

**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 60 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.