adult has not complied with the
5 guardian's duties or the guardianship should be modified or
6 terminated, the court:

7 (1) shall notify the adult, the guardian and
8 any other person entitled to notice under Subsection E of
9 Section 310 of the Uniform Guardianship, Conservatorship and
10 Other Protective Arrangements Act or a subsequent order;

11 (2) may require additional information from
12 the guardian;

13 (3) may appoint a visitor to interview the
14 adult or guardian or investigate any matter involving the
15 guardianship; and

16 (4) consistent with Sections 318 and 319 of
17 the Uniform Guardianship, Conservatorship and Other Protective
18 Arrangements Act, may hold a hearing to consider removal of the
19 guardian, termination of the guardianship or a change in the
20 powers granted to the guardian or terms of the guardianship.

21 G. If the court has reason to believe fees
22 requested by a guardian for an adult are not reasonable, the
23 court shall hold a hearing to determine whether to adjust the
24 requested fees and give notice of the hearing to the adult
25 subject to guardianship, a person entitled to notice under

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1 Subsection E of Section 310 of the Uniform Guardianship,
2 Conservatorship and Other Protective Arrangements Act or under
3 a subsequent order and any other person the court deems
4 entitled to notice.

5 H. A guardian for an adult may petition the court
6 for approval of a report filed under this section and shall
7 petition the court for approval of an annual report, a report
8 filed upon resignation, removal or termination or a report
9 filed upon the court's direction. The court shall not approve
10 the report without:

11 (1) notice to the adult subject to
12 guardianship, a person entitled to notice under Subsection E of
13 Section 310 of the Uniform Guardianship, Conservatorship and
14 Other Protective Arrangements Act or under a subsequent order
15 and any other person the court deems entitled to notice; and

16 (2) a hearing.

17 SECTION 318. [NEW MATERIAL] REMOVAL OF GUARDIAN FOR
18 ADULT--APPOINTMENT OF SUCCESSOR.--

19 A. The court may remove a guardian for an adult for
20 failure to perform the guardian's duties or for other good
21 cause and appoint a successor guardian to assume the duties of
22 guardian.

23 B. The court shall hold a hearing to determine
24 whether to remove a guardian for an adult and appoint a
25 successor guardian on:

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1 (1) petition of the adult, guardian or person
2 interested in the welfare of the adult, that contains
3 allegations that, if true, would support a reasonable belief
4 that removal of the guardian and appointment of a successor
5 guardian may be appropriate, but the court may decline to hold
6 a hearing if a petition based on the same or substantially
7 similar facts was filed during the preceding six months;

8 (2) communication from the adult, guardian or
9 person interested in the welfare of the adult that supports a
10 reasonable belief that removal of the guardian and appointment
11 of a successor guardian may be appropriate; or

12 (3) determination by the court that a hearing
13 would be in the best interest of the adult.

14 C. Notice of a petition under Paragraph (1) of
15 Subsection B of this section shall be given to the adult
16 subject to guardianship, the guardian and any other person the
17 court determines.

18 D. An adult subject to guardianship who seeks to
19 remove the guardian and have a successor guardian appointed has
20 the right to choose an attorney to represent the adult in this
21 matter. If the adult is not represented by an attorney, the
22 court shall appoint an attorney under the same conditions as in
23 Section 305 of the Uniform Guardianship, Conservatorship and
24 Other Protective Arrangements Act. The court shall award
25 reasonable attorney's fees to the attorney for the adult as

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1 provided in Section 119 of that act.

2 E. In selecting a successor guardian for an adult,
3 the court shall follow the priorities under Section 309 of the
4 Uniform Guardianship, Conservatorship and Other Protective
5 Arrangements Act.

6 F. Not later than thirty days after appointing a
7 successor guardian, the court shall give notice of the
8 appointment to the adult subject to guardianship and any person
9 entitled to notice under Subsection E of Section 310 of the
10 Uniform Guardianship, Conservatorship and Other Protective
11 Arrangements Act or a subsequent order.

12 SECTION 319. [NEW MATERIAL] TERMINATION OR MODIFICATION
13 OF GUARDIANSHIP FOR ADULT.--

14 A. An adult subject to guardianship, the guardian
15 for the adult or a person interested in the welfare of the
16 adult may petition for:

17 (1) termination of the guardianship on the
18 ground that a basis for appointment under Section 301 of the
19 Uniform Guardianship, Conservatorship and Other Protective
20 Arrangements Act does not exist or termination would be in the
21 best interest of the adult or for other good cause; or

22 (2) modification of the guardianship on the
23 ground that the extent of protection or assistance granted is
24 not appropriate or for other good cause.

25 B. The court shall hold a hearing to determine

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1 whether termination or modification of a guardianship for an
2 adult is appropriate on:

3 (1) petition under Subsection A of this
4 section that contains allegations that, if true, would support
5 a reasonable belief that termination or modification of the
6 guardianship may be appropriate, but the court may decline to
7 hold a hearing if a petition based on the same or substantially
8 similar facts was filed during the preceding six months;

9 (2) communication from the adult, guardian or
10 person interested in the welfare of the adult that supports a
11 reasonable belief that termination or modification of the
12 guardianship may be appropriate, including because the
13 functional needs of the adult or supports or services available
14 to the adult have changed;

15 (3) a report from a guardian or conservator
16 that indicates that termination or modification may be
17 appropriate because the functional needs of the adult or
18 supports or services available to the adult have changed or a
19 protective arrangement instead of guardianship or other less
20 restrictive alternative for meeting the adult's needs is
21 available; or

22 (4) a determination by the court that a
23 hearing would be in the best interest of the adult.

24 C. Notice of a petition under Paragraph (1) of
25 Subsection B of this section shall be given to the adult

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1 subject to guardianship, the guardian and any other person the
2 court determines.

3 D. On presentation of prima facie evidence for
4 termination of a guardianship for an adult, the court shall
5 order termination unless it is proven that a basis for
6 appointment of a guardian under Section 301 of the Uniform
7 Guardianship, Conservatorship and Other Protective Arrangements
8 Act exists.

9 E. The court shall modify the powers granted to a
10 guardian for an adult if the powers are excessive or inadequate
11 due to a change in the abilities or limitations of the adult,
12 the adult's supports or other circumstances.

13 F. Unless the court otherwise orders for good
14 cause, before terminating or modifying a guardianship for an
15 adult, the court shall follow the same procedures to safeguard
16 the rights of the adult that apply to a petition for
17 guardianship.

18 G. An adult subject to guardianship who seeks to
19 terminate or modify the terms of the guardianship has the right
20 to choose an attorney to represent the adult in the matter. If
21 the adult is not represented by an attorney, the court shall
22 appoint an attorney under the same conditions as in Section 305
23 of the Uniform Guardianship, Conservatorship and Other
24 Protective Arrangements Act. The court shall award reasonable
25 attorney's fees to the attorney for the adult as provided in

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1 Section 119 of that act.

2 ARTICLE 4

3 CONSERVATORSHIP

4 SECTION 401. [NEW MATERIAL] BASIS FOR APPOINTMENT OF
5 CONSERVATOR.--

6 A. On petition and after notice and hearing, the
7 court may appoint a conservator for the property or financial
8 affairs of a minor if the court finds by a preponderance of
9 evidence that appointment of a conservator is in the minor's
10 best interest and:

11 (1) if the minor has a parent, the court gives
12 weight to any recommendation of the parent whether an
13 appointment is in the minor's best interest; and

14 (2) either:

15 (a) the minor owns funds or other
16 property requiring management or protection that otherwise
17 cannot be provided;

18 (b) the minor has or may have financial
19 affairs that may be put at unreasonable risk or hindered
20 because of the minor's age; or

21 (c) appointment is necessary or
22 desirable to obtain or provide funds or other property needed
23 for the support, care, education, health or welfare of the
24 minor.

25 B. On petition and after notice and hearing, the

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1 court may appoint a conservator for the property or financial
2 affairs of an adult if the court finds by clear and convincing
3 evidence that:

4 (1) the adult is unable to manage property or
5 financial affairs because:

6 (a) of a limitation in the adult's
7 ability to receive and evaluate information or make or
8 communicate decisions, even with the use of appropriate
9 supportive services, technological assistance or supported
10 decision making; or

11 (b) the adult is missing, detained or
12 unable to return to the United States;

13 (2) appointment is necessary to:

14 (a) avoid harm to the adult or
15 significant dissipation of the property of the adult; or

16 (b) obtain or provide funds or other
17 property needed for the support, care, education, health or
18 welfare of the adult or of an individual entitled to the
19 adult's support; and

20 (3) the respondent's identified needs cannot
21 be met by a protective arrangement instead of conservatorship
22 or other less restrictive alternative.

23 C. The court shall grant a conservator only those
24 powers necessitated by demonstrated limitations and needs of
25 the respondent and issue orders that will encourage development

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1 of the respondent's maximum self-determination and
2 independence. The court shall not establish a full
3 conservatorship if a limited conservatorship, protective
4 arrangement instead of conservatorship or other less
5 restrictive alternative would meet the needs of the respondent.

6 SECTION 402. [NEW MATERIAL] PETITION FOR APPOINTMENT OF
7 CONSERVATOR.--

8 A. The following may petition for the appointment
9 of a conservator:

10 (1) the individual for whom the order is
11 sought;

12 (2) a person interested in the estate,
13 financial affairs or welfare of the individual, including a
14 person that would be adversely affected by lack of effective
15 management of property or financial affairs of the individual;
16 or

17 (3) the guardian for the individual.

18 B. A petition under Subsection A of this section
19 shall state the petitioner's name, principal residence, current
20 street address, if different, relationship to the respondent,
21 interest in the appointment, the name and address of any
22 attorney representing the petitioner and, to the extent known,
23 the following:

24 (1) the respondent's name, age, principal
25 residence, current street address, if different, and, if

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1 different, address of the dwelling in which it is proposed the
2 respondent will reside if the petition is granted;

3 (2) the name and address of the respondent's:

4 (a) spouse or, if the respondent has
5 none, an adult with whom the respondent has shared household
6 responsibilities for more than six months in the twelve-month
7 period before the filing of the petition;

8 (b) adult children or, if none, each
9 parent and adult sibling of the respondent or, if none, at
10 least one adult nearest in kinship to the respondent who can be
11 found with reasonable diligence; and

12 (c) adult stepchildren whom the
13 respondent actively parented during the stepchildren's minor
14 years and with whom the respondent had an ongoing relationship
15 during the two years immediately before the filing of the
16 petition;

17 (3) the name and current address of each of
18 the following, if applicable:

19 (a) a person responsible for the care or
20 custody of the respondent;

21 (b) any attorney currently representing
22 the respondent;

23 (c) the representative payee appointed
24 by the federal social security administration for the
25 respondent;

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1 (d) a guardian or conservator acting for
2 the respondent in New Mexico or another jurisdiction;

3 (e) a trustee or custodian of a trust or
4 custodianship of which the respondent is a beneficiary;

5 (f) the fiduciary appointed for the
6 respondent by the federal department of veterans affairs;

7 (g) an agent designated under a power of
8 attorney for health care in which the respondent is identified
9 as the principal;

10 (h) an agent designated under a power of
11 attorney for finances in which the respondent is identified as
12 the principal;

13 (i) a person known to have routinely
14 assisted the respondent with decision making in the six-month
15 period immediately before the filing of the petition;

16 (j) any proposed conservator, including
17 a person nominated by the respondent, if the respondent is
18 twelve years of age or older; and

19 (k) if the individual for whom a
20 conservator is sought is a minor: 1) an adult not otherwise
21 listed with whom the minor resides; and 2) each person not
22 otherwise listed that had primary care or custody of the minor
23 for at least sixty days during the two years immediately before
24 the filing of the petition or for at least seven hundred thirty
25 days during the five years immediately before the filing of the

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1 petition;

2 (4) a general statement of the respondent's
3 property with an estimate of its value, including any insurance
4 or pension and the source and amount of other anticipated
5 income or receipts;

6 (5) the reason conservatorship is necessary,
7 including a brief description of:

8 (a) the nature and extent of the
9 respondent's alleged need;

10 (b) if the petition alleges the
11 respondent is missing, detained or unable to return to the
12 United States, the relevant circumstances, including the time
13 and nature of the disappearance or detention and any search or
14 inquiry concerning the respondent's whereabouts;

15 (c) any protective arrangement instead
16 of conservatorship or other less restrictive alternative for
17 meeting the respondent's alleged need that has been considered
18 or implemented;

19 (d) if no protective arrangement or
20 other less restrictive alternatives have been considered or
21 implemented, the reason it has not been considered or
22 implemented; and

23 (e) the reason a protective arrangement
24 or other less restrictive alternative is insufficient to meet
25 the respondent's need;

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1 (6) whether the petitioner seeks a limited
2 conservatorship or a full conservatorship;

3 (7) if the petitioner seeks a full
4 conservatorship, the reason a limited conservatorship or
5 protective arrangement instead of conservatorship is not
6 appropriate;

7 (8) if the petition includes the name of a
8 proposed conservator, the reason the proposed conservator
9 should be appointed;

10 (9) if the petition is for a limited
11 conservatorship, a description of the property to be placed
12 under the conservator's control and any requested limitation on
13 the authority of the conservator;

14 (10) whether the respondent needs an
15 interpreter, translator or other form of support to communicate
16 effectively with the court or understand court proceedings; and

17 (11) the name and address of an attorney
18 representing the petitioner, if any.

19 SECTION 403. [NEW MATERIAL] NOTICE AND HEARING.--

20 A. On filing of a petition under Section 402 of the
21 Uniform Guardianship, Conservatorship and Other Protective
22 Arrangements Act for appointment of a conservator, the court
23 shall set a date, time and place for a hearing on the petition.

24 B. A copy of a petition under Section 402 of the
25 Uniform Guardianship, Conservatorship and Other Protective

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1 Arrangements Act and notice of a hearing on the petition shall
2 be served personally on the respondent. If the respondent's
3 whereabouts are unknown or personal service cannot be made,
4 service on the respondent shall be made as provided in Section
5 45-1-401 NMSA 1978. The notice shall inform the respondent of
6 the respondent's rights at the hearing, including the right to
7 an attorney and to attend the hearing. The notice also shall
8 include a description of the nature, purpose and consequences
9 of granting the petition. The court shall not grant a petition
10 for appointment of a conservator if notice substantially
11 complying with this subsection is not served on the respondent.

12 C. In a proceeding on a petition under Section 402
13 of the Uniform Guardianship, Conservatorship and Other
14 Protective Arrangements Act, notice of the hearing shall be
15 given to the persons required to be listed in the petition
16 under Paragraphs (1) through (3) of Subsection B of Section 402
17 of that act and any other person interested in the respondent's
18 welfare the court determines. Failure to give notice under
19 this subsection does not preclude the court from appointing a
20 conservator.

21 D. After the appointment of a conservator, notice
22 of a hearing on a petition for an order under this article,
23 together with a copy of the petition, shall be given to:

24 (1) the individual subject to conservatorship,
25 if the individual is twelve years of age or older and not

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1 missing, detained or unable to return to the United States;

2 (2) the conservator; and

3 (3) any other person the court determines.

4 SECTION 404. [NEW MATERIAL] ORDER TO PRESERVE OR APPLY
5 PROPERTY WHILE PROCEEDING PENDING.--While a petition under
6 Section 402 of the Uniform Guardianship, Conservatorship and
7 Other Protective Arrangements Act is pending, after preliminary
8 hearing and without notice to others, the court may issue an
9 order to preserve and apply property of the respondent as
10 required for the support of the respondent or an individual who
11 is in fact dependent on the respondent. The court may appoint
12 a special master to assist in implementing the order.

13 SECTION 405. [NEW MATERIAL] APPOINTMENT AND ROLE OF
14 VISITOR.--

15 A. If the respondent in a proceeding to appoint a
16 conservator is a minor, the court may appoint a visitor to
17 investigate a matter related to the petition or inform the
18 minor or a parent of the minor about the petition or a related
19 matter.

20 B. If the respondent in a proceeding to appoint a
21 conservator is an adult, the court shall appoint a visitor
22 unless the adult is represented by an attorney appointed by the
23 court. The duties and reporting requirements of the visitor
24 are limited to the relief requested in the petition. The
25 visitor shall be an individual with training or experience in

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1 the type of abilities, limitations and needs alleged in the
2 petition.

3 C. A visitor appointed under Subsection B of this
4 section for an adult shall interview the respondent in person
5 and, in a manner the respondent is best able to understand:

6 (1) explain to the respondent the substance of
7 the petition, the nature, purpose and effect of the proceeding,
8 the respondent's rights at the hearing on the petition and the
9 general powers and duties of a conservator;

10 (2) determine the respondent's views about the
11 appointment sought by the petitioner, including views about a
12 proposed conservator, the conservator's proposed powers and
13 duties and the scope and duration of the proposed
14 conservatorship;

15 (3) inform the respondent of the respondent's
16 right to employ and consult with an attorney at the
17 respondent's expense and the right to request a court-appointed
18 attorney; and

19 (4) inform the respondent that all costs and
20 expenses of the proceeding, including respondent's attorney's
21 fees, may be paid from the respondent's assets.

22 D. The visitor appointed for an adult under
23 Subsection B of this section shall:

24 (1) interview the petitioner and proposed
25 conservator, if any;

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1 (2) review financial records of the
2 respondent, if relevant to the visitor's recommendation under
3 Paragraph (1) of Subsection E of this section;

4 (3) investigate whether the respondent's needs
5 could be met by a protective arrangement instead of
6 conservatorship or other less restrictive alternative and, if
7 so, identify the arrangement or other less restrictive
8 alternative; and

9 (4) investigate the allegations in the
10 petition and any other matter relating to the petition the
11 court directs.

12 E. A visitor appointed for an adult under
13 Subsection B of this section promptly shall file a report in a
14 record with the court that includes:

15 (1) a recommendation:

16 (a) regarding the appropriateness of
17 conservatorship or whether a protective arrangement instead of
18 conservatorship or other less restrictive alternative for
19 meeting the respondent's needs is available;

20 (b) if a conservatorship is recommended,
21 whether it should be full or limited; and

22 (c) if a limited conservatorship is
23 recommended, the powers to be granted to the conservator and
24 the property that should be placed under the conservator's
25 control;

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1 (2) a statement of the qualifications of the
2 proposed conservator and whether the respondent approves or
3 disapproves of the proposed conservator;

4 (3) a recommendation whether a professional
5 evaluation under Section 407 of the Uniform Guardianship,
6 Conservatorship and Other Protective Arrangements Act is
7 necessary;

8 (4) a statement whether the respondent is able
9 to attend a hearing at the location court proceedings typically
10 are held;

11 (5) a statement whether the respondent is able
12 to participate in a hearing and that identifies any technology
13 or other form of support that would enhance the respondent's
14 ability to participate; and

15 (6) any other matter the court directs.

16 SECTION 406. [NEW MATERIAL] APPOINTMENT AND ROLE OF
17 ATTORNEY.--

18 A. Unless the respondent in a proceeding for
19 appointment of a conservator is represented by an attorney, the
20 court shall appoint an attorney to represent the respondent
21 regardless of the respondent's ability to pay.

22 B. An attorney representing the respondent in a
23 proceeding for appointment of a conservator shall:

24 (1) make reasonable efforts to ascertain the
25 respondent's wishes;

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1 (2) advocate for the respondent's wishes to
2 the extent reasonably ascertainable; and

3 (3) if the respondent's wishes are not
4 reasonably ascertainable, advocate for the result that is the
5 least restrictive in type, duration and scope, consistent with
6 the respondent's interests.

7 SECTION 407. [NEW MATERIAL] PROFESSIONAL EVALUATION.--

8 A. At or before a hearing on a petition for
9 conservatorship for an adult, the court shall order a
10 professional evaluation of the respondent:

11 (1) if the respondent requests the evaluation;
12 or

13 (2) in other cases, unless the court finds it
14 has sufficient information to determine the respondent's needs
15 and abilities without the evaluation.

16 B. If the court orders an evaluation under
17 Subsection A of this section, the respondent shall be examined
18 by a licensed physician, psychologist, social worker or other
19 individual appointed by the court who is qualified to evaluate
20 the respondent's alleged cognitive and functional abilities and
21 limitations and will not be advantaged or disadvantaged by a
22 decision to grant the petition or otherwise have a conflict of
23 interest. The individual conducting the evaluation promptly
24 shall file a report in a record with the court. Unless
25 otherwise directed by the court, the report shall contain:

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1 (1) a description of the nature, type and
2 extent of the respondent's cognitive and functional abilities
3 and limitations with regard to the management of the
4 respondent's property and financial affairs;

5 (2) an evaluation of the respondent's mental
6 and physical condition and, if appropriate, educational
7 potential, adaptive behavior and social skills;

8 (3) a prognosis for improvement with regard to
9 the ability to manage the respondent's property and financial
10 affairs; and

11 (4) the date of the examination on which the
12 report is based.

13 C. A respondent may decline to participate in an
14 evaluation ordered under Subsection A of this section.

15 SECTION 408. [NEW MATERIAL] ATTENDANCE AND RIGHTS AT
16 HEARING.--

17 A. Except as otherwise provided in Subsection B of
18 this section, a hearing under Section 403 of the Uniform
19 Guardianship, Conservatorship and Other Protective Arrangements
20 Act shall not proceed unless the respondent attends the
21 hearing. If it is not reasonably feasible for the respondent
22 to attend a hearing at the location court proceedings typically
23 are held, the court shall make reasonable efforts to hold the
24 hearing at an alternative location convenient to the respondent
25 or allow the respondent to attend the hearing using real-time

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1 audio-visual technology.

2 B. A hearing under Section 403 of the Uniform
3 Guardianship, Conservatorship and Other Protective Arrangements
4 Act may proceed without the respondent in attendance if the
5 court finds by clear and convincing evidence that:

6 (1) the respondent consistently and repeatedly
7 has refused to attend the hearing after having been fully
8 informed of the right to attend and the potential consequences
9 of failing to do so;

10 (2) there is no practicable way for the
11 respondent to attend and participate in the hearing even with
12 appropriate supportive services or technological assistance; or

13 (3) the respondent is a minor who has received
14 proper notice and attendance would be harmful to the minor.

15 C. The respondent may be assisted in a hearing
16 under Section 403 of the Uniform Guardianship, Conservatorship
17 and Other Protective Arrangements Act by a person or persons of
18 the respondent's choosing, assistive technology or an
19 interpreter or translator or a combination of these supports.
20 If assistance would facilitate the respondent's participation
21 in the hearing, but is not otherwise available to the
22 respondent, the court shall make reasonable efforts to provide
23 it.

24 D. The respondent has a right to choose an attorney
25 to represent the respondent at a hearing under Section 403 of

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1 the Uniform Guardianship, Conservatorship and Other Protective
2 Arrangements Act.

3 E. At a hearing under Section 403 of the Uniform
4 Guardianship, Conservatorship and Other Protective Arrangements
5 Act, the respondent may:

6 (1) present evidence and subpoena witnesses
7 and documents;

8 (2) examine witnesses, including any court-
9 appointed evaluator and the visitor; and

10 (3) otherwise participate in the hearing.

11 F. Unless excused by the court for good cause, a
12 proposed conservator shall attend a hearing under Section 403
13 of the Uniform Guardianship, Conservatorship and Other
14 Protective Arrangements Act.

15 G. A hearing under Section 403 of the Uniform
16 Guardianship, Conservatorship and Other Protective Arrangements
17 Act shall be closed on request of the respondent and a showing
18 of good cause.

19 H. Any person may request to participate in a
20 hearing under Section 403 of the Uniform Guardianship,
21 Conservatorship and Other Protective Arrangements Act. The
22 court may grant the request, with or without a hearing, on
23 determining that the best interest of the respondent will be
24 served. The court may impose appropriate conditions on the
25 person's participation.

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1 SECTION 409. ~~[NEW MATERIAL]~~ CONFIDENTIALITY OF

2 RECORDS.--

3 A. The existence of a proceeding for or the
4 existence of conservatorship is a matter of public record
5 unless the court seals the record after:

6 (1) the respondent, the individual subject to
7 conservatorship or the parent of a minor subject to
8 conservatorship requests the record be sealed; and

9 (2) either:

10 (a) the petition for conservatorship is
11 dismissed; or

12 (b) the conservatorship is terminated.

13 B. An individual subject to a proceeding for a
14 conservatorship, whether or not a conservator is appointed, an
15 attorney designated by the individual and a person entitled to
16 notice under Section 411 of the Uniform Guardianship,
17 Conservatorship and Other Protective Arrangements Act or a
18 subsequent order may access court records of the proceeding and
19 resulting conservatorship, including the conservator's plan
20 under Section 419 of that act and the conservator's report
21 under Section 423 of that act. A person not otherwise entitled
22 to access to court records under this section for good cause
23 may petition the court for access to court records of the
24 conservatorship, including the conservator's plan and report.
25 The court shall grant access if access is in the best interest

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1 of the respondent or individual subject to conservatorship or
2 furthers the public interest and does not endanger the welfare
3 or financial interests of the respondent or individual.

4 C. A report under Section 405 of the Uniform
5 Guardianship, Conservatorship and Other Protective Arrangements
6 Act of a visitor or professional evaluation under Section 407
7 of that act is confidential and shall be sealed on filing, but
8 is available to:

9 (1) the court;

10 (2) the individual who is the subject of the
11 report or evaluation, without limitation as to use;

12 (3) the petitioner, visitor and petitioner's
13 and respondent's attorneys, for purposes of the proceeding;

14 (4) unless the court directs otherwise, an
15 agent appointed under a power of attorney for finances in which
16 the respondent is identified as the principal; and

17 (5) any other person if it is in the public
18 interest or for a purpose the court orders for good cause.

19 SECTION 410. [NEW MATERIAL] WHO MAY BE CONSERVATOR--ORDER
20 OF PRIORITY.--

21 A. Except as otherwise provided in Subsection C of
22 this section, the court in appointing a conservator shall
23 consider persons qualified to be a conservator in the following
24 order of priority:

25 (1) a conservator, other than a temporary or

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1 emergency conservator, currently acting for the respondent in
2 another jurisdiction;

3 (2) a person nominated as conservator by the
4 respondent, including the respondent's most recent nomination
5 made in a power of attorney for finances;

6 (3) an agent appointed by the respondent to
7 manage the respondent's property under a power of attorney for
8 finances;

9 (4) a spouse of the respondent; and

10 (5) a family member or other individual who
11 has shown special care and concern for the respondent.

12 B. If two or more persons have equal priority under
13 Subsection A of this section, the court shall select as
14 conservator the person the court considers best qualified. In
15 determining the best qualified person, the court shall consider
16 the person's relationship with the respondent, the person's
17 skills, the expressed wishes of the respondent, the extent to
18 which the person and the respondent have similar values and
19 preferences and the likelihood the person will be able to
20 perform the duties of a conservator successfully.

21 C. The court, acting in the best interest of the
22 respondent, may decline to appoint as conservator a person
23 having priority under Subsection A of this section and appoint
24 a person having a lower priority or no priority.

25 D. A person that provides paid services to the

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1 respondent, or an individual who is employed by a person that
2 provides paid services to the respondent or is the spouse,
3 domestic partner, parent or child of an individual who provides
4 or is employed to provide paid services to the respondent,
5 shall not be appointed as conservator unless:

6 (1) the individual is related to the
7 respondent by blood, marriage or adoption; or

8 (2) the court finds by clear and convincing
9 evidence that the person is the best qualified person available
10 for appointment and the appointment is in the best interest of
11 the respondent.

12 E. An owner, operator or employee of a long-term
13 care facility at which the respondent is receiving care shall
14 not be appointed as conservator unless the owner, operator or
15 employee is related to the respondent by blood, marriage or
16 adoption.

17 SECTION 411. [NEW MATERIAL] ORDER OF APPOINTMENT.--

18 A. A court order appointing a conservator for a
19 minor shall include findings to support appointment of a
20 conservator and, if a full conservatorship is granted, the
21 reason a limited conservatorship would not meet the identified
22 needs of the minor.

23 B. A court order appointing a conservator for an
24 adult shall:

25 (1) include a specific finding that clear and

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1 convincing evidence has established that the identified needs
2 of the respondent cannot be met by a protective arrangement
3 instead of conservatorship or other less restrictive
4 alternative, including use of appropriate supportive services,
5 technological assistance or supported decision making; and

6 (2) include a specific finding that clear and
7 convincing evidence established the respondent was given proper
8 notice of the hearing on the petition.

9 C. A court order establishing a full
10 conservatorship for an adult shall state the basis for granting
11 a full conservatorship and include specific findings to support
12 the conclusion that a limited conservatorship would not meet
13 the functional needs of the adult.

14 D. A court order establishing a limited
15 conservatorship shall state the specific property placed under
16 the control of the conservator and the powers granted to the
17 conservator.

18 E. The court, as part of an order establishing a
19 conservatorship, shall identify any person that subsequently is
20 entitled to:

21 (1) notice of the rights of the individual
22 subject to conservatorship under Subsection B of Section 412 of
23 the Uniform Guardianship, Conservatorship and Other Protective
24 Arrangements Act;

25 (2) notice of a sale of or surrender of a

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1 lease to the primary dwelling of the individual;

2 (3) notice that the conservator has delegated
3 a power that requires court approval under Section 414 of the
4 Uniform Guardianship, Conservatorship and Other Protective
5 Arrangements Act or substantially all powers of the
6 conservator;

7 (4) notice that the conservator will be
8 unavailable to perform the conservator's duties for more than
9 one month;

10 (5) a copy of the conservator's plan under
11 Section 419 of the Uniform Guardianship, Conservatorship and
12 Other Protective Arrangements Act and the conservator's report
13 under Section 423 of that act;

14 (6) access to court records relating to the
15 conservatorship;

16 (7) notice of a transaction involving a
17 substantial conflict between the conservator's fiduciary duties
18 and personal interests;

19 (8) notice of the death or significant change
20 in the condition of the individual;

21 (9) notice that the court has limited or
22 modified the powers of the conservator; and

23 (10) notice of the removal of the conservator.

24 F. If an individual subject to conservatorship is
25 an adult, the spouse and adult children of the adult subject to

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1 conservatorship are entitled under Subsection E of this section
2 to notice unless the court determines notice would be contrary
3 to the preferences or prior directions of the adult subject to
4 conservatorship or not in the best interest of the adult.

5 G. If an individual subject to conservatorship is a
6 minor, each parent and adult sibling of the minor is entitled
7 under Subsection E of this section to notice unless the court
8 determines notice would not be in the best interest of the
9 minor.

10 SECTION 412. [NEW MATERIAL] NOTICE OF ORDER OF
11 APPOINTMENT--RIGHTS.--

12 A. A conservator appointed under Section 411 of the
13 Uniform Guardianship, Conservatorship and Other Protective
14 Arrangements Act shall give to the individual subject to
15 conservatorship and to all other persons given notice under
16 Section 403 of that act a copy of the order of appointment,
17 together with notice of the right to request termination or
18 modification. The order and notice shall be given not later
19 than fourteen days after the appointment.

20 B. Not later than thirty days after appointment of
21 a conservator under Section 411 of the Uniform Guardianship,
22 Conservatorship and Other Protective Arrangements Act, the
23 court shall give to the individual subject to conservatorship,
24 the conservator and any other person entitled to notice under
25 Subsection E of Section 411 of the Uniform Guardianship,

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1 Conservatorship and Other Protective Arrangements Act a
2 statement of the rights of the individual subject to
3 conservatorship and procedures to seek relief if the individual
4 is denied those rights. The statement shall be in plain
5 language, in at least sixteen-point font and, to the extent
6 feasible, in a language in which the individual subject to
7 conservatorship is proficient. The statement shall notify the
8 individual subject to conservatorship of the right to:

9 (1) seek termination or modification of the
10 conservatorship, or removal of the conservator, and choose an
11 attorney to represent the individual in these matters;

12 (2) participate in decision making to the
13 extent reasonably feasible;

14 (3) receive a copy of the conservator's plan
15 under Section 419 of the Uniform Guardianship, Conservatorship
16 and Other Protective Arrangements Act, the conservator's
17 inventory under Section 420 of that act and the conservator's
18 report under Section 423 of that act; and

19 (4) object to the conservator's inventory,
20 plan or report.

21 C. If a conservator is appointed for the reasons
22 stated in Subparagraph (b) of Paragraph (1) of Subsection B of
23 Section 401 of the Uniform Guardianship, Conservatorship and
24 Other Protective Arrangements Act and the individual subject to
25 conservatorship is missing, notice under this section to the

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1 individual is not required.

2 SECTION 413. [NEW MATERIAL] EMERGENCY CONSERVATOR.--

3 A. On its own or on petition by a person interested
4 in an individual's welfare after a petition has been filed
5 under Section 402 of the Uniform Guardianship, Conservatorship
6 and Other Protective Arrangements Act, the court may appoint an
7 emergency conservator for the individual if the court finds:

8 (1) appointment of an emergency conservator is
9 likely to prevent substantial and irreparable harm to the
10 individual's property or financial interests;

11 (2) no other person appears to have authority
12 and willingness to act in the circumstances; and

13 (3) there is reason to believe that a basis
14 for appointment of a conservator under Section 401 of the
15 Uniform Guardianship, Conservatorship and Other Protective
16 Arrangements Act exists.

17 B. The duration of authority of an emergency
18 conservator shall not exceed sixty days, and the emergency
19 conservator may exercise only the powers specified in the order
20 of appointment. The emergency conservator's authority may be
21 extended once for not more than sixty days if the court finds
22 that the conditions for appointment of an emergency conservator
23 under Subsection A of this section continue.

24 C. Immediately on filing of a petition for an
25 emergency conservator, the court shall appoint an attorney to

1 represent the respondent in the proceeding. Except as
2 otherwise provided in Subsection D of this section, reasonable
3 notice of the date, time and place of a hearing on the petition
4 shall be given to the respondent, the respondent's attorney and
5 any other person the court determines.

6 D. The court may appoint an emergency conservator
7 without notice to the respondent and any attorney for the
8 respondent only if the court finds from an affidavit or
9 testimony that the respondent's property or financial interests
10 will be substantially and irreparably harmed before a hearing
11 with notice on the appointment can be held. If the court
12 appoints an emergency conservator without giving notice under
13 Subsection C of this section, the court shall give notice of
14 the appointment not later than forty-eight hours after the
15 appointment to:

- 16 (1) the respondent;
17 (2) the respondent's attorney; and
18 (3) any other person the court determines.

19 E. Not later than five days after the appointment,
20 the court shall hold a hearing on the appropriateness of the
21 appointment.

22 F. Appointment of an emergency conservator under
23 this section is not a determination that a basis exists for
24 appointment of a conservator under Section 401 of the Uniform
25 Guardianship, Conservatorship and Other Protective Arrangements

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1 Act.

2 G. The court may remove an emergency conservator
3 appointed under this section at any time. The emergency
4 conservator shall make any report the court requires.

5 SECTION 414. [NEW MATERIAL] POWERS OF CONSERVATOR
6 REQUIRING COURT APPROVAL.--

7 A. Except as otherwise ordered by the court, a
8 conservator shall give notice to persons entitled to notice
9 under Subsection D of Section 403 of the Uniform Guardianship,
10 Conservatorship and Other Protective Arrangements Act and
11 receive specific authorization by the court before the
12 conservator may exercise with respect to the conservatorship
13 the power to:

14 (1) make a gift, except a gift of de minimis
15 value;

16 (2) sell, encumber an interest in or surrender
17 a lease to the primary dwelling of the individual subject to
18 conservatorship;

19 (3) convey, release or disclaim a contingent
20 or expectant interest in property, including marital property
21 and any right of survivorship incident to joint tenancy or
22 tenancy by the entireties;

23 (4) exercise or release a power of
24 appointment;

25 (5) create a revocable or irrevocable trust of

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1 property of the conservatorship estate, whether or not the
2 trust extends beyond the duration of the conservatorship, or
3 revoke or amend a trust revocable by the individual subject to
4 conservatorship;

5 (6) exercise a right to elect an option or
6 change a beneficiary under an insurance policy or annuity or
7 surrender the policy or annuity for its cash value;

8 (7) exercise a right to an elective share in
9 the estate of a deceased spouse of the individual subject to
10 conservatorship or renounce or disclaim a property interest;

11 (8) grant a creditor priority for payment over
12 creditors of the same or higher class if the creditor is
13 providing property or services used to meet the basic living
14 and care needs of the individual subject to conservatorship and
15 preferential treatment otherwise would be impermissible under
16 Subsection E of Section 428 of the Uniform Guardianship,
17 Conservatorship and Other Protective Arrangements Act; and

18 (9) make, modify, amend or revoke the will of
19 the individual subject to conservatorship in compliance with
20 the Uniform Probate Code.

21 B. In approving a conservator's exercise of a power
22 listed in Subsection A of this section, the court shall
23 consider primarily the decision the individual subject to
24 conservatorship would make if able, to the extent the decision
25 can be ascertained.

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1 C. To determine under Subsection B of this section
2 the decision the individual subject to conservatorship would
3 make if able, the court shall consider the individual's prior
4 or current directions, preferences, opinions, values and
5 actions, to the extent actually known or reasonably
6 ascertainable by the conservator. The court also shall
7 consider:

- 8 (1) the financial needs of the individual
9 subject to conservatorship and individuals who are in fact
10 dependent on the individual subject to conservatorship for
11 support and the interests of creditors of the individual;
- 12 (2) possible reduction of income, estate,
13 inheritance or other tax liabilities;
- 14 (3) eligibility for governmental assistance;
- 15 (4) the previous pattern of giving or level of
16 support provided by the individual;
- 17 (5) any existing estate plan or lack of estate
18 plan of the individual;
- 19 (6) the life expectancy of the individual and
20 the probability the conservatorship will terminate before the
21 individual's death; and
- 22 (7) any other relevant factor.

23 D. A conservator shall not revoke or amend a power
24 of attorney for finances signed by the individual subject to
25 conservatorship. If a power of attorney for finances is in

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1 effect, a decision of the agent takes precedence over that of
2 the conservator, unless the court orders otherwise.

3 SECTION 415. [NEW MATERIAL] PETITION FOR ORDER AFTER
4 APPOINTMENT.--An individual subject to conservatorship or a
5 person interested in the welfare of the individual may petition
6 for an order:

7 A. requiring the conservator to furnish a bond or
8 collateral or additional bond or collateral or allowing a
9 reduction in a bond or collateral previously furnished;

10 B. requiring an accounting for the administration
11 of the conservatorship estate;

12 C. directing distribution;

13 D. removing the conservator and appointing a
14 temporary or successor conservator;

15 E. modifying the type of appointment or powers
16 granted to the conservator, if the extent of protection or
17 management previously granted is excessive or insufficient to
18 meet the individual's needs, including because the individual's
19 abilities or supports have changed;

20 F. rejecting or modifying the conservator's plan
21 under Section 419 of the Uniform Guardianship, Conservatorship
22 and Other Protective Arrangements Act, the conservator's
23 inventory under Section 420 of that act or the conservator's
24 report under Section 423 of that act; or

25 G. granting other appropriate relief.

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1 SECTION 416. ~~[NEW MATERIAL]~~ BOND--ALTERNATIVE ASSET-

2 PROTECTION ARRANGEMENT.--

3 A. Except as otherwise provided in Subsection C of
4 this section, the court shall require a conservator to furnish
5 a bond with a surety the court specifies, or require an
6 alternative asset-protection arrangement, conditioned on
7 faithful discharge of all duties of the conservator. The court
8 may waive the requirement only if the court finds that a bond
9 or other asset-protection arrangement is not necessary to
10 protect the interests of the individual subject to
11 conservatorship. Except as otherwise provided in Subsection C
12 of this section, the court shall not waive the requirement if
13 the conservator is in the business of serving as a conservator
14 and is being paid for the conservator's service.

15 B. Unless the court directs otherwise, the bond
16 required under this section shall be in the amount of the
17 aggregate capital value of the conservatorship estate, plus one
18 year's estimated income, less the value of property deposited
19 under an arrangement requiring a court order for its removal
20 and real property the conservator lacks power to sell or convey
21 without specific court authorization. The court, in place of
22 surety on a bond, may accept collateral for the performance of
23 the bond, including a pledge of securities or a mortgage of
24 real property.

25 C. A financial institution that possesses and is

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1 exercising general trust powers in New Mexico is not required
2 to give a bond under this section. As used in this subsection,
3 "financial institution" means a state- or federally chartered,
4 federally insured depository bank or trust company.

5 SECTION 417. [NEW MATERIAL] TERMS AND REQUIREMENTS OF
6 BOND.--

7 A. The following rules apply to the bond required
8 under Section 416 of the Uniform Guardianship, Conservatorship
9 and Other Protective Arrangements Act:

10 (1) except as otherwise provided by the bond,
11 the surety and the conservator are jointly and severally
12 liable;

13 (2) by executing a bond provided by a
14 conservator, the surety submits to the personal jurisdiction of
15 the court that issued letters of office to the conservator in a
16 proceeding relating to the duties of the conservator in which
17 the surety is named as a party. Notice of the proceeding shall
18 be given to the surety at the address shown in the records of
19 the court in which the bond is filed and any other address of
20 the surety then known to the person required to provide the
21 notice;

22 (3) on petition of a successor conservator or
23 person affected by a breach of the obligation of the bond, a
24 proceeding may be brought against the surety for breach of the
25 obligation of the bond; and

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1 (4) a proceeding against the bond may be
2 brought until liability under the bond is exhausted.

3 B. A proceeding shall not be brought under this
4 section against a surety of a bond on a matter as to which a
5 proceeding against the conservator is barred.

6 C. If a bond under Section 416 of the Uniform
7 Guardianship, Conservatorship and Other Protective Arrangements
8 Act is not renewed by the conservator, the surety or sureties
9 immediately shall give notice to the court and the individual
10 subject to conservatorship.

11 SECTION 418. [NEW MATERIAL] DUTIES OF CONSERVATOR.--

12 A. A conservator is a fiduciary and has duties of
13 prudence and loyalty to the individual subject to
14 conservatorship.

15 B. A conservator shall promote the self-
16 determination of the individual subject to conservatorship and,
17 to the extent feasible, encourage the individual to participate
18 in decisions, act on the individual's own behalf and develop or
19 regain the capacity to manage the individual's personal
20 affairs.

21 C. In making a decision for an individual subject
22 to conservatorship, the conservator shall make the decision the
23 conservator reasonably believes the individual would make if
24 able, unless doing so would fail to preserve the resources
25 needed to maintain the individual's well-being and lifestyle or

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1 otherwise unreasonably harm or endanger the welfare or personal
2 or financial interests of the individual. To determine the
3 decision the individual would make if able, the conservator
4 shall consider the individual's prior or current directions,
5 preferences, opinions, values and actions, to the extent
6 actually known or reasonably ascertainable by the conservator.

7 D. If a conservator cannot make a decision under
8 Subsection C of this section because the conservator does not
9 know and cannot reasonably determine the decision the
10 individual subject to conservatorship probably would make if
11 able, or the conservator reasonably believes the decision the
12 individual would make would fail to preserve resources needed
13 to maintain the individual's well-being and lifestyle or
14 otherwise unreasonably harm or endanger the welfare or personal
15 or financial interests of the individual, the conservator shall
16 act in accordance with the best interest of the individual.

17 In determining the best interest of the individual, the
18 conservator shall consider:

19 (1) information received from professionals
20 and persons that demonstrate sufficient interest in the welfare
21 of the individual;

22 (2) other information the conservator believes
23 the individual would have considered if the individual were
24 able to act; and

25 (3) other factors a reasonable person in the

1 circumstances of the individual would consider, including
2 consequences for others.

3 E. Except when inconsistent with the conservator's
4 duties under Subsections A through D of this section, a
5 conservator shall invest and manage the conservatorship estate
6 as a prudent investor would, by considering:

7 (1) the circumstances of the individual
8 subject to conservatorship and the conservatorship estate;

9 (2) general economic conditions;

10 (3) the possible effect of inflation or
11 deflation;

12 (4) the expected tax consequences of an
13 investment decision or strategy;

14 (5) the role of each investment or course of
15 action in relation to the conservatorship estate as a whole;

16 (6) the expected total return from income and
17 appreciation of capital;

18 (7) the need for liquidity, regularity of
19 income and preservation or appreciation of capital; and

20 (8) the special relationship or value, if any,
21 of specific property to the individual subject to
22 conservatorship.

23 F. The propriety of a conservator's investment and
24 management of the conservatorship estate is determined in light
25 of the facts and circumstances existing when the conservator

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1 decides or acts and not by hindsight.

2 G. A conservator shall make a reasonable effort to
3 verify facts relevant to the investment and management of the
4 conservatorship estate.

5 H. A conservator that has special skills or
6 expertise, or is named conservator in reliance on the
7 conservator's representation of special skills or expertise,
8 has a duty to use the special skills or expertise in carrying
9 out the conservator's duties.

10 I. In investing, selecting specific property for
11 distribution and invoking a power of revocation or withdrawal
12 for the use or benefit of the individual subject to
13 conservatorship, a conservator shall consider any estate plan
14 of the individual known or reasonably ascertainable to the
15 conservator and may examine the will or other donative,
16 nominative or appointive instrument of the individual.

17 J. A conservator shall maintain insurance on the
18 insurable real and personal property of the individual subject
19 to conservatorship, unless the conservatorship estate lacks
20 sufficient funds to pay for insurance or the court finds:

21 (1) the property lacks sufficient equity; or

22 (2) insuring the property would unreasonably
23 dissipate the conservatorship estate or otherwise not be in the
24 best interest of the individual.

25 K. If a power of attorney for finances is in

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1 effect, a conservator shall cooperate with the agent to the
2 extent feasible.

3 L. A conservator has access to and authority over a
4 digital asset of the individual subject to conservatorship to
5 the extent provided by the Revised Uniform Fiduciary Access to
6 Digital Assets Act or court order.

7 M. A conservator for an adult shall notify the
8 court if the condition of the adult has changed so that the
9 adult is capable of exercising rights previously removed. The
10 notice shall be given immediately upon learning of the change.

11 SECTION 419. [NEW MATERIAL] CONSERVATOR'S PLAN.--

12 A. A conservator, not later than sixty days after
13 appointment and when there is a significant change in
14 circumstances or the conservator seeks to deviate significantly
15 from the conservator's plan, shall file with the court a plan
16 for protecting, managing, expending and distributing the assets
17 of the conservatorship estate. The plan shall be based on the
18 needs of the individual subject to conservatorship and take
19 into account the best interest of the individual as well as the
20 individual's preferences, values and prior directions, to the
21 extent known to or reasonably ascertainable by the conservator.
22 The conservator shall include in the plan:

23 (1) a budget containing projected expenses and
24 resources, including an estimate of the total amount of fees
25 the conservator anticipates charging per year and a statement

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1 or list of the amount the conservator proposes to charge for
2 each service the conservator anticipates providing to the
3 individual;

4 (2) how the conservator will involve the
5 individual in decisions about management of the conservatorship
6 estate;

7 (3) any step the conservator plans to take to
8 develop or restore the ability of the individual to manage the
9 conservatorship estate; and

10 (4) an estimate of the duration of the
11 conservatorship.

12 B. A conservator shall give notice of the filing of
13 the conservator's plan under Subsection A of this section,
14 together with a copy of the plan, to the individual subject to
15 conservatorship, a person entitled to notice under Subsection E
16 of Section 411 of the Uniform Guardianship, Conservatorship and
17 Other Protective Arrangements Act or a subsequent order and any
18 other person the court determines. The notice shall include a
19 statement of the right to object to the plan and be given not
20 later than fourteen days after the filing.

21 C. An individual subject to conservatorship and any
22 person entitled under Subsection B of this section to receive
23 notice and a copy of the conservator's plan may object to the
24 plan.

25 D. A conservator shall petition the court for

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1 approval of a plan filed under Subsection A of this section.
2 The court shall review the plan and determine whether to
3 approve it or require a new plan. In deciding whether to
4 approve the plan, the court shall consider an objection under
5 Subsection C of this section and whether the plan is consistent
6 with the conservator's duties and powers. The court shall not
7 approve the plan without:

8 (1) notice to the adult subject to
9 conservatorship, a person entitled to notice under Subsection E
10 of Section 411 of the Uniform Guardianship, Conservatorship and
11 Other Protective Arrangements Act or under a subsequent order
12 and any other person the court deems entitled to notice; and

13 (2) a hearing.

14 E. After a conservator's plan under this section is
15 approved by the court, the conservator shall provide a copy of
16 the plan to the individual subject to conservatorship, a person
17 entitled to notice under Subsection E of Section 411 of the
18 Uniform Guardianship, Conservatorship and Other Protective
19 Arrangements Act or a subsequent order and any other person the
20 court determines.

21 SECTION 420. [NEW MATERIAL] INVENTORY--RECORDS.--

22 A. Not later than sixty days after appointment, a
23 conservator shall prepare and file with the appointing court a
24 detailed inventory of the conservatorship estate, together with
25 an oath or affirmation that the inventory is believed to be

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1 complete and accurate as far as information permits.

2 B. A conservator shall give notice of the filing of
3 an inventory to the individual subject to conservatorship, a
4 person entitled to notice under Subsection E of Section 411 of
5 the Uniform Guardianship, Conservatorship and Other Protective
6 Arrangements Act or a subsequent order and any other person the
7 court determines. The notice shall be given not later than
8 fourteen days after the filing.

9 C. A conservator shall keep records of the
10 administration of the conservatorship estate and make them
11 available for examination on reasonable request of the
12 individual subject to conservatorship, a guardian for the
13 individual or any other person the conservator or the court
14 determines.

15 SECTION 421. [NEW MATERIAL] ADMINISTRATIVE POWERS OF
16 CONSERVATOR NOT REQUIRING COURT APPROVAL.--

17 A. Except as otherwise provided in Section 414 of
18 the Uniform Guardianship, Conservatorship and Other Protective
19 Arrangements Act or qualified or limited in the court's order
20 of appointment and stated in the letters of office, a
21 conservator has all powers granted in this section and any
22 additional power granted to a trustee by law of New Mexico
23 other than that act.

24 B. A conservator, acting reasonably and consistent
25 with the fiduciary duties of the conservator to accomplish the

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1 purpose of the conservatorship, without specific court
2 authorization or confirmation, may with respect to the
3 conservatorship estate:

4 (1) collect, hold and retain property,
5 including property in which the conservator has a personal
6 interest and real property in another state, until the
7 conservator determines disposition of the property should be
8 made;

9 (2) receive additions to the conservatorship
10 estate;

11 (3) continue or participate in the operation
12 of a business or other enterprise;

13 (4) acquire an undivided interest in property
14 in which the conservator, in a fiduciary capacity, holds an
15 undivided interest;

16 (5) invest assets;

17 (6) deposit funds or other property in a
18 financial institution, including one operated by the
19 conservator;

20 (7) acquire or dispose of property, including
21 real property in another state, for cash or on credit, at
22 public or private sale and manage, develop, improve, exchange,
23 partition, change the character of or abandon property;

24 (8) make ordinary or extraordinary repairs or
25 alterations in a building or other structure, demolish any

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1 improvement or raze an existing or erect a new party wall or
2 building;

3 (9) subdivide or develop land, dedicate land
4 to public use, make or obtain the vacation of a plat and adjust
5 a boundary, adjust a difference in valuation of land, exchange
6 or partition land by giving or receiving consideration and
7 dedicate an easement to public use without consideration;

8 (10) enter for any purpose into a lease of
9 property as lessor or lessee, with or without an option to
10 purchase or renew, for a term within or extending beyond the
11 term of the conservatorship;

12 (11) enter into a lease or arrangement for
13 exploration and removal of minerals or other natural resources
14 or a pooling or unitization agreement;

15 (12) grant an option involving disposition of
16 property or accept or exercise an option for the acquisition of
17 property;

18 (13) vote a security, in person or by general
19 or limited proxy;

20 (14) pay a call, assessment or other sum
21 chargeable or accruing against or on account of a security;

22 (15) sell or exercise a stock subscription or
23 conversion right;

24 (16) consent, directly or through a committee
25 or agent, to the reorganization, consolidation, merger,

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1 dissolution or liquidation of a corporation or other business
2 enterprise;

3 (17) hold a security in the name of a nominee
4 or in other form without disclosure of the conservatorship so
5 that title to the security may pass by delivery;

6 (18) insure:

7 (a) the conservatorship estate, in whole
8 or in part, against damage or loss in accordance with
9 Subsection J of Section 418 of the Uniform Guardianship,
10 Conservatorship and Other Protective Arrangements Act; and

11 (b) the conservator against liability
12 with respect to a third person;

13 (19) borrow funds, with or without security,
14 to be repaid from the conservatorship estate or otherwise;

15 (20) advance funds for the protection of the
16 conservatorship estate or the individual subject to
17 conservatorship and all expenses, losses and liability
18 sustained in the administration of the conservatorship estate
19 or because of holding any property for which the conservator
20 has a lien on the conservatorship estate;

21 (21) pay or contest a claim, settle a claim by
22 or against the conservatorship estate or the individual subject
23 to conservatorship by compromise, arbitration or otherwise or
24 release, in whole or in part, a claim belonging to the
25 conservatorship estate to the extent the claim is

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1 uncollectible;

2 (22) pay a tax, assessment, compensation of
3 the conservator or any guardian and other expense incurred in
4 the collection, care, administration and protection of the
5 conservatorship estate;

6 (23) pay a sum distributable to the individual
7 subject to conservatorship or an individual who is in fact
8 dependent on the individual subject to conservatorship by
9 paying the sum to the distributee or for the use of the
10 distributee:

11 (a) to the guardian for the distributee;

12 (b) to the custodian of the distributee
13 under the Uniform Transfers to Minors Act or custodial trustee
14 under the Uniform Custodial Trust Act; or

15 (c) if there is no guardian, custodian
16 or custodial trustee, to a relative or other person having
17 physical custody of the distributee;

18 (24) bring or defend an action, claim or
19 proceeding in any jurisdiction for the protection of the
20 conservatorship estate or the conservator in the performance of
21 the conservator's duties;

22 (25) structure the finances of the individual
23 subject to conservatorship to establish eligibility for a
24 public benefit, including by making gifts consistent with the
25 individual's preferences, values and prior directions, if the

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1 conservator's action does not jeopardize the individual's
2 welfare and otherwise is consistent with the conservator's
3 duties; and

4 (26) execute and deliver any instrument that
5 will accomplish or facilitate the exercise of a power of the
6 conservator.

7 SECTION 422. [NEW MATERIAL] DISTRIBUTION FROM
8 CONSERVATORSHIP ESTATE.--Except as otherwise provided in
9 Section 414 of the Uniform Guardianship, Conservatorship and
10 Other Protective Arrangements Act or qualified or limited in
11 the court's order of appointment and stated in the letters of
12 office and unless contrary to a conservator's plan under
13 Section 419 of that act, the conservator may expend or
14 distribute income or principal of the conservatorship estate
15 without specific court authorization or confirmation for the
16 support, care, education, health or welfare of the individual
17 subject to conservatorship or an individual who is in fact
18 dependent on the individual subject to conservatorship,
19 including the payment of child or spousal support, in
20 accordance with the following rules:

21 A. the conservator shall consider a recommendation
22 relating to the appropriate standard of support, care,
23 education, health or welfare for the individual subject to
24 conservatorship or individual who is dependent on the
25 individual subject to conservatorship, made by a guardian for

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1 the individual subject to conservatorship, if any, and, if the
2 individual subject to conservatorship is a minor, a
3 recommendation made by a parent of the minor;

4 B. the conservator acting in compliance with the
5 conservator's duties under Section 418 of the Uniform
6 Guardianship, Conservatorship and Other Protective Arrangements
7 Act is not liable for an expenditure or distribution made based
8 on a recommendation under Subsection A of this section unless
9 the conservator knows the expenditure or distribution is not in
10 the best interest of the individual subject to conservatorship;

11 C. in making an expenditure or distribution under
12 this section, the conservator shall consider:

13 (1) the size of the conservatorship estate,
14 the estimated duration of the conservatorship and the
15 likelihood the individual subject to conservatorship, at some
16 future time, may be fully self-sufficient and able to manage
17 the individual's financial affairs and the conservatorship
18 estate;

19 (2) the accustomed standard of living of the
20 individual subject to conservatorship and individual who is
21 dependent on the individual subject to conservatorship;

22 (3) other funds or source used for the support
23 of the individual subject to conservatorship; and

24 (4) the preferences, values and prior
25 directions of the individual subject to conservatorship; and

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1 D. funds expended or distributed under this section
2 may be paid by the conservator to any person, including the
3 individual subject to conservatorship, as reimbursement for
4 expenditures the conservator might have made, or in advance for
5 services to be provided to the individual subject to
6 conservatorship or individual who is dependent on the
7 individual subject to conservatorship if it is reasonable to
8 expect the services will be performed and advance payment is
9 customary or reasonably necessary under the circumstances.

10 SECTION 423. [NEW MATERIAL] CONSERVATOR'S REPORT AND
11 ACCOUNTING--MONITORING.--

12 A. A conservator shall file with the court a report
13 in a record regarding the administration of the conservatorship
14 estate annually unless the court otherwise directs, on
15 resignation or removal, on termination of the conservatorship
16 and at any other time the court directs.

17 B. A report under Subsection A of this section
18 shall state or contain:

19 (1) an accounting that lists property included
20 in the conservatorship estate and the receipts, disbursements,
21 liabilities and distributions during the period for which the
22 report is made;

23 (2) a list of the services provided to the
24 individual subject to conservatorship;

25 (3) a copy of the conservator's most recently

1 approved plan and a statement whether the conservator has
2 deviated from the plan and, if so, how the conservator has
3 deviated and why;

4 (4) a recommendation as to the need for
5 continued conservatorship and any recommended change in the
6 scope of the conservatorship;

7 (5) to the extent feasible, a copy of the most
8 recent reasonably available financial statements evidencing the
9 status of bank accounts, investment accounts and mortgages or
10 other debts of the individual subject to conservatorship with
11 all but the last four digits of the account numbers and social
12 security number redacted;

13 (6) anything of more than de minimis value
14 that the conservator, any individual who resides with the
15 conservator or the spouse, parent, child or sibling of the
16 conservator has received from a person providing goods or
17 services to the individual subject to conservatorship;

18 (7) any business relation the conservator has
19 with a person the conservator has paid or that has benefited
20 from the property of the individual subject to conservatorship;
21 and

22 (8) whether any co-conservator or successor
23 conservator appointed to serve when a designated event occurs
24 is alive and able to serve.

25 C. The court may appoint a visitor to review a

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1 report under this section or conservator's plan under Section
2 419 of the Uniform Guardianship, Conservatorship and Other
3 Protective Arrangements Act, interview the individual subject
4 to conservatorship or conservator or investigate any other
5 matter involving the conservatorship. In connection with the
6 report, the court may order the conservator to submit the
7 conservatorship estate to appropriate examination in a manner
8 the court directs.

9 D. Notice of the filing under this section of a
10 conservator's report, together with a copy of the report, shall
11 be provided to the individual subject to conservatorship, a
12 person entitled to notice under Subsection E of Section 411 of
13 the Uniform Guardianship, Conservatorship and Other Protective
14 Arrangements Act or a subsequent order and other persons the
15 court determines. The notice and report shall be given not
16 later than fourteen days after filing.

17 E. The court may establish procedures for
18 monitoring a report submitted under this section and review
19 each report at least annually to determine whether:

20 (1) the reports provide sufficient information
21 to establish the conservator has complied with the
22 conservator's duties;

23 (2) the conservatorship should continue; and

24 (3) the conservator's requested fees, if any,
25 should be approved.

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1 F. If the court determines there is reason to
2 believe a conservator has not complied with the conservator's
3 duties or the conservatorship should not continue, the court:

4 (1) shall notify the individual subject to
5 conservatorship, the conservator and any other person entitled
6 to notice under Subsection E of Section 411 of the Uniform
7 Guardianship, Conservatorship and Other Protective Arrangements
8 Act or a subsequent order;

9 (2) may require additional information from
10 the conservator;

11 (3) may appoint a visitor to interview the
12 individual subject to conservatorship or conservator or
13 investigate any matter involving the conservatorship; and

14 (4) consistent with Sections 430 and 431 of
15 the Uniform Guardianship, Conservatorship and Other Protective
16 Arrangements Act, may hold a hearing to consider removal of the
17 conservator, termination of the conservatorship or a change in
18 the powers granted to the conservator or terms of the
19 conservatorship.

20 G. If the court has reason to believe fees
21 requested by a conservator are not reasonable, the court shall
22 hold a hearing to determine whether to adjust the requested
23 fees and give notice of the hearing to the individual subject
24 to conservatorship, a person entitled to notice under
25 Subsection E of Section 411 of the Uniform Guardianship,

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1 Conservatorship and Other Protective Arrangements Act or under
2 a subsequent order and any other person the court deems
3 entitled to notice.

4 H. A conservator may petition the court for
5 approval of a report filed under this section and shall
6 petition the court for approval of an annual report, a report
7 filed upon resignation, removal or termination or a report
8 filed upon the court's direction. The court after review shall
9 not approve the report without:

10 (1) notice to the individual subject to
11 conservatorship, a person entitled to notice under Subsection E
12 of Section 411 of the Uniform Guardianship, Conservatorship and
13 Other Protective Arrangements Act or under a subsequent order
14 and any other person the court deems entitled to notice; and

15 (2) a hearing.

16 I. An order, after notice and hearing, approving an
17 interim report of a conservator filed under this section
18 adjudicates liabilities concerning a matter adequately
19 disclosed in the report, as to a person given notice of the
20 report or accounting.

21 J. An order, after notice and hearing, approving a
22 final report filed under this section discharges the
23 conservator from all liabilities, claims and causes of action
24 by a person given notice of the report and the hearing as to a
25 matter adequately disclosed in the report.

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1 **SECTION 424. [NEW MATERIAL] ATTEMPTED TRANSFER OF**
2 **PROPERTY BY INDIVIDUAL SUBJECT TO CONSERVATORSHIP.--**

3 A. The interest of an individual subject to
4 conservatorship in property included in the conservatorship
5 estate is not transferrable or assignable by the individual and
6 is not subject to levy, garnishment or similar process for
7 claims against the individual unless allowed under Section 428
8 of the Uniform Guardianship, Conservatorship and Other
9 Protective Arrangements Act.

10 B. If an individual subject to conservatorship
11 enters into a contract after having the right to enter the
12 contract removed by the court, the contract is void against the
13 individual and the individual's property but is enforceable
14 against the person that contracted with the individual.

15 C. A person other than the conservator that deals
16 with an individual subject to conservatorship with respect to
17 property included in the conservatorship estate is entitled to
18 protection provided by law of New Mexico other than the Uniform
19 Guardianship, Conservatorship and Other Protective Arrangements
20 Act.

21 **SECTION 425. [NEW MATERIAL] TRANSACTION INVOLVING**
22 **CONFLICT OF INTEREST.--**A transaction involving a
23 conservatorship estate that is affected by a substantial
24 conflict between the conservator's fiduciary duties and
25 personal interest is voidable unless the transaction is

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1 authorized by court order after notice to persons entitled to
2 notice under Subsection E of Section 411 of the Uniform
3 Guardianship, Conservatorship and Other Protective Arrangements
4 Act or a subsequent order. A transaction affected by a
5 substantial conflict includes a sale, encumbrance or other
6 transaction involving the conservatorship estate entered into
7 by the conservator, an individual with whom the conservator
8 resides, the spouse, descendant, sibling, agent or attorney of
9 the conservator or a corporation or other enterprise in which
10 the conservator has a substantial beneficial interest.

11 SECTION 426. [NEW MATERIAL] PROTECTION OF PERSON DEALING
12 WITH CONSERVATOR.--

13 A. A person that assists or deals with a
14 conservator in good faith and for value in any transaction,
15 other than a transaction requiring a court order under Section
16 414 of the Uniform Guardianship, Conservatorship and Other
17 Protective Arrangements Act, is protected as though the
18 conservator properly exercised any power in question.
19 Knowledge by a person that the person is dealing with a
20 conservator alone does not require the person to inquire into
21 the existence of authority of the conservator or the propriety
22 of the conservator's exercise of authority, but restrictions on
23 authority stated in letters of office, or otherwise provided by
24 law, are effective as to the person. A person that pays or
25 delivers property to a conservator is not responsible for

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1 proper application of the property.

2 B. Protection under Subsection A of this section
3 extends to a procedural irregularity or jurisdictional defect
4 in the proceeding leading to the issuance of letters of office
5 and does not substitute for protection for a person that
6 assists or deals with a conservator provided by comparable
7 provisions in law of New Mexico other than the Uniform
8 Guardianship, Conservatorship and Other Protective Arrangements
9 Act relating to a commercial transaction or simplifying a
10 transfer of securities by a fiduciary.

11 SECTION 427. [NEW MATERIAL] DEATH OF INDIVIDUAL SUBJECT
12 TO CONSERVATORSHIP.--

13 A. If an individual subject to conservatorship
14 dies, the conservator shall deliver to the court for
15 safekeeping any will of the individual in the conservator's
16 possession and inform the personal representative named in the
17 will, if feasible, or, if not feasible, a beneficiary named in
18 the will, of the delivery.

19 B. On the death of an individual subject to
20 conservatorship, the conservator shall conclude the
21 administration of the conservatorship estate as provided in
22 Section 431 of the Uniform Guardianship, Conservatorship and
23 Other Protective Arrangements Act.

24 SECTION 428. [NEW MATERIAL] PRESENTATION AND ALLOWANCE OF
25 CLAIM.--

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1 A. A conservator may pay, or secure by encumbering
2 property included in the conservatorship estate, a claim
3 against the conservatorship estate or the individual subject to
4 conservatorship arising before or during the conservatorship,
5 on presentation and allowance in accordance with the priorities
6 under Subsection D of this section. A claimant may present a
7 claim by:

8 (1) sending or delivering to the conservator a
9 statement in a record of the claim, indicating its basis, the
10 name and address of the claimant and the amount claimed; or

11 (2) filing the claim with the court, in a form
12 acceptable to the court, and sending or delivering a copy of
13 the claim to the conservator.

14 B. A claim under Subsection A of this section is
15 presented on receipt by the conservator of the statement of the
16 claim or the filing with the court of the claim, whichever
17 first occurs. A presented claim is allowed if it is not
18 disallowed in whole or in part by the conservator in a record
19 sent or delivered to the claimant not later than sixty days
20 after its presentation. Before payment, the conservator may
21 change an allowance of the claim to a disallowance in whole or
22 in part, but not after allowance under a court order or order
23 directing payment of the claim. Presentation of a claim tolls
24 until thirty days after disallowance of the claim the running
25 of a statute of limitations that has not expired relating to

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1 the claim.

2 C. A claimant whose claim under Subsection A of
3 this section has not been paid may petition the court to
4 determine the claim at any time before it is barred by a
5 statute of limitations, and the court may order its allowance,
6 payment or security by encumbering property included in the
7 conservatorship estate. If a proceeding is pending against the
8 individual subject to conservatorship at the time of
9 appointment of the conservator or is initiated thereafter, the
10 moving party shall give the conservator notice of the
11 proceeding if it could result in creating a claim against the
12 conservatorship estate.

13 D. If a conservatorship estate is likely to be
14 exhausted before all existing claims are paid, the conservator
15 shall distribute the estate in money or in kind in payment of
16 claims in the following order:

- 17 (1) costs and expenses of administration;
- 18 (2) a claim of the federal or state government
19 having priority under law other than the Uniform Guardianship,
20 Conservatorship and Other Protective Arrangements Act;
- 21 (3) a claim incurred by the conservator for
22 support, care, education, health or welfare previously provided
23 to the individual subject to conservatorship or an individual
24 who is in fact dependent on the individual subject to
25 conservatorship;

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1 (4) a claim arising before the
2 conservatorship; and

3 (5) all other claims.

4 E. Preference shall not be given in the payment of
5 a claim under Subsection D of this section over another claim
6 of the same class. A claim due and payable shall not be
7 preferred over a claim not due unless:

8 (1) doing so would leave the conservatorship
9 estate without sufficient funds to pay the basic living and
10 health care expenses of the individual subject to
11 conservatorship; and

12 (2) the court authorizes the preference under
13 Paragraph (8) of Subsection A of Section 414 of the Uniform
14 Guardianship, Conservatorship and Other Protective Arrangements
15 Act.

16 F. If assets of a conservatorship estate are
17 adequate to meet all existing claims, the court, acting in the
18 best interest of the individual subject to conservatorship, may
19 order the conservator to grant a security interest in the
20 conservatorship estate for payment of a claim at a future date.

21 SECTION 429. [NEW MATERIAL] PERSONAL LIABILITY OF
22 CONSERVATOR.--

23 A. Except as otherwise agreed by a conservator, the
24 conservator is not personally liable on a contract properly
25 entered into in a fiduciary capacity in the course of

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1 administration of the conservatorship estate unless the
2 conservator fails to reveal the conservator's representative
3 capacity before entering into the contract or in the contract.

4 B. A conservator is personally liable for an
5 obligation arising from control of property of the
6 conservatorship estate or an act or omission occurring in the
7 course of administration of the conservatorship estate only if
8 the conservator is personally at fault.

9 C. A claim based on a contract entered into by a
10 conservator in a fiduciary capacity, an obligation arising from
11 control of property included in the conservatorship estate or a
12 tort committed in the course of administration of the
13 conservatorship estate may be asserted against the
14 conservatorship estate in a proceeding against the conservator
15 in a fiduciary capacity, whether or not the conservator is
16 personally liable for the claim.

17 D. A question of liability between a
18 conservatorship estate and the conservator personally may be
19 determined in a proceeding for accounting, surcharge or
20 indemnification or another appropriate proceeding or action.

21 SECTION 430. [NEW MATERIAL] REMOVAL OF CONSERVATOR--
22 APPOINTMENT OF SUCCESSOR.--

23 A. The court may remove a conservator for failure
24 to perform the conservator's duties or other good cause and
25 appoint a successor conservator to assume the duties of the

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1 conservator.

2 B. The court shall hold a hearing to determine
3 whether to remove a conservator and appoint a successor on:

4 (1) petition of the individual subject to
5 conservatorship, conservator or person interested in the
6 welfare of the individual that contains allegations that, if
7 true, would support a reasonable belief that removal of the
8 conservator and appointment of a successor may be appropriate,
9 but the court may decline to hold a hearing if a petition based
10 on the same or substantially similar facts was filed during the
11 preceding six months;

12 (2) communication from the individual subject
13 to conservatorship, conservator or person interested in the
14 welfare of the individual that supports a reasonable belief
15 that removal of the conservator and appointment of a successor
16 may be appropriate; or

17 (3) determination by the court that a hearing
18 would be in the best interest of the individual subject to
19 conservatorship.

20 C. Notice of a petition under Paragraph (1) of
21 Subsection B of this section shall be given to the individual
22 subject to conservatorship, the conservator and any other
23 person the court determines.

24 D. An individual subject to conservatorship who
25 seeks to remove the conservator and have a successor appointed

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1 has the right to choose an attorney to represent the individual
2 in this matter. If the individual is not represented by an
3 attorney, the court shall appoint an attorney under the same
4 conditions as in Section 406 of the Uniform Guardianship,
5 Conservatorship and Other Protective Arrangements Act. The
6 court shall award reasonable attorney's fees to the attorney as
7 provided in Section 119 of that act.

8 E. In selecting a successor conservator, the court
9 shall follow the priorities under Section 410 of the Uniform
10 Guardianship, Conservatorship and Other Protective Arrangements
11 Act.

12 F. Not later than thirty days after appointing a
13 successor conservator, the court shall give notice of the
14 appointment to the individual subject to conservatorship and
15 any person entitled to notice under Subsection E of Section 411
16 of the Uniform Guardianship, Conservatorship and Other
17 Protective Arrangements Act or a subsequent order.

18 SECTION 431. [NEW MATERIAL] TERMINATION OR MODIFICATION
19 OF CONSERVATORSHIP.--

20 A. A conservatorship for a minor terminates on the
21 earliest of:

22 (1) a court order terminating the
23 conservatorship;

24 (2) the minor becoming an adult or, if the
25 minor consents or the court finds by clear and convincing

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1 evidence that substantial harm to the minor's interests is
2 otherwise likely, attaining twenty-one years of age;

3 (3) emancipation of the minor; or

4 (4) death of the minor.

5 B. A conservatorship for an adult terminates on
6 order of the court or when the adult dies.

7 C. An individual subject to conservatorship, the
8 conservator or a person interested in the welfare of the
9 individual may petition for:

10 (1) termination of the conservatorship on the
11 ground that a basis for appointment under Section 401 of the
12 Uniform Guardianship, Conservatorship and Other Protective
13 Arrangements Act does not exist or termination would be in the
14 best interest of the individual or for other good cause; or

15 (2) modification of the conservatorship on the
16 ground that the extent of protection or assistance granted is
17 not appropriate or for other good cause.

18 D. The court shall hold a hearing to determine
19 whether termination or modification of a conservatorship is
20 appropriate on:

21 (1) petition under Subsection C of this
22 section that contains allegations that, if true, would support
23 a reasonable belief that termination or modification of the
24 conservatorship may be appropriate, but the court may decline
25 to hold a hearing if a petition based on the same or

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1 substantially similar facts was filed within the preceding six
2 months;

3 (2) a communication from the individual
4 subject to conservatorship, conservator or person interested in
5 the welfare of the individual that supports a reasonable belief
6 that termination or modification of the conservatorship may be
7 appropriate, including because the functional needs of the
8 individual or supports or services available to the individual
9 have changed;

10 (3) a report from a guardian or conservator
11 that indicates that termination or modification may be
12 appropriate because the functional needs or supports or
13 services available to the individual have changed or a
14 protective arrangement instead of conservatorship or other less
15 restrictive alternative is available; or

16 (4) a determination by the court that a
17 hearing would be in the best interest of the individual.

18 E. Notice of a petition under Subsection C of this
19 section shall be given to the individual subject to
20 conservatorship, the conservator and any such other person the
21 court determines.

22 F. On presentation of prima facie evidence for
23 termination of a conservatorship, the court shall order
24 termination unless it is proven that a basis for appointment of
25 a conservator under Section 401 of the Uniform Guardianship,

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1 Conservatorship and Other Protective Arrangements Act exists.

2 G. The court shall modify the powers granted to a
3 conservator if the powers are excessive or inadequate due to a
4 change in the abilities or limitations of the individual
5 subject to conservatorship, the individual's supports or other
6 circumstances.

7 H. Unless the court otherwise orders for good
8 cause, before terminating a conservatorship, the court shall
9 follow the same procedures to safeguard the rights of the
10 individual subject to conservatorship that apply to a petition
11 for conservatorship.

12 I. An individual subject to conservatorship who
13 seeks to terminate or modify the terms of the conservatorship
14 has the right to choose an attorney to represent the individual
15 in this matter. If the individual is not represented by an
16 attorney, the court shall appoint an attorney under the same
17 conditions as in Section 406 of the Uniform Guardianship,
18 Conservatorship and Other Protective Arrangements Act. The
19 court shall award reasonable attorney's fees to the attorney as
20 provided in Section 119 of that act.

21 J. On termination of a conservatorship other than
22 by reason of the death of the individual subject to
23 conservatorship, property of the conservatorship estate passes
24 to the individual. The order of termination shall direct the
25 conservator to file a final report and petition for discharge

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1 on approval by the court of the final report.

2 K. On termination of a conservatorship by reason of
3 the death of the individual subject to conservatorship, the
4 conservator promptly shall file a final report and petition for
5 discharge on approval by the court of the final report. On
6 approval of the final report, the conservator shall proceed
7 expeditiously to distribute the conservatorship estate to the
8 individual's estate or as otherwise ordered by the court. The
9 conservator may take reasonable measures necessary to preserve
10 the conservatorship estate until distribution can be made.

11 L. The court shall issue a final order of discharge
12 on the approval by the court of the final report and
13 satisfaction by the conservator of any other condition the
14 court imposed on the conservator's discharge.

15 SECTION 432. [NEW MATERIAL] TRANSFER FOR BENEFIT OF MINOR
16 WITHOUT APPOINTMENT OF CONSERVATOR.--

17 A. Unless a person required to transfer funds or
18 other property to a minor knows that a conservator for the
19 minor has been appointed or a proceeding is pending for
20 conservatorship, the person may transfer an amount or value not
21 exceeding fifteen thousand dollars (\$15,000) in a twelve-month
22 period to:

- 23 (1) a person that has care or custody of the
24 minor and with whom the minor resides;
- 25 (2) a guardian for the minor;

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1 (3) a custodian under the Uniform Transfers to
2 Minors Act; or

3 (4) a financial institution as a deposit in an
4 interest-bearing account or certificate solely in the name of
5 the minor and shall give notice to the minor of the deposit.

6 B. A person that transfers funds or other property
7 under this section is not responsible for its proper
8 application.

9 C. A person that receives funds or other property
10 for a minor under Paragraph (1) or (2) of Subsection A of this
11 section may apply it only to the support, care, education,
12 health or welfare of the minor and shall not derive a personal
13 financial benefit from it, except for reimbursement for
14 necessary expenses. Funds not applied for these purposes shall
15 be preserved for the future support, care, education, health or
16 welfare of the minor and the balance, if any, transferred to
17 the minor when the minor becomes an adult or otherwise is
18 emancipated.

19 ARTICLE 5

20 OTHER PROTECTIVE ARRANGEMENTS

21 SECTION 501. [NEW MATERIAL] AUTHORITY FOR PROTECTIVE
22 ARRANGEMENT.--

23 A. Under this article, a court:

24 (1) on receiving a petition for a guardianship
25 for an adult may order a protective arrangement instead of

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1 guardianship as a less restrictive alternative to guardianship;
2 and

3 (2) on receiving a petition for a
4 conservatorship for an individual may order a protective
5 arrangement instead of conservatorship as a less restrictive
6 alternative to conservatorship.

7 B. A person interested in an adult's welfare,
8 including the adult or a conservator for the adult, may
9 petition under this article for a protective arrangement
10 instead of guardianship.

11 C. The following persons may petition under this
12 article for a protective arrangement instead of
13 conservatorship:

14 (1) the individual for whom the protective
15 arrangement is sought;

16 (2) a person interested in the property,
17 financial affairs or welfare of the individual, including a
18 person that would be affected adversely by lack of effective
19 management of property or financial affairs of the individual;
20 and

21 (3) the guardian for the individual.

22 SECTION 502. [NEW MATERIAL] BASIS FOR PROTECTIVE
23 ARRANGEMENT INSTEAD OF GUARDIANSHIP FOR ADULT.--

24 A. After the hearing on a petition under Section
25 302 of the Uniform Guardianship, Conservatorship and Other

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1 Protective Arrangements Act for a guardianship or under
2 Subsection B of Section 501 of that act for a protective
3 arrangement instead of guardianship, the court may issue an
4 order under Subsection B of this section for a protective
5 arrangement instead of guardianship if the court finds by clear
6 and convincing evidence that:

7 (1) the respondent lacks the ability to meet
8 essential requirements for physical health, safety or self-care
9 because the respondent is unable to receive and evaluate
10 information or make or communicate decisions, even with
11 appropriate supportive services, technological assistance or
12 supported decision making; and

13 (2) the respondent's identified needs cannot
14 be met by a less restrictive alternative.

15 B. If the court makes the findings under Subsection
16 A of this section, the court, instead of appointing a guardian,
17 may:

18 (1) authorize or direct a transaction
19 necessary to meet the respondent's need for health, safety or
20 care, including:

21 (a) a particular medical treatment or
22 refusal of a particular medical treatment;

23 (b) a move to a specified place of
24 dwelling; or

25 (c) visitation or supervised visitation

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1 between the respondent and another person;

2 (2) restrict access to the respondent by a
3 specified person whose access places the respondent at serious
4 risk of physical, psychological or financial harm; and

5 (3) order other arrangements on a limited
6 basis that are appropriate.

7 C. In deciding whether to issue an order under this
8 section, the court shall consider the factors under Sections
9 313 and 314 of the Uniform Guardianship, Conservatorship and
10 Other Protective Arrangements Act that a guardian shall
11 consider when making a decision on behalf of an adult subject
12 to guardianship.

13 SECTION 503. [NEW MATERIAL] BASIS FOR PROTECTIVE
14 ARRANGEMENT INSTEAD OF CONSERVATORSHIP FOR ADULT OR MINOR.--

15 A. After the hearing on a petition under Section
16 402 of the Uniform Guardianship, Conservatorship and Other
17 Protective Arrangements Act for conservatorship for an adult or
18 under Subsection C of Section 501 of that act for a protective
19 arrangement instead of conservatorship for an adult, the court
20 may issue an order under Subsection C of this section for a
21 protective arrangement instead of conservatorship for the
22 respondent if the court finds:

23 (1) by clear and convincing evidence that the
24 respondent is unable to manage the respondent's property or
25 financial affairs because:

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1 (a) of a limitation in the ability to
2 receive and evaluate information or make or communicate
3 decisions, even with appropriate supportive services,
4 technological assistance or supported decision making; or

5 (b) the adult is missing, detained or
6 unable to return to the United States;

7 (2) by a preponderance of the evidence that:

8 (a) the respondent has property likely
9 to be wasted or dissipated unless management is provided; or

10 (b) an order under Subsection C of this
11 section is necessary or desirable to obtain or provide funds or
12 other property needed for the support, care, education, health
13 or welfare of the respondent or an individual entitled to the
14 respondent's support; and

15 (3) the respondent's identified needs cannot
16 be met by a less restrictive alternative.

17 B. After the hearing on a petition under Section
18 402 of the Uniform Guardianship, Conservatorship and Other
19 Protective Arrangements Act for conservatorship for a minor or
20 under Subsection C of Section 501 of that act for a protective
21 arrangement instead of conservatorship for a minor, the court
22 may issue an order under Subsection C of this section for a
23 protective arrangement instead of conservatorship for the
24 respondent if the court finds by a preponderance of the
25 evidence that the arrangement is in the minor's best interest

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1 and:

2 (1) if the minor has a parent, the court gives
3 weight to any recommendation of the parent whether an
4 arrangement is in the minor's best interest;

5 (2) either:

6 (a) the minor owns money or property
7 requiring management or protection that otherwise cannot be
8 provided;

9 (b) the minor has or may have financial
10 affairs that may be put at unreasonable risk or hindered
11 because of the minor's age; or

12 (c) the arrangement is necessary or
13 desirable to obtain or provide funds or other property needed
14 for the support, care, education, health or welfare of the
15 minor; and

16 (3) the order under Subsection C of this
17 section is necessary or desirable to obtain or provide money
18 needed for the support, care, education, health or welfare of
19 the minor.

20 C. If the court makes the findings under Subsection
21 A or B of this section, the court, instead of appointing a
22 conservator, may:

23 (1) authorize or direct a transaction
24 necessary to protect the financial interest or property of the
25 respondent, including:

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1 (a) an action to establish eligibility
2 for benefits;

3 (b) payment, delivery, deposit or
4 retention of funds or property;

5 (c) sale, mortgage, lease or other
6 transfer of property;

7 (d) purchase of an annuity;

8 (e) entry into a contractual
9 relationship, including a contract to provide for personal
10 care, supportive services, education, training or employment;

11 (f) addition to or establishment of a
12 trust;

13 (g) ratification or invalidation of a
14 contract, trust, will or other transaction, including a
15 transaction related to the property or business affairs of the
16 respondent; or

17 (h) settlement of a claim; or

18 (2) restrict access to the respondent's
19 property by a specified person whose access to the property
20 places the respondent at serious risk of financial harm.

21 D. After the hearing on a petition under Paragraph
22 (2) of Subsection A of Section 501 of the Uniform Guardianship,
23 Conservatorship and Other Protective Arrangements Act or
24 Subsection C of that section, whether or not the court makes
25 the findings under Subsection A or B of this section, the court

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1 may issue an order to restrict access to the respondent or the
2 respondent's property by a specified person that the court
3 finds by clear and convincing evidence:

4 (1) through fraud, coercion, duress or the use
5 of deception and control caused or attempted to cause an action
6 that would have resulted in financial harm to the respondent or
7 the respondent's property; and

8 (2) poses a serious risk of substantial
9 financial harm to the respondent or the respondent's property.

10 E. Before issuing an order under Subsection C or D
11 of this section, the court shall consider the factors under
12 Section 418 of the Uniform Guardianship, Conservatorship and
13 Other Protective Arrangements Act that a conservator shall
14 consider when making a decision on behalf of an individual
15 subject to conservatorship.

16 F. Before issuing an order under Subsection C or D
17 of this section for a respondent who is a minor, the court also
18 shall consider the best interest of the minor, the preference
19 of the parents of the minor and the preference of the minor, if
20 the minor is twelve years of age or older.

21 SECTION 504. [NEW MATERIAL] PETITION FOR PROTECTIVE
22 ARRANGEMENT.--A petition for a protective arrangement instead
23 of guardianship or conservatorship shall state the petitioner's
24 name, principal residence, current street address, if
25 different, relationship to the respondent, interest in the

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1 protective arrangement, the name and address of any attorney
2 representing the petitioner and, to the extent known, the
3 following:

4 A. the respondent's name, age, principal residence,
5 current street address, if different, and, if different,
6 address of the dwelling in which it is proposed the respondent
7 will reside if the petition is granted;

8 B. the name and address of the respondent's:

9 (1) spouse or, if the respondent has none, an
10 adult with whom the respondent has shared household
11 responsibilities for more than six months in the twelve-month
12 period before the filing of the petition;

13 (2) adult children or, if none, each parent
14 and adult sibling of the respondent, or, if none, at least one
15 adult nearest in kinship to the respondent who can be found
16 with reasonable diligence; and

17 (3) adult stepchildren whom the respondent
18 actively parented during the stepchildren's minor years and
19 with whom the respondent had an ongoing relationship in the
20 two-year period immediately before the filing of the petition;

21 C. the name and current address of each of the
22 following, if applicable:

23 (1) a person responsible for the care or
24 custody of the respondent;

25 (2) any attorney currently representing the

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1 respondent;

2 (3) the representative payee appointed by the
3 federal social security administration for the respondent;

4 (4) a guardian or conservator acting for the
5 respondent in New Mexico or another jurisdiction;

6 (5) a trustee or custodian of a trust or
7 custodianship of which the respondent is a beneficiary;

8 (6) the fiduciary appointed for the respondent
9 by the federal department of veterans affairs;

10 (7) an agent designated under a power of
11 attorney for health care in which the respondent is identified
12 as the principal;

13 (8) an agent designated under a power of
14 attorney for finances in which the respondent is identified as
15 the principal;

16 (9) a person nominated as guardian or
17 conservator by the respondent if the respondent is twelve years
18 of age or older;

19 (10) a person nominated as guardian by the
20 respondent's parent or spouse in a will or other signed record;

21 (11) a person known to have routinely assisted
22 the respondent with decision making in the six-month period
23 immediately before the filing of the petition; and

24 (12) if the respondent is a minor:

25 (a) an adult not otherwise listed with

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1 whom the respondent resides; and

2 (b) each person not otherwise listed
3 that had primary care or custody of the respondent for at least
4 sixty days during the two years immediately before the filing
5 of the petition or for at least seven hundred thirty days
6 during the five years immediately before the filing of the
7 petition;

8 D. the nature of the protective arrangement sought;

9 E. the reason the protective arrangement sought is
10 necessary, including a brief description of:

11 (1) the nature and extent of the respondent's
12 alleged need;

13 (2) any less restrictive alternative for
14 meeting the respondent's alleged need that has been considered
15 or implemented;

16 (3) if no less restrictive alternative has
17 been considered or implemented, the reason less restrictive
18 alternatives have not been considered or implemented; and

19 (4) the reason other less restrictive
20 alternatives are insufficient to meet the respondent's alleged
21 need;

22 F. the name and current address, if known, of any
23 person with whom the petitioner seeks to limit the respondent's
24 contact;

25 G. whether the respondent needs an interpreter,

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1 translator or other form of support to communicate effectively
2 with the court or understand court proceedings;

3 H. if a protective arrangement instead of
4 guardianship is sought and the respondent has property other
5 than personal effects, a general statement of the respondent's
6 property with an estimate of its value, including any insurance
7 or pension and the source and amount of any other anticipated
8 income or receipts; and

9 I. if a protective arrangement instead of
10 conservatorship is sought, a general statement of the
11 respondent's property with an estimate of its value, including
12 any insurance or pension and the source and amount of other
13 anticipated income or receipts.

14 SECTION 505. [NEW MATERIAL] NOTICE AND HEARING.--

15 A. On filing of a petition under Section 501 of the
16 Uniform Guardianship, Conservatorship and Other Protective
17 Arrangements Act, the court shall set a date, time and place
18 for a hearing on the petition.

19 B. A copy of a petition under Section 501 of the
20 Uniform Guardianship, Conservatorship and Other Protective
21 Arrangements Act and notice of a hearing on the petition shall
22 be served personally on the respondent. The notice shall
23 inform the respondent of the respondent's rights at the
24 hearing, including the right to an attorney and to attend the
25 hearing. The notice shall include a description of the nature,

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1 purpose and consequences of granting the petition. The court
2 shall not grant the petition if notice substantially complying
3 with this subsection is not served on the respondent.

4 C. In a proceeding on a petition under Section 501
5 of the Uniform Guardianship, Conservatorship and Other
6 Protective Arrangements Act, notice of the hearing shall be
7 given to the persons required to be listed in the petition
8 under Subsections A through C of Section 504 of that act and
9 any other person interested in the respondent's welfare the
10 court determines. Failure to give notice under this subsection
11 does not preclude the court from granting the petition.

12 D. After the court has ordered a protective
13 arrangement under this article, notice of a hearing on a
14 petition filed under the Uniform Guardianship, Conservatorship
15 and Other Protective Arrangements Act, together with a copy of
16 the petition, shall be given to the respondent and any other
17 person the court determines.

18 SECTION 506. [NEW MATERIAL] APPOINTMENT AND ROLE OF
19 VISITOR.--

20 A. On filing of a petition under Section 501 of the
21 Uniform Guardianship, Conservatorship and Other Protective
22 Arrangements Act for a protective arrangement instead of
23 guardianship, the court shall appoint a visitor. The visitor
24 shall be an individual with training or experience in the type
25 of abilities, limitations and needs alleged in the petition.

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1 B. On filing of a petition under Section 501 of the
2 Uniform Guardianship, Conservatorship and Other Protective
3 Arrangements Act for a protective arrangement instead of
4 conservatorship for a minor, the court may appoint a visitor to
5 investigate a matter related to the petition or inform the
6 minor or a parent of the minor about the petition or a related
7 matter.

8 C. On filing of a petition under Section 501 of the
9 Uniform Guardianship, Conservatorship and Other Protective
10 Arrangements Act for a protective arrangement instead of
11 conservatorship for an adult, the court shall appoint a visitor
12 unless the respondent is represented by an attorney appointed
13 by the court. The visitor shall be an individual with training
14 or experience in the types of abilities, limitations and needs
15 alleged in the petition.

16 D. A visitor appointed under Subsection A or C of
17 this section shall interview the respondent in person and, in a
18 manner the respondent is best able to understand:

19 (1) explain to the respondent the substance of
20 the petition, the nature, purpose and effect of the proceeding
21 and the respondent's rights at the hearing on the petition;

22 (2) determine the respondent's views with
23 respect to the order sought;

24 (3) inform the respondent of the respondent's
25 right to employ and consult with an attorney at the

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1 respondent's expense and the right to request a court-appointed
2 attorney;

3 (4) inform the respondent that all costs and
4 expenses of the proceeding, including respondent's attorney's
5 fees, may be paid from the respondent's assets;

6 (5) if the petitioner seeks an order related
7 to the dwelling of the respondent, visit the respondent's
8 present dwelling and any dwelling in which it is reasonably
9 believed the respondent will live if the order is granted;

10 (6) if a protective arrangement instead of
11 guardianship is sought, obtain information from any physician
12 or other person known to have treated, advised or assessed the
13 respondent's relevant physical or mental condition;

14 (7) if a protective arrangement instead of
15 conservatorship is sought, review financial records of the
16 respondent, if relevant to the visitor's recommendation under
17 Paragraph (2) of Subsection E of this section; and

18 (8) investigate the allegations in the
19 petition and any other matter relating to the petition the
20 court directs.

21 E. A visitor under this section promptly shall file
22 a report in a record with the court that includes:

23 (1) to the extent relevant to the order
24 sought, a summary of self-care, independent-living tasks and
25 financial-management tasks that the respondent:

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1 (a) can manage without assistance or
2 with existing supports;

3 (b) could manage with the assistance of
4 appropriate supportive services, technological assistance or
5 supported decision making; and

6 (c) cannot manage;

7 (2) a recommendation regarding the
8 appropriateness of the protective arrangement sought and
9 whether a less restrictive alternative for meeting the
10 respondent's needs is available;

11 (3) if the petition seeks to change the
12 physical location of the dwelling of the respondent, a
13 statement whether the proposed dwelling meets the respondent's
14 needs and whether the respondent has expressed a preference as
15 to the respondent's dwelling;

16 (4) a recommendation whether a professional
17 evaluation under Section 508 of the Uniform Guardianship,
18 Conservatorship and Other Protective Arrangements Act is
19 necessary;

20 (5) a statement whether the respondent is able
21 to attend a hearing at the location court proceedings typically
22 are held;

23 (6) a statement whether the respondent is able
24 to participate in a hearing and that identifies any technology
25 or other form of support that would enhance the respondent's

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1 ability to participate; and

2 (7) any other matter the court directs.

3 SECTION 507. [NEW MATERIAL] APPOINTMENT AND ROLE OF
4 ATTORNEY.--

5 A. Unless the respondent in a proceeding under this
6 article is represented by an attorney, the court shall appoint
7 an attorney to represent the respondent, regardless of the
8 respondent's ability to pay.

9 B. An attorney representing the respondent in a
10 proceeding under this article shall:

11 (1) make reasonable efforts to ascertain the
12 respondent's wishes;

13 (2) advocate for the respondent's wishes to
14 the extent reasonably ascertainable; and

15 (3) if the respondent's wishes are not
16 reasonably ascertainable, advocate for the result that is the
17 least restrictive alternative in type, duration and scope,
18 consistent with the respondent's interests.

19 SECTION 508. [NEW MATERIAL] PROFESSIONAL EVALUATION.--

20 A. At or before a hearing on a petition under this
21 article for a protective arrangement, the court shall order a
22 professional evaluation of the respondent:

23 (1) if the respondent requests the evaluation;

24 or

25 (2) or in other cases, unless the court finds

1 that it has sufficient information to determine the
2 respondent's needs and abilities without the evaluation.

3 B. If the court orders an evaluation under
4 Subsection A of this section, the respondent shall be examined
5 by a licensed physician, psychologist, social worker or other
6 individual appointed by the court who is qualified to evaluate
7 the respondent's alleged cognitive and functional abilities and
8 limitations and will not be advantaged or disadvantaged by a
9 decision to grant the petition or otherwise have a conflict of
10 interest. The individual conducting the evaluation promptly
11 shall file a report in a record with the court. Unless
12 otherwise directed by the court, the report shall contain:

13 (1) a description of the nature, type and
14 extent of the respondent's cognitive and functional abilities
15 and limitations;

16 (2) an evaluation of the respondent's mental
17 and physical condition and, if appropriate, educational
18 potential, adaptive behavior and social skills;

19 (3) a prognosis for improvement, including
20 with regard to the ability to manage the respondent's property
21 and financial affairs if a limitation in that ability is
22 alleged and recommendation for the appropriate treatment,
23 support or habilitation plan; and

24 (4) the date of the examination on which the
25 report is based.

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1 C. The respondent may decline to participate in an
2 evaluation ordered under Subsection A of this section.

3 SECTION 509. [NEW MATERIAL] ATTENDANCE AND RIGHTS AT
4 HEARING.--

5 A. Except as otherwise provided in Subsection B of
6 this section, a hearing under this article shall not proceed
7 unless the respondent attends the hearing. If it is not
8 reasonably feasible for the respondent to attend a hearing at
9 the location court proceedings typically are held, the court
10 shall make reasonable efforts to hold the hearing at an
11 alternative location convenient to the respondent or allow the
12 respondent to attend the hearing using real-time audio-visual
13 technology.

14 B. A hearing under this article may proceed without
15 the respondent in attendance if the court finds by clear and
16 convincing evidence that:

17 (1) the respondent consistently and repeatedly
18 has refused to attend the hearing after having been fully
19 informed of the right to attend and the potential consequences
20 of failing to do so;

21 (2) there is no practicable way for the
22 respondent to attend and participate in the hearing even with
23 appropriate supportive services and technological assistance;
24 or

25 (3) the respondent is a minor who has received

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1 proper notice and attendance would be harmful to the minor.

2 C. The respondent may be assisted in a hearing
3 under this article by a person or persons of the respondent's
4 choosing, assistive technology or an interpreter or translator
5 or a combination of these supports. If assistance would
6 facilitate the respondent's participation in the hearing, but
7 is not otherwise available to the respondent, the court shall
8 make reasonable efforts to provide it.

9 D. The respondent has a right to choose an attorney
10 to represent the respondent at a hearing under this article.

11 E. At a hearing under this article, the respondent
12 may:

13 (1) present evidence and subpoena witnesses
14 and documents;

15 (2) examine witnesses, including any court-
16 appointed evaluator and the visitor; and

17 (3) otherwise participate in the hearing.

18 F. A hearing under this article shall be closed on
19 request of the respondent and a showing of good cause.

20 G. Any person may request to participate in a
21 hearing under this article. The court may grant the request,
22 with or without a hearing, on determining that the best
23 interest of the respondent will be served. The court may
24 impose appropriate conditions on the person's participation.

25 SECTION 510. [NEW MATERIAL] NOTICE OF ORDER.--The court

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1 shall give notice of an order under this article to the
2 individual who is subject to the protective arrangement instead
3 of guardianship or conservatorship, a person whose access to
4 the individual is restricted by the order and any other person
5 the court determines.

6 SECTION 511. [NEW MATERIAL] CONFIDENTIALITY OF RECORDS.--

7 A. The existence of a proceeding for or the
8 existence of a protective arrangement instead of guardianship
9 or conservatorship is a matter of public record unless the
10 court seals the record after:

11 (1) the respondent, the individual subject to
12 the protective arrangement or the parent of a minor subject to
13 the protective arrangement requests the record be sealed; and

14 (2) either:

- 15 (a) the proceeding is dismissed;
16 (b) the protective arrangement is no
17 longer in effect; or
18 (c) an act authorized by the order
19 granting the protective arrangement has been completed.

20 B. A respondent, an individual subject to a
21 protective arrangement instead of guardianship or
22 conservatorship, an attorney designated by the respondent or
23 individual, a parent of a minor subject to a protective
24 arrangement and any other person the court determines are
25 entitled to access court records of the proceeding and

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1 resulting protective arrangement. A person not otherwise
2 entitled to access to court records under this subsection for
3 good cause may petition the court for access. The court shall
4 grant access if access is in the best interest of the
5 respondent or individual subject to the protective arrangement
6 or furthers the public interest and does not endanger the
7 welfare or financial interests of the respondent or individual.

8 C. A report of a visitor or professional evaluation
9 generated in the course of a proceeding under this article
10 shall be sealed on filing, but is available to:

11 (1) the court;

12 (2) the individual who is the subject of the
13 report or evaluation, without limitation as to use;

14 (3) the petitioner, visitor and petitioner's
15 and respondent's attorneys, for purposes of the proceeding;

16 (4) unless the court orders otherwise, an
17 agent appointed under a power of attorney for finances in which
18 the respondent is the principal;

19 (5) if the order is for a protective
20 arrangement instead of guardianship and unless the court orders
21 otherwise, an agent appointed under a power of attorney for
22 health care in which the respondent is identified as the
23 principal; and

24 (6) any other person if it is in the public
25 interest or for a purpose the court orders for good cause.

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1 through 45-5-431 and 45-5-434 through 45-5-436 NMSA 1978 (being
2 Laws 1975, Chapter 257, Sections 5-101 through 5-104, Laws
3 1993, Chapter 301, Section 23, Laws 1975, Chapter 257, Section
4 5-201, Laws 1995, Chapter 210, Section 51, Laws 1975, Chapter
5 257, Sections 5-203 through 5-208, Laws 1995, Chapter 210,
6 Section 54, Laws 1975, Chapter 257, Sections 5-210 through
7 5-212 and 5-301, Laws 1989, Chapter 252, Section 4, Laws 1975,
8 Chapter 257, Section 5-302, Laws 1989, Chapter 252, Sections 5
9 through 7, Laws 1975, Chapter 257, Sections 5-305 through
10 5-307, Laws 1989, Chapter 252, Section 9, Laws 1975, Chapter
11 257, Sections 5-309 through 5-313, Laws 1989, Chapter 252,
12 Sections 14 and 15, Laws 1975, Chapter 257, Sections 5-401 and
13 5-402, Laws 1993, Chapter 301, Section 25, Laws 1975, Chapter
14 257, Sections 5-403 and 5-404, Laws 1989, Chapter 252, Section
15 18, Laws 1975, Chapter 257, Section 5-405, Laws 1993, Chapter
16 301, Section 26, Laws 1975, Chapter 257, Sections 5-406 and
17 5-407, Laws 1989, Chapter 252, Sections 21 and 22, Laws 1975,
18 Chapter 257, Sections 5-410, 5-411, 5-413 through 5-418, 5-420
19 and 5-421, Laws 1989, Chapter 252, Section 26, Laws 1975,
20 Chapter 257, Sections 5-422 through 5-425, Laws 1989, Chapter
21 252, Section 27, Laws 1975, Chapter 257, Sections 5-427 through
22 5-431 and Laws 2011, Chapter 124, Sections 59 through 61, as
23 amended) are repealed.

24 **SECTION 604. APPLICABILITY.**--The Uniform Guardianship,
25 Conservatorship and Other Protective Arrangements Act applies

.208901.3

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1 to a proceeding for appointment of a guardian or conservator or
2 for a protective arrangement instead of guardianship or
3 conservatorship commenced after January 1, 2019 and a
4 guardianship, conservatorship or protective arrangement instead
5 of guardianship or conservatorship in existence on January 1,
6 2019 unless the court finds application of a particular
7 provision of that act would substantially interfere with the
8 effective conduct of the proceeding or prejudice the rights of
9 a party, in which case the particular provision of that act
10 does not apply and the superseded law applies.

11 SECTION 605. EFFECTIVE DATE.--The effective date of the
12 provisions of this act is January 1, 2019.

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SENATE BILL

53RD LEGISLATURE - STATE OF NEW MEXICO - SECOND SESSION, 2018

INTRODUCED BY

FOR THE COURTS, CORRECTIONS AND JUSTICE COMMITTEE

AN ACT

RELATING TO BAIL; ESTABLISHING A PRESUMPTION THAT A MOTOR
VEHICLE DRIVER CHARGED WITH VIOLATION OF SECTION 66-7-201 NMSA
1978 (BEING LAWS 1978, CHAPTER 35, SECTION 390, AS AMENDED) IS
A FLIGHT RISK.

BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF NEW MEXICO:

SECTION 1. A new section of Chapter 31, Article 3 NMSA
1978 is enacted to read:

"[NEW MATERIAL] LEAVING THE SCENE OF AN ACCIDENT.--When
considering the setting of bail or other conditions of release,
a person charged with violation of Section 66-7-201 NMSA 1978
shall be presumed to be a flight risk."

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HOUSE JOINT MEMORIAL

53RD LEGISLATURE - STATE OF NEW MEXICO - SECOND SESSION, 2018

INTRODUCED BY

FOR THE COURTS, CORRECTIONS AND JUSTICE COMMITTEE

A JOINT MEMORIAL

EXPRESSING THE LEGISLATURE'S SUPPORT OF DREAMERS AND REQUESTING
WORK ON COMPREHENSIVE IMMIGRATION REFORM.

WHEREAS, many immigrant parents bring their children to
the United States to provide them with greater opportunities
for access to the "American dream"; and

WHEREAS, the federal deferred action for childhood
arrivals program was created by an executive order signed by
President Barack Obama in August 2012; and

WHEREAS, the deferred action for childhood arrivals
program gives certain immigrants who came to the United States
before they were sixteen years old, known as "dreamers", a
chance to stay in the United States to study or work, provided
that those dreamers meet certain conditions; and

WHEREAS, nearly seven hundred ninety thousand young

.208880.4

NOTE: As reflected in the minutes of the committee's November 8-9, 2017 meeting, the committee endorsed the .208880.3 version of this memorial. The version included in this report is designated .208880.4 to reflect the committee's discussion of changing the memorial from a simple memorial to a joint memorial. No substantive changes were made in the change from the .3 version to the .4 version, merely its designation as a joint memorial.

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1 dreamers have received work permits and deportation relief
2 through the federal deferred action for childhood arrivals
3 program; and

4 WHEREAS, those approved for participation in the deferred
5 action for childhood arrivals program are given a work permit
6 and protection from deportation for two years, which permit and
7 protection can be renewed; and

8 WHEREAS, the immigrant population in the United States is
9 very diverse, including people from a range of backgrounds,
10 ethnicities and nationalities. In 2015, forty-seven percent of
11 immigrants to the United States reported their race as "white",
12 twenty-seven percent as "Asian", nine percent as "black" and
13 fifteen percent as another race; and

14 WHEREAS, according to the 2014 American community survey,
15 seven and two-tenths percent of the twenty-two million
16 undocumented immigrants in the United States were black; and

17 WHEREAS, among the top fifteen countries of origin of
18 undocumented immigrants in the United States, a broad range of
19 countries is represented, including Mexico, China, India,
20 Canada and Haiti; and

21 WHEREAS, New Mexico is home to an estimated ten thousand
22 immigrants who would qualify for participation in the deferred
23 action for childhood arrivals program and nearly seven thousand
24 dreamers. Regardless of their immigration status, those
25 dreamers deserve equal protection under the law; and

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1 WHEREAS, the institute on taxation and economic policy
2 reported that in 2010, undocumented immigrants in New Mexico
3 paid eighty-six million seven hundred thousand dollars
4 (\$86,700,000) in state and local taxes, including seventy-five
5 million two hundred thousand dollars (\$75,200,000) in gross
6 receipts taxes, three million three hundred thousand dollars
7 (\$3,300,000) in state income taxes and eight million dollars
8 (\$8,000,000) in property taxes; and

9 WHEREAS, the deferred action for childhood arrivals
10 program is popular with the public and enjoys the support of
11 employers, educators, community leaders and elected officials
12 from across the political spectrum. According to a *Morning*
13 *Consult* and *Politico* poll in April 2017, seventy-eight percent
14 of American voters support giving dreamers the chance to stay
15 in the United States permanently; and

16 WHEREAS, President Donald Trump issued an executive order
17 in September 2017 ending the deferred action for childhood
18 arrivals program;

19 NOW, THEREFORE, BE IT RESOLVED BY THE LEGISLATURE OF THE
20 STATE OF NEW MEXICO that it stand in strong alliance with
21 dreamers and in opposition to the president's rescission of the
22 deferred action for childhood arrivals program; and

23 BE IT FURTHER RESOLVED that the legislature urge the
24 president to stand by those who were brought as children to
25 this country, the only home many of them have ever known; and

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1 BE IT FURTHER RESOLVED that the legislature support a
2 comprehensive and workable approach to repairing the nation's
3 broken immigration system; and

4 BE IT FURTHER RESOLVED that the legislature call upon the
5 United States congress to take affirmative steps to develop a
6 new bipartisan and effective version of the deferred action for
7 childhood arrivals program that does not require dreamers to
8 choose between their own futures and the futures of their
9 undocumented families and neighbors; and

10 BE IT FURTHER RESOLVED that copies of this memorial be
11 transmitted to the president and vice president of the United
12 States, the United States secretary of homeland security and
13 the New Mexico congressional delegation.

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SENATE BILL

53RD LEGISLATURE - STATE OF NEW MEXICO - SECOND SESSION, 2018

INTRODUCED BY

FOR THE COURTS, CORRECTIONS AND JUSTICE COMMITTEE

AN ACT

RELATING TO ELECTIONS; PROVIDING REQUIREMENTS FOR CONTRIBUTIONS
MADE TO A CANDIDATE OR A POLITICAL COMMITTEE VIA THE INTERNET
BY CREDIT OR DEBIT CARD.

BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF NEW MEXICO:

SECTION 1. Section 1-19-34 NMSA 1978 (being Laws 1979,
Chapter 360, Section 10, as amended) is amended to read:

"1-19-34. CANDIDATES--POLITICAL COMMITTEES--TREASURER--
BANK ACCOUNT--ANONYMOUS CONTRIBUTIONS--CONTRIBUTIONS FROM
SPECIAL EVENTS--CREDIT AND DEBIT CARD CONTRIBUTIONS.--

A. It is unlawful for the members of any political
committee or any candidate to make any expenditure or solicit
or accept any contribution for a political purpose unless:

(1) a treasurer has been appointed and is
constantly maintained; provided, however, when a duly appointed

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1 treasurer is unable for any reason to continue as treasurer,
2 the candidate or political committee shall appoint a successor;
3 and provided further that a candidate may serve as the
4 candidate's own treasurer;

5 (2) all disbursements of money and receipts of
6 contributions are authorized by and through the candidate or
7 treasurer;

8 (3) a separate bank account has been
9 established and all receipts of money contributions and all
10 expenditures of money are deposited in and disbursed from the
11 one bank account maintained by the treasurer in the name of the
12 candidate or political committee; provided that nothing in this
13 section shall prohibit investments from the bank account to
14 earn interest as long as the investments and earnings are fully
15 reported. All disbursements except for disbursements made from
16 a petty cash fund of one hundred dollars (\$100) or less shall
17 be made in a form such that the date, amount and payee of the
18 transaction are automatically recorded or by check made payable
19 to the person or entity receiving the disbursement and not to
20 "cash" or "bearer"; and

21 (4) the treasurer upon disbursing or receiving
22 money or other things of value immediately enters and
23 thereafter keeps a proper record preserved by the treasurer,
24 including a full, true and itemized statement and account of
25 each sum disbursed or received, the date of such disbursal or

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1 receipt, to whom disbursed or from whom received and the object
2 or purpose for which it was disbursed or received.

3 B. No anonymous contributions may be accepted in
4 excess of one hundred dollars (\$100). The aggregate amount of
5 anonymous contributions received by a reporting individual
6 during a primary or general election or a statewide special
7 election shall not exceed two thousand dollars (\$2,000) for
8 statewide races and five hundred dollars (\$500) for all other
9 races.

10 C. Cash contributions received at special events
11 that are unidentifiable as to specific contributor but
12 identifiable as to the special event are not subject to the
13 anonymous contribution limits provided for in this section so
14 long as no single special event raises, after expenses, more
15 than one thousand dollars (\$1,000) in such cash contributions.
16 For those contributions, due diligence and best efforts shall
17 be made to disclose on a special prescribed form the sponsor,
18 date, place, total amount received, expenses incurred,
19 estimated number of persons in attendance and other
20 identifiable factors that describe the special event. For
21 purposes of this subsection, "special event" includes an event
22 such as a barbecue or similar fundraiser where tickets costing
23 fifteen dollars (\$15.00) or less are sold or an event such as a
24 coffee, tea or similar reception.

25 D. Any contributions received pursuant to this

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1 section in excess of the limits established in Subsections B
2 and C of this section shall be donated to the state general
3 fund or an organization to which a federal income tax deduction
4 would be available under Subparagraph (A) of Paragraph (1) of
5 Subsection (b) of Section 170 of the Internal Revenue Code of
6 1986, as amended.

7 E. A candidate or political committee shall not
8 accept a contribution made via the internet by a credit card or
9 a debit card unless, at the time the contribution is made, the
10 contributor provides:

11 (1) the card security code assigned to and
12 printed or imprinted on the card; and

13 (2) either:

14 (a) the billing address associated with
15 the card, which shall be within the United States; or

16 (b) if the contributor is a United
17 States citizen living outside the United States, the United
18 States mailing address used by the contributor for the purpose
19 of voter registration.

20 F. An entity that processes a contribution
21 described in Subsection E of this section shall register with
22 the secretary of state, and the secretary of state shall review
23 the entity's processing method, including any related computer
24 software."



LEGISLATIVE COUNCIL SERVICE
SANTA FE, NEW MEXICO