

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

**July 16, 2018
State Capitol, Room 307
Santa Fe**

**July 17, 2018
University of New Mexico Science & Technology Park Rotunda
851 University Blvd. SE
Albuquerque**

The second meeting of the Courts, Corrections and Justice Committee (CCJ) was called to order by Senator Richard C. Martinez, co-chair, on July 16, 2018 at 9:22 a.m. in Room 307 of the State Capitol in Santa Fe.

Present

Rep. Gail Chasey, Co-Chair (7/16)
Sen. Richard C. Martinez, Co-Chair
Rep. Eliseo Lee Alcon
Sen. Gregory A. Baca (7/17)
Rep. Zachary J. Cook (7/16)
Rep. Jim Dines (7/16)
Sen. Linda M. Lopez
Rep. Antonio Maestas
Rep. Javier Martínez
Sen. Cisco McSorley
Rep. Angelica Rubio (7/16)

Advisory Members

Sen. Bill B. O'Neill
Sen. John Pinto (7/17)
Sen. Mimi Stewart
Rep. Christine Trujillo

Guest Legislators

Rep. Harry Garcia
Rep. Bill McCamley

Absent

Sen. Jacob R. Candelaria
Rep. Sarah Maestas Barnes
Rep. William "Bill" R. Rehm
Sen. Sander Rue

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 those members not present for the entire meeting.)

Staff

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

Guests

The guest list is in the meeting file.

Handouts

Copies of all handouts are in the meeting file.

Monday, July 16**Call to Order**

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

New Mexico Prison Population Forecasts

Linda Freeman, executive director, and Douglas Carver, deputy director, New Mexico Sentencing Commission (commission), provided an update on prison population forecasts for both female and male state prison populations, referring to the report titled "New Mexico Prison Population Forecasts: FY 2019-FY 2028" (Forecast). Ms. Freeman and Mr. Carver summarized the report and highlighted a number of important points.

Mr. Carver noted that, based on the most recent U.S. Department of Justice Bureau of Justice Statistics report (2016), the federal prison population has been trending downward since 2009, with a slight uptick in 2014. The aggregate state prison population also decreased from 2015 to 2016. Finally, the imprisonment rate for sentenced prisoners was the lowest since 1997. Mr. Carver also noted that, when compared to the national average, New Mexico houses a higher percentage of male prisoners convicted of violent offenses.

Ms. Freeman discussed the findings in the Forecast, noting that there is a general upward trend when looking at the highest actual annual population rates of both males and females in New Mexico prisons from 2004 to date. The commission expects the trend to continue through 2028.

Ms. Freeman also noted that the female inmate population has increased at a faster rate than the male inmate population for the period reviewed and continues to increase. However, the increase appears to be slowing down. Nevertheless, Ms. Freeman warned that the current operational capacity for female inmates is 850. The commission estimates that the female inmate population will exceed that capacity in 2024. Ms. Freeman added that the commission also expects the male inmate population to exceed operational capacity in 2024.

Ms. Freeman stated that, while predictions regarding the growing inmate populations are troubling, the commission's projections are based on records over the past three to five years. She believes that criminal justice reform initiatives being considered by the legislature may impact the current trends and result in a decrease in the total population for both male and female prisoners over time.

Ms. Freeman discussed the age of New Mexico's prison population, pointing out that an older population generally has more medical needs. She noted that, fortunately, New Mexico has a relatively small number of older prisoners, but suggested that the age factor should be monitored closely because it will affect the health care costs that will need to be included in budgets.

Finally, Ms. Freeman noted that while prison admissions are trending downward, prison releases are not keeping pace. She believes that this relates to the lengths of sentences, but the commission currently does not have the resources to analyze this issue. She believes that the commission will be better able to access the data necessary to understand and explain this phenomenon when the Corrections Department (NMCD) implements its new case management system.

On questioning, the following topics were discussed:

- the need for the commission to advise the legislature on causes of recidivism and other matters that may affect the prison population;
- what resources the commission needs to expand its access to information and expand its ability to provide broader analysis;
- the reasons for the increasing female prison population;
- the impact of alcohol- and drug-related sentences on the prison population;
- the Parole Board and parole requirements; and
- diagnostic processing of incoming prisoners and opportunities to provide helpful basic education and skills training.

NMCD Update

Jerry Roark, deputy secretary, NMCD, introduced the NMCD executive team and briefed the committee on current issues within the NMCD, referring to his report titled "New Mexico Corrections Department". Deputy Secretary Roark described the NMCD's basic mission, summarized the NMCD's budget and spending and provided a number of highlights regarding the NMCD and its programs.

He informed the committee that the NMCD has purchased four body scanners, which are deployed at the Springer Correctional Center, the Penitentiary of New Mexico and the Central New Mexico Correctional Facility. The scanners have proven effective, and the NMCD hopes to purchase four more.

Deputy Secretary Roark stated that the number of positive reports for drugs based on urinalysis averages four percent per month. Eighty percent of the positive reports result from the presence of Suboxone.

The NMCD has had, and continues to have, high employee vacancy rates. In this year's legislative session, the NMCD was authorized additional funding to provide for a pay raise for correctional officers. The NMCD hopes that the improved funding will assist in addressing the vacancy problem.

Deputy Secretary Roark noted that the hepatitis C rate for the inmate population continues to be approximately 40 percent. The NMCD works with Project ECHO (Extension for Community Healthcare Outcomes) at the University of New Mexico (UNM) School of Medicine to address the most acute cases within the inmate population.

The NMCD has 31 HIV-positive inmates. Health care services for these inmates are provided by Centurion and CHRISTUS St. Vincent.

The NMCD has revised its policies to allow more inmates to access the NMCD's Residential Drug Abuse Program (RDAP). The NMCD believes this is a positive step, as the recidivism rate for RDAP graduates is approximately 21 percent compared to 46 percent for those not completing the RDAP.

Deputy Secretary Roark noted that the NMCD is replacing its current offender management system. The new system will be called "offender management network information" or "OMNI". The NMCD hopes to have the new system in place by December 31, 2019.

The NMCD continues its efforts to improve and expand programming to reduce recidivism. Previously, 81 percent of its programs were evidence-based, but currently that number is 72 percent. The drop is because the NMCD decided to increase the number of programs to avoid problems caused by having idle inmates. Deputy Secretary Roark noted that the programming includes numerous programs specifically directed to female inmates.

On questioning, the following topics were discussed:

- the purchase, location and use of body scanners;
- participation in education and other programming;
- comparison between New Mexico and other states regarding the age and condition of facilities;
- escape risks and statistics;
- recidivism rates and methods to reduce recidivism;
- risks and incidents involving drone aircraft;
- hepatitis C rates and management issues;

- processing new inmates;
- parole issues regarding both male and female inmates;
- costs of housing inmates in private and state prisons;
- prison staff training;
- gang membership and activity within prisons;
- community corrections programs; and
- issues regarding timely release of inmates from private prisons.

Public Comment

Dr. Deborah Blanton suggested that drug and alcohol abuse should be considered as a health issue and not a criminal issue. She also noted that recidivism is often linked to a lack of employment and employers are reluctant to hire individuals who have been in prison. She recommended that the legislature consider expanding community-based programs. Finally, she observed that private prisons have a profit incentive to keep people incarcerated.

Don Johnston discussed in-house parole statistics, housing availability and issues concerning sex offenders and the sex offender registry. He noted that including a sex offender's place of employment on the registry website deters employers from hiring a sex offender. He suggested that successful felons should be able to associate with other felons, as the successful felon can assist parolees in integrating back into society. Finally, he stated that the recidivism rate for persons on the sex offender registry is only five percent.

Diane McCash suggested that probation and parole periods should be shortened, as longer periods can cause the person to cycle in and out of prison. She noted that probation and parole do not work for all individuals. She suggested that a person who has not committed a new crime, but who is not functioning well within the system, as indicated by technical violations of parole or probation, should simply be released from the system.

Denicia Cadena, policy director, Young Women United, described the work done by her organization and thanked the committee for discussing gender-related issues at the meeting.

Privately Operated Prisons in New Mexico with Contracts to House Federal Immigration Detainees

Representative Chasey introduced the topic of contracts between private prisons and federal agencies. She noted that two New Mexico counties contract with the federal Department of Homeland Security's U.S. Immigration and Customs Enforcement (ICE) to house immigrants detained for civil immigration violations. Cibola County houses immigrant detainees at the Cibola County Correctional Center (CCCC) in Milan, and Otero County houses immigrant detainees at the Otero County Processing Center (OCPC) in Chaparral. The CCCC is operated by CoreCivic, and the OCPC is operated by the Management and Training Corporation (MTC).

Representative Chasey noted that Ronald D. Vitiello, acting director, ICE, and the wardens at the CCCC and the OCPC were invited to attend the committee meeting. Mr. Vitiello

did not respond, and the wardens for the CCCC and the OCPC declined to attend, although the warden for the CCCC invited committee members to tour the facility.

Ann Morse, federal affairs counsel and director of the Immigrant Policy Project, National Conference of State Legislatures (NCSL), highlighted a number of issues that are addressed in detail in her report titled "U.S. Immigration: A Primer for State Policy Makers".

Ms. Morse began by reminding the committee that while federal law governs immigration, states can and have recently taken active roles in regulating the provision of services for those immigrants located within their states. She noted that the last comprehensive review and reform of the federal immigration laws occurred in 1986, and that the current federal administration has implemented numerous executive policies that impact immigration, including separating immigrant children from their families. She added that the NCSL is attempting to develop alternative policies that may address some of the problem issues.

Ms. Morse noted that a 2016 study by the National Academy of Sciences that examined a large number of studies on the economic impact of immigration concluded that immigration provides positive national long-term economic benefits, has little negative impact on wages and employment and has some negative initial impacts on states due to the provision of health and education services. However, there is a net positive long-term economic benefit to the states as the immigrants progress in their careers and become better established financially, and the children of immigrants tend to do better economically than their parents.

Ms. Moore stated that through meetings with researchers, economists, union leaders, legislators and others, the NCSL has concluded that there is a growing consensus that immigrants play a vital role in the nation's social, economic and civic life. She cited examples of immigrants providing needed labor, introducing new crops and creating new markets.

Ms. Morse noted that the states have historically worked with federal authorities to address certain immigration issues. During the 1980s and 1990s, the states generally focused on social services, health care and nutritional assistance. In the early 2000s, the focus shifted to driver's licenses and education. In 2010-2011, the focus was on immigration enforcement reforms.

Ms. Morse said that the NCSL currently monitors state legislative activities in immigration. She stated that, in the aggregate, states introduce approximately 1,200 pieces of legislation per year and pass approximately 200 laws. Ms. Morse noted that some states are currently considering the issue of occupational licensing because, as a large portion of the United States population ages, the workforce is losing a high number of licensed health care professionals at all levels. These states are exploring the viability of allowing professionals from other countries to obtain a professional license based upon their experience and the licensing authority in their country of origin.

Finally, Ms. Morse described a number of efforts in other states, such as Utah and California, to address various immigration issues. She noted that states have authority with regard to certain issues, such as the welfare of children. She also encouraged the committee to pursue creative solutions to address immigration issues and to utilize any resources that the NCSL can offer.

Adriel Orozco, attorney, New Mexico Immigrant Law Center, discussed current issues regarding immigrants detained in New Mexico. He related that President Trump has called for expansion of detention of all undocumented persons and separation of families. The federal administration has enacted a policy of categorically detaining asylum seekers, immigrants with long ties to the United States and others who pose no threat to public safety, and has increased its use of private prison facilities to house immigrant detainees. He noted that under the Obama administration, ICE regularly released detainees who did not present a safety threat, but now each detainee must have a hearing before an immigration judge before the detainee can be released, which often takes two to three months or longer. The number of detained immigrants has increased from 5,000 in 1994 to 19,000 in 2001 to over 39,000 in 2017. He commented that, with ICE spending \$2 billion per year on private detention facilities, profits of private prison companies are soaring, and he does not expect the policy to be revised.

Mr. Orozco stated that both private detention facilities in Cibola and Otero counties have long and well-documented records of incidents involving inmate abuse and neglect prior to the contracts with ICE to house immigrant detainees, noting that the Federal Bureau of Prisons contracted for 16 years with a private prison company to operate a facility in Cibola County to house federal prisoners but closed the facility due to inmate abuse and neglect problems. He stated that when the facility reopened under contract with ICE, the problems continued. Mr. Orozco cited as an example the recent death of a detainee at the CCCC due to HIV complications after the detainee had requested and had not received medical attention from staff. He also noted that an audit of the OCPC facility by the U.S. Department of Justice Office of the Inspector General revealed delays in medical care, unsanitary conditions and the use of solitary confinement as punishment, among other issues.

Mr. Orozco discussed the recent policy of the federal administration to separate children from their parents at the border to deter people from seeking asylum in the United States, citing a number of examples of the impact of this policy has had on parents and children and providing letters written by parents detained at the CCCC who had been separated from their children. He also cited a number of examples in which medical assistance or medication was withheld from detainees, resulting in serious medical consequences.

Mr. Orozco encouraged the committee to consider options to monitor and regulate conditions in the facilities, including imposing a moratorium on new contracts between counties and ICE.

On questioning, Mr. Orozco explained that, although approximately one-half of New Mexico state prisons are operated by private prison companies, none contracts with ICE to detain immigrants for civil immigration violations. There are, however, two counties, Cibola and Otero, that contract with ICE to house immigrants detained for civil immigration violations. Both counties subcontract with private prison companies to operate the detention facilities.

The CCCC in Milan is owned by CoreCivic (formerly Corrections Corporation of America). In October 2016, Cibola County contracted with ICE to house immigrants detained for civil immigration violations. In turn, Cibola County subcontracts with CoreCivic to fulfill the county's contract with ICE by housing immigrant detainees at the CCCC. Cibola County is essentially a pass-through entity: most of the revenues received from ICE under the contract are paid, in turn, to CoreCivic, and the county receives a small administrative fee from CoreCivic. Immigrant detainees began being housed at the CCCC in December 2016. The CCCC has 1,116 beds and usually houses 300 to 600 people at any given time depending on current federal immigration policy. The CCCC houses mostly men, but has a dedicated pod for transgender women.

Otero County built the OCPC in early 2008 for the specific purpose of housing immigrants detained for civil immigration violations. Otero County contracts with ICE to house immigrant detainees and with the MTC to operate the OCPC. Immigrant detainees began being housed at the OCPC in June 2008. The OCPC has 1,086 beds and usually houses approximately 900 people. Only men are housed at the OCPC.

The following topics were also discussed:

- whether any states have prohibited counties from contracting with ICE to provide detention facilities;
- the lack of attorney representation at hearings, including for children;
- the availability of translators;
- basic civil rights of detainees;
- the amount of funding provided to the private facilities pursuant to ICE contracts and the amount of funds provided to the counties;
- current efforts to reunite separated parents and children;
- inclusion of detainees in census counts;
- initiatives that New Mexico can take to legislatively address immigration issues, including oversight of county detention facilities;
- pursuing actions for criminal negligence against detention facility officials; and
- an investigation of the CCCC and the OTPC detention facilities by the New Mexico attorney general.

Public Comment

A large number of former immigration detainees described conditions inside the CCCC and the OTPC detention facilities. Their complaints included: delays in medical treatment; lack

of telephone and access to other communication; disrespect by staff; inadequate and spoiled food; the use of solitary confinement; a lack of adequate bedding; and extreme cold and hot temperatures.

Recess

The committee recessed at 5:06 p.m.

Tuesday, July 17

Reconvene

Senator Martinez reconvened the meeting at 9:25 a.m at the UNM Science and Technology Park Rotunda in Albuquerque.

Welcome

Richard L. Wood, Ph.D., interim senior vice provost for the academic mission, UNM, welcomed the committee to the UNM campus. He noted that a top priority of the university administration is campus safety, especially in regard to car theft and women's safety, and includes: systematic personal safety training for all students; installation of more cameras and additional security personnel; and new programs to bring more people on campus so that there are fewer dark, empty spaces that may encourage assaults. He announced that the four-year graduation rate has more than doubled from 12 percent in 2006 through 2010 to 29 percent last year, although enrollment has fallen by six percent.

Juvenile Drug Courts

Robert Mitchell, senior statewide program manager for problem-solving courts, Administrative Office of the Courts, referring to his handout, explained that drug courts are a specialized category of problem-solving courts that target a variety of offenders who have alcohol and other drug dependency problems. He remarked that no criminal justice intervention has been studied more than adult drug courts, and the research shows that adult drug courts significantly reduce drug use and associated crime better than jail or prison, probation or treatment alone and at less expense than any other justice strategy. Drug courts are usually initially funded by a federal grant, which is later absorbed into an individual court's base budget. New Mexico has developed drug court standards based on research and national best practices.

Marie Ward, district judge, Second Judicial District Court, explained that, originally, the Juvenile Drug Treatment Court (JDTC) in the Second Judicial District Court was modeled after adult drug courts. The court, however, worked with the National Drug Court Institute to revise the JDTC based on new research on brain development that shows that the brains of young people are developmentally different from adults. Judge Ward commented that since the JDTC receives its referrals from the Children, Youth and Families Department (CYFD), the high turnover in CYFD personnel affects the JDTC also, resulting in a decreased number of referrals. In addition, the treatment provider contract has been vacant for the last two years or so.

Krista Lawrence, division director of problem-solving courts, Eleventh Judicial District Court, commented that the JDTC in the Eleventh Judicial District Court has experienced a decline in referrals from the CYFD. The CYFD has informed the court that it was finding that mental health issues are more prevalent than substance abuse issues among its populations. In response, the court implemented multi-systemic therapy (MST), which provides intensive support to the juveniles and their families.

Lindsey Lucero, program manager, Second Judicial District Juvenile Drug Court, commented that the court had done a lot of outreach to the community before it lost the full-time treatment provider, and the court has continued partnerships to support clients.

On questioning, Judge Ward explained that the JDTC accepts youth up to age 17, but an individual already enrolled in the treatment program may continue after the individual reaches age 18. Many of the JDTC clients are not in school, but the program includes an education component to help participants either complete their high school classes and graduate or obtain a high school equivalency credential.

Ms. Lawrence explained that the major difference between juvenile and adult drug treatment programs is that juvenile programs involve the juvenile's family. The MST approach addresses family issues first and then individual issues of the participating juvenile. Often, it turns out that parents have co-occurring issues, which are also addressed.

CYFD

Jeremy Howard, chief data officer, CYFD, informed the committee that since the agency's fiscal year 2020 budget is incomplete, he is unable to address specific budget priorities. He noted that the CYFD's client population continues to grow. Referring to his handout, he discussed agency vacancy rates and staff training programs. In response to a committee member's questions, he was unable to explain why the agency reverts money for early childhood home visits every year, or whether the CYFD coordinates with the NMCD regarding child welfare issues, especially in the area of inmates with children.

Public Comment

Tanya Covington spoke in support of expanding the use of restorative justice principles in juvenile justice. Restorative justice is evidence-based, has been shown to reduce recidivism and heal communities and is less expensive than incarceration.

The Use of Isolated Confinement for Adults and Children

Steven Robert Allen, director of public policy, American Civil Liberties Union of New Mexico, cited a position statement on the use of solitary confinement issued by the National Commission on Correctional Health Care in 2016. The position statement found that solitary confinement longer than 15 consecutive days is cruel, inhuman and degrading treatment and is harmful to an individual's health, and it recommends that juveniles, mentally ill individuals and pregnant women should be excluded from solitary confinement of any duration. He reviewed

House Bill (HB) 175 (2017), sponsored by Representatives Maestas and Patricia A. Lundstrom, which would have created the "Restricted Housing Act" and prohibited the use of restricted housing for people under the age of 18, for pregnant women after the first five days of confinement and for persons with a "serious mental disability" under certain circumstances. Mr. Allen noted that Colorado has gone much further in prohibiting the use of solitary confinement. The use of the term "restricted housing" in the New Mexico bill was a compromise with the counties, and the sponsors worked with Disability Rights New Mexico on the definition of "serious mental disability". The bill would also have required all correctional facilities to collect and report data regarding the use of restricted housing in the previous quarter to the legislature or the county commission; and it would have required privately operated facilities to report quarterly all monetary settlements that were paid to inmates or former inmates as a result of lawsuits filed by the inmates or former inmates against the private correctional facility or its employees. The bill passed both houses with broad bipartisan support and substantial majorities but was vetoed by Governor Martinez.

Deputy Secretary Roark reported that the NMCD has reduced its use of restricted housing from 12 percent in 2012 to four percent as of last week, and he noted that there are currently one or two prisoners in protective custody.

Tamera Marcantel, deputy director of juvenile justice facilities, CYFD, stated that the CYFD focuses on rehabilitation, not punishment, and the use of solitary confinement is contrary to the CYFD's mission. She averred that "room confinement" is not the same as restricted housing but is used, under a policy developed in 2015, for limited times and specific purposes. Debriefing is required after every use of room confinement, and violations of the policy are required to be reported to the Office of Inspector General. The average length of room confinement has been reduced from one hour and 37 minutes to 36 minutes total, and client-on-staff assaults and client-on-client assaults have also decreased.

Patrick Trujillo commented that the bill was a good compromise and was supported by New Mexico Counties.

On questioning by members, Clay Corn, detention administrator, Chaves County Detention Center, explained that Chaves County had been successful in implementing incremental change in its "Special Management Detainees Policy". He said the county began by developing an accredited program. He emphasized that assessment of each person upon admission is crucial to its success.

Public Comment

Christian described his two-week experience in detention at the Bernalillo County Juvenile Detention Center. He said that, among other things, residents were held in "lockdown", that is, in their rooms, eating alone, no gym time, with bathroom breaks every three hours, for a week straight. He said lockdown was used as a disciplinary measure, sometimes for all residents

and sometimes only for three or four. He said it was not always clear what violations had been committed that led to being placed in lockdown.

Erik Rivera, La Plazita Institute, relayed corroborating comments from young detainees regarding the use of lockdown when office supplies belonging to staff went missing. He explained that La Plazita is a two-year-old alternative to a detention program that provides individualized life skills and supervision Monday through Friday from 9:00 a.m. to 4:00 p.m. Most detainees are on house arrest and attend the program while wearing a Global Positioning System tracker. The program is funded by grants and private donations and has a capacity of 12 to 14 youth, although there are not that many attendees at the present time.

Dave Schmidt remarked that HB 175 combined provisions used in the Children's Code and the Criminal Code. The term "inmate" is not used in the Children's Code. He suggested that the Children's Code and the Criminal Code provisions should be separate.

Adjournment

There being no further business before the committee, the second meeting of the CCJ for the 2018 interim adjourned at 3:02 p.m.