NEW MEXICO LEGISLATURE

COURTS, CORRECTIONS AND JUSTICE COMMITTEE

2016 INTERIM FINAL REPORT

Legislative Council Service
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Interim summary

Courts, Corrections and Justice Committee
2016 Interim Summary

The Courts, Corrections and Justice Committee met five times during the 2016 interim and heard presentations from state officials and advocates on a wide variety of issues related to the state's courts, corrections and justice systems. The committee held its meetings in Santa Fe and Albuquerque and also visited the Ultra Health medical cannabis dispensary in Bernalillo.

The committee's interim work included several presentations related to sexual assault, sex offenders and child sex trafficking. The Office of the State Auditor, advocates and law enforcement representatives updated the committee on the processing of backlogged sexual assault examination kits.

Domestic violence and its intersections with the possession of firearms and the abuse of animals were discussed by the committee, which also considered and endorsed a bill that provided for relinquishment of firearms under certain circumstances in a domestic violence proceeding.

The committee considered conditions and the effectiveness of incarceration of adults and juveniles in several presentations from the Legislative Finance Committee, the Children, Youth and Families Department, the Corrections Department and community advocates. The New Mexico Sentencing Commission also presented the results of a study of adverse childhood experiences reported by juvenile offenders.

At its final meeting, the committee considered several pieces of legislation and voted to endorse bills related to the following issues:

- domestic violence orders of protection and firearm possession;
- parole procedures for 30-year life sentences;
- employment of ex-convicts, "ban the box";
- supervised release for absconding delinquent children;
- allow the director of the Administrative Office of the Courts to receive funds;
- uniform collateral consequences of conviction;
- attorney general's special use of force unit;
- Revised Uniform Limited Liability Company Act;
- Electronic Communications Privacy Act;
- amendment to Uniform Commercial Code;
- revised uniform fiduciary access to digital assets;
- uniform partition of heirs property;
- Language Access Fund for the courts;
- Judge Pro Tem Fund for the courts;
- closing two magistrate courts;
- legislative authority to provide for appellate jurisdiction;
- agricultural hemp research and fund; and
- appropriation for testing sexual assault examination kits.

WORK PLAN AND MEETING SCHEDULE

2016 APPROVED
WORK PLAN AND MEETING SCHEDULE
for the
COURTS, CORRECTIONS AND JUSTICE COMMITTEE

Members

Rep. Zachary J. Cook, Co-Chair
Sen. Richard C. Martinez, Co-Chair
Rep. Eliseo Lee Alcon
Sen. Joseph Cervantes
Rep. Gail Chasey
Rep. Jim Dines
Rep. Rick Little
Sen. Linda M. Lopez
Rep. Georgene Louis
Rep. Antonio Maestas
Sen. Cisco McSorley
Rep. Andy Nunez
Rep. William "Bill" R. Rehm
Sen. Sander Rue
Sen. Lisa A. Torraco

Advisory Members

Sen. Craig W. Brandt
Sen. Jacob R. Candelaria
Rep. Brian Egolf
Rep. Doreen Y. Gallegos
Sen. Daniel A. Ivey-Soto
Rep. W. Ken Martinez
Sen. Bill B. O'Neill
Rep. Paul A. Pacheco
Sen. William H. Payne
Sen. John Pinto
Rep. Patricia Roybal Caballero
Rep. Patricio Ruiloba
Sen. Michael S. Sanchez
Sen. Mimi Stewart
Rep. Christine Trujillo
Sen. Peter Wirth

Work Plan

The Courts, Corrections and Justice Committee was created by the New Mexico Legislative Council on May 9, 2016. During the 2016 interim, and as time permits, the committee proposes to address the following and recommend appropriate legislation:

1. a joint meeting with the Legislative Health and Human Services Committee to examine aspects of the intersection between health issues and the criminal justice system, including the growing problem of opioid addiction;

2. election law and open government issues;

3. proposal for an ethics commission;

4. House Special Investigatory Committee recommendations for impeachment processes;

5. changes to statutes concerned with domestic violence and other issues surrounding domestic violence, including a restriction on possession of firearms by those subject to an order of protection and an examination of the link between animal abuse and domestic violence;

6. human trafficking, including an examination of the intersection of runaway children and trafficking;

7. transfer of probation to the courts;

8. drug decriminalization and heroin-assisted treatment;

9. family law issues, including issues surrounding grandparents raising children and visitation rights;

10. solitary confinement/segregated housing;

11. Legislative Finance Committee evaluation of juvenile justice and a Results First project on children's mental health services;

12. expungement;

13. child pornography — an overview, including a discussion of House Bill 65 (2016) and the various statutes concerning sexually explicit images;

14. presentation from the Sex Offender Management Board;

15. examination of the use of fines and fees in the justice system and what burdens they may place on defendants;

16. veterans courts;

17. use of ankle bracelets as an alternative to incarceration;

18. discussion with the Taxation and Revenue Department, including the issue of driver's license revocation hearings;

19. preventive measures against metal theft on utility infrastructure;

20. protecting consumers from inappropriate and deceptive business practices;

21. update from the APD Forward campaign;

22. recusal of public regulation commissioners;

23. theft of artifacts from the pueblos and tribes and their sale at auctions;

24. reverse stings for street-level drug sales being conducted by the Albuquerque Police Department;

25. "ban the box" legislation;

26. release policies of the Adult Parole Board;

27. progress in data sharing across the criminal justice system;

28. review of federal legislation regarding the sale of hemp;

29. the New Mexico Sentencing Commission's *Prison Population Forecast* and *Adverse Childhood Experiences in the New Mexico Juvenile Justice Population*;

30. update from the New Mexico Association of Counties, including updates on the county jail system and the impact of behavioral health issues on jails;

31. update and bill requests from the Corrections Department, including an update on the new health care contract in the prisons, changes surrounding the population of incarcerated women and recruitment of corrections officers;

32. update from the Public Defender Department;

33. update on DNA and rape kit processing;

34. update from the Administrative Office of the Courts and a presentation of the courts' unified budget; and

35. proposed uniform law bills:
    - Revised Uniform Limited Liability Company Act;
    - Revised Uniform Fiduciary Access to Digital Assets Act;
    - Uniform Collateral Consequences of Conviction Act; and
    - Uniform Statutory Trust Entity Act.

Courts, Corrections and Justice Committee
2016 Approved Meeting Schedule

Date	Location
May 27	Santa Fe
July 26-27	Clovis; Portales
August 17-19	Albuquerque
September 12-13	Santa Fe
October 27-28*	Santa Fe
November 16-18	Santa Fe

*A joint meeting with the Legislative Health and Human Services Committee will be held on October 27-28.

AGENDAS AND MINUTES

Revised: May 24, 2016

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

May 27, 2016
Room 322, State Capitol
Santa Fe

Friday, May 27

9:30 a.m.		**Call to Order/Introductions**
9:45 a.m.	(1)	**Overview of the 2016 Legislative Session** —Douglas Carver, Staff Attorney, Legislative Council Service (LCS)
10:15 a.m.	(2)	**2016 Interim Work Plan and Meeting Schedule Development** —Douglas Carver, Staff Attorney, LCS
11:00 a.m.	(3)	**New Mexico's County Jails — An Overview** —Grace Philips, General Counsel, New Mexico Association of Counties
12:00 noon	(4)	**The Ongoing Need for Criminal Justice Reform** —Steven Robert Allen, Director of Public Policy, American Civil Liberties Union of New Mexico —Hal Stratton, Rio Grande Foundation
1:00 p.m.		**Public Comment**
1:30 p.m.		**Adjourn**

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

May 27, 2016
State Capitol, Room 322
Santa Fe

The first meeting of the Courts, Corrections and Justice Committee (CCJ) for the 2016 interim was called to order by Representative Zachary J. Cook, co-chair, on May 27, 2016 at 10:00 a.m. in Room 322 of the State Capitol in Santa Fe.

Present
Rep. Zachary J. Cook, Co-Chair
Rep. Eliseo Lee Alcon
Rep. Gail Chasey
Rep. Jim Dines
Sen. Linda M. Lopez
Rep. Georgene Louis
Sen. Cisco McSorley
Sen. Sander Rue

Absent
Sen. Richard C. Martinez, Co-Chair
Sen. Joseph Cervantes
Rep. Rick Little
Rep. Antonio Maestas
Rep. Andy Nunez
Rep. William "Bill" R. Rehm
Sen. Lisa Torraco

Advisory Members
Sen. Bill B. O'Neill
Sen. John Pinto
Rep. Patricia Roybal Caballero
Rep. Patricio Ruiloba

Sen. Craig W. Brandt
Sen. Jacob R. Candelaria
Rep. Brian Egolf
Rep. Doreen Y. Gallegos
Sen. Daniel A. Ivey-Soto
Rep. W. Ken Martinez
Rep. Paul A. Pacheco
Sen. William H. Payne
Sen. Michael S. Sanchez
Sen. Mimi Stewart
Rep. Christine Trujillo
Sen. Peter Wirth

Staff
Douglas Carver, 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.

Friday, May 27

Representative Cook welcomed members of the committee and the audience to the meeting, and committee members, staff and members of the audience introduced themselves.

Overview of the 2016 Legislative Session

Mr. Carver gave a brief overview of the ultimate fate of legislation that had been endorsed by the committee for the 2016 legislative session. He noted that most of the bills endorsed by the committee died at some point during the legislative process, a couple were never introduced and the only two bills that passed — both were bills initially proposed by the Administrative Office of the Courts — were both vetoed by the governor. A chart showing the endorsed legislation and the fate of each bill is included in the handouts for the meeting.

2016 Interim Work Plan and Meeting Schedule Development

Mr. Carver went through the items of the proposed work plan and meeting schedule for the committee. Members of the committee made occasional comments and suggestions concerning certain items. The proposed work plan items and schedule are available with the handouts for the meeting. The work plan and meeting schedule approved by the committee upon a motion by Senator Rue, seconded by Representative Dines, consist of the following:

1. a joint meeting with the Legislative Health and Human Services Committee (LHHS) to examine aspects of the intersection between health issues and the criminal justice system, including the growing problem of opioid addiction;
2. election law and open government issues;
3. proposal for an ethics commission;
4. House Special Investigatory Committee recommendations for impeachment processes;
5. changes to statutes concerned with domestic violence and other issues surrounding domestic violence, including a restriction on possession of firearms by those subject to an order of protection and an examination of the link between animal abuse and domestic violence;
6. human trafficking, including an examination of the intersection of runaway children and trafficking;
7. transfer of probation to the courts;
8. drug decriminalization and heroin-assisted treatment;
9. family law issues, including issues surrounding grandparents raising children and visitation rights;

10. solitary confinement/segregated housing;
11. Legislative Finance Committee evaluation of juvenile justice and a Results First project on children's mental health services;
12. expungement;
13. child pornography — an overview, including a discussion of House Bill 65 (2016) and the various statutes concerning sexually explicit images;
14. presentation from the Sex Offender Management Board;
15. examination of the use of fines and fees in the justice system and what burdens they may place on defendants;
16. veterans courts;
17. use of ankle bracelets as an alternative to incarceration;
18. discussion with the Taxation and Revenue Department, including the issue of driver's license revocation hearings;
19. preventive measures against metal theft on utility infrastructure;
20. protecting consumers from inappropriate and deceptive business practices;
21. update from the Albuquerque Police Department (APD) Forward campaign;
22. recusal of public regulation commissioners;
23. theft of artifacts from the pueblos and tribes and their sale at auctions;
24. reverse stings for street-level drug sales being conducted by the APD;
25. "ban the box" legislation;
26. release policies of the Adult Parole Board;
27. progress in data sharing across the criminal justice system;
28. review of federal legislation regarding the sale of hemp;
29. reports from the New Mexico Sentencing Commission — *New Mexico Prison Population Forecast* and *Adverse Childhood Experiences in the New Mexico Juvenile Justice Population*;
30. update from the New Mexico Association of Counties, including updates on the county jail system and the impact of behavioral health issues on jails;
31. update and bill requests from the Corrections Department, including an update on the new health care contract in the prisons, changes surrounding the population of incarcerated women and recruitment of corrections officers;
32. update from the Public Defender Department;
33. update on DNA and rape kit processing;
34. update from the Administrative Office of the Courts and a presentation of the courts' unified budget; and
35. proposed uniform law bills:
    - Revised Uniform Limited Liability Company Act;
    - Revised Uniform Fiduciary Access to Digital Assets Act;
    - Uniform Collateral Consequences of Conviction Act; and
    - Uniform Statutory Trust Entity Act.

Proposed Interim Schedule

May 27 Santa Fe

July 26-27	Santa Fe (visit to Penitentiary of New Mexico)
August 17-19	Albuquerque (visit to medical marijuana processing facility)
September 12-13	Clovis; Portales (visit/tour of DWI unit)
October 20-21	Santa Fe (joint meeting with LHHS — it was noted that these dates are likely to change)
November 16-18	Santa Fe (bill endorsements)

New Mexico's County Jails — An Overview

Grace Philips, general counsel, New Mexico Association of Counties, gave the committee an overview of the county jail system in New Mexico, working her way through a detailed handout presented to the committee. She noted that the map illustrating capacity for jails shows design capacity, as distinguished from operational capacity, which is a lower figure. She also noted that while classification of an incarcerated population is important, it is not possible with jails, as jails are required to house whomever comes through their doors. She noted that jails cost the counties a significant amount of money. One of every three dollars spent by a county, on average, goes to the jail. In some counties, the ratio is one of every two dollars.

Ms. Philips then went through a series of charts detailing arrest and booking rates, crime and jail rates and the number of unconvicted people in jail. The charts illustrate how even short increases in time spent in jail can lead to an increase in recidivism.

Ms. Philips then discussed trends in New Mexico county detention, basing her discussion on studies conducted by the New Mexico Sentencing Commission (NMSC) in 2007 and 2010. She added that the NMSC is beginning a new study in June 2016 that will allow for another set of comparative data. She noted that New Mexico is one of two states where there are more people in jail than in prison — most states, in fact, have prison populations twice as big as their jail populations. New Mexico is also distinctive for having twice as many women in jails as in the state prison system. She directed the committee's attention to the next pages of her report, which detail how length of stay in jails is increasing, the reasons for incarceration in jails, how jails in New Mexico are functioning as de facto mental health hospitals, the characteristics of inmates with serious mental illness, how a mental health diagnosis affects the length of stay in jail, how competency affects the length of stay in jail and how the bail system used in the state affects the length of stay in jail. Ms. Philips concluded by briefly discussing two memorials passed by the legislature that concerned issues surrounding jails, the incarceration of the mentally ill and the need for services — House Joint Memorial 17 (2011) and Senate Joint Memorial 4 (2015). The details of the recommendations of the task forces created by those memorials are provided in the handout.

Members of the committee asked questions concerning and discussed the economic impact of jails on the counties; the need for services, especially mental health services, in the counties; the bail bond industry and the possible impact of the constitutional amendment on bail that will be on the November ballot; design capacity of and overcapacity in the jails; the use of risks and needs assessments; the role the judicial branch has in the number of people incarcerated

in jails; and how the use of data could help legislators develop policies to reduce the number of people held in jails.

The Ongoing Need for Criminal Justice Reform

Steven Robert Allen, director of public policy, American Civil Liberties Union of New Mexico (ACLU-NM), and Hal Stratton, Rio Grande Foundation, discussed the continuing need for the state to focus on criminal justice reform. Mr. Allen noted that it was an odd pairing of the ACLU-NM and the Rio Grande Foundation, but that the pairing was indicative of the wide support for criminal justice reform across the state and throughout the country. He noted how New Mexico's high violent crime rates are connected to the state's poor socio-economic situation, quoting Aristotle that "poverty is the parent of crime", and that these factors are not often discussed together. He criticized the recent reverse drug stings being conducted by the APD among the homeless population and said that these stings are in effect a criminalization of poverty. He noted that the vast majority of bills concerning criminal justice that are introduced in the legislature are bills that increase criminal sentences, which demonstrates that the legislature has not been addressing the root causes of crime. Too many people in the state, he said, are incarcerated for too long and for the wrong reasons. Mr. Allen added that there have been discussions of these issues in the context of the debate over the bail reform constitutional amendment.

Mr. Allen stated that to move forward, the state needs to realize that the "tough on crime" policies of the past decades have failed and that the need now is to be smart on crime, which will take creativity, courage and leadership. Sentences need to be rationalized; diversion programs need to be implemented for substance abuse; ban-the-box legislation needs to pass; parole reform needs to be examined, especially in the context of making it easier for prisoners to reintegrate with society upon release; restorative justice models need to be used; prison conditions need to be addressed, especially the use of solitary confinement and the implementation of federal Prison Rape Elimination Act of 2003 reforms and other reforms surrounding sexual assault among the state's incarcerated population; and the NMSC needs to conduct fiscal analyses of sentencing bills. He concluded that, if people in the system can be helped on the front end, poverty can be reduced and public safety can be augmented.

Mr. Stratton began by thanking the legislature for its work on reforming civil asset forfeiture, legislation that has received nationwide praise. He noted that while he still feels it is necessary to be tough on violent crime, there are issues where groups like the Rio Grande Foundation and the ACLU-NM could work together. He noted that work needs to be done on the issue of *mens rea* reform in the state's criminal statutes and said that he is in full agreement that addressing the state's socio-economic situation is part of the package.

Members of the committee asked questions concerning and discussed *mens rea*, the efforts made by the Criminal Justice Reform Subcommittee in past years, including why the New Mexico Legislative Council allowed that subcommittee to end and the connections between poverty and crime.

Public Comment

Tony Ortiz, director of the NMSC, announced that he is being succeeded by Linda Freeman, though he will remain at the commission for a transition year.

Sheila Lewis requested that the committee, during the joint meeting with the LHHS, consider focusing on strangulation in domestic violence incidents as a health issue as well as a criminal justice issue. Ms. Lewis further suggested that the committee address issues surrounding violence prevention in a holistic manner by examining the causes of violence. She noted that the federal Centers for Disease Control and Prevention looked at violence as a health issue. Ms. Lewis also noted that the committee needs to focus on collateral consequences of conviction, and she informed the committee that she has a list of 11 simple things the committee can do to reduce the burden of these collateral consequences. Mr. Carver was instructed to transmit Ms. Lewis's list to the members of the committee.

Miranda Viscoli of New Mexicans to Prevent Gun Violence stated that she hoped the committee would discuss during the interim possible legislation to restrict gun possession by people who are involved in domestic violence incidents.

Kim Chavez-Cook of the Law Offices of the Public Defender commended the committee for its kickoff discussion and brought up three issues for the committee to consider during the interim. The first is an examination of the issues surrounding competency examinations and county jails, specifically what happens when statutory timelines are not followed. The second issue is that the committee consider the need for speedy trials as balanced against prioritizing pretrial release. The third is a request that, if the committee is to consider an examination of issues surrounding *mens rea* in New Mexico, it keep in mind the interplay between criminal statutes and New Mexico case law.

Erin Muffoletto Baca, lobbyist for the bail bonding industry, noted the success of the bail bonding industry in working with pretrial services and said that the decrease in the incarcerated population in Albuquerque has seen a corresponding increase in the number of warrants issued. She offered to serve as a resource for the committee if needed.

Adjournment

There being no further business before the committee, the first meeting of the CCJ for the 2016 interim adjourned at 1:21 p.m.

Revised: August 15, 2016

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

August 17-19, 2016
University of New Mexico Science and Technology Park Rotunda
801 University Blvd.
Albuquerque

Wednesday, August 17

9:00 a.m. **Call to Order — Introductions — Approval of Minutes**
—Senator Richard C. Martinez, Co-Chair

9:10 a.m. **Welcoming Remarks — University of New Mexico School of Law (UNMSOL)**
—Alfred D. Mathewson, Co-Dean, UNMSOL
—Sergio Pareja, Co-Dean, UNMSOL

9:30 a.m. (1) **Drug Decriminalization**
—Emily Kaltenbach, Senior Director, National Criminal Justice Reform Strategy; State Director, Drug Policy Alliance New Mexico

10:30 a.m. (2) **Reducing Recidivism and Improving Outcomes for Youth in New Mexico's Juvenile Justice System**
—Nina Salomon, Senior Policy Analyst, Council of State Governments Justice Center
—Nancy Arrigona, Research Manager, Council of State Governments Justice Center

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

1:00 p.m. (3) **Update From the APD Forward Campaign**
—Steve Allen, Director of Public Policy, American Civil Liberties Union-New Mexico
—Alice Liu Cook, Staff Attorney, Disability Rights New Mexico

2:00 p.m. (4) **Life Sentences, Parole Eligibility and Parole Board Hearings**
—Sheila Lewis, Former Public Defender
—Senator Bill B. O'Neill

3:00 p.m. (5) **Sale of Recycled Metals Act and Metal Theft Prevention**
—Ray Vigil, Manager, Electric Distribution Standards, Public Service Company of New Mexico (PNM)
—Carlos Lucero, P.E., Manager, Government Affairs, PNM

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

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

Thursday, August 18

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

10:05 a.m. (6) **Report from the Sex Offender Management Board**
—Tony Ortiz, Acting Chair, Sex Offender Management Board

11:00 a.m. (7) **Report on the DNA Identification System Oversight Committee**
—John Krebsbach, M.S., Laboratory Director, Scientific Evidence Division, Albuquerque Police Department (APD)
—William Watson, Ph.D., Administrator, New Mexico DNA Identification System Administrative Center; Chair, DNA Identification System Oversight Committee

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

1:00 p.m. (8) **Report on Processing of Backlogged Sexual Assault Examination Kits**
—Timothy Keller, State Auditor (invited)
—Sarita Nair, Chief Government Accountability Officer and General Counsel, Office of the State Auditor
—Scott Weaver, Secretary-Designate, Department of Public Safety
—John Krebsbach, M.S., Laboratory Director, Scientific Evidence Division, APD
—Connie Monahan, Statewide Sexual Assault Nurse Examiner (SANE) Coordinator

2:30 p.m. (9) **Prison Rape Elimination Act (PREA)**
—Micaela Cadena, Cadena Strategies
—Karen Herman, Director of Sexual Assault Services, New Mexico Coalition of Sexual Assault Programs (NMCSAP)
—Jillian Shane, PREA Coordinator, Corrections Department
—Greg Nelson, Chief, Performance/Policy Bureau, Juvenile Justice Services, Children, Youth and Families Department

4:00 p.m. (10) **What Works with Sex Offenders — Preventing Sexual Assault**
—Kim Alaburda, Executive Director, NMCSAP
—Leona Woelk, Associate Scientist II, Prevention Research Center, University of New Mexico

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

Friday, August 19

10:00 a.m. **Tour — Ultra Health Medical Cannabis Grow Facility***
(*tour is by invitation only, for committee members and staff)

11:30 a.m. **Adjourn**

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

August 17-19, 2016
University of New Mexico Science and Technology Park Rotunda
801 University Blvd.
Albuquerque

The second meeting of the Courts, Corrections and Justice Committee (CCJ) for the 2016 interim was called to order at 9:22 a.m. by Senator Richard C. Martinez, co-chair, on Wednesday, August 17, 2016, in the Rotunda Room at the University of New Mexico Science and Technology Park in Albuquerque.

Present
Sen. Richard C. Martinez, Co-Chair (8/17, 8/18)
Rep. Eliseo Lee Alcon
Rep. Gail Chasey (8/17, 8/18)
Rep. Rick Little (8/17, 8/18)
Sen. Linda M. Lopez
Rep. Georgene Louis (8/17, 8/19)
Rep. Antonio Maestas (8/17, 8/18)
Sen. Cisco McSorley
Rep. Andy Nunez (8/17, 8/18)
Sen. Sander Rue

Absent
Rep. Zachary J. Cook, Co-Chair
Sen. Joseph Cervantes
Rep. Jim Dines
Rep. William "Bill" R. Rehm
Sen. Lisa Torraco

Advisory Members
Sen. Jacob R. Candelaria (8/17)
Sen. Bill B. O'Neill (8/17, 8/18)
Rep. Patricio Ruiloba
Rep. Christine Trujillo
Sen. Peter Wirth

Sen. Craig W. Brandt
Rep. Brian Egolf
Rep. Doreen Y. Gallegos
Sen. Daniel A. Ivey-Soto
Rep. Paul A. Pacheco
Sen. William H. Payne
Sen. John Pinto
Rep. Patricia Roybal Caballero
Sen. Michael S. Sanchez
Sen. Mimi Stewart

(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
Peter Kovnat, Staff Attorney, LCS

Guests
The guest list is in the meeting file.

Handouts
Handouts and other written testimony are in the meeting file.

Wednesday, August 17

Welcoming Remarks — University of New Mexico School of Law (UNMSOL)
Alfred D. Mathewson, dean of the UNMSOL, explained that he and Sergio Pareja had just completed a successful first year of service as co-deans of the law school. Mr. Mathewson described some of the law school's programs, including the formation of an experiential learning committee that will focus on training law students for professions in the law and will prepare students for work in the UNMSOL's legal clinic programs, which are among the top clinical programs in the country.

Mr. Mathewson said that the law school recently received a grant from the W.K. Kellogg Foundation that will be used to support the UNMSOL's Corinne Wolfe Center for Child and Family Justice (center), which will prepare students for practice in family and children's law. In the fall of 2017, the first class of students studying in the center will begin, along with the UNMSOL's first class of students in the newly established master of studies in law degree program. In closing, Mr. Mathewson noted that former Dean Kevin Washburn has returned to the law school and that the law school has hired two professors and is conducting faculty searches to fill an additional three positions.

In response to a committee member's question about the UNMSOL's reduced budget, Mr. Mathewson explained that the school has adjusted and is preparing for additional budget cuts, which seem likely. Another member asked about recent graduates' employment. Mr. Mathewson said that many 2015 graduates are currently employed in the public sector. He added that with the implementation of the uniform bar exam, bar passage rates dropped significantly at many schools; however, the rate at the UNMSOL was only slightly reduced. The school has implemented incentive programs to encourage students' full participation in bar preparation programs.

In response to another question, Mr. Mathewson said that yearly tuition at the UNMSOL is approximately $16,000 and that, on average, a UNMSOL student graduates with $60,000 in student-loan debt. A committee member commented on the significant number of legislators

who attended the UNMSOL, and another member emphasized how the UNMSOL, which is the only law school in the state, would be harmed if its budget were to be further reduced.

Following Mr. Mathewson's presentation, the committee members introduced themselves and approved the minutes from the committee's first meeting without objection.

Drug Decriminalization

Emily Kaltenbach, the state director for the Drug Policy Alliance New Mexico and the senior director for the National Criminal Justice Reform Strategy, explained that there is growing bipartisan support for widespread criminal justice reform in connection with drug-related crime. She said that drug decriminalization efforts are already under way in approximately two dozen countries throughout the world and in many cities throughout the United States. Sixteen states and the District of Columbia categorize possession of small amounts of drugs as misdemeanor crimes; in New Mexico, minor possession of drugs is categorized as a felony.

Ms. Kaltenbach said that "drug decriminalization" means the removal of criminal penalties for drug possession and for personal use of drugs, along with investment in substance abuse treatment and harm-reduction services. She explained that decriminalization is not legalization of drugs or drug use, and it does not include the removal of penalties for the sale, manufacture or distribution of drugs. She said that jurisdictions that have undertaken drug decriminalization have not seen increased rates of drug use or trafficking, and some have seen reductions in certain drug-related concerns, including drug overdose deaths. Drug decriminalization can also improve public safety and health through reduced rates of incarceration, which can also reduce the cost of administering a criminal justice system and can allow more resources to be dedicated to health programs and policing of more violent crimes.

Ms. Kaltenbach recalled that in 2001, lawmakers in Portugal enacted comprehensive reforms that included reclassification of minor drug possession and consumption crimes to administrative violations. Along with those decriminalization efforts, Portugal significantly expanded its substance abuse treatment and harm-reduction services, including improving access to sterile syringes and methadone maintenance therapy. She also noted that Maryland recently introduced legislation to decriminalize all drugs and has provided for civil penalties for the possession of small amounts of marijuana, cocaine and other drugs.

Ms. Kaltenbach highlighted positive policy changes in New Mexico, including the passage of the nation's first 911 Good Samaritan law, which exempts overdose witnesses from prosecution for certain drug- and alcohol-related crimes, and the implementation of the Law Enforcement Assisted Diversion (LEAD) program in Santa Fe. She presented suggestions for future policy changes, including reducing certain drug use and possession crimes to misdemeanors, decriminalizing possession of drug paraphernalia and marijuana and providing funding to establish additional LEAD programs and to support treatment for opiate addiction.

In response to a member's question, Ms. Kaltenbach clarified that her organization's work is not focused exclusively on marijuana and that it supports treating drug abuse as a public health issue. She emphasized that the goal of her presentation is to inform the committee of drug and criminal justice reforms taking place across the country and around the world. She noted that the model implemented by Santa Fe's LEAD program is an example of a drug decriminalization model that offers certain offenders an alternative to incarceration, including treatment options. She added that the resources saved through reduced corrections costs could be used to pay for treatment programs.

In response to a question about incarceration rates for drug-related offenses, Ms. Kaltenbach said that it is difficult to obtain accurate data; however, she reported that in 2012, there were approximately 7,800 charges brought against adult offenders for drug possession, and of those charges, approximately 3,000 to 4,000 were for possession of marijuana.

A member asked about the reclassification of marijuana by the federal Drug Enforcement Administration. Ms. Kaltenbach responded that the reclassification of marijuana as a Schedule II drug could help improve marijuana-related research opportunities. Another member noted that nine states will be voting on legalizing marijuana in November 2016, and she suggested that the legislature should take responsible steps toward addressing the issue.

A member emphasized the importance of hearing input on drug decriminalization from the law enforcement community.

Reducing Recidivism and Improving Outcomes for Youth in New Mexico's Juvenile Justice System

Nancy Arrigona, research manager for the Council of State Governments Justice Center (Justice Center), explained that New Mexico is a member of the Council of State Governments, which provides nonpartisan policy support to legislative, executive and judicial state leaders. The Justice Center is currently working on a juvenile justice improvement initiative that aims to reduce incarceration rates. She said that between 1997 and 2013, incarceration rates for juvenile facilities fell by 49% in New Mexico and 55% nationwide. The Justice Center hosted a 50-state forum in 2015 to provide states with an opportunity to hear from national juvenile justice experts on evidence-based and best practices. The forum was attended by four-person teams from each state. Attending on behalf of New Mexico were Representative Chasey; Nick Costales, deputy director of field services for the Children, Youth and Families Department (CYFD); Kelly Jo Parker, chief juvenile probation officer for the CYFD; and Judge Marie Ward from the Second Judicial District Court.

At the forum, the Justice Center presented research on juvenile justice reforms in Texas that have contributed to a reduction in confinement rates. She noted that a study revealed that outcomes for juveniles confined to secure facilities were worse than for juvenile offenders who were not confined. In 2007, the Texas legislature passed legislation to allow incarceration only for juveniles who committed felonies. In 2009, the Texas legislature focused on providing

funding for programs and services for juveniles not confined to secure facilities. With a shift toward fewer incarcerations in secure facilities, there was a significant increase in the need for community-based services.

The Justice Center studied the 2007 reforms in Texas and found that Texas reduced the number of incarcerated youth without compromising public safety; youth supervised outside of facilities had lower rates of subsequent arrests; significant investments in community-based supervision and services were critical; and recidivism rates did not improve significantly after the reforms.

The Justice Center's analysis of the CYFD's annual reports showed that New Mexico reduced its juvenile commitment rate by 33% between 2006 and 2015 and that juvenile referrals were reduced even more. Of the juveniles referred to the CYFD in 2015, 99% of them stayed in their communities and less than 20% were placed on supervision.

Ms. Arrigona said that the Justice Center published a white paper detailing best practices in juvenile justice that have the most significant outcomes for youth. In preparing the white paper, the Justice Center surveyed states and found that 39 states perform recidivism analysis of juveniles that are released from secure facilities. New Mexico analyzes recidivism-tracking readjudication and recommitment with respect to juveniles who are confined and does some analysis with respect to those who receive services in their communities. The Justice Center also found that 13 states use risk-assessment methods to identify juvenile offenders who are at higher risk of re-offending.

In 2014, the National Reentry Resource Center published a study that identified core principles for reducing recidivism and improving other outcomes for youth in the juvenile justice system. The study identified four core principles for reducing recidivism. The first principle, "use validated risk and needs assessments", provides that a validated tool should be used to assess juvenile offenders, which can enable a justice system to allocate the most resources for the juveniles who are at the highest risk of re-offending. With respect to New Mexico, Ms. Arrigona noted that New Mexico does use the risk assessment instrument, but because of a lack of community-based services or diversion programs, juveniles are often being detained for several months at a time. She also noted that the state uses a structured decision-making tool for risk and needs assessment, but it is important that assessments be performed in a timely fashion and that the results are used to inform the disposition of a case. She also suggested that assessment tools could be used to inform decisions regarding the appropriate length of stay for juveniles who are confined.

The second principle, "implement programs and services proven to reduce recidivism", addresses the importance of youth services that promote positive development and, therefore, reduce recidivism. She highlighted cognitive behavioral therapy and family- and community-centered programs as examples of services that promote positive development. She added that studies have shown that programs such as boot camps and the Scared Straight and

D.A.R.E. (Drug Abuse Resistance Education) programs are not effective. With respect to New Mexico, Ms. Arrigona said that the state could consider how to increase programs and services for juveniles in all of the state's communities and how to ensure that those programs are using evidence-based practices.

The third principle, "collaborate across systems to address youths' needs", emphasizes the importance of collaboration among systems and services for juveniles. She said that collaboration is particularly important because 60% to 70% of confined juveniles have a mental illness; 25% to 50% of confined juveniles have a substance use disorder; 65% of youth in supervision have past or current involvement with the child welfare system; and more than 50% of confined youth have below-grade reading and math skills, have repeated a grade in school and have been suspended or expelled from school. With respect to New Mexico's service providers, Ms. Arrigona suggested that the state examine the CYFD's internal collaboration among child welfare and juvenile justice services and the collaboration with the education and behavioral health systems to aid transitions for juveniles who are released from confinement.

The fourth principle, "tailor supervision/services to youths' developmental needs", emphasizes the differences between juveniles and adults and identifies key components of developmentally appropriate approaches. With respect to New Mexico, Ms. Arrigona noted that implementation of the state's Cambiar juvenile justice model might not have been ideal and that the state's laws might need revision to align with Cambiar.

Nina Salomon, senior policy analyst with the Justice Center, said that the Statewide Juvenile Justice Improvement Initiative (SJJII) helps states to answer questions about the alignment of state resources, policies and practices with research; about how well state leaders are collaborating on juvenile justice; and about tracking of state data on recidivism and juvenile justice system outcomes. Following the 2015 forum, 18 states applied for assistance from the Justice Center and the SJJII. The Justice Center met with stakeholders in New Mexico in March 2016 to learn about the challenges and barriers the state faces with its juvenile justice system. The Justice Center met with CYFD leadership and staff, judges, probation officials, district attorneys, public defenders and law enforcement officials.

The Justice Center chose to work with Nevada because all three branches of that state's government were in support of work with the Justice Center on juvenile justice improvements.

Ms. Arrigona said that the SJJII works through three phases to improve juvenile justice policies and practices. The SJJII uses comprehensive, quantitative data analysis to identify areas in need of improvement, has conversations with stakeholders and then presents findings and recommendations to a state and works with that state to develop policy ideas. She said that the Justice Center's and the SJJII's work with states is led by the state and requires the support of a bipartisan, interbranch task force to guide the work. She noted that New Mexico and one other state are being considered by the SJJII as possible sites for future juvenile justice improvement work.

In response to a member's question, Ms. Arrigona noted that the statistics she presented on reduced incarceration of juveniles in New Mexico are drawn from the CYFD's annual reports, but she said that the definition of "commitment" varies in the annual reports. The member agreed that incarcerating juveniles leads to worse outcomes and added that it has been difficult to get recidivism rate data from the CYFD.

A member asked Ms. Salomon which state laws are in need of revision. She responded that if the Justice Center chooses New Mexico as a partner for future work, the work would include analysis of statutes that could be misaligned with the Cambiar model. She added that stakeholders informed her that some statutes are in need of revision.

In response to a committee member's comment, Ms. Salomon said that it is important that all of the state's leaders support a potential collaboration between the Justice Center and New Mexico.

Public Comment

Margarita Sanchez told the committee that it is difficult for policy changes to be implemented in the state. She also expressed frustration about police shootings, corporate tax incentives, the lack of funding for basic health and social services, solitary confinement and the cost of private prisons.

Denicia Cadena commented on the increasing number of young women in the juvenile justice system. She noted that many of them are survivors of trauma, yet services for survivors are very limited.

Paula Cure and Jamie Sullivan discussed efforts to improve conditions for family members' visits to corrections facilities.

Update from the APD Forward Campaign

Steve Allen, director of public policy for the American Civil Liberties Union-New Mexico, said that the APD Forward campaign was organized in 2014, following the Albuquerque Police Department's (APD's) shooting of James Boyd in Albuquerque. An investigation by the United States Department of Justice (DOJ) found that the APD had a practice of unconstitutional use of force and a culture of aggression. The DOJ's investigation led to a settlement agreement with the City of Albuquerque and mandated reforms. The campaign's partners include 18 organizations and some shooting victims' family members.

Mr. Allen said that APD Forward's objectives are to finalize the settlement agreement; ensure that reforms take place; identify a monitor to oversee mandated reforms of the APD; ensure that the city adequately fund the reform process; and ensure that reforms are sustained.

APD Forward recommended that Dr. James Ginger serve as the DOJ monitor to oversee APD reforms, and Dr. Ginger was jointly appointed by the city and the DOJ. APD Forward

publishes summaries of Dr. Ginger's reports and will continue to host roundtable discussions with affected groups, including youth, Native Americans, homeless persons and members of the lesbian, gay, bisexual and transgender community.

Alice Liu Cook, staff attorney with Disability Rights New Mexico (DRNM), attended the July 28, 2016 status hearing on APD reforms. She noted that Dr. Ginger's report was critical of the reform process, but that critique was not discussed in the status hearing. At the hearing, the city reported significant progress toward reforms; however, Ms. Cook said that very little progress has been made and the city has achieved just 5% operational compliance with the settlement agreement.

Mr. Allen agreed that Dr. Ginger's third report was very critical and noted the dysfunction in the APD's systems to track and respond to officers' use of force. Dr. Ginger's previous reports also noted dysfunction in the APD's policymaking, but he commended the department's use of special units. Dr. Ginger observed an improvement in the APD's policies, and APD Forward has made recommendations on revisions to those policies.

APD Forward is concerned that, after Dr. Ginger's last report was published, the APD sent a memorandum to its supervisors stating that officers are underusing force due to the "Ferguson effect". Mr. Allen said that the data and the monitor's findings do not support that statement.

Mr. Allen said that the four-year reform implementation deadline established in the settlement agreement is not realistic, and Ms. Cook added that the reform process should not be rushed. She said that if reforms are implemented correctly the first time, money and time will ultimately be saved. Ms. Cook said that *The Guardian*, a British publication, appears to have the most reliable data on the number of people killed by police in the United States, and it recently reported that New Mexico ranks first in the country per capita for police-involved shooting deaths.

Ms. Cook said that DRNM is particularly interested in APD reforms because DRNM's clients, along with young Native American and Hispanic men, are part of a population disproportionately affected by the APD's practices. Of the 17 police-shooting deaths in New Mexico during 2016, 16 victims were men and 70% of the victims were Hispanic. Five of those shootings were in Albuquerque. She noted that it cannot be determined whether the shootings were justified without accurate data collection and reporting by law enforcement agencies.

Ms. Cook said that since 2010, the city has paid $46.5 million in settlements related to the APD's use of force. The settlements paid by the city between 2012 and 2014 amount to approximately $11,000 per year for each officer in the department.

In response to a member's question, Mr. Allen confirmed that the DOJ's and Dr. Ginger's reports and the APD Forward's summaries of the reports are available on APD Forward's

website, under "Resources". Regarding settlement agreement deadlines, Mr. Allen said that the agreement includes short-term deadlines and a goal of the APD's substantial compliance with the agreement by December 2016, which is not likely to happen. The only penalty for the city's noncompliance with deadlines is continued payments to Dr. Ginger for his services as a monitor. He added that the greatest expense related to the agreement is Dr. Ginger's contract. He said that, once APD compliance is reached, it will have to be maintained for two years before the agreement is dissolved.

A member expressed appreciation for APD Forward's work and frustration that the city does not seem receptive to the DOJ's involvement in reforms. Another member said that the APD's recent operation involving arrests at a mobile clean-needle-exchange location is counter productive and discourages drug users from employing safer practices.

Regarding APD staffing, Mr. Allen said that there is a limit to the number of officers that can be recruited and trained. Ms. Cook added that it is difficult to recruit officers when relationships between police and the community are strained. The settlement agreement provides for community police councils to help improve those relationships. A member noted that recruiting officers with a connection to their communities could be more important than requiring certain education levels. Another member expressed concern over recent police officer deaths. Finally, a member asked which police officers participate in APD Forward's roundtable discussions. Mr. Allen said that Chief Gordon Eden invites field officers, public relations staff and other APD staff to the meetings.

Life Sentences, Parole Eligibility and Parole Board Hearings

Senator O'Neill presented a draft bill that would revise the Parole Board's hearing process for inmates who have served 30 or more years of a life sentence. The Parole Board would be required to grant parole to those inmates unless the board makes a specific finding that an inmate is unwilling or unable to abide by laws upon release. The bill would also prohibit the denial of parole based solely on the fact that an inmate took another person's life. Senator O'Neill said that it appears that inmates with certain criminal profiles are not even considered for parole, and he added that the Parole Board's decision of whether to grant parole should be based primarily on the likelihood of an inmate re-offending. He added that older inmates and those who were incarcerated for a crime of passion, such as murder, are generally less likely to re-offend.

Sheila Lewis, a former public defender, told the committee that a former client's wife contacted Ms. Lewis because, despite the fact that her husband had served at least 30 years and maintained a perfect conduct record in prison, he was denied parole. Ms. Lewis looked into the situation and found that 87 parole hearings for inmates serving life sentences have taken place in the past seven years, but parole was granted after just five of those hearings. She explained that inmates serving life sentences, in contrast with "life without parole" sentences, do not qualify for sentence reductions, but after serving at least 30 years, they can request a hearing before the Parole Board. At those hearings, an inmate is not allowed to have an attorney or witnesses attend

and is not given access to the information provided to the board members about the inmate. The family of a victim is permitted to attend and speak at parole hearings.

In 2012, Sandra Dietz, the Parole Board chair, publicly said that she believes a life sentence should mean incarceration for an inmate's natural life, and not just for 30 years. Ms. Lewis emphasized that the legislature has set sentencing guidelines, and the Parole Board is not a policymaking entity. She added that inmates convicted of first degree murder and sentenced to life recidivate at a rate of just 1.3%.

Senator O'Neill and Ms. Lewis both suggested that inmates should be allowed legal representation for parole hearings.

In response to a question about the parole hearing process, Ms. Lewis said that the process is guided by statutes and regulations. A hearing is required only if requested by an eligible inmate, and hearings are conducted throughout the state before panels of three Parole Board members. Generally, the board members who reside closest to the facility where a hearing is to be held will represent the Parole Board at the hearing; however, Ms. Dietz has assigned herself to sit on 87% of recent parole hearings, regardless of where the hearings are held. Ms. Lewis added that minutes for hearings are taken, but they are not publicly available, and an inmate can challenge a decision of the Parole Board only through a habeus corpus petition. She noted that even if a discretionary habeus petition is heard by the court, an inmate has no access to evidence from the parole hearing to present to the court.

A member suggested that the committee support the bill and noted that Ms. Dietz was formerly a district attorney's office victim's advocate. He added that the possibility of release on parole is one of the only incentives to encourage good behavior of an inmate sentenced to life. The member said that after many years of practicing criminal defense, he still knows nothing about parole hearings because there is no public record created in the hearings. Ms. Lewis informed the member that, currently, 84 inmates are eligible for a parole hearing, and the member noted the great expense associated with housing those inmates.

Sale of Recycled Metals Act and Metal Theft Prevention

Carlos Lucero, manager of government affairs for Public Service Company of New Mexico (PNM), said that PNM — the only New York Stock Exchange-traded company headquartered in New Mexico — focuses on reliability, affordability and environmental responsibility. The company employs 1,500 people and serves over half a million customers in 40 communities. PNM provides $137 million in taxable wages, and in 2015, the company paid $24.5 million in property taxes and $61.6 million in gross receipts taxes in the state.

Mr. Lucero said that PNM contributes to local nonprofit organizations, and he highlighted the fact that, each year, PNM awards approximately 100 grants worth $5,000 each to nonprofit organizations. In 2015, the company assisted 3,554 low-income families with more than $248,000 through the PNM Good Neighbor Fund.

Ray Vigil, manager of electric distribution standards for PNM, explained that increased copper prices and the recent economic recession caused an increase in metal theft from homes, businesses, scrap sites and utilities. The price of copper as of April 2, 2015 was $2.72 per pound. He showed a photograph of copper cable used by PNM, which costs between $23.00 and $24.00 per foot, and he said that the cable is sought by thieves, who strip the cable to remove identifying materials and then sell it to metal recyclers.

The theft of copper wire and cable exposes the public, utility employees and thieves to the risk of death or serious injury. Other impacts include costs to customers, expensive substation repairs, damage to critical infrastructure and key resources and the creation of hazards due to exposure of electrical equipment and inoperable streetlights. Over three years, PNM has spent over $5 million replacing substation grounding wires alone.

Mr. Vigil said that PNM has addressed metal theft through collaboration internally and externally. Internal efforts include repairing damaged equipment and wire, monitoring field trials and evaluating new equipment designs to prevent theft. Externally, PNM has worked with the APD, with the Regulation and Licensing Department (RLD) and with other utilities to improve responses to theft and to promote helpful legislative changes.

Mr. Vigil said that the Sale of Recycled Metals Act requires dealers to report the purchase of regulated metals by the end of the second day after the purchase; however, a dealer is only required to hold the purchased material for 24 hours, which could allow dealers to evade law enforcement.

Mr. Vigil said that PNM's business customers lose revenue and production and experience increased insurance premiums due to metal theft; as a result, many business customers have installed theft deterrents.

A member asked whether PNM and law enforcement have set up sting operations to catch thieves. Mr. Vigil said that a few successful sting operations have been done. A member suggested the use of cameras to catch thieves.

A representative from the RLD said that the department has not decided whether to pursue legislation in 2017 to address metal theft, and she agreed that holding times and notification times provided in the current statute could probably be revised.

Thursday, August 18

Report from the Sex Offender Management Board (SOMB)

Tony Ortiz, acting chair of the SOMB, said that the SOMB is a statutory entity under the authority of the New Mexico Sentencing Commission (NMSC). In October 2012, Representatives Maestas and Yvette Herrell, several cabinet secretaries, Parole Board members and others met in Albuquerque to discuss requirements pursuant to the federal Adam Walsh

Child Protection and Safety Act of 2006 (Adam Walsh Act) and the changes made to state law in 2012. In 2013, the DOJ published "Substantial Implementation Review for New Mexico" following an audit of New Mexico's compliance with the Adam Walsh Act. The audit showed that the state was in compliance in 13 of 15 categories. The DOJ noted that the state could improve compliance by providing additional information on state websites and by taking additional steps to register juvenile offenders.

Mr. Ortiz said that many of the Indian pueblos, tribes and nations in the state, including the Jicarilla Apache Nation, Ohkay Owingeh, the Pueblo of San Ildefonso, the Pueblo of Acoma, the Pueblo of Isleta, the Pueblo of Laguna, the Pueblo of Santa Ana and the Pueblo of Zuni, are also in compliance with the Adam Walsh Act. The Pueblo of Cochiti is close to achieving compliance. The federal Office of Sex Offender Sentencing, Monitoring, Apprehending, Registering, and Tracking is a useful resource for information about sex offender laws throughout the country and information on effective sex offender treatment approaches.

The SOMB has published two New Mexico-specific sex offender recidivism analyses, which are available on the NMSC's website. The SOMB is working to assess the quality of treatment for sex offenders in rural parts of the state due to concern about the adequacy of the credentials of professionals delivering treatment to sex offenders. The SOMB surveyed neighboring states' approaches to treatment professionals and developed a set of professional standards for those who treat sex offenders. The Corrections Department (NMCD) has agreed to incrementally include the recommended professional standards into the department's contracts for the treatment of sex offenders.

Mr. Ortiz recalled the committee's visit in 2015 to the sex offender management unit at the Otero County Prison Facility and said that the facility's treatment program, operated by Tala Ibrahim, uses a curriculum developed by the Medlin Training Institute. The curriculum is evidence-based, and almost all sex offenders in the state who are within five years of release will be housed in the Otero County facility and will receive treatment using that curriculum to prepare for reintegration into society upon release.

Mr. Ortiz recalled House Bill (HB) 65 (2016), which revised statutes related to sexual exploitation of children. The bill increased penalties for distribution, possession and manufacture of child pornography and included an exemption from prosecution for certain young people who might otherwise violate the law by exchanging explicit electronic messages, or "sexting". He said that the Office of the Attorney General (OAG) and the CYFD reported that the category of young people exempted in the bill are not the types of offenders that would have been prosecuted before the bill was signed into law. Both the OAG and the CYFD objected to the exemption. The OAG is particularly concerned that the state could lose approximately $200,000 in annual federal funding because of the sexting exemption. That funding is distributed to local law enforcement agencies to address internet child exploitation crimes. The SOMB has discussed the importance of educating young people about sexting rather than prosecuting them for child sexual exploitation violations.

Kim Chavez Cook, assistant appellate defender for the Public Defender Department, said she understands that the federal funding that could be lost due to the sexting exemption might be lost due to a decrease in reports of sexting. If those reports are less frequent, the state will also lose opportunities to educate young people about sexting. She added that Senate Judiciary Committee Substitute for Senate Bill 320 (2016) included provisions that would address sexting through education. She recommended that the committee consider removing the criminal justice system entirely from sexting between young people and, instead, address the situation only through education.

A member expressed disappointment about the legislative process in connection with HB 65, which he said lacked cooperation between affected agencies and the legislature.

Upon a member's request, Mr. Ortiz explained a 2014 study that examined recidivism rates for 351 sex offenders who were incarcerated and 109 sex offenders who were placed on probation. The probationers were sentenced between 2004 and 2006, and they were tracked through October 2013 to determine if they re-offended. Of the 104 tracked, 29% were ultimately returned to the corrections system for probation or parole violations or new crimes. Most of the new crimes committed were not sex offenses; rather, they were violent offenses, drug offenses and burglary. The incarcerated offenders were also tracked through October 2013, and of those who re-offended, 110 offenders committed a parole violation, 75 offenders committed new crimes and 40 committed probation violations. Of the total 455 offenders tracked in the study, just 16 offenders were convicted of another sex offense; however, he noted, sex crimes are one of the most underreported crimes because victims are often family members of offenders.

A member said that the OAG should be included in discussions of possible future sexting legislation, and he opined that sexting should be included in public school curricula. Mr. Ortiz added that the SOMB will prepare a proposal on the issue for the NMSC's consideration.

Report on the DNA Identification System Oversight Committee

John Krebsbach, laboratory director of the Scientific Evidence Division of the APD, introduced William Watson, Ph.D., the newly selected administrator of the New Mexico DNA Identification System Administrative Center (DNA Center). Mr. Krebsbach said that the DNA Center currently does not have a backlog of work, partly due to legislative appropriations and federal grants that fund the DNA Center's operations.

Mr. Krebsbach noted that many states have begun using private DNA databases that are not compatible with the federal Combined DNA Index System (CODIS). The CODIS supports the majority of criminal justice DNA databases and related software throughout the country. Some states have passed laws to prohibit the use of non-CODIS-compatible DNA laboratories. It is concerning that privately run laboratories have no government oversight and often produce reports that are not compatible with entering DNA information into the CODIS because of incompatible systems and software.

Mr. Krebsbach said that "rapid DNA" is a process that allows for near-real-time analysis of DNA samples. Jail personnel are able, with rapid DNA, to analyze samples and upload results into the CODIS. While rapid DNA is permissible and has been approved by the United States Senate for use with federal offenders, no state has implemented the program. The cost of a rapid DNA analysis of a sample is approximately $300, compared to $28.00 per sample for standard analysis methods. While rapid DNA is an effective tool for the military, which has used it effectively to identify suicide bombers, it is not an ideal method for a domestic criminal justice system.

Dr. Watson reviewed data from the DNA Center's work for the previous six years. He said that as a result of the expansion of the federal Katie Sepich Enhanced DNA Collection Act of 2012 (Katie's Law), which provides for DNA collection processes for felony arrests, the DNA Center's entry of searchable samples into the database increased significantly. The number of criminal cases or investigations that were assisted through use of the DNA database has continually increased since 2013, which he believes is attributable to an increase in personnel in the state crime laboratory and an increased law enforcement focus on property crimes.

Dr. Watson said that convicted offenders and persons on probation or parole pay a fee of $100 for DNA testing. Since 2012, the amount of fees collected by the DNA Center has continually declined. He suggested that the decline could be attributed to courts improperly waiving the fees or a need for training of probation and parole offices.

The DNA Center is implementing paperless operations and converting the center's records to an electronic format. Using a federal grant, the DNA Center upgraded its computer systems to be CODIS-compatible. Using additional funds, the DNA Center is updating a tracking system that meets federal standards, which require the use of more than 20 genetic markers. Using a greater number of genetic markers helps reduce false-positive DNA matches. The DNA Center's previous tracking system used 13 genetic markers. Dr. Watson suggested revisions to the rules, including a change to redefine the levels of training for on-site DNA sample collectors.

A member said that the legislature should increase appropriations to the DNA Center and not rely on fees paid by offenders to cover the cost of DNA sample testing. That change could also reduce the administrative costs of probation and parole offices.

In response to a member's question, Mr. Krebsbach said that the DNA Center's operation budget has remained flat for over a decade, but the turnaround time for DNA analyses has improved from one month to less than two weeks. The process of DNA analysis in the laboratory begins when a sample arrives in the office, after which, staff determines whether the sample meets testing criteria. That determination includes a review of court records to determine whether probable cause for the offender's arrest on a felony charge exists. Samples are then tested, and test results are entered into the CODIS database to identify any existing DNA matches

in the system. With technological improvements, the cost of analyzing samples has decreased and accuracy has improved.

In response to a question about samples analyzed at the APD laboratory, Mr. Krebsbach said that more than 50% of samples tested by that laboratory are from the Bernalillo County Metropolitan Detention Center.

In response to a member's question about staffing, Mr. Krebsbach said that the DNA Center has three full-time personnel: Dr. Watson, an administrative assistant and a DNA tester. Another member thanked the DNA Center for its dedication to accurate DNA analysis and the simultaneous preservation of civil liberties.

In response to a question, Dr. Watson explained that the laboratory is able to test a sample that contains as few as 30 cells, and a single speck of blood can contain thousands of cells, although not all cells carry DNA.

Mr. Krebsbach said that upon an offender's acquittal, samples and related test results and DNA profiles are destroyed and deleted from the database.

Report on Processing of Backlogged Sexual Assault Examination Kits (SAEKs)

Connie Monahan, the statewide sexual assault nurse examiner coordinator and co-chair of the task force that studied the backlog of untested SAEKs, said that sometimes a kit will be deemed to have been tested even if only some of the swabs in the kit are tested. She said that community input on how testing decisions are made is critical.

Mr. Krebsbach said that more than 3,000 untested SAEKs are being held in Albuquerque's evidence warehouse. Two new analysts will start at the laboratory in September 2016, and Mayor Richard J. Berry has provided for three retired investigators to work part time to analyze SAEK records to determine testing priority. Sixty SAEKs have already been sent to the Federal Bureau of Investigation for processing.

Scott Weaver, secretary-designate of public safety, said that the Department of Public Safety (DPS) is very concerned with the backlog of untested SAEKs and is committed to resolving the backlog. He said the DPS received a $1.2 million appropriation to assist with testing SAEKs. The department has applied for additional grants to process untested kits. Currently, the DPS has tested 74 to 90 kits and will fill positions with personnel to assist with the backlog.

Secretary Weaver said that the DPS receives evidence for testing from 142 law enforcement agencies in the state, and the department currently holds 1,025 untested kits. He said that law enforcement agencies are asked to assist with the prioritization of kits to be tested.

State Auditor Timothy Keller said that his office became aware of the backlog of untested kits about a year ago after working with the former secretary of public safety and sexual assault prevention advocates. Auditor Keller commended the DPS for its work on the backlog, which he said will require significant resources. The Office of the State Auditor has made several site visits of law enforcement agencies and organized working groups, from which he learned of the wide variation in agency policies governing evidence and the storage and testing of SAEKs. There is uncertainty in the law and variation in guidance on what information is required to be entered into the CODIS and how DNA samples are stored. There are also concerns with disposal of evidence and kits, and he understands that agencies seek standard policies governing evidence disposal.

Auditor Keller noted the competing goals at issue, and he said that testing of SAEKs should be completed while simultaneously addressing sexual assault victims' needs through services and support, which are generally provided by nonprofit organizations' experts.

Secretary Weaver said that law enforcement agencies should identify why any untested kit has not been tested and should indicate those reasons when a kit is sent for testing or upon inquiry.

In response to a member's question, Mr. Krebsbach said that his department has hired contract investigators to review original case reports to identify why untested kits were not tested. In some instances, a case may have already been adjudicated or an offender may already be in the database, so related kits could go untested. The investigators want to identify any kits for which testing is unnecessary.

In response to another question, Mr. Krebsbach said that there are very few workers who are qualified to work in the laboratory. He said that a qualified applicant would need experience in biology or chemistry and ideally have some laboratory work experience. It takes about six months to a year to train an analyst, even if that person has prior experience.

Auditor Keller noted that some law enforcement officers drive kits to Santa Fe for testing from all across the state, and he said that there could be an evidence delivery process that could save money and law enforcement officer hours. He acknowledged that there could be evidentiary chain of custody concerns with consolidating evidence delivery procedures.

In response to a question about whether the previous $1.2 million appropriation for testing SAEKs was recurring, Secretary Weaver confirmed that it was a one-time appropriation. He added that the DPS hopes the appropriations will be extended, and he said that approximately 900 kits can be tested with $1.2 million. Ms. Monahan noted that, each year, approximately 1,000 additional kits are submitted by sexual assault examination nurses for testing.

Julianna Koob, a legislative advocate with the New Mexico Coalition of Sexual Assault Programs (NMCSAP), reminded the committee that during the 2016 session, a bipartisan effort provided for the appropriation to test SAEKs, but additional funding is needed for the APD's laboratory, and an additional $800,000 is needed for services for sexual assault victims whose SAEKs are tested, sometimes after many years. She said that advocates and the DPS will request $400,000 for services and continued funding for laboratories to continue work on reducing the backlog.

A member requested that the committee consider endorsing an appropriation of $1.2 million to the DPS at the committee's final meeting in November.

Prison Rape Elimination

Jillian Shane, federal Prison Rape Elimination Act of 2003 (PREA) coordinator for the NMCD, briefly explained that the PREA was passed by Congress in 2003, and standards related to the law were established by the DOJ in 2012. There are 43 standards with which states are required to comply, and compliance is assessed via audits. All 11 adult prisons in the state have met PREA standards, and many have exceeded those standards with respect to inmate and staff education. The NMCD has entered into agreements with six rape crisis centers and has established incident reporting procedures, including a private phone line that allows an inmate to place free, unmonitored calls to report sexual assault to a rape crisis center. The NMCD is also working with Ms. Monahan to enter into another agreement to enable sexual assault examination nurses to work with the NMCD.

Ms. Shane said that rape crisis center staff members work in corrections facilities on a daily basis, and they and NMCD staff members have collaborated and trained each other. Juvenile facilities have been included in these actions. Rape crisis center staff members have been afforded various levels of clearance to enable them to inspect showers, phone call areas and other locations within facilities.

A significant aspect of the PREA is inmate screening. The NMCD is working on a PREA screening process, which will include screening for sexual history, sexual orientation and whether an inmate has committed or been a victim of a sexual assault or related crime. The NMCD will work to track inmates who have been victims or perpetrators of sexual assault if they move between facilities. The NMCD expects an increase in PREA reports because of increased opportunities for inmates to safely make reports.

Greg Nelson, chief of the Performance/Policy Bureau of the Juvenile Justice Division of the CYFD, said that the CYFD performed a mock-PREA audit at the J. Paul Taylor Juvenile Detention Center and found that while the PREA standards appear simple in concept, they are challenging to implement. In April 2015, the CYFD began to rewrite policies to integrate PREA policies and to encourage a cultural change to encourage discussion around sexual assault. Grants are being used to train staff and educate juveniles on the PREA. In the last two years,

there have been no substantiated cases of staff member assaults of clients, and there have been very few instances of client-on-client assaults.

Mr. Nelson noted that his bureau has developed vulnerability assessments, which consider that many of the youth in the juvenile justice system — 68% of females and 48% of males — experienced sexual assault prior to their incarceration. The bureau is also collaborating with the NMCSAP to train youth on available resources. Some facilities have also placed mirrors and windows in certain areas to improve visibility.

Micaela Cadena of Cadena Strategies said that there are key staff members in each of the 11 adult corrections facilities who work on PREA issues. She reiterated that many people in criminal justice systems are survivors of trauma and sexual assault. She said that Jerry Roark, director of the Adult Prison Division of the NMCD, has expressed his intention to implement trauma-informed processes in facilities, and she added that the majority of corrections security and support staff members are considerate and thoughtful in their work. The successful completion of 11 audits demonstrates a changing culture in corrections.

Ms. Cadena said that the NMCD can address housing assignments for potential predators and victims through the use of screening tools and PREA assessments. She recommended that the NMCD invest in a risk and needs assessment tool called Compass. Assessment tools are important in managing and running a prison, but she said that the use of various tools should be integrated to fully assess inmates. She noted the state's behavioral health crisis and said that the same situation exists in prisons, but some facilities do not have a mental health care provider on staff. It has been particularly difficult for the NMCD to hire mental health care providers in rural areas.

Ms. Cadena made two recommendations for investment in infrastructure:

(1) integrated tools for screening and assessing inmates. Researchers at UNM's Institute for Social Research are working on the development of an integrated screening tool; and

(2) support for an improved information technology system for the NMCD. Currently, there is no way to capture real-time data for NMCD populations or to track whether and why individual return to the NMCD's custody.

Karen Herman, director of sexual assault services for the NMCSAP, listed several potential outcomes of untreated sexual violence, including mental and physical health problems, substance addiction and an increased risk of future sexual violence. A majority of women and likely similar numbers of men experience sexual violence prior to incarceration. Rape crisis centers provide free and confidential services 24 hours per day and include legal, counseling and other services related to sexually transmitted infections.

Ms. Herman said that the NMCSAP and other service organizations continually pursue funding sources. Ongoing training for rape crisis center and corrections facility staff and sexual assault examination nurses is important to work toward eliminating sexual assault. Training is particularly important because the service model used by a rape crisis center, which provides confidentiality and always believes the victim, and the operations model used in a corrections facility, which often cannot guarantee confidentiality or unconditional support for a person who reports an incident, highlight the importance of ongoing training and the need for associated funding.

In response to a question, Ms. Shane said that the NMCD receives some funding from the DOJ and other grants support her work. She added that a $500,000 grant was secured for work in juvenile facilities. Mr. Nelson said that the CYFD employs a PREA coordinator, an administrative staff person and a management analyst, who all work on PREA issues.

A member asked how the culture of silence around sexual assault is addressed in corrections facilities. Ms. Shane said that the NMCD posts information on the PREA throughout its facilities and has collaborated with the Transgender Resource Center of New Mexico to assist with training. The NMCD is training staff members that sexual assault is not an accepted part of prison culture and provides case managers, rather than security staff, to conduct initial inmate screenings.

A member asked about the process after a PREA complaint is filed. Ms. Shane said that victims are not punished for reporting, and every effort is made to avoid segregating a victim. None of the victims in the last 170 cases investigated was placed in segregation. The presenters acknowledged that, in some cases, a false report is filed in hopes that a certain inmate will be removed.

What Works with Sex Offenders — Preventing Sexual Assault

Kim Alaburda, executive director of the NMCSAP, and Leona Woelk, an associate scientist with the Prevention Research Center at UNM, presented statistics on sexual offenders in New Mexico: 61% sexually violate children; 81% are known to the victim (often a family member, friend or acquaintance); 19% are strangers; and 19% are 18 years old or younger. She said that comprehensive prevention efforts are important and should include direct services to victims; outreach and education; specific funding and technical assistance for persons who are Asian or Spanish-speaking immigrants, Native American or transgender or who have a disability; and trauma-informed training for criminal justice professionals.

Ms. Alaburda noted the importance of training for therapists to work with youth who exhibit activities or other signs indicating that a youth could sexually assault another person. So far, 120 New Mexico therapists and 120 law enforcement officers have been trained to work with those youth. She added that a primary prevention approach aims to stop violence and sexual violence before it occurs. Current research shows that primary prevention happens at the individual, relationship, community and society levels. She highlighted various primary

prevention strategies outlined in her presentation materials. Formal evaluations show that primary prevention efforts in schools and within organizations have been effective, and policy revisions have resulted. To decrease sexual violence in New Mexico, Ms. Alaburda recommends ongoing funding for the UNM Prevention Research Center.

Ms. Woelk said that she has worked with youth to develop messaging to use in a sexual assault prevention social marketing campaign. In collaboration with the Department of Health, she is working to change social tolerance around sexual assault. She suggested that schools could implement policies to require staff training, education on healthy relationships and policies supportive of transgender persons. She meets with various organizations to work on prevention programs, and those organizations have expressed appreciation for being included in a cohesive network of professionals working to end sexual violence.

In response to a member's question, Ms. Woelk said that her organization's 2015 strategic plan reveals that the ultimate cost of sexual assault to the state is close to $1 billion, which includes time off work and the cost of services for victims and perpetrators of sexual violence.

Friday, August 19

Tour of Ultra Health Medical Cannabis Grow Facility

Members of the CCJ toured the Ultra Health Medical Cannabis Grow Facility and received a presentation from representatives of Ultra Health concerning medical cannabis in New Mexico.

Adjournment

There being no further business before the committee, the second meeting of the CCJ for the 2016 interim adjourned at 11:20 a.m.

Revised: September 9, 2016

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

September 12-13, 2016
Room 322, State Capitol
Santa Fe

Monday, September 12

8:30 a.m. **Call to Order — Introductions**
—Representative Zachary J. Cook, Co-Chair
—Senator Richard C. Martinez, Co-Chair

8:35 a.m. (1) **Effectiveness of Juvenile Justice Facilities and Community-Based Services**
—Maria Griego, Program Evaluator, LFC
—Brian Hoffmeister, Program Evaluator, LFC
—Tamera Marcantel, Director, Juvenile Justice Division, Children, Youth and Families Department (CYFD)
—Nick Costales, Deputy Director, Juvenile Justice Division, CYFD

9:30 a.m. (2) **New Mexico Sentencing Commission Prison Population Forecast**
—Linda Freeman, Executive Director, New Mexico Sentencing Commission

10:30 a.m. (3) **Adult Visitation and Guardianship**
—Kerri Kasem

12:00 noon **Lunch**

1:30 p.m. (4) **Domestic Violence, Orders of Protection and Possession of Firearms**
—Adelyn Allchin, Public Health Analyst, Public Educational Fund to Stop Gun Violence
—Jennifer Padgett, District Attorney, First Judicial District
—Miranda Viscoli, Co-President, New Mexicans to Prevent Gun Violence
—Lisa Weisenfeld, Policy Coordinator, New Mexico Coalition Against Domestic Violence

2:30 p.m. (5) **The Link Between Animal Abuse and Domestic Violence**
—Tammy Fiebelkorn, Positive Links
—Representative Jim Dines

3:30 p.m. (6) **Considering Pregnancy and Incarceration in the New Mexico Prison System**
—Micaela Cadena, Cadena Strategies on Behalf of Young Women United

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

Tuesday, September 13

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

9:05 a.m. (7) **Judiciary's Unified Budget and Proposed Legislation**
—Chief Justice Charles W. Daniels, New Mexico Supreme Court
—Arthur Pepin, Director, Administrative Office of the Courts

11:00 a.m. (8) **Update from the Public Defender Department**
—Bennett Baur, Interim Chief Public Defender, Public Defender Department

12:00 noon **Lunch**

1:30 p.m. (9) **Impeachment Processes — Recommendations of the House Special Investigatory Committee**
—Douglas Carver

2:30 p.m. (10) **Human Trafficking and Runaway Children**
—Judge John J. Romero, Jr., Presiding Children's Court Judge, Second Judicial District

3:30 p.m. (11) **Process for Replacement of Recused Public Regulation Commissioners**
—Judith Amer, Associate General Counsel, Public Regulation Commission

4:30 p.m. **Adjourn**

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

September 12-13, 2016
Room 322, State Capitol
Santa Fe

The third meeting of the Courts, Corrections and Justice Committee (CCJ) was called to order by Representative Zachary J. Cook, co-chair, on September 12, 2016 at 9:15 a.m. in Room 322 of the State Capitol in Santa Fe.

Present
Rep. Zachary J. Cook, Co-Chair
Sen. Richard C. Martinez, Co-Chair
Rep. Eliseo Lee Alcon
Rep. Jim Dines
Rep. Rick Little (9/12)
Sen. Linda M. Lopez (9/13)
Rep. Antonio Maestas
Sen. Cisco McSorley
Rep. Andy Nunez (9/12)
Rep. William "Bill" R. Rehm

Absent
Sen. Joseph Cervantes
Rep. Gail Chasey
Rep. Georgene Louis
Sen. Sander Rue
Sen. Lisa Torraco

Advisory Members
Sen. Bill B. O'Neill
Sen. John Pinto
Rep. Patricio Ruiloba
Sen. Mimi Stewart
Rep. Christine Trujillo
Sen. Peter Wirth

Sen. Craig W. Brandt
Sen. Jacob R. Candelaria
Rep. Brian Egolf
Rep. Doreen Y. Gallegos
Sen. Daniel A. Ivey-Soto
Rep. Paul A. Pacheco
Sen. William H. Payne
Rep. Patricia Roybal Caballero
Sen. Michael S. Sanchez

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

Guest Legislator
Sen. John Arthur Smith

Staff
Monica Ewing, Staff Attorney, Legislative Council Service (LCS)
Celia Ludi, Staff Attorney, LCS
Peter Kovnat, 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, September 12

Call to Order
Representative Cook welcomed members of the committee, staff and guests to the meeting.

Effectiveness of Juvenile Justice Facilities and Community-Based Services
Brian Hoffmeister, program evaluator for the Legislative Finance Committee (LFC), reviewed the LFC's August 24, 2016 report, "Program Evaluation: Effectiveness of Juvenile Justice Facilities and Community-Based Services" at Item 1. Mr. Hoffmeister highlighted the recommendations on pages 5 and 6 of the report.

Tamera Marcantel, director, Juvenile Justice Division (JJD), Children, Youth and Families Department (CYFD), stressed that the CYFD's approach to juvenile justice is therapeutic, not punitive, and focuses on prevention and early intervention. Programming and services offered in juvenile facilities consider the ineffectiveness of traditional punitive practices. When a client enters a JJD facility, multidisciplinary teams prepare plans to maximize opportunities for successful transition to the community and to adulthood. The plans focus on reintegration and linking clients with community-based resources. The JJD's programming and services are based on research and best-practice models, and the division has established standards and quality assurance measures to monitor compliance and to help ensure that clients receive the highest quality services and care.

Ms. Marcantel said that fewer youth are entering JJD facilities because prevention and diversion efforts have been successful, and the youth that do enter are generally less likely to recidivate. The JJD facilities' one-year recidivism rates dropped significantly with respect to clients released in fiscal years (FY) 2005 and 2013. The LFC's analysis of the CYFD's data shows that 79 percent of youth released from JJD facilities in FY 2005 did not recidivate within three years, and that number fell to 70 percent for youth released in FY 2010. Eighty-two percent of youth released in FY 2013 did not recidivate within three years. These results compare favorably to a 2010 study of recidivism rates in Missouri, Ms. Marcantel said.

Ms. Marcantel commented that vacancy rates among youth care specialists at secure facilities have decreased, but the facilities remain understaffed.

Regarding juvenile probation programs, Ms. Marcantel said that one-year and three-year analyses show that clients placed on probation recidivate at significantly lower rates than clients who are committed to facilities. The number of clients who violated probation declined 22 percent between FY 2009 and FY 2015. In addition, zero to one percent of clients who went to reintegration centers recidivated, based on the one-year and three-year analyses.

Ms. Marcantel expressed appreciation that the LFC's report reflected the CYFD's success and progress, and she said that the LFC's recommendations are opportunities to demonstrate sustained commitment to improving the juvenile justice system. She noted that the CYFD's responses to the specific comments and recommendations are included in the report section titled "Agency Responses", beginning on page 59.

Regarding deadlines on LFC recommendations, Mr. Hoffmeister said that the LFC requested the CYFD to provide an implementation plan within 30 days after the report is issued. The LFC will then follow up on the implementation plan six to 12 months later.

A committee member asked why the CYFD does not publish recidivism data, which are essential for measuring performance. Nick Costales, deputy director, JJD, responded that the CYFD tracks outcomes in different ways, and recidivism can be assessed in many ways. Ms. Marcantel referred to the charts on page 16 of the report, which show that the three-year non-recidivism outcomes of New Mexico youth discharged from custody are approximately 20 percent higher than Missouri's outcome data; she said this is significant because New Mexico's program is modeled on Missouri's.

In response to a question, Ms. Marcantel said that the CYFD's overall employee vacancy rate is 16 percent, and the vacancy rate for youth care specialists at secure facilities is 11 percent.

In response to a committee member's question, Mr. Hoffmeister confirmed that the LFC recommends a $1.2 million decrease in the CYFD's budget for juvenile justice services because of the decrease in the number of youth being served. The recommendation contemplates closing and consolidating some facilities. Ms. Marcantel said that the agency has worked with the LFC to address the department's budget, but the CYFD does not agree with the LFC's suggested budget cut, and the department will instead request a flat budget for the coming year, based on the state's economic situation.

A committee member commented that the Missouri model emphasizes keeping incarcerated children as close to home as possible because rehabilitation efforts are more successful when families are involved. For that reason, the committee member expressed support for keeping as many facilities as possible open, even if they are not cost-efficient.

Referring to the statement on page 52 of the report that "[b]etween FY13 and FY15, on average, 59 percent of commitments to juvenile facilities were related to probation violations", a committee member asked about the agency's plan for reducing that number. Ms. Marcantel responded that because diversion programs keep more children out of incarceration, the children who are in the system are older, on average 18 years of age, and they are incarcerated for more serious infractions and more often re-offend. The member asked if in the past five years there has been an increase in serious or violent offenses, and Mr. Costales said that the agency tracks that information and will provide it to the committee.

Referring to the number and type of juvenile facilities and the section of the report beginning on page 19, and the agency's response on page 60, a member noted that the CYFD's budget has remained flat while the number of clients housed in facilities has dropped. Mr. Costales alluded to Ms. Marcantel's comments about juveniles in facilities being older, more serious offenders and said that additional money in the department's budget has been used for services, including behavioral health services. The member expressed appreciation for the agency's progress.

A member asked about the term "absconding" in the Administrative Discharge column of the chart on page 83 of the report. Mr. Costales replied that clients who are in treatment, not corrections, participate in programs voluntarily outside secure facilities, and sometimes clients choose to leave treatment. Supervised release continues whether a client absconds from a treatment program or not.

In response to a member's question about services to support children upon release from secure facilities, Mr. Costales said that many older clients do not return to live with their families after release, and, therefore, services are focused more on life skills, including financial management, meal planning and preparation and employment.

A committee member asked why the rate of incidents in secure facilities has doubled since FY 2011, and Mr. Costales said that the statistic is related to the fact that older and sometimes more aggressive clients are held in secure facilities. Ms. Marcantel added that older offenders are often gang members, and friction between gangs can exist in spite of efforts to keep rival gang members separated. Mr. Costales commented that a few clients are often responsible for the majority of the reported incidents.

Regarding a question about the decreased number of clients attaining a general equivalency diploma (GED) or high school diploma (page 15, Chart 12), Ms. Marcantel said that that number has increased again, and in 2015-2016, clients earned 62 GEDs and 21 high school diplomas. Another member asked whether behavioral health services are provided in-house or by community-based providers. Mr. Costales replied that the CYFD works to ensure a continuum of care that includes both, but some communities do not have adequate or appropriate services. The CYFD works to ensure that community-based providers offer evidence-based services.

Ms. Marcantel said that the CYFD is working with the State Personnel Office to secure pay raises for certain employees who work with particularly difficult clients.

New Mexico Sentencing Commission Prison Population Forecast

Tony Ortiz, deputy director, New Mexico Sentencing Commission (NMSC), highlighted the most notable trend in the report "New Mexico Prison Population Forecast FY 2017-FY 2026", (handout at Item 2), which is the ongoing significant increase in the female inmate population. The increase in that population has resulted in greater housing needs for the female population, and there are many issues that arise in connection with the incarceration of mothers. Imminent issues include the lack of capacity for female inmates in the current prison system and the cascade of related events affecting children when mothers are incarcerated.

Mr. Ortiz referred to page 5 of his report and noted that at the end of FY 2016, on May 24, 2016, the operational capacity for female inmates in the New Mexico prison system was 794 beds. The projected high count of female inmates for FY 2017 is 786, and for FY 2018 is 810, which exceeds current capacity. In May 2016, the operational capacity for male inmates was 6,982 beds, and the projected high count for the male inmate population for FY 2017 is 6,775, and for FY 2018 it is 6,853. He added that correctional experts recommend that facilities maintain a five-percent bed vacancy rate to ensure safe operations.

Mr. Ortiz noted that from FY 2011 forward, most new male inmates have been admitted for violent offenses. During those same years, most new female inmate admissions were for property and drug offenses. He added that serious violent offenses are increasing among both males and females, which is significant because inmates are required to serve longer sentences when convicted of a serious violent offense. New admissions of both male and female inmates for driving under the influence of alcohol or drugs (DWI) have decreased, which is attributable to several factors, including the use of special DWI courts, the availability of ride-sharing services, educational campaigns against drinking and driving and the use of ignition interlocks.

Linda Freeman, executive director, NMSC, explained that the NMSC is researching the factors that are leading to the increase in the female inmate population. Referring to page 4 of the report, she said that one reason release-eligible inmates are remaining incarcerated is because a parole plan was not approved for those inmates due to a lack of transitional services or behavioral health services in the inmates' communities. Sherry Stephens, executive director, Adult Parole Board, added that some inmates are hard to place upon release because they cannot live with family and that some transitional programs have restrictions on the types of convicts who will be accepted.

Answering a committee member's question about the types of drugs included in felony drug court programs (second bullet on left, page 4 of the report), Mr. Ortiz said that there are no inmates in the state who are incarcerated for felony marijuana possession. At a member's request, Ms. Freeman said she would provide more detailed information on the new admissions of females for drug trafficking and drug possession.

In response to a question about lower DWI-related admissions, Mr. Ortiz responded that the reduced admissions are due in part to the closing of liquor stores' drive-up windows, the use of ignition interlock devices, the availability of ride-sharing services and widespread public education campaigns. Ms. Freeman added that convicted offenders are usually sentenced on their most serious offenses, so, for example, if a drunk driver causes a wreck with injuries, the charges, conviction and sentence would be more serious than a DWI offense and would, therefore, not be recorded as a DWI-related admission.

In response to a question about the increase in the female inmate population, Mr. Ortiz said that Ms. Freeman and Kristine Denman, the director for the New Mexico Statistical Analysis Center at the University of New Mexico, published research on the issue, an article titled "New Mexico's Female Prisoners: Exploring Recent Increases in the Inmate Population" and referenced on page 2 of the report. He added, referring to Figure 8 on page 9 and Table 3 on page 11 of the report, that increased drug trafficking and other drug offenses account for the majority of new female inmate admissions since FY 2011.

A committee member noted that the current and projected inmate population numbers do not allow for the recommended five-percent bed vacancy rate for corrections facilities. Another member asked how current recidivism rates compare to rates five years ago and to national rates. Mr. Ortiz noted that measuring recidivism is difficult and cautioned that every state calculates recidivism differently. Theresa Rogers, fiscal analyst, LFC, said that the recidivism rate in New Mexico prisons has been 46 percent to 47 percent for the past five years, and the target rate is 45 percent.

A committee member, referring to page 3 of the report, asked how the time served by female inmates is measured. Ms. Freeman responded that the total time served, which includes a sentence and any period of parole, has to be included, but there are currently insufficient data to accurately calculate the total time served. She said she expects to be able to provide more information soon. She added that for female inmates, admissions outpace releases, which is a significant difference between female and male inmates.

A committee member highlighted the important role of specialty courts in reducing prison time, especially since budget crises have often led to cutting funding for specialty courts.

Adult Visitation and Guardianship

Representative Conrad James reviewed House Bill (HB) 120 (2016) and explained that a House Judiciary Committee substitute for the bill had passed the house but died in the Senate Judiciary Committee during the session. He said that many states have passed legislation similar to HB 120 to allow adult children to secure information and visitation with an incapacitated adult whose guardian has prevented visitation or information sharing.

Troy Martin, attorney and director of Kasem Cares Foundation, provided a summary (at Item 3) of HB 120. Mr. Martin said that after the 2016 regular legislative session, House Bill

120 was revised to add a new Subsection D to Section 1 of the bill to provide that an alleged incapacitated person or protected person may refuse visitation. The proponents of the bill do not want the bill to be used to force visitation on a protected person. Another change to the bill adds language that comports with the Uniform Probate Code and a definition of "interested person". Mr. Martin said that the intention is to make the law more expansive and allow more people to visit with an alleged incapacitated or protected person to combat isolation that allows abuse to occur. He said that a person holding power of attorney or a spouse has the presumed right to control visitation, but that presumption is not codified.

Kathleen Wright-Brawn, a director of the Kasem Cares Foundation, related that her father was taken by a caregiver and friend without providing family members with any information about where her father was taken or how long he would be gone. The State of Washington, where her father lived, did not have a law allowing adult relatives to petition for visitation or notice of the whereabouts and health of an alleged incapacitated or protected person. Family members incurred substantial expense trying to find their father, and by the time they found him, all his financial arrangements had been changed. Ms. Wright-Brawn alleged that New Mexico does not have statistics on elder abuse, but the *Santa Fe Reporter* found 225 complaints of elder abuse that were made in Santa Fe County between January and June 2010.

A committee member said that the proposed bill is a non-uniform amendment to the Uniform Probate Code, noted that the Uniform Law Commission (ULC) is considering the issue and expressed a preference to delay action on the bill until the ULC has addressed the issue. Mr. Martin responded that the Uniform Probate Code currently only applies to people for whom a guardian has been appointed, and any amendment approved by the ULC that does not apply to a person under guardianship would necessitate a long and expensive process of having a guardian appointed.

Several members discussed presentation of the proposed bill to the ULC and to the Real Property Trust and Estate Section of the State Bar of New Mexico for comment and possible revision.

A committee member expressed concern about the definition of "interested person", and Mr. Martin replied that the definition requires a preexisting relationship with the alleged incapacitated or protected person to prevent exploitation by persons previously unknown. He noted that Texas was the second state to pass this legislation, which does not include a definition of "interested person".

Two members of the audience shared personal experiences with trying to attain visitation with a family member.

A committee member asked whether a judge currently has the authority to allow visitation by an interested person, and Mr. Martin confirmed that, under current law, a judge probably has such authority, but that authority is not explicit and might not be exercised by a judge.

A committee member expressed reluctance about the possibility that the bill would result in a flood of petitions for visitation. Ms. Wright-Brawn responded that elder abuse is often undertaken as "isolate - medicate - steal the estate", and the proposed bill would help prevent that abuse.

Domestic Violence, Orders of Protection and Possession of Firearms

Miranda Viscoli, co-president, New Mexicans to Prevent Gun Violence, spoke in support of proposed legislation (see Item 4) that would prohibit a person who is the subject of a domestic violence protective order from purchasing or possessing a firearm for the duration of the protective order. She explained that the photograph on the handout is of a mother and daughter, Cam Thi To and Nhi Nguyen, who were shot and killed by the mother's husband, Trinh Tran Van, who then killed himself, on August 28, 2016. Ms. To and Mr. Van had agreed to separate shortly before the murder occurred. Ms. Viscoli said that 3,500 domestic violence protective orders are issued each year by New Mexico courts, and the state has the fourth-highest rate of gun violence in the nation. Thirty-one percent of women killed in New Mexico between 2010 and 2014 were killed with guns.

Adelyn Allchin, public health analyst, Public Education Fund to Stop Gun Violence, reviewed information from The Educational Fund To Stop Gun Violence and highlighted the fact that New Mexico is unique in not prohibiting subjects of domestic violence protective orders from purchasing or possessing firearms. The proposed legislation would align state law with federal law governing possession and purchase of firearms by persons who are the subject of a domestic violence protective order. Ms. Allchin said that research shows that a history of violence is the biggest predictor of future violence, and access to firearms increases the risk that a partner will be shot and killed. She explained that the proposed legislation would require temporary removal of all firearms from the subject of a domestic violence protective order. She added that Colorado requires surrender of firearms and ammunition that the subject of a domestic violence protective order already owns and prohibits the purchase of other firearms and ammunition while the domestic violence protective order is in effect.

Lisa Weisenfeld, policy coordinator, New Mexico Coalition Against Domestic Violence (NMCADV), informed the committee that, according to the Interpersonal Violence Data Central Repository in New Mexico, in 2014:

- there were 18,057 domestic violence incidents reported to law enforcement, 64 percent of which involved a weapon;
- in those incidents, 6,044 children, 68 percent of whom were age 12 and under, were present; and

- there were 5,889 domestic violence protective orders issued.

Ms. Weisenfeld said the NMCADV represents approximately 30 member domestic violence programs statewide and also represents the victims and families that the member programs serve. The NMCADV supports the proposed legislation because firearms are the primary weapon of choice in domestic violence homicides and one of the top three in non-fatal domestic violence assaults. She added that a perpetrator of domestic violence with access to a firearm poses a deadly threat not only to the intended victim, but to children, pets, extended family members, friends, bystanders and co-workers as well. She recalled the 2010 incident at an Albuquerque workplace, Emcore, when a man with a handgun shot his ex-girlfriend and killed three and wounded four other people. She noted that domestic violence calls to law enforcement are the most dangerous, especially when the abuser is armed with a firearm.

Ms. Weisenfeld concluded that the New Mexico Intimate Partner Violence Death Review Team, which includes members from the Office of the State Medical Investigator, the Office of the Attorney General and the courts, and from the fields of corrections, medicine, advocacy and prosecution, has for four consecutive years recommended passage of legislation that mirrors federal law prohibiting the possession of firearms by subjects of domestic violence protective orders. The team's 2015 process evaluation report is included in the presentation materials.

Jennifer Padgett, district attorney, First Judicial District, spoke in a personal capacity and referred to a report of the Prosecutors Against Gun Violence (PAGV), "Firearm Removal/Retrieval in Cases of Domestic Violence", which is included in the presentation materials. She stressed that when an abusive partner has access to a firearm, the risk that the other partner will be killed increases more than five-fold. One study found that approximately half of women killed by their intimate partner had abuse-related contact with the criminal justice system within the year prior to being murdered. Those contacts with law enforcement provide critical windows of opportunity to prevent a killing, Ms. Padgett said. Restricting abusers' access to firearms is an effective policy, reducing domestic violence homicides by as much as 25 percent. The PAGV's recommendations to diminish gun violence perpetrated by domestic abusers are: identify those respondents and defendants who possess a firearm; notify the subject of a domestic violence protective order that the subject is prohibited from possessing firearms during the term of the protective order; remove the firearms; and store the firearms in a safe place.

A committee member commented that if a person protected by a domestic violence protective order has a weapon, there is a good chance that the weapon could be used to harm the protected person. Another member reiterated that federal law already prohibits the subject of a domestic violence protective order from purchasing firearms and referred to the federal "Firearms Transaction Record Part 1 - Over-the-Counter" form that is completed and filed when a firearm is purchased from a store. Ms. Weisenfeld responded that in her experience as a former prosecutor, state judges do not believe they have the authority to prohibit purchase or possession of firearms by domestic abusers because there is no explicit provision to that effect in state law.

Ms. Padgett added that current state law does not explicitly provide for the removal of firearms from the subject of a domestic violence protective order. A member averred that the New Mexico Supreme Court could educate inferior courts about their authority to order removal of firearms, which would be more expedient than passing a new law.

A committee member wondered whether the legislation would discourage a person accused of domestic violence from agreeing to a protective order and speculated that an abuser could also bring domestic violence accusations against the abuser's partner, resulting in the partner being disarmed and helpless against the abuser. Another member expressed concern about enforcement and the storage and return of firearms.

The Link Between Animal Abuse and Domestic Violence

Representative Dines introduced Tammy Fiebelkorn, board president, Positive Links, and said that, thanks to the efforts of Positive Links, the Bernalillo County Sheriff's Department now trains its officers to observe family pets when responding to calls because those animals can be an indicator of abuse or domestic violence in a household. As a next step, he suggested that the CYFD and the Department of Public Safety could be encouraged to similarly train their staff members on the link between animal abuse and family violence. To that end, Representative Dines offered a proposed house joint memorial on the subject (see Item 5). To illustrate the value of the training, Representative Dines related a story about a long-time CYFD social worker who had received training from Positive Links and was investigating a complaint of possible abuse of a mother and children in a family. The social worker felt that the mother and children had been coached in how to respond to the social worker's questions regarding various injuries, and they provided no information about the possible abuse. The social worker then noticed that the family's dog was cowering and afraid, and the social worker was able to confirm abuse in the family through questions directed to the children about the dog. The social worker said that without the Positive Links training, she would not have made the connection between the dog's abnormal behavior and the abuse of the children and mother.

Ms. Fiebelkorn said that 56 percent to 68 percent of homes in the United States include at least one companion animal that is largely considered to be a family member. Studies have shown that abuse of or cruelty to animals is often concurrent with domestic violence, elder abuse or child abuse. Animal abuse is, therefore, a key indicator of domestic violence, but it often goes unreported, even though animal cruelty is now treated as a felony in all 50 states. This year, the Federal Bureau of Investigation began tracking cases of animal cruelty nationally to gain an understanding of how often it occurs, where it occurs and whether it is increasing.

She added that children who witness animal abuse and neglect are desensitized to violence, and their ability to develop empathy is impaired, increasing the potential theat they will become abusers themselves. In addition, children who are cruel to animals are more likely to have experienced violence and abuse themselves. Therapy options for animal abusers of any age and children who have witnessed animal abuse center around re-teaching empathy.

Ms. Fiebelkorn cited a study that found that batterers who also abuse their pets are both more controlling and more likely to use more dangerous forms of violence than batterers who do not. An abuser who harms pets is demonstrating power over others in a household, Ms. Fiebelkorn said. Animal abuse also eliminates a source of support and comfort for family members and sometimes prevents a victim from leaving the home out of fear of additional violence against the animal. She noted that the top three indicators that a woman will be killed by her batterer are threats of homicide or suicide, access to weapons and threats to mutilate or kill pets.

Ms. Fiebelkorn suggested that some steps that can be taken to mitigate animal and human abuse include:

- providing funds for short-term housing for companion animals in domestic violence situations;
- working with domestic violence shelters to offer shelter to companion animals with their humans;
- including companion animals in domestic violence protective orders;
- encouraging cross-reporting between agencies, e.g., between the CYFD, law enforcement, animal control and professionals, such as therapists;
- passing bestiality laws; and
- offering training for more professions to recognize the link between animal abuse and human abuse.

A committee member asked who decides what kind of behavior constitutes animal abuse and who can make a complaint of such abuse. Ms. Fiebelkorn replied that the term is already defined at both the state and federal levels, and she is not suggesting any changes to those laws. She emphasized that Positive Links' focus is on training law enforcement, CYFD staff and other professionals to look for domestic violence when they identify animal abuse. Representative Dines added that anyone can make a complaint about animal abuse, and the proposed joint memorial would not change that process.

Considering Pregnancy and Incarceration in the New Mexico Prison System

Micaela Cadena, Cadena Strategies on Behalf of Young Women United, provided the committee with copies of a position statement titled "Women's Health Care in Correctional Settings" from the National Commission on Correctional Health Care; an article in the March 2009 issue of *Perspectives on Sexual and Reproductive Health*, titled "Abortion Access for Incarcerated Women: Are Correctional Health Practices in Conflict with Constitutional Standards?"; a November 2014 article published by the National Commission on Correctional Health Care titled "Pregnancy and Postpartum Care in Correctional Settings"; and an October 2014 article published by the National Institute of Corrections titled "Gender-Responsive Policy Development in Corrections: What We Know and Roadmaps for Change". Ms. Cadena then presented information to the committee about women who are pregnant while incarcerated.

Ms. Cadena, referring to Paragraphs J and K of the "New Mexico Corrections Department (NMCD) policy CD-170100, Medical Clinical Services, Psychiatry Services, Detoxification, Intoxication and Withdrawal", noted that the NMCD has policies regarding providing access to "pregnancy management services" for female inmates and that suggest that nursing infants may be allowed to remain with their incarcerated mothers. In addition, the contract between the NMCD and Centurion Correctional Healthcare of New Mexico LLC (Centurion), General Services Contract ID #16-770-1300-0097, has provisions for women's health care on pages 25 and 26, but the contract does not address the adequacy of prenatal care.

Ms. Cadena noted that although the contract with Centurion provides that "questions from pregnant females about continuation or termination of pregnancy should be expertly addressed in accordance with all applicable laws", it also provides that:

> If a female inmate requests an abortion and it is not medically necessary to preserve her health, the Agency will neither provide nor pay for it, nor shall the contractor be obligated to pay for or offer such service either directly or by subcontracting. However, the Agency will reasonably facilitate access to pregnancy termination services. Such abortions will be provided at the inmate's or third party expense, at a facility that provides this service and is appropriately licensed under state law.

Ms. Cadena observed that this is not a requirement of the NMCD's policy, which also does not require female inmates to pay for any other kind of health care.

Regarding abortion services, Ms. Cadena said that a women's prison administrator reported that no pregnant inmate has requested an abortion, yet Ms. Cadena has spoken with a number of female inmates who said that they were never notified that they could choose abortion as an alternative to carrying a pregnancy to term. She also noted that pregnant inmates are strongly encouraged to place their babies for adoption, and she related several anecdotes about female inmates who were pregnant while incarcerated. Some of those inmates knew about their pregnancies prior to incarceration, while others discovered that they were pregnant only when they were tested upon incarceration. Some inmates wanted to keep their children and described many difficulties in making arrangements for post-natal care while they were incarcerated. Ms. Cadena noted that the NMCD does not track information related to pregnancy, such as the number of pregnant inmates, prenatal care provided or termination requests. Further, the NMCD does not monitor outcomes for inmates or babies in connection with pregnant inmates.

Renee Chavez described her experience being pregnant while incarcerated. Ms. Chavez's pregnancy was not confirmed until she was five months pregnant, and she recalled always being hungry because she did not have money to buy food from the canteen and she did not receive enough food at mealtime. Eventually, Ms. Chavez gave birth in a hospital while shackled and with two male guards present. With the assistance of a nonprofit organization, Ms. Chavez was able to arrange for postpartum care for her baby, but she was unable to see the baby for another three months after the birth. Ms. Chavez said that she did not receive lactation education or

treatment from prison health care personnel, and she relied on other inmates for such help. In addition, Ms. Chavez experienced postpartum depression, for which she had just one 35-minute visit with a mental health specialist. Ms. Chavez told the committee that her daughter is eight years old now, and Ms. Chavez has not committed a crime in those eight years.

Committee members expressed admiration and appreciation for Ms. Chavez's testimony.

Recess

The committee recessed at 4:23 p.m.

Tuesday, September 13

The committee reconvened at 9:30 a.m.

Judiciary's Unified Budget and Proposed Legislation

Chief Justice Charles W. Daniels, New Mexico Supreme Court, described the judiciary's unified budget process by which each judicial district court prepares a proposed budget, which is then considered and amended, if necessary, by the New Mexico Chief Judges Council. The New Mexico Chief Judges Council also considers issues that include courts' caseloads, operations and facilities. The council develops recommendations and submits them to the New Mexico Supreme Court, which makes final decisions about the budget requests that will be presented to the legislature.

Chief Justice Daniels noted that although the judiciary is a separate branch of government, it does not have the authority to make fiscal policy decisions and does not control its own budget. He said that the judicial branch's budget comprises less than three percent of the total state budget. Referring to his presentation materials (Item 7), he noted that the highest percentage of the state's total budget that was allocated to the judiciary was in FY 2010, when the judiciary received 2.76 percent of the state's total budget. The current budget is 2.58 percent of the total budget.

In response to the 2010 state budget crisis, the judiciary reduced services and programs. The current budget situation and cuts to the judiciary's budget mean that the judiciary is nearly impaired in its ability to provide essential services. Chief Justice Daniels emphasized that the judiciary cannot sustain a three percent cut to its current budget. He said that any further reductions from the FY 2017 already-reduced appropriations will impair proper functioning of the drug courts and other important court programs and services. A reduction beyond one percent will result in court closures, furloughs, income reductions of underpaid court employees and other unacceptable consequences.

Chief Justice Daniels related that the New Mexico Chief Judges Council requested:

- four new district court judges — after court caseload studies showed that 10 to 12 new judges are needed;
- a budget sufficient to fill existing vacancies — 90 percent of the judiciary's budget goes to personnel expenses. The overall vacancy rate in the courts is 13 percent; in the Second Judicial District Court, Metropolitan Court and the magistrate courts, the vacancy rate is 15 percent. With high vacancies, the courts cannot do their jobs in a timely manner, and high vacancies create turnover because employees are overburdened. Court clerks, especially, are affected by the high vacancy rates; 50 percent of new clerk hires leave employment within a year. The vacancy rate in the Second Judicial District Court is so high that it costs as much to train new hires as it would to give raises to those who stay, which could help reduce the turnover; and
- that the legislature abide by the recommendations of the Judicial Compensation Commission. New Mexico judge salaries are the lowest of the surrounding states and are among the lowest in the country. Between the relatively low salaries and the high caseloads, experienced, seasoned attorneys are not applying for judgeships.

Despite the recommendations of the New Mexico Chief Judges Council, and in recognition of the state's financial crisis, the judicial branch is not requesting any new judgeships or pay raises for judges.

Chief Justice Daniels said that LFC staff recommended a decrease in juror pay, which the New Mexico Supreme Court opposes. Juror pay is currently set near the minimum wage, and the New Mexico Supreme Court believes that cutting jury pay below minimum wage levels would amount to a tax on people who serve on juries.

To help with cost savings, the New Mexico Supreme Court ordered a reduction in mileage reimbursement rates for all judicial branch employees and jurors — from $0.46 per mile to $0.29 per mile, which Administrative Office of the Courts (AOC) staff calculated would reimburse drivers for the cost of gasoline and oil used while driving. The reimbursement reduction will save over $500,000 per year. In addition, the New Mexico Supreme Court is considering a request for a change to the law that would allow mileage reimbursement to be paid as a flat rate.

Chief Justice Daniels reviewed the judiciary's 2017 legislative requests:

1. a constitutional amendment to allow the legislature to regulate appellate jurisdiction. In 1960, the legislature created the Court of Appeals to hear appeals from district courts. The Court of Appeals and the New Mexico Supreme Court review records created in lower courts of record. Appeals from non-record courts, such as magistrate courts, are made to the district courts, which must hold new trials to create a record that may be appealed. Although the Bernalillo County Metropolitan Court is a record court, appeals from its decisions are made to the district court, and the district attorney's office performs a record review rather than a trial, despite the fact that

district attorneys are trial lawyers. The proposed constitutional amendment would allow the legislature to provide for all record appeals to be heard by the Court of Appeals or the New Mexico Supreme Court, which would relieve the district courts of record review appeals;

2. the creation of a judge pro tempore fund to be administered by the AOC and used to pay judges pro tempore;
3. the creation of a language access fund, separate from the jury fund;
4. closure of magistrate courts in Quemado to save annual lease costs of $11,628 and in Questa to save annual lease costs of $15,000, plus additional savings in reduced judge and clerk travel expenses; and
5. increasing the warrant fee from $100 to $200.

In response to a member's question regarding warrant fees, Arthur Pepin, director, AOC, said that the fees cover the costs of warrant enforcement. Another member suggested that the AOC consider consolidating multiple warrants issued for the same person because if the person is unable to pay the multiple fees, the person will serve time in jail without having been convicted of a crime.

A member asked how the judiciary accommodated budget cuts in the past, and Mr. Pepin said that problem-solving courts, such as drug courts, are often cut first. Chief Justice Daniels commented that drug courts are effective tools to reduce recidivism and increase public safety, but, because their operation is not mandated by the Constitution of New Mexico, they get cut. He added that savings from the use of drug courts are realized in law enforcement's and corrections agencies' budgets and not the judiciary's budget. He reiterated that a budget cut of more than one percent would result in court closures and elimination of staff. A committee member recalled Mr. Ortiz's earlier statements that corrections costs would increase if drug courts were cut.

A member asked how New Mexico's judges' salaries compare with those in surrounding states, and Mr. Pepin said that district court and Court of Appeals judges' salaries are the lowest in the nation, and the New Mexico Supreme Court's justices' salaries are second to last in the nation. The Judicial Compensation Commission also found that the relative value of the state's judicial retirement program is on the low end of the nationwide average. He added that applicants for judicial vacancies are generally younger lawyers who often have narrower public service backgrounds.

A committee member noted that closing magistrate courts could have negative economic consequences for the building owners in small communities. Another member asked how the judiciary works to reduce frivolous lawsuits. Chief Justice Daniels responded that the Constitution of New Mexico requires that at least one hearing take place before a decision can be rendered, and appeals are also constitutionally guaranteed. Frivolous lawsuits are costly for the courts because judges and staff are required to hold hearings and complete paperwork in connection with the cases.

A committee member asked why fines are not always imposed in state criminal cases. Chief Justice Daniels responded that the United States Supreme Court has held that a person cannot be jailed for inability to pay court costs and fines. Mr. Pepin added that magistrate courts generate about $15 million per year in court costs and fines.

In response to a member's question about whether a judge in a domestic violence arraignment has authority to order a defendant to relinquish firearms, Chief Justice Daniels said that judges have broad discretion to protect the community. Another member observed that the judiciary is an equal branch of government with constitutional mandates, and budget cuts are impairing its ability to function. The member asked what kind of budget increase the judiciary would need to remedy the state's judicial system. Chief Justice Daniels replied that if three percent of the state's budget were allocated to the judiciary, the system could be stabilized and improved. The member noted that the increase would amount to about $10 million.

In response to a question about the number of new judgeships needed to allow the state to meet national judge caseload standards, Chief Justice Daniels said that 10 to 15 new judgeships would be needed. Mr. Pepin added that the legislature approved an appropriation to the judiciary to study the issue, but the appropriation was vetoed. In response to another staffing question, Mr. Pepin said that court clerks make approximately $13.09 per hour, and those in Albuquerque average $15.00 per hour. He added that, at that salary, a family of three would qualify for government assistance.

In response to a question about specialty courts, Mr. Pepin said that specialty courts cost approximately $9 million. The member emphasized the significant savings to the state attributable to specialty courts.

Update from the Public Defender Department (PDD)

Bennett J. Baur, chief public defender, PPD, introduced the public defender commissioners, retired Judge Michael Vigil and Hugh Dangler; Philip Larragoite, deputy chief public defender, PDD; and Robert Mead, administrative services director, PDD. Mr. Baur said that the PDD is the largest law firm in the state, with nearly 200 public defenders and 150 contract lawyers representing criminal defendants in 70,000 new cases per year. Mr. Baur emphasized that the PDD is underfunded and struggling to meet its constitutional mandate to provide effective assistance of counsel to indigent defendants. He noted that additional funding for social services that address issues that lead to crime would help reduce the office's caseload. He added that prosecutors' and the PDD's caseloads increase four to five percent every year.

Mr. Baur explained that New Mexico's model of providing indigent defense services uses a combination of PPD employee attorneys in 13 counties and contract defenders in 20 of the state's 33 counties. He referred to his presentation materials (Item 8) "LOPD Caseload Assignments July & August 2016" and noted that the PDD caseloads significantly exceed recommended maximum numbers in 12 of the state's 14 divisions, and that caseloads in Hobbs are almost four and one-half times the recommended maximum. Contract defenders are paid a

flat rate of $180 to $750 per case, which requires most contract defenders to take as many cases as possible to stay in business. In FY 2016, the PDD sought contract defenders for Eddy and Lea counties and received just one response. Mr. Baur said that the PDD requests a 10 percent budget increase for the coming fiscal year, which will allow the PDD to hire 25 attorneys to help reduce caseloads.

Mr. Dangler said that the PDD has never refused a case, but because the caseloads are so high, for the first time ever the PDD may have to stop taking cases in some areas to ensure that it is providing effective assistance to clients. He added that the warrant fee system is in need of reform, and jailing a person who cannot pay the warrant fee has severe financial consequences for families.

A committee member noted that district attorneys can choose whether to prosecute a case, but defenders have to take every qualified client's case. Referring to the PDD's FY 2018 budget request, a member urged the PDD to propose legislation to remove jail penalties from certain traffic offenses. The member also suggested that the Law Enforcement Assisted Diversion program piloted in Santa Fe should be expanded statewide.

Impeachment Processes — Recommendations of the House Special Investigatory Committee (HSIC)

Douglas Carver, former LCS staff member, explained that the February 15, 2012 "Final Report of the Investigatory Subcommittee of the House Rules and Order of Business Committee" (Item 9) on the impeachment inquiry into former Public Regulation Commissioner Jerome D. Block, Jr. included recommendations regarding impeachment processes. He said that impeachment is not widely used, and before the impeachment of Senator Phil Griego in 2015 was contemplated, the process had only been considered three times, with respect to former State Treasurer Robert Vigil in 2004, former Commissioner Block in 2011and former Secretary of State Dianna Duran in 2015. In each of those cases, the impeachment process was halted when those officials resigned from office.

Mr. Carver reviewed the constitutional basis for impeachment, and he noted a lack of statutory guidance for conducting impeachment proceedings. Without any procedural guidance, each impeachment inquiry requires rules and procedures to be developed, so the process could be improved through the development of statutory procedures, he said. He noted that there are statutory provisions that allow for the issuance of legislative subpoenas under specific circumstances only: during a regular or special session of the legislature; for perjury; and for criminal penalties for refusal to take an oath or affirmation prior to testimony. He said that the only instance in which an impeachment inquiry involved the issuance of subpoenas was in the case of former Commissioner Block. That inquiry occurred when the legislature was in regular session, so statute provided for the issuance of the subpoenas; however, if the need for subpoenas had arisen in the case of former Secretary of State Duran's impeachment inquiry, a special legislative session would have been required to allow the legislature to issue the subpoenas, which highlights a possible obstacle in an impeachment process. Mr. Carver noted that, if the

legislature's subpoena power is expanded, the power could be limited to impeachment inquiries to avoid the possibility of an abuse of power. In response to a member's question, Mr. Carver said that guidance on impeachment processes is not readily available from other states or the federal government.

A committee member who served on the HSIC in 2015, commented that work to develop procedures was undertaken in 2012, but that work did not become law and had to be repeated during the inquiry in 2015. Another committee member who served on a house special investigatory subcommittee observed that impeachment is a quasi-judicial function of the legislature and recalled that Senate Joint Resolution 17 (2015) proposed a constitutional amendment to provide for legislative subpoena power. Mr. Carver noted that a legislative subpoena statute exists, but it could be altered to provide specifically for subpoena power in impeachment proceedings.

The committee voted to continue work to implement the recommendations made in the report presented by Mr. Carver.

Human Trafficking and Runaway Children

Judge John J. Romero, Jr., presiding Children's Court judge, Second Judicial District, described a collaborative project to educate judges nationwide regarding sexual exploitation of children and runaway children. He said that many of the young people he sees in his courtroom, particularly in connection with sex-related charges, are being or have been abused or neglected, and many of them have been trafficked for sex, some from a young age. Many children who run away from abusive homes are recruited by traffickers, and often, the children end up in the juvenile justice system. He noted that children who have been abused and traumatized by trafficking are not willing participants in a sex trade but are instead engaging in what he termed "survival sex". Judge Romero said the term "child prostitute" always refers to a child who is being abused, regardless of the apparent level of physical or social maturity of the child. He strongly urged the legislature to revise the age in the state's law prohibiting sexual exploitation of children by prostitution (Section 30-6A-4 NMSA 1978) from 16 to 18.

Judge Romero said that the federal Preventing Sex Trafficking and Strengthening Families Act requires states to identify and protect children and youth at risk of being trafficked for sex. He complimented the CYFD for its quick action in response to the federal law to develop policies and procedures to identify children in state custody who are being trafficked and need assistance.

Judge Romero said that foster parents are vital to the child protection system, and the federal law sets a "reasonable and prudent parent" standard for a foster parent to make parental decisions about the child's participation in extracurricular, enrichment, cultural and social activities to maintain the child's safety and health. Foster parents are screened, selected and overseen by the CYFD with a goal of normalizing a family experience for children in the state's custody and making them less vulnerable to traffickers. Judge Romero said that some risk

factors for trafficking are the same factors that bring children into foster care, and he added that lesbian, gay, bisexual, transgender and queer children are at the highest risk of being trafficked.

Judge Romero recommended the following additional resources on children and trafficking:

- "The Sexual Abuse to Prison Pipeline: The Girls' Story", a joint report by the Human Rights Project for Girls, Georgetown Law Center on Poverty and Inequality and the Ms. Foundation for Women, issued in 2015;
- "Girls Like Us, Fighting for a World Where Girls Are Not For Sale"; a memoir by Rachel Lloyd, the founder of GEMS, Girls Educational and Mentoring Services in New York City; and
- a documentary film, "Prevention: Everybody's Business".

Judge Romero showed a YouTube video titled, "America's Daughters", that discussed how children may end up in the sex trade. He called for greater awareness and an end to adults blaming children for their victimization.

A committee member commented that changes to current law are needed to help law enforcement address issues related to runaways. HB 418 (2015), if it had been signed into law, would have required law enforcement to notify the CYFD upon receipt of a report of a runaway child. House Memorial 111 (2015), which did pass, requested the CYFD, law enforcement and public schools to study and develop an approach to identify and provide protective services to runaway children and their families. Currently, if a law enforcement officer identifies a runaway child, the officer may return the child to the environment the child fled, unless medical treatment is necessary, in which case the officer can take the child to receive care. The committee member observed that some runaways' parents do not report the child as missing because of fear of involvement by the CYFD and law enforcement. The member also noted that violent juvenile criminals are often runaways who may have also been expelled from school. Judge Romero agreed, and said that more services are needed in schools and within the CYFD, and he added that children should receive services through the Protective Services Division and not through the juvenile justice system.

A committee member asked how the legislature can help children who have run away from abusive environments and what can be done to intervene before a family becomes so toxic that a child runs away. Judge Romero referred to the documentary film, "Prevention: Everybody's Business", and said that programs that help with parenting skills are important, including nurse visitations immediately after a child is born.

Process for Replacement of Recused Public Regulation Commissioners

Judith Amer, associate general counsel, Public Regulation Commission (PRC), reviewed a memorandum in support of the PRC's Resolution No. 03-09-16 (Item 11) requesting that the

legislature determine what governmental body would be responsible for selecting a replacement for a recused commissioner and what criteria would be used to select the replacement commissioner. There are five commissioners, and a quorum of three is required to conduct business. The PRC proposes adoption of "the rule of necessity", which would allow a recused or disqualified commissioner to participate in discussions and decisions if the case cannot be heard otherwise due to a lack of a quorum. The application of this principle would mean that if three or more commissioners are disqualified by a party or recuse themselves because of personal bias, conflicts of interest or other reasons provided in Section 8-8-18 NMSA 1978, the recused or disqualified commissioners would still be able to participate in a proceeding to establish a quorum. Alternatives to the "rule of necessity" would be to amend the constitution to address the issue or amend the applicable statute to change the definition of "quorum" in the event of a recusal or disqualification of three or more commissioners.

Ernest Archuleta, chief of staff, PRC, introduced Commissioner Linda Lovejoy, who spoke in favor of the PRC's proposal. Commissioner Lovejoy said that a party had never filed a complaint in the New Mexico Supreme Court to force recusal of a commissioner before the Public Service Company of New Mexico San Juan Abandonment case (Case No. 13-00390-UT). In that case, the New Mexico Supreme Court did not require recusal, but the PRC wants to address the issue in case the situation ever arises again.

There was discussion of the possible situations that could lead to disqualification or recusal of commissioners. Ms. Amer noted that such situations are infrequent.

A committee member asked how other states address replacing recused or disqualified commissioners. Ms. Amer said that only 13 states have elected commissioners, the remainder of states have appointed commissioners. She noted that in Montana and Arizona, the governor appoints an acting commissioner to fill vacancies.

A committee member commented that the PRC's proposal would undermine the statute requiring recusal in cases of personal bias or conflict of interest and said that a different solution should be developed. It is important to have impartial decision-makers, and the "rule of necessity" would not support impartiality in the PRC's work and could harm its reputation.

Another member agreed but expressed concern about allowing the governor to appoint replacement commissioners. Other possibilities might include constitutional amendments providing for "at-large" commissioners instead of commissioners elected from districts, increasing the number of commissioners or making some commissioners elected and some appointed. Another member noted that a combination of elected and appointed commissioners could lead to contention as it has on other similarly constituted boards. The committee agreed that the issue needs further inquiry.

Public Comment

Mariel Nanasi, executive director, New Energy Economy (NEE), provided a handout regarding the PRC quorum issue (Item 11). The NEE's position is that the legislature should revise the definition of a quorum to allow three commissioners to vote on a final decision with a majority of two to decide. Another option is to establish a pool of replacement commissioners defined by the legislature and appointed by the governor. Ms. Nanasi said that the "rule of necessity" has never been applied in New Mexico except in the issue of judicial raises.

Adjournment

There being no further business before the committee, the third meeting of the CCJ for the 2016 interim adjourned at 4:23 p.m.

Revised: October 26, 2016

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

October 27-28, 2016
State Capitol, Room 307
Santa Fe

Thursday, October 27 — Joint Meeting with the Legislative Health and Human Services Committee (LHHS)

8:30 a.m. **Welcome and Introductions**
—Representative Zachary J. Cook, Co-Chair, Courts, Corrections and Justice Committee (CCJ)
—Senator Richard C. Martinez, Co-Chair, CCJ
—Senator Gerald Ortiz y Pino, Chair, LHHS
—Representative Nora Espinoza, Vice Chair, LHHS

8:45 a.m. (1) **Corrections Health Care: Report of the Corrections Health Care Task Force; Federal Prison Rape Elimination Act of 2013 (PREA)**
—Maria Martinez Sanchez, Staff Attorney, American Civil Liberties Union of New Mexico (ACLU-NM)
—Jody Neal-Post, Attorney at Law
—Matt Coyte, Coyte Law, P.C.
—Gregg Marcantel, Secretary, Corrections Department (NMCD)
—Wendy Price, Psy.D., Behavioral Health Bureau Chief, NMCD
—Jillian Shane, PREA Coordinator, NMCD
—Steve Jenison, M.D.

11:00 a.m. (2) **Corrections Medicaid Enrollment and Suspension**
—Kari Armijo, Deputy Director, Medical Assistance Division, Human Services Department
—TBD, NMCD
—Gabriel Nims, Special Projects Coordinator, Bernalillo County Metropolitan Detention Center

12:00 noon **Lunch**

1:30 p.m. (3) **Solitary Confinement and Custodial Segregation**
—Steve Allen, Director of Public Policy, ACLU-NM
—Stuart Grassian, M.D. (via video conferencing)
—Matt Coyte, Coyte Law, P.C.
—Jerry Roark, Director, Adult Prison Division, NMCD
—Grace Philips, General Counsel, New Mexico Association of Counties

—Mark Caldwell, Warden, Santa Fe County Adult Correctional Facility
—Michael Ferstl, Assistant Director of Operations, Bernalillo Youth Services Center

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

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

Friday, October 28 — Joint Meeting with the LHHS

8:30 a.m. **Welcome and Introductions**
—Senator Gerald Ortiz y Pino, Chair, LHHS
—Representative Nora Espinoza, Vice Chair, LHHS
—Representative Zachary J. Cook, Co-Chair, CCJ
—Senator Richard C. Martinez, Co-Chair, CCJ

8:45 a.m. (5) **Adverse Childhood Experiences in Juvenile Offenders in New Mexico and What We Can Do About It**
—Amir Chapel, Research Scientist, New Mexico Sentencing Commission
—George Davis, M.D., Director of Psychiatry, Children, Youth and Families Department

10:00 a.m. (6) **Sharpening Prescribing Practices for Pain Management**
—Michael Landen, M.D., State Epidemiologist, Department of Health
—Demetrius Chapman, M.P.H., M.S.N. (R.), R.N., Executive Director, Board of Nursing
—Ben Kesner, Executive Director, Board of Pharmacy (BOP)
—Shelley Bagwell, Prescription Monitoring Program Director, BOP
—Sarah Trujillo, Licensing Manager, BOP
—Sondra Frank, J.D., Executive Director, New Mexico Medical Board
—Ralph McClish, Executive Director, New Mexico Osteopathic Medical Association; Member, Prescription Drug Misuse and Overdose Prevention and Pain Management Advisory Council
—Joanna Katzman, M.D., M.S.P.H., University of New Mexico (UNM) Health Sciences Center (HSC); Associate Professor, UNM; Director, UNM Pain Center; Director, UNM Project ECHO Chronic Pain and Headache Program

11:30 a.m. (7) **Non-Pharmaceutical Treatment for Chronic Non-Cancer Pain**
—Michael Pridham, D.C.-A.P.C., N.R.C.M.E., Member, Executive Board, New Mexico Chiropractic Association
—Juliette Mulgrew, N.D., M.S.A.Y., Vice President, New Mexico Association of Naturopathic Physicians

12:30 p.m. **Lunch**

2:00 p.m. (8) **Medication-Assisted Treatment**

—Eugenia Oviedo-Joekes, Associate Professor, School of Population and Public Health, University of British Columbia

—Lindsay LaSalle, Senior Staff Attorney, Drug Policy Alliance

—Miriam Suzanne Komaromy, M.D., Associate Director, ECHO Institute; Associate Professor of Medicine, UNM

—Andrew Hsi, M.D., Principal Investigator, FOCUS Programs at CDD UNM HSC; Principal Investigator, Reflejos Familiares Project; Professor of Family and Community Medicine

3:30 p.m. (9) **Economic Burden of Prescription Opioid Abuse**

—Alan G. White, Ph.D. in Economics, University of British Columbia; M. Litt. in Economics and Mathematics, and B.A. in Economics and Mathematics, University of Dublin, Trinity College; Managing Principal, Analysis Group, Inc.

4:30 p.m. (10) **Public Comment**

5:00 p.m. **Adjourn**

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

October 27-28, 2016
Room 307, State Capitol
Santa Fe

The fourth meeting of the Courts, Corrections and Justice Committee (CCJ) was a joint meeting with the Legislative Health and Human Services Committee (LHHS), which was called to order by Senator Gerald Ortiz y Pino, chair, LHHS, on October 27, 2016 at 9:28 a.m. in Room 307 of the State Capitol in Santa Fe.

Present
Sen. Richard C. Martinez, Co-Chair
Rep. Eliseo Lee Alcon
Rep. Gail Chasey
Sen. Linda M. Lopez
Rep. Georgene Louis (10/28)
Rep. Antonio Maestas
Sen. Cisco McSorley

Absent
Rep. Zachary J. Cook, Co-Chair
Sen. Joseph Cervantes
Rep. Jim Dines
Rep. Rick Little
Rep. Andy Nunez
Rep. William "Bill" R. Rehm
Sen. Sander Rue
Sen. Lisa Torraco

Advisory Members
Sen. Craig W. Brandt
Sen. Bill B. O'Neill
Sen. John Pinto
Rep. Patricio Ruiloba
Sen. Mimi Stewart
Rep. Christine Trujillo (10/27)

Sen. Jacob R. Candelaria
Rep. Brian Egolf
Rep. Doreen Y. Gallegos
Sen. Daniel A. Ivey-Soto
Rep. Paul A. Pacheco
Sen. William H. Payne
Rep. Patricia Roybal Caballero
Sen. Michael S. Sanchez
Sen. Peter Wirth

Guest Legislator
Rep. Dennis J. Roch (10/28)

(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
Peter Kovnat, Staff Attorney, LCS
Diego Jimenez, Research Assistant, LCS

Guests
The guest list is in the meeting file.

Handouts
Handouts and other written testimony are in the meeting file and are located on the New Mexico Legislature website (www.nmlegis.gov). Please see handouts for more presentation details.

Thursday, October 27

Welcome and Introductions
Legislators from the LHHS and the CCJ and staff introduced themselves.

Corrections Health Care: Report of the Corrections Health Care Task Force; Federal Prison Rape Elimination Act of 2013 (PREA)
Maria Martinez Sanchez, staff attorney, American Civil Liberties Union-New Mexico (ACLU-NM), told the committees that the ACLU-NM receives 70 complaints from New Mexico prisoners each month and that 10% to 20% of those complaints are regarding failures of the prison health system. Ms. Martinez Sanchez said the complaints include neglect in diabetes, cancer and hepatitis C care; untreated broken bones, hernias and kidney stones; dental neglect; and psychiatric medications not being provided.

Ms. Martinez Sanchez stated that she sees a pattern of neglect that violates the Eighth Amendment to the United States Constitution's prohibition on cruel and unusual punishment. She said that the State of New Mexico jails a lot of people but then fails to care for them. In addition, Ms. Martinez Sanchez said that preventative care would save the state money and that the state is opening itself up to liability in its substandard medical care of inmates.

To close, Ms. Martinez Sanchez said that the ACLU-NM wants to be included in the task force created pursuant to Senate Memorial 132 (2015). Without a prisoner health advocate, she said, the task force would be incomplete.

Jody Neal-Post, attorney at law, discussed the difficulties some of her clients faced in receiving health care while incarcerated. There were challenges with missed appointments, shackling on limbs despite a medical prohibition and failure to finalize recommended medical parole by the Parole Board. Ms. Neal-Post highlighted the fact that despite attempts by the Corrections Department (NMCD) to secure an inmate's medical parole, the Parole Board would

not grant it. She urged the committees and the task force to change the statutory guidelines for parole boards to ameliorate the problem. Ms. Neal-Post said that the state faces unnecessary exposure to liability based on a failure to provide adequate health care to inmates. She said that when inmate health care is more compassionate and humane, it is also cheaper. She said that she wants to see the task force continue and to have inmates participate on the task force, as everyone wants to be part of their own health care.

Matthew Coyte, Coyte Law, P.C., said that he gets about 20 inmate requests for help per week. He said that from a legal standpoint, these are difficult cases to win because there is a required showing of deliberate indifference of the prison as a health care provider. As long as the prison doctor gives the inmate Ibuprofen or Tylenol, the prison is immunized from lawsuits. Of course, cases can still be filed alleging negligence and malpractice against the doctor, but those cases are almost never filed. He said that he understands that the prisons are in a difficult situation, too. A lack of funding has led to understaffing, which only aggravates the situation.

Mr. Coyte said that the new contract for inmate health care prioritizes fiscal responsibility over medical care, as evidenced by there being limited medical oversight over the contract, but significant financial oversight.

Wendy Price, Psy.D., chief, Behavioral Health Bureau, NMCD, told the committees that she led the task force created pursuant to Senate Memorial 132 and went over the various issues discussed by the task force. The top maladies faced by inmates are hepatitis C, HIV and psychological disorders. She said that there are challenges to care, but that inmates are educated as to how they can request treatment.

Jillian Shane, PREA coordinator, NMCD, stated that 11 adult prisons and two community jails in the state all passed the PREA audit.

Steve Jenison, M.D., said that he oversaw HIV treatment in all New Mexico prisons, which meant visiting each facility at least every three months and having a state public health nurse involved to ensure continuity of care for each patient.

Questions from members of the committees and the ensuing discussion focused on hepatitis C treatment, including Section 340B of the federal Public Health Service Act discounted drug pricing eligibility; medical oversight at the NMCD; the task force; and the new contract between the NMCD and Centurion.

Members and presenters agreed that hepatitis C treatment under the University of New Mexico's (UNM's) Project ECHO program has been very effective. In the last year, there were 65 to 70 inmates treated for hepatitis C, which represents a big jump. While this may seem like a low number, with 58% of the state's inmates having hepatitis C, most states only treat about 1% of their inmates with hepatitis C. The biggest hurdle to treatment is the high cost, which is $90,000 to deliver a 12-week course of hepatitis C treatment to one person. Under the deeply

discounted pharmaceutical pricing available pursuant to Section 340B, the cost would be half that.

Alex Sanchez, deputy secretary, NMCD, said that 340B eligibility has a number of requirements, and the state fails to qualify, but it is written into the contract with Centurion that vendors will still seek it. A member mentioned a federally funded health provider in Albuquerque that would qualify for 340B pricing and said that the NMCD should partner with the provider. According to information received by another legislator, 340B pricing was actually discontinued at the recommendation of an NMCD medical director who no longer works for the state. That medical director sought pharmaceutical savings through the NMCD's contract with Corizon Correctional Healthcare.

A legislator asked how the NMCD decides who are among the 1% of inmates who are treated for hepatitis C. Deputy Secretary Sanchez said that the NMCD has a process for assessing whether an inmate would compromise treatment with intravenous needle usage or if the inmate has another condition that would have an impact on the viability of the treatment. When selecting an inmate for treatment, the NMCD contacts Project ECHO. Deputy Secretary Sanchez said that, though not all patients receive this expensive course of medicine, all patients receive, at a minimum, the care that an indigent patient would receive on the outside. A legislator said that Project ECHO is a "game changer", but the state cannot expect the same level of delivery if it is underfunded.

Regarding medical oversight of those incarcerated at NMCD facilities, Deputy Secretary Sanchez said that there is a medical director, Dr. Boynton, and Health Services Director Angela Martinez, who is in change of the auditing and medical care. Upon questioning, Deputy Secretary Sanchez stated that Dr. Boynton is not employed by the NMCD but is in fact the Centurion medical director. There is no medical director employed by the NMCD. Some legislators expressed concern that the health services director for the NMCD is not a medical professional as has occurred in the past.

Discussing the Corrections Health Care Task Force, members asked if the right people were on the task force and if there were an opportunity for members and nonmembers to be heard. Legislators voiced concerns when Dr. Price explained that, though it was being finalized for awhile, a draft report of the task force's findings was only sent out the day before for members of the task force to review. A legislator said that it is difficult to assess the task force's work when information is provided at the last minute.

Ms. Martinez Sanchez said that the ACLU-NM got a late invitation to join the task force, and after being assured that the director of the ACLU-NM could call in to participate in the meeting, the videoconferencing technology was a consistent obstacle to his ability to join in. Deputy Secretary Sanchez alleged that the director of the ACLU-NM attended four out of the five task force meetings.

In response to a question, Deputy Secretary Sanchez said that among the task force's recommendations, there is no recommendation that the task force continue. Legislators requested copies of those recommendations, that the task force continue its work and that it include more advocacy groups. Members said that a reason for the task force to continue is that it provides ongoing progress reports to the legislature.

Regarding the contract with Centurion, which went into effect on June 1, 2016, Deputy Secretary Sanchez said that there are actually two contracts, one for $41 million for health care and one not to exceed $11 million for pharmaceuticals. She said that the company does recruit within the state for staff and that, for the most part, the staff will remain the same. The improvement, she said, will happen in the required performance measures. A live dashboard is the centerpiece of that and is the key to real-time assessment.

Deputy Secretary Sanchez said that the dashboard will provide, on request, a real-time update on inmate information. Deputy Secretary Sanchez said that officers do not enter information into the dashboard; it is the vendor's responsibility. Members of the committees expressed concern that requested care by the inmates is not being provided and asked that the dashboard reflect that in an effort to improve care.

To close, a legislator suggested that the NMCD seek offset funding from the Indian Health Service to the extent that the NMCD provides health care to Native American inmates.

Corrections Medicaid Enrollment and Suspension

Kari Armijo, deputy director, Medical Assistance Division, Human Services Department (HSD), discussed how the HSD is rolling out its program to ensure that Medicaid-eligible inmates have timely access to post-release health care (see handout). Deputy Director Armijo highlighted the impact of information technology and regulatory changes, the counties and agencies currently participating and the pilot program between the Bernalillo County Metropolitan Detention Center (MDC) and Molina Healthcare.

Deputy Director Armijo said that the HSD is working with more counties than are identified in the handout, but those not mentioned are still a work in progress. She said that there are still some delays with the daily sharing of information, but the process is automated. Another benefit is that over one-half of the inmates are actively engaged in their post-release health care coordination, and this drives down recidivism.

Jerry Roark, director, Adult Prison Division, NMCD, said that the NMCD has started signing up inmates for Medicaid 60 days before their release and have reached a 90% sign-up rate.

Gabriel Nims, special projects coordinator, MDC, said that the MDC accounts for the lion's share of the county budget, some $75 million to $80 million a year, and it is realized how important it is to be fiscally responsible and good custodians of that money.

Mr. Nims said that the MDC used to have a passive enrollment system, according to which the MDC waited until a Medicaid-eligible inmate requested it and even then it would hold the inmate's application for Medicaid until that person's release date. Now, MDC staff is approaching those inmates who qualify, helping them to fill out the application and then sending the applications for processing earlier. In response to a question, Mr. Nims said that inmates can still refuse to enroll, but that is rare. Mr. Nims said that the first 72 hours after release is the most important for recidivism, so any delay in continuity of health care can have an impact.

Currently, the Medicaid enrollment pilot project is ongoing only with Molina Healthcare, one of the four Medicaid managed care organizations (MCOs), but other MCOs are watching closely. In fact, the MDC/Molina Project is generating interest by Seattle-King County officials in the State of Washington.

Mr. Nims closed by discussing a proposed reentry resource center, which would include a rest area if an inmate is released at night. The center would be staffed with case managers to connect newly released inmates to available social services. He said that these efforts improve the system and have a positive financial impact.

Solitary Confinement and Custodial Segregation

Mr. Coyte said that whatever one calls it — administrative segregation, administrative housing, protective custody, solitary confinement — these are a lot of names to explain a deprivation of meaningful human contact, where a person is kept in a room for 23 hours a day on weekdays and 24 hours on weekends. Mr. Coyte said that while solitary confinement is banned in many states and New Mexico has paid out million-dollar judgments to people wrongly held in solitary, the state has not passed laws to stop solitary confinement.

Mr. Coyte highlighted the fact that inmates with a mental health diagnosis are not officially allowed to be in solitary confinement, but they should be in an alternative placement area. Despite that, he said, in New Mexico, those inmates are still being put in solitary confinement.

Stuart Grassian, M.D., appearing via videoconferencing, told members that restricted environmental stimulation is toxic to anyone and that inadequate exposure to stimulation, internal or external, results in stupor. Dr. Grassian discussed the history of solitary confinement, from an innovative criminal justice incarceration technique to significant limitation of its use because it was long ago found not to foster reform and to seriously and detrimentally impact prisoners' mental well-being. In fact, he said, the toxic effect has been known for so long, it is absurd that it is still in use.

Dr. Grassian said the arguments in support of solitary confinement are based on prisoners making rational decisions about how to act to avoid solitary confinement, but this situation rarely plays out where the decisions made by the inmate that resulted in solitary confinement are rationally made. This is especially pernicious in light of the fact that 75% of prison beds are

occupied by people whose initial offense can be tied to mental illness. A member agreed and said that inmates with traumatic brain injury often have diminished impulse control, which could cause the exact behavior that lands a person in solitary confinement.

Dr. Grassian said that inmates with impaired cognitive ability do terribly in solitary confinement. He said that the worst thing for people with posttraumatic stress disorder is to put them in a situation that they cannot control, and that is what solitary confinement is all about.

A legislator asked if inmates in solitary confinement can receive visitors and why the 23 hours of confinement is de rigueur. Mr. Coyte said that visitation rights depend on the facility and on the level of the prisoner. The 23-hour rule, according to Mr. Coyte, comes from a dictum in a legal case where the judge wrote, "Well, at least they should get an hour a day outside". Now, for whatever reason, that has been incorporated into the solitary confinement practice of many prisons and jails.

To illustrate the deleterious effects of solitary confinement, he cited the example of a once-healthy young man who was picked up for traffic tickets, placed in solitary confinement and came out with a severe mental illness. While held in solitary confinement, the young man was kept naked and forced to defecate in a hole in the floor.

A 54-year-old woman had severe postpartum depression in her twenties, according to Mr. Coyte. She later became severely mentally ill after being held by Valencia County in solitary confinement, where she had to sleep near a hole in a damp floor. For posttraumatic stress disorder and other complaints, she was awarded a $1.6 million settlement with Valencia County.

Mr. Coyte described the case of a man who was held in Carlsbad in a tiny cell, naked, where he had to endure lights left on 24 hours a day and sleep by a drain into which he was forced to push his feces, which would later bubble up through the drain. He was kept in cold temperatures, with no water with which to wash. He was never released for exercise. "Why do we do this?", Mr. Coyte asked. There needs to be a law that bans these practices, he stated. In 1998, West Virgina banned solitary confinement for juveniles. Mr. Coyte stated that he is currently suing Curry County for use of solitary confinement on juveniles there.

In response to a question about tests that show the different effects of solitary confinement and additional punishment, i.e., leaving the lights on for 24 hours or removing all furniture or the inmate's clothes from the room or the inmate's clothes, Steve Allen, director of public policy, ACLU-NM, said that most prisons and jails do not collect good data on whom they put in solitary, so no such tests exist. The little data that are collected, Mr. Allen said, are not useful for comparison because each facility collects different information. In the past, house and senate bills were introduced in New Mexico that would have required prisons and jails to collect information on solitary confinement in a uniform way. Those bills did not pass. Colorado, he explained, took a data-driven approach and requires uniform data collection. This has resulted in a drastic decrease in the use of solitary confinement. During their 2017 legislative sessions,

Idaho, Maine and Texas are going to consider laws using a data-driven approach to solitary confinement.

Mr. Allen said that other research has shown that there is no good reason for the use of solitary confinement on minors, the mentally ill or anyone for more than 15 days. He said that Colorado is the national leader in improving techniques for the use of solitary confinement.

Grace Philips, general counsel, New Mexico Association of Counties, said that there are correctional facilities in 27 of the 33 counties in the state and far fewer facilities for juvenile inmates, which means that juvenile offenders are often incarcerated farther from home. She stated that New Mexico has a much higher incarceration rate than do other states. One-third of those incarcerated in county jails are in for failure to comply reasons, including probation violations, parole violations and warrants. Housing of probation violators alone cost counties $35.8 million in fiscal year 2016. County jails also hold many people who live with mental illness. On average, 2,557 inmates a day in New Mexico county jails have a diagnosed serious mental illness.

Ms. Philips said that when the legislature seeks harsher criminal penalties, especially in times of financial hardship, longer sentences mean a bigger cost to the taxpayer. She also said that jails and prisons are de facto mental health hospitals and posited that there are more people in jail taking psychotropic medicine than there are in mental health facilities and more county detention staff than clinicians treating the mentally ill.

To close, Ms. Philips said that in her experience, families do not typically bond out the mentally ill, as those families often use the jail as a safe way to remove a person from the home.

Pablo Sedillo, director, Public Safety Department, Santa Fe County, highlighted the county's efforts to handle the mentally ill. All of the county's public safety officers and first responders have crisis management training and know crisis-intervention techniques. Also, Santa Fe County has two reentry specialists and is looking for a third.

Mr. Sedillo reiterated what Ms. Philips said regarding the families of the mentally ill. He said that the families of those with mental illness are often happy when the mentally ill person is held in a detention center. Mr. Sedillo explained that, nevertheless, jails are not hospitals. While they do their best to care for mentally ill inmates, it is not the same as a hospital setting. County jails do not have trauma areas, for example, as a hospital would.

Michael Ferstl, assistant director of operations, Bernalillo County Youth Services Center, said that he is the former head of the United States Marshals Service for New Mexico, and as such, he is very familiar with the state's correctional facilities. He said that New Mexico has well-run jails and that the solitary confinement lawsuits stem from staff failures and not department policy. He said that as a corrections professional, he sees through a lens of prisoner

days. He warned against taking these lawsuits out of context and said that five lawsuits arising out of 47 million prisoner days is not a high number at all.

Mr. Ferstl said that the Bernalillo County Youth Services Center does not utilize solitary confinement, as that term is defined. In fact, he thinks that the segregation policy his facility uses is worthy of being a national model. Mr. Ferstl said that he is wary of any blanket legislation regarding solitary confinement because he fears that it will hamper the efforts of corrections officers.

When asked about how long juveniles are kept in isolation at the Bernalillo County Youth Services Center, Darren James, case manager, Bernalillo County Youth Services Center, discussed some case studies and said that when inmates relapse, they might be in isolation more than a few weeks.

Mr. Roark said that New Mexico's adult facilities use the American Correctional Association's definition of restrictive housing, which includes 22 hours of cell time a day. He said that despite all efforts to curb it, there will always be illegal activity in prisons, be it trafficking, gambling or something else. That activity will spur outbursts of violence, which will, in turn, require the separation of inmates. A legislator said that perhaps that is the case, but that there is a difference between segregation and segregation with additional punishment.

A large number of beds are going unused at the Department of Health's (DOH's) New Mexico Behavioral Health Institute at Las Vegas (BHI), according to one legislator. Why, the legislator asked, is the DOH turning people away from treatment at the BHI? The legislator requested that the LHHS follow up with testimony from the DOH on the BHI's accessibility for seriously mentally ill New Mexicans.

A legislator said that there will be a bill introduced next session and that it is important that legislators learn from the NMCD and county corrections officials about jail management so that the language in the bill reflects the legislative intent. The legislator wants New Mexico to comply with international standards.

Finally, a legislator said that oversight of probation and parole needs to be taken from the NMCD and given to the judiciary, which is better prepared to provide objective administration.

Public Comment

Diana Crowson discussed her son, who spent almost two years in solitary confinement in Las Cruces. She said that she is aware of an inmate, not her son, who received only an Ibuprofen after suffering a stroke.

Ruth Hoffman, director, Lutheran Advocacy Ministry-New Mexico, read the following statement.

Mr. Chairman and Members of the Committee,
Our denomination, the Evangelical Lutheran Church in America, adopts social statements which are the underpinnings of our advocacy work. The following is a quote from our newest social statement on criminal justice: 'As people of reason, we accept differences in correctional philosophies, but as people of faith we reject dehumanization of the incarcerated through brutalizing means whether legal, psychological, sexual, emotional, racial, cultural, or spiritual.' With this underpinning, we oppose the use of solitary confinement for juveniles and the seriously mentally ill. We also urge that it be restricted for use with the general population of those incarcerated and that the use of solitary confinement be closely monitored and tracked.

Ms. Hoffman said that Mississippi has virtually eliminated solitary confinement, not because of a moral distaste for its use, but because it saves the state a lot of money.

Reverend Holly Beaumont stated that 80% of the job is just "showing up", and she was present to represent 300 faith leaders in support of limiting solitary confinement. (Please see letter provided in the handouts, Item (18), for the week's hearings.)

Leona Stuckey-Abbott spoke against the use of solitary confinement.

Recess

There being no further business before the committees, the meeting recessed at 5:25 p.m.

Friday, October 28

Welcome and Introductions

Senator Ortiz y Pino reconvened the meeting at 8:59 a.m. and the members and staff of both committees introduced themselves. He also mentioned that legislators and staff were invited by Robin Otten to tour supportive housing facilities at Lomas and Second in Albuquerque at 8:00 a.m. on Veterans Day, November 11.

Adverse Childhood Experiences in Juvenile Offenders in New Mexico and What We Can Do About It

Amir Chapel, research scientist, New Mexico Sentencing Commission (NMSC), discussed a newly released report about adverse childhood experiences (ACEs), with a focus on ACEs within the state's juvenile justice population. Mr. Chapel said that the study was undertaken in part to identify ways to target treatment for people who have experienced trauma. The report highlights and analyzes the results of several studies and includes a study of more than 26,000 randomly sampled adults nationwide and a study of 220 juvenile offenders in New Mexico. Mr. Chapel said that the field of ACEs is growing quickly. It started with health outcomes, is now being used with juvenile justice issues and will likely be used to assess a number of things in the near future.

The authors of the report looked at a number of factors or "ACEs". Those factors are emotional abuse, physical abuse, sexual abuse, emotional neglect, physical neglect, parental divorce or separation, family violence or domestic abuse, household substance abuse and household member incarceration. One hundred percent of female inmates and 93% of male inmates in New Mexico facilities surveyed were found to have experienced physical neglect, and 81% of inmates had experienced a diagnosable substance abuse or dependence issue. These were the most common correlates for probation violations. He informed the committees that the final report is available on the NMSC's website.

George Davis, M.D., director of psychiatry, Children, Youth and Families Department (CYFD), stated that the ACE study was "one of the greatest behavioral health studies ever done". He said that ACEs have long-term effects on people's physical, mental and emotional lives, but not every ACE has the same deleterious effect. In fact, ACEs work in concert with one another, and typically, four different ACEs is the number where studies show that they have an impact. Studies show that a person who has experienced four or more ACEs will live 20 years less than if the person had not had any ACEs.

Dr. Davis said that juvenile delinquents are created, not born, but intervention needs to happen early, long before the person commits a crime. ACE intervention has to rewire these children's brains. Dr. Davis said that while not all neglected children end up in trouble, 90% of those in the juvenile justice system in New Mexico experienced ACEs. Early childhood trauma is an attachment disturbance, which is an emotional disruption causing an inability to be calmed by adults. Sports, t'ai chi and any large-muscle activities that are multisensory; vocational skill-building; showing respect; animal therapies, such as equine and dog therapy; and using discharge planning in facilities are all methods that the CYFD employs at its facilities that can be helpful in counteracting the effects of ACEs.

A legislator said that prevention is the first step, and one of the challenges is getting home-visiting services to the right homes. The legislator said that experience shows that the people who sign up for home visiting are rarely the people who need it. There are good results with home visiting, but it is obvious that those who accept it are in families where the parents are more informed and more likely to accept and incorporate constructive criticism.

Dr. Davis said that the difficulty is not identifying those most in need of home visiting but to coerce those families into accepting the visits. This is especially the case where there is a need for ongoing visits. Solutions posed were tying cash assistance or Medicaid to home visits.

A legislator asked whether marijuana legalization might contribute to ACEs. Dr. Davis stated that this would be part of a larger picture. Where there is substance abuse in the home, there may be ACEs.

The discussion focused on lifestyle tips for improving the home life of children in New Mexico. Topics discussed include helping young mothers, providing books and toys to help with

parenting, de-incentivizing divorce, providing cash assistance to single parents and treating substance abuse.

A member said that one way to break the familial incarceration cycle is to prevent recidivism by prohibiting a lack of criminal history to be used as a condition of employment. Another legal solution posed was to tie home visiting to early childhood development efforts so that it can be considered a medical home visit and be covered by Medicaid.

In response to a question about what types of probation violations are leading to incarceration, Mr. Chapel cited a report from a few years ago on what probation violations land people in jail. However, he said, a lack of uniformity in the data collection continues to be an obstacle. There are some uniform rules that are being implemented now that should help in the future.

A member mentioned Uniform Probation Code provisions that are being used in New Mexico and the need to teach parenting skills.

In closing, a legislator warned that, based on ACEs, there will be more women in the criminal justice system as more and more girls are being traumatized.

Sharpening Prescribing Practices for Pain Management

Michael Landen, M.D., state epidemiologist, DOH, told the committees that the prescription monitoring program is critical to sharpening the prescribing of pain medication to more effectively combat pain and not over-prescribe. (Please see handout under Item (20) for details and, on page 8, recommendations.) Dr. Landen cited a study that shows that the mortality rate among middle-aged White Americans is on the rise, in stark contradiction to comparable countries where the rate is going down. He attributed the difference to pain and pain medications. He said that more than one-half of the people who die of a prescription overdose have a prescription for the drug that caused it, but just under one-half do not. More than two-thirds of people who die of opioid overdose are on chronic opioid therapy.

Dr. Landen said that oversight, like that provided by the New Mexico Prescription Monitoring Program (PMP), if used effectively, can prevent overlapping prescriptions. However, there are still 3,000 to 6,000 patients in the state with overlapping prescriptions.

Discussing specific drugs, Dr. Landen said that hydrocodone was rescheduled in 2014, after which overdose deaths dropped precipitously. He also said that New Mexico is a leader in the use of Naloxone, an overdose medication.

Dr. Landen closed by saying that what is being done is not working, but work continues on the problem. For example, the chronic pain survey findings by the Prescription Drug Misuse and Overdose Prevention and Pain Management Advisory Council will be implemented in 2017.

Joanna Katzman, M.D., M.S.P.H., director, UNM Pain Center; and director, UNM Project ECHO Chronic Pain and Headache Program, said that the UNM Pain Center saw 8,000 patients last year suffering from an array of maladies. She said that most heroin addicts started with prescribed opioids given to them by a friend or relative. An important way to address this and other issues is to train everyone that can prescribe how to and how not to prescribe opioids. Dr. Katzman said the need is to train everyone, not just doctors and osteopaths, but nurse practitioners, physician assistants, etc. Currently, a five-hour training is now required for doctors at all federal clinics.

Demetrius Chapman, M.P.H., M.S.N.; R.N., executive director, Board of Nursing, provided a primer of advanced practice registered nursing. There are four types of advanced practice registered nurses (APRNs), three of which are regulated by the Board of Nursing: C.N.P., C.R.N.A. and C.N.S. Certified nurse-midwives are regulated by the DOH. APRNs in New Mexico have prescriptive authority that does not require physician oversight, while neighboring states have more limits to the prescriptive authority of APRNs. All APRNs are registered nurses with a bachelor's degree in nursing and either a master's degree or doctorate in advanced nursing.

APRNs include:

1. C.N.P.— (certified nurse practitioner), who provides primary care in community and acute-care settings, of whom New Mexico has 1,794;
2. C.R.N.A. — (certified registered nurse anesthetist), who provides anesthesia care or pain management, of whom New Mexico has 425; and
3. C.N.S.— (clinical nurse specialist), who has different training than a C.N.P. in that the C.N.S. is are more specialized in one population, disease process or anatomical system, such as the cardiovascular system, of whom New Mexico has 130.

Mr. Chapman provided an overview of recent federal law impacting the nurses' prescriptive authority and related training and said that the Centers for Disease Control and Prevention guidelines for the prescribing of opioids for chronic pain are a nice synthesis of the current science that is available regarding the prescribing of opioids.

He said that the PMP has been a valuable tool for APRNs in determining treatment for patients with opioid prescriptions. Mr. Chapman discussed Suboxone and said that limited access and high need have resulted in a market on the street for the self-treatment of addiction. He said the limited number of patients that a certified Suboxone prescriber can treat also creates a barrier to care because there are not enough providers to meet the needs of opioid-addicted patients. The limit was 30 and is now 100, but that will still not be enough.

Ben Kesner, executive director, Board of Pharmacy (BOP), introduced Shelley Bagwell, director, PMP, BOP, and Sarah Trujillo, licensing manager, BOP. Ms. Bagwell went through the steps of the PMP. She said the program has been responsible for lowering the number of doctor shoppers. To increase use of the program, doctors and providers are required to have a PMP file.

To better gauge their own work, providers will now be able to stay informed on where they rank in the state and among similar specialists regarding prescribing medications.

Ms. Trujillo told the committees that there are 13 types of prescribing licenses that the BOP issues. She stated in response to a staff request that there are currently 950 custodial drug permits issued to boarding homes statewide.

Ralph McClish, executive director, New Mexico Osteopathic Medical Association, told the committees that the Board of Osteopathic Medicine is currently changing its rules partly to address opioid prescribing. He stated that opioids are physically and mentally addictive and that the public needs to know that. He stressed that patient education is a critical aspect of this discussion that is often ignored. He expressed his support for the use of abuse-deterrent opioids. "We had a small dip in opioid deaths" when there was more public messaging about the dangers of opioid use, he asserted. With less outreach and education, the numbers have again worsened.

Sondra Frank, J.D., executive director, New Mexico Medical Board, told the committees that until now, there has been a structural problem linking the PMP to the appropriate doctor. When someone enters data into the PMP but does not reference the right doctor, the doctor does not receive credit, and then it looks in the system as if the doctor was noncompliant or as if the doctor was not using the system enough or at all. When that happens, the doctor can end up on the high-risk prescriber list. Last year, there were 56 complaints filed about providers. Some of the confusion, Ms. Frank said, is that for some reason, cancer and hospice physicians thought they were exempt from the PMP, but they are not. Anyone with dispensing power, except veterinarians, must use the PMP. If a doctor needs retraining in pain medication prescribing, the New Mexico Medical Board sends the doctor to the Center for Personalized Education for Physicians in Denver. Ms. Frank said that New Mexico Medical Board investigations can be triggered by PMP irregularities.

In response to a question about why oxycodone use is so prevalent, Dr. Landen said that, often, oxycodone is the most appropriate thing to prescribe for pain. Dr. Landen said that among those people who die from opioids, 85% are dealing with chronic, not acute, pain.

When asked if there is a danger of overdose if the drugs are used as prescribed, Dr. Katzman said that in her opinion and in her experience, for the people who are taking their opioids responsibly, the risk of death is low.

A member forwarded the idea of using medical marijuana as an alternative to opioids. Mr. McClish said that there is a lack of cannabis training for doctors. He said that doctors want to prescribe cannabis, but they do not know how to go about it.

In response to the question of whether there is a problem mixing opioids and cannabis, several presenters explained that it is hard to know how to parse out what drug is having what effect and that there are many issues with cannabis, including the various legal issues. While the

evidence for the benefits of cannabis for chronic pain is strong anecdotally, the evidence-based research is sparse because it is banned. In fact, a legislator said, cannabis research is a big reason to legalize. The possibilities for application seem very broad, and it can be paid for by diverting regulatory fees for cannabis to medical research.

A legislator expressed disappointment with the fact that there is little funding for training while providers attempt to treat pain appropriately. The legislator said that there is an unfunded mandate to train clinicians to treat pain adequately while not getting patients addicted.

Non-Pharmaceutical Treatment for Chronic Non-Cancer Pain

Michael Pridham, D.C.-A.P.C., N.R.C.M.E., member, executive board, New Mexico Chiropractic Association, explained the role of chiropractic treatment in the attempt to deal with the opioid epidemic. He said that a big challenge to these efforts is that in New Mexico, Medicaid does not reimburse providers for chiropractic treatment for opioid addiction, but there are 27 states that do. Dr. Pridham said that a patient's pharmaceutical costs are 85% lower when the patient seeks chiropractic treatment first.

Juliette Mulgrew, N.D., M.S.A.Y., vice president, New Mexico Association of Naturopathic Physicians, said that pain is a personalized experience. People with the same malady will experience different levels of pain and require differentiated treatment. Ms. Mulgrew said that pain is a symptom, not a diagnosis. In fact, many people who come to seek naturopathic pain treatment are already using opioids. She said that there is a six-month wait to get into a pain clinic, so other therapies are important and need recognition and support.

In response to a question, Dr. Pridham told the committees that the veterans' hospital in Albuquerque covers chiropractic treatment if the patient gets a referral from the patient's primary care physician to a qualifying chiropractor.

When asked what the legislature can do to help, Dr. Pridham said that chiropractors are legally prohibited from telling patients to stop using opioids and that it would be helpful to be able to do so if appropriate. He told the committees that some chiropractors would be seeking to change their scope of practice to permit this.

Medication-Assisted Treatment

Lindsay LaSalle, senior staff attorney, Drug Policy Alliance, said that New Mexico has been innovative and is credited with a lot of firsts in drug treatment and drug policy.

Eugenia Oviedo-Joekes, associate professor, School of Population and Public Health, University of British Columbia (UBC), discussed a study with Dilaudid that she published in *Psychology Today*. She said that by providing clean drugs, clean needles and a safe place to inject and having a person around in case of an overdose, deaths and the spread of disease went down. The study included more than 200,000 injections, and there were only 27 overdoses that required Narcan. Also notable in her work, she said, were better familial relationships for the

addicts and significant savings in emergency room treatment costs and criminal justice costs because of an 80% retention rate in treatment.

Miriam Suzanne Komaromy, M.D., associate director, ECHO Institute; and associate professor of medicine, UNM, said that using technology allows front-line providers to access information via telemedicine. Dr. Komaromy said that the case-based treatment supported by the web-based database allows providers the ability to share best practices and to reduce disparities in the provision of health care. She said that opioid addiction is the most common disorder seen and that three-fourths of the physicians changed their treatment after working with the ECHO program. Dr. Komaromy said that the institute just got a grant from the United States Department of Health and Human Services' Health Resources and Services Administration to launch six opioid use disorder programs.

Andrew Hsi, M.D., principal investigator, FOCUS Programs at the Center for Developmental and Disability, UNM Health Sciences Center; principal investigator, Reflejos Familiares Project; professor of family and community medicine, discussed neonatal opioid withdrawal syndrome (NOWS) and said that since data started being collected, New Mexico is high on the list of NOWS per capita. He said that long-term outcomes of those who suffer NOWS are hard to predict. Dr. Hsi said that UNM pediatric clinics have become a significant provider, with about 120 families with young children receiving treatment, including a growing number of fathers. "We care for a very challenged population", he stated in response to a question about whether the adolescent wing at Turquoise Lodge is needed to provide detox services to adolescents. He spoke of administrative barriers that make it harder to serve people who desperately need assistance. He urged that health care administration be informed by medical expertise and not by "administrative fiat".

Dr. Komaromy stated that Turquoise Lodge is very important for reaching "highly at-risk" people. She also informed the committees that UNM was starting a post-detention clinic on an outpatient basis for children released from juvenile facilities. She stated that UNM would send case managers to homes to ensure compliance, and if there were issues at home, UNM would send a caregiver to help.

Responding to a legislator's question, Professor Oviedo-Joekes said that the use of opioid-assisted treatment is patient by patient and that treatment is meant to reach patients as they are and to go from there. Professor Oviedo-Joekes said that just starting this treatment is not a magic elixir that will put the patient back into the workforce right away. The treatment discussed in her study is for the very poor, very addicted and not socially competent people who must come to the clinic three times a day.

Professor Oviedo-Joekes said that treatment varies country by country. In some places, clinics will allow the patient to take home a maintenance dose, which is rare, but that in her clinic, if anything is sent home with the patient, it would be methadone, which is much less popular than heroin. In fact, for the addict, Professor Oviedo-Joekes explained, opioids go from

being a street drug to being a medication, and this provides the person with a great sense of pride. While the patients go to the clinic in Vancouver, British Columbia, for the medication, the staff is there to care for them as patients and provide them with an entire suite of social services. Another benefit to these clinics, Professor Oviedo-Joekes said, is that when heroin is offered for free at the clinic, the black market for heroin is undercut.

When asked about treatment for alcohol abuse and dependence, Professor Oviedo-Joekes stated that UBC has a small pilot project group in Vancouver that makes its own alcohol for consumption as a community. The project is showing that alcohol consumption is diminishing through the community work.

A legislator expressed frustration at the fact that the state is closing juvenile detoxification facilities, and the medical director of one facility does not believe in medical detoxification. Dr. Hsi said that the decision of whether or not to provide inpatient detoxification should be a medical one for the particular patient and not done by administrative fiat. Ms. LaSalle said that most people do not require inpatient detoxification, but facilities should prioritize treatment for the sickest rather than exclude those very patients.

Economic Burden of Prescription Opioid Abuse

Alan White, Ph.D. in economics, UBC; M. Litt. in economics and mathematics, and B.A. in economics and mathematics, University of Dublin, Trinity College; managing principal, Analysis Group, Inc., provided the members with a map of the United States showing the prevalence of prescription opioid abuse by zip code that indicates that large swathes of New Mexico are in the top 10%. He said that the medical cost associated with an opioid abuser is $20,000 above the average person. The total burden on the United States is $50 billion a year, he stated. That figure includes only diagnosed prescription opioid use, Dr. White explained, so it is likely a very low estimate. There are also associated costs that this estimate ignores, such as missed days of work, for example.

Dr. White mentioned two initiatives that may reduce opioid abuse and curb its costs. First is the use of tamper-resistant pills so that users cannot alter them to smoke or snort the drug. Second is interpreting claims data to identify patients at risk for abuse before treatment begins.

A legislator questioned the figure previously cited as a cost to the criminal justice system and said it is much more costly.

In response to a question by a member, Dr. White said that an opioid will typically be 20% of the cost of its equivalent abuse-deterrent opioid.

Public Comment

Nat Dean, disability advocate, said that at Express Scripts, the difference in price between an opioid and its equivalent abuse-deterrent opioid is $15.00 versus $90.00.

There being no further business before the committees, the meeting adjourned at 5:25 p.m.

Revised: November 15, 2016

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

November 16-18, 2016
Room 317, State Capitol
Santa Fe

Wednesday, November 16

9:00 a.m. **Call to Order — Introductions — Approval of Minutes**
—Representative Zachary J. Cook, Co-Chair
—Senator Richard C. Martinez, Co-Chair

9:10 a.m. (1) **Safety, Transparency and Disclosure in Private Solar Marketing — Consideration of Legislation**
Truth in Marketing Distributed Generation Act — .205080
—Matthew Jaramillo, Government Affairs, Public Service Company of New Mexico

10:00 a.m. (2) **24/7 Sobriety Monitor — Consideration of Legislation**
Sobriety Monitoring Program — .204610
—Mindy Huddleston, Director of Industry Relations, Alcohol Monitoring Systems
—Jarred Cobb, Operations Manager, Southwest Monitoring, LLC

11:00 a.m. (3) **Report from New Mexico DWI Coordinators Affiliate**
—Kelly Ford, DWI Coordinator, Lea County

11:45 a.m. **Lunch**

1:15 p.m. (4) **Child Protection Registry Act — House Bill 237 (2016)**
—Representative Monica Youngblood
—Eric Langheinrich, Chief Executive Officer, UNSPAM Technologies, Inc.

2:00 p.m. (5) **Human Trafficking — Services for Trafficking Victims**
—Susan Loubet, Executive Director, New Mexico Women's Agenda
—Lynn Sanchez, Human Trafficking Program Director, The Life Link, and Co-Chair, New Mexico Human Trafficking Task Force
—Frank Zubia, Director, New Mexico Crime Victims Reparation Commission

3:00 p.m. (6) **Update on Mora Courthouse**
—Paula A. Garcia, Chair, Board of Mora County Commissioners
—Ben F. Sanchez, County Manager, Mora County
—Luis Campos, Facilities Manager, Administrative Office of the Courts (AOC)

4:00 p.m. **Recess**

Thursday, November 17

9:00 a.m. **Reconvene**
—Representative Zachary J. Cook, Co-Chair
—Senator Richard C. Martinez, Co-Chair

9:10 a.m. (7) **New Mexico Association of Counties (NMAC) — Legislative Priorities — Consideration of Legislation**
Forfeiture Act Revisions — .205027
—Grace Philips, General Counsel, NMAC
—Steven Kopelman, Executive Director, NMAC
—Glenn Hamilton, Sheriff, Sierra County

Whistleblower Protection Act — .205029
—Grace Philips, General Counsel, NMAC
—Steven Kopelman, Executive Director, NMAC
—Randy Van Vleck, General Counsel, New Mexico Municipal League

10:45 a.m. (8) **"Ban the Box" — Consideration of Legislation — .205040**
—Senator Bill B. O'Neill
—Representative Alonzo Baldonado

11:00 a.m. (9) **Life Sentences, Parole Eligibility and Parole Board Hearings — Consideration of Legislation — .204581**
—Senator Bill B. O'Neill
—Sheila Lewis, Former Public Defender

11:20 a.m. (10) **Sexual Assault Examination Kit Testing — Report on Audit — Consideration of Legislation — .204672**
—Senator Cisco McSorley
—Timothy Keller, State Auditor
—Sarita Nair, Chief Government Accountability Officer and General Counsel, Office of the State Auditor
—Richard J. Berry, Mayor, City of Albuquerque (invited)
—Scott Weaver, Secretary-Designate, Department of Public Safety (invited)

12:15 p.m. **Working Lunch**

12:30 p.m. (11) **Revisions to Bail Statute — Consideration of Legislation — .204429**
—Rob Hayes, President, Aladdin Bail Bonds
—Pete Botz, General Counsel, Aladdin Bail Bonds

1:30 p.m. (12) **Public Accountability Act — Consideration of Legislation — .204365**
—Senator Daniel A. Ivey-Soto

2:45 p.m. (13) **Creation of Excessive Force Unit — Consideration of Legislation — .205039**
—Representative Patricia Roybal Caballero

3:45 p.m. (14) **Domestic Violence, Orders of Protection and Possession of Firearms — Consideration of Legislation — .204414**
—Miranda Viscoli, Co-President, New Mexicans to Prevent Gun Violence (NMPGV)
—Sheila Lewis, Santa Fe Safe
—Michelle Williams, Lieutenant, Santa Fe Police Department
—Steve Lipscomb, Member NMPGV

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

Friday, November 18

9:00 a.m. **Reconvene**
—Representative Zachary J. Cook, Co-Chair
—Senator Richard C. Martinez, Co-Chair

9:05 a.m. (15) **New Mexico SAFE**
—Adriann Barboa, New Mexico Field Director, Strong Families New Mexico
—Steve Allen, Director of Public Policy, American Civil Liberties Union of New Mexico (ACLU)

9:45 a.m. (16) **Electronic Communications Privacy Act — Consideration of Legislation — .205041**
—Senator Peter Wirth
—Steve Allen, Director of Public Policy, ACLU

10:45 a.m. (17) **Judiciary's Proposals — Consideration of Legislation**
—Celina Jones, General Counsel, AOC
Separate Language Access and Jury Funds — .204544
Create Judge Pro Tem Fund — .204546
Close Two Magistrate Courts — .204609
AOC Director to Receive Funds — .204545
Sliding Alternative Dispute Resolution Fee Scale — .204490

Constitutional Amendment — Legislative Authority to Regulate Appellate Jurisdiction — .204574

12:30 p.m. **Working Lunch**

12:45 p.m. (18) **Children, Youth and Families Department (CYFD) Legislative Priorities — Consideration of Legislation**
—Jennifer Saavedra, Deputy Secretary, CYFD
Crimes Against CYFD Workers — .204975
Supervised Release for Delinquent Children — .204976

2:00 p.m. (19) **New Mexico Criminal Defense Lawyers Association (NMCDLA) — Legislative Priorities — Consideration of Legislation**
—Matthew Coyte, President, NMCDLA
—Margaret Strickland, President-Elect, NMCDLA
—Rikki-Lee Chavez, Legislative Coordinator, NMCDLA

2:45 p.m. (20) **Uniform Law Bills — Consideration of Legislation**
Revised Uniform Fiduciary Access to Digital Assets Act, Conforming Amendment to the Uniform Probate Code — .204346
—Fletcher Catron, Attorney, Catron, Catron & Glassman, P.A.

Uniform Partition of Heirs Property Act, Technical Amendments to the Uniform Probate Code and Uniform Trust Decanting Act — .204354
—Fletcher Catron, Attorney, Catron, Catron & Glassman, P.A.

Uniform Collateral Consequences of Conviction Act — .204347
—Jack Burton, Commissioner, Uniform Law Commission (ULC)

Uniform Amendment to Section 55-3-309 NMSA 1978 of the Uniform Commercial Code — .204694
—Jack Burton, Commissioner, ULC

Revised Uniform Limited Liability Company Act and Updates to the Business Corporation Act Requested by New Mexico Business Lawyers — .204345
—Jack Burton, Commissioner, ULC

4:30 p.m. **Adjourn**

MINUTES
of the
FIFTH MEETING
of the
COURTS, CORRECTIONS AND JUSTICE COMMITTEE

November 16-18, 2016
Room 317, State Capitol
Santa Fe

The fifth meeting of the Courts, Corrections and Justice Committee was called to order by Senator Richard C. Martinez, co-chair, on November 16, 2016 at 9:25 a.m. at the State Capitol in Santa Fe.

Present
Sen. Richard C. Martinez, Co-Chair
Rep. Eliseo Lee Alcon
Sen. Joseph Cervantes (11/17, 11/18)
Rep. Gail Chasey
Rep. Rick Little (11/16, 11/17)
Sen. Linda M. Lopez
Rep. Antonio Maestas
Sen. Cisco McSorley
Rep. Andy Nunez (11/16, 11/17)
Rep. William "Bill" R. Rehm
Sen. Sander Rue

Absent
Rep. Zachary J. Cook, Co-Chair
Rep. Jim Dines
Rep. Georgene Louis
Sen. Lisa Torraco

Advisory Members
Sen. Craig W. Brandt (11/16)
Sen. Jacob R. Candelaria (11/17)
Sen. Daniel A. Ivey-Soto (11/17)
Sen. Bill B. O'Neill (11/16, 11/17)
Rep. Patricia Roybal Caballero
Rep. Christine Trujillo
Sen. Peter Wirth (11/16)
Rep. Brian Egolf
Rep. Doreen Y. Gallegos
Rep. Paul A. Pacheco
Sen. William H. Payne
Sen. John Pinto
Rep. Patricio Ruiloba
Sen. Michael S. Sanchez
Sen. Mimi Stewart

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

Guest Legislator
Rep. Debbie A. Rodella

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
Peter Kovnat, 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.

Wednesday, November 16

Call to Order

Senator Martinez welcomed members of the committee, staff and guests.

Safety, Transparency and Disclosure in Private Solar Marketing — Consideration of Legislation

Matthew Jaramillo, a representative of Public Service Company of New Mexico (PNM), sought the committee's endorsement of a bill that would enact the "Truth in Marketing Distributed Generation Act" (handout item 1), which would regulate the activities of companies that market and lease solar energy generation systems. James Mosher, chief executive officer, Consolidated Solar Technologies (CST), informed the committee that his company had joined PNM's effort because of safety and reliability concerns for customers of some solar system leasing companies. Mr. Mosher said that companies that lease solar systems are largely unregulated, which has allowed some companies to make misleading marketing statements and perform substandard and sometimes dangerous installations of solar systems. Mr. Mosher said that his company had encountered improper installations of solar systems by companies no longer in operation, which left customers with expensive repairs and no recourse against the companies.

Mr. Jaramillo referred to his presentation materials and explained that PNM has received complaints about some solar system leasing companies that relate to sales practices, including misleading information and failures to disclose consumer obligations, and performance and service complaints, including improper and sometimes dangerous installations. He noted issues highlighted on slide number 6 of his presentation materials. PNM received 10 complaints between July and November 2016, and more complaints are expected as the private solar system industry grows. He added, in response to a question by a committee member, that he understands

that the Attorney General's Office's Consumer and Environmental Protection Division has nine cases ready for trial, and another 11 complaints are under investigation. Mr. Jaramillo, referring to slide number 10, summarized the provisions of proposed legislation.

Mr. Mosher explained that his company and other solar system installation companies have been working with PNM since 2008 to develop procedures for safe and cost-effective sales and installation of private solar systems. He said that he believes that lenders and leasing companies need to be more transparent about the structure of the financing agreements for private solar systems. In response to a committee member's question, Mr. Mosher said that most of the leasing companies are national companies, while most of the companies that sell systems are local companies.

The committee discussed existing financing approaches for solar systems and consumer protections available for leased and purchased solar systems. Mr. Jaramillo related that PNM has information on the topic on its website, including information on questions consumers should ask when considering the purchase or lease of a solar system. The committee agreed that consumers need protection from unscrupulous installers, but legitimate installers should not be adversely affected by over-regulation. Mr. Jaramillo withdrew his request for the committee's endorsement of the proposed legislation and said that he would continue working on the legislation in light of the committee's discussion.

24/7 Sobriety Monitor — Consideration of Legislation

Mindy Huddleston, director of industry relations, Alcohol Monitoring Systems, explained that her company provides continuous alcohol-monitoring devices that are placed on a person's body, as well as remote portable breath-analysis devices, house-arrest devices and devices that report a user's location. Jarred Cobb, operations manager, Southwest Monitoring, LLC, informed the committee that his company works with courts statewide to manage the installation, monitoring and removal of monitoring devices to promote behavioral changes in offenders. Ms. Huddleston said that repeat DWI offenders have a disease and that incarceration alone will not address the root of offenders' issues. She added that treatment and monitoring of offenders produce better outcomes.

In answer to a committee member's question, Mr. Cobb said there is currently very limited use of monitoring devices and that they are primarily used after adjudication in a case. He noted that the proposed legislation would require use of a monitoring device as a condition of pretrial release.

A committee member commented that use of monitoring devices, which cost about $8.00 to $12.00 per day, was originally proposed as a way to reduce corrections costs. The member added that if an accused or convicted person was responsible for the cost of a monitoring device, the state's burden would be even lower, but the member noted that accused and convicted persons often already have substantial financial burdens. Another committee member commented that because many offenders in the state would likely qualify for a subsidy if monitoring devices were

offered on a sliding-fee scale, it would place a significant burden on companies that install monitors to require such a scale.

Committee members expressed the following concerns:

- that procedures for reporting violations of terms of release and monitoring are problematic because district attorneys, probation officers and the courts are all overloaded and could have difficulty responding quickly;
- how much discretion judges should have for ordering the use of monitoring devices; and
- the cost of monitoring devices and the appropriate party to pay for them.

The committee did not endorse the proposed legislation but encouraged the proponents to continue work on it to address the committee's concerns.

Report from New Mexico DWI Coordinators Affiliate

Kelly Ford, DWI coordinator, Lea County, and chair of DWI Coordinators Affiliate, introduced DWI coordinators from Dona Ana, Grant, Rio Arriba, Sandoval, Taos and Santa Fe counties, explaining that every county has a DWI coordinator who offers services to DWI offenders. Those services include screening, treatment, monitoring and probation supervision. DWI coordinators also evaluate the needs of the local community and propose solutions to prevent and reduce DWI. Ms. Ford said the DWI coordinators are not addressed by the legislation proposed in the previous presentation.

Ms. Ford reminded the committee that local DWI grant funding was lost as solvency measures were undertaken in the 2016 regular and special sessions, and DWI coordinators are overextended as a result. She asked for the committee's support for the following three DWI Grant Council resolutions:

- Resolution No. 2016-2, which supports funding from liquor excise tax revenues for problem-solving courts;
- Resolution 2016-3, which supports legislation that permanently transfers 46% of the liquor excise tax to the Local DWI Grant Fund; and
- Resolution 2016-4, which opposes any legislative changes to the Local DWI Grant Program Act that would move the administration of the program from the Local Government Division of the Department of Finance and Administration.

Ms. Ford emphasized that there are currently as many people in local DWI programs as there are in jail. If those programs are extinguished through budget cuts, there will be significant strain on courts and jails, which do not have the resources to address additional offenders.

Child Protection Registry Act — House Bill 237 (2016)

Representative Monica Youngblood discussed House Bill 237, introduced in 2016, which created the Child Protection Registry Act. She said that she plans to introduce the bill again in 2017 and wants to provide information to the committee about the bill, but she is not seeking the committee's endorsement. She introduced Eric Langheinrich, chief executive officer, UNSPAM Technologies, Inc., who explained that his company works with governments to implement and enforce effective laws to control unwanted electronic messages. The company currently manages child protection registries in Michigan and Utah that are modeled after national "do not call" programs and allow families to block promotional messages for products that minors are prohibited from purchasing, including alcohol, tobacco, gambling, pornography and illegal drugs.

Michelle Scharf, vice president of government affairs, UNSPAM Technologies, Inc., and spokesperson for Utah's child protection registry, noted that on November 10, 2016, a text message with a link to pornographic material was sent to middle school students at Hope Christian School in Albuquerque. She said that the company's software prevents similar text and email messages. Representative Youngblood explained that use of the registry would be voluntary, and participants can opt out. She added that the program prevents marketers from sending unwanted communications, but it would not prevent a friend from forwarding the same message. The committee discussed the penalty provisions in the legislation, and several committee members suggested that the penalties are too severe. Mr. Langheinrich commented that the penalties are in line with penalties for the national "do not call" registry.

Human Trafficking — Services for Trafficking Victims

Susan Loubet, executive director, New Mexico Women's Agenda, discussed a fund established to provide services to victims of human trafficking, domestic violence and sexual assault. She said that disbursements from the fund are available within 24 hours of an approved request and are sent to service providers to provide direct aid to victims, including tickets for transportation, temporary housing, food and emergency medical and dental treatment. Ms. Loubet emphasized the ongoing need for education for law enforcement personnel to help them identify victims of human trafficking.

Lynn Sanchez, director, Human Trafficking Program, The Life Link, and co-chair, New Mexico Human Trafficking Task Force, explained that the task force is funded by a federal Department of Justice grant, and it primarily focuses on education to increase awareness of victims' needs and how to identify and apprehend perpetrators.

Frank Zubia, director, New Mexico Crime Victims Reparation Commission (CVRC), informed the committee that two years ago, the CVRC began administering a $125,000 grant in partnership with four organizations, including The Life Link, to provide support services for victims. In the first year of its work, 17 victims were assisted with rent, relocation costs, child care and medical and dental expenses. During the last year, $88,000 was spent on services for those victims and 40 survivors of domestic violence and sexual assault.

Responding to questions by committee members, Ms. Sanchez said that The Life Link's full-time staff includes crisis intervention and outreach professionals. She explained that The Life Link does not offer legal services, but it refers victims to other nonprofit legal service providers. Victims also receive service referrals from local law enforcement offices and federal agencies, including the Federal Bureau of Investigation, Immigration and Customs Enforcement and the Department of Homeland Security. She added that a 2014 law requires every employer that is subject to minimum wage laws to prominently post the phone number for a helpline. Ms. Loubet noted that outreach to and education of truck drivers at truck stops are also helpful in curbing human trafficking. Mr. Zubia remarked that the CVRC funds 146 programs.

Committee members expressed appreciation and support for the efforts of all the people and agencies involved.

Approval of Minutes

The minutes for the August 17-19 and September 12-13, 2016 meetings were approved without amendment or objection.

Update on Mora Courthouse

Paula A. Garcia, chair, Board of Mora County Commissioners, informed the committee that she and other commissioners began serving on the county commission in January 2011 and inherited the unfinished Mora courthouse project. She summarized the issue and its history: the old courthouse building was evacuated suddenly in 2005 because of safety concerns; the county acquired Federal Emergency Management Agency trailers to serve as temporary court facilities while the building's condition was evaluated and a plan developed; in 2006, the commission proposed a bond to fund repair of the old building or construction of a new building, and the bond was approved by voters; in 2007, the commission decided to build a new courthouse, and construction started in 2009 but was not completed due to a lack of funding; in 2010, the building's shell was completed, and all other construction was halted; and in 2011, the incoming commission audited the project and adopted new procurement policies to address findings by the auditor.

Ms. Garcia said that at the legislature's direction, the commission sought and received assistance from the Administrative Office of the Courts (AOC), which served as the project's manager in 2012. In 2013, a joint powers agreement was entered into, and it provided that all financial decisions be made by the AOC as the project's fiscal agent.

Luis Campos, facilities manager, AOC, described the progress on the construction of the new courthouse. Mr. Campos said that the finished building will house the district and magistrate courts, the sheriff, county administrative offices, emergency and health services and a library and that additional space will be leased to Luna Community College and the United States Department of Agriculture. In 2014, the AOC had an engineering assessment of the existing building shell and found that it was in generally acceptable condition and needed only minor

repairs. The AOC subsequently entered into a contract that includes a guaranteed maximum cost with an architect and builder.

In response to a committee member's question, Ms. Garcia said that it is not clear why the governor, in 2015, vetoed an appropriation to complete construction on the building. The county has enacted an increase in the local gross receipts tax to help pay for the building and is currently working on other ways to acquire necessary funding. She added that the re-design of the building cost $700,000, and between $2 million and $3 million has been spent to date on the courthouse project.

Answering a committee member's questions, Ms. Garcia said that the population of Mora County is 4,800, the population in the surrounding area is 15,000 to 20,000 and the courthouse will serve as a regional hub for government services in the area.

Recess

The committee recessed at 3:50 p.m.

Thursday, November 17

The committee reconvened at 9:28 a.m. Senator Martinez welcomed members of the committee, staff and guests to the meeting. Committee members introduced themselves.

New Mexico Association of Counties (NMAC) — Legislative Priorities — Consideration of Legislation

Whistleblower Protection Act — .205029

Steven Kopelman, executive director, NMAC, explained the bills proposed by the NMAC. Mr. Kopelman proposed revisions to the Whistleblower Protection Act, citing costs of claims under the act and the importance of maintaining a reasonable business litigation environment in the state to encourage economic development.

Randy Van Vleck, general counsel, New Mexico Municipal League (NMML), told the committee that the Whistleblower Protection Act has cost local governments millions of dollars, partially because there is no cap on the damages under the act. Adding to the costs for government is the fact that contract employees are included in the definition of a "public employee". Mr. Van Vleck suggested that "retaliatory actions" and clauses related to communication with third parties should be addressed.

Grace Philips, general counsel, NMAC, told the committee that whistleblower claims have become a standard part of lawsuits by discharged or terminated employees. She said that over $20 million has been paid by municipal governments and school entities in whistleblower claims. Mr. Kopelman added that the act is being used as a way to protect poorly performing employees.

The committee discussed the costs of whistleblower litigation to taxpayers and the need for limits on the federal Equal Employment Opportunity Commission and whistleblower protection laws. The members noted that under federal law, "public employee" does not include a contract employee. In response to a question from the committee, Mr. Van Vleck said that notice requirements for a whistleblower claim should specify that notice be made to an employee's colleague who has authority to affect change and not simply to any person.

Forfeiture Act Revisions — .205027

Ms. Philips told the committee that this bill is a high priority for the NMAC, NMML and sheriffs in the state. Sierra County Sheriff Glenn Hamilton expressed to the committee that the 2015 amendments to the Forfeiture Act were passed with insufficient information.

The committee discussed language used in the bill and the focus of the 2015 amendments on pre-conviction seizures.

"Ban the Box" — .205040

Senator O'Neill and Joseph Shaw from Fathers Building Futures presented a bill to prohibit job application questions regarding criminal convictions on an initial application. Senator O'Neill told the committee the intent of this bill is to stop immediate disqualification of applicants with prior convictions, and he noted that an employer can still ask questions about convictions later in the hiring process. The committee endorsed the bill without opposition.

Life Sentences, Parole Eligibility and Parole Board Hearings — .204581

Senator O'Neill discussed a need for changes to Parole Board hearings and eligibility. Under the current Parole Board, 87 hearings for persons incarcerated for at least 30 years have been conducted, and just five of the hearings resulted in parole being granted. The bill would shift the burden to the Parole Board to make certain findings if it denies parole. The committee endorsed the bill without opposition.

Sexual Assault Examination Kit Testing — Report on Audit — .204672

Connie Monahan, co-chair, Sexual Assault Evidence Kit Task Force, told the committee that an appropriation helped with significant improvements in the testing of kits and in the crime laboratory itself. Scott Weaver, secretary-designate, Department of Public Safety (DPS), told the committee that the previous year's appropriation was not the full amount requested, but the department has been able to stretch the appropriation and combine it with grant awards to make progress. Deputy Chief Eric Garcia, Albuquerque Police Department, reported that 3,600 sexual assault examination kits remain untested. Kits are prioritized, and the laboratories are currently testing the top-two priority categories to ensure that viable samples of DNA can be obtained. John Krebsbach from the Albuquerque Police Department laboratory informed the committee that the lab is restructuring its training process to allow new staff members to assist with testing kits.

State Auditor Timothy Keller reported on the results of the audit and said that the final report will be completed by the 2017 legislative session. He informed the committee that public education about testing of sexual assault examination kits has increased, and law enforcement agencies' awareness around the issue has also increased.

In response to a question from the committee, Secretary-Designate Weaver explained how law enforcement agencies outside the metro area deliver sexual assault examination kits to the state police laboratory. The laboratory received a grant to provide funding for two years, with a possible extension for a third year of funding to help with testing kits. He noted that the DPS forensics laboratory is located in Santa Fe. State Auditor Keller added that the requested funding is a relatively small amount of money to solve a large problem. Processing the backlog has been extremely cost-effective, but additional funding is still needed for DPS personnel and for sexual assault service providers who are involved in working with victims during and after the process of testing an examination kit.

The committee endorsed the bill without opposition.

Revisions to Bail Statute — .204429

Rob Hays, president, Aladdin Bail Bonds, told the committee that Constitutional Amendment 1 passed in 2016, and newly adopted court rules will have unintended consequences. He stressed that New Mexico is still in an extreme budget crisis, and a state-run pretrial-release program will cost the state significantly more than expected. Mr. Hays told the committee that the proposed legislation considers the state's economic situation, is consistent with the 2016 constitutional amendment and will ensure that indigent criminal defendants who are not a flight or public safety risk will be released with appropriate conditions.

The committee discussed the legislation and the need for more work on the bill draft.

Public Accountability Act — .204365

Senator Ivey-Soto said that legislation introduced in the 2016 session relating to government accountability included provisions that do not properly belong in the state's constitution. The legislation he presented includes a new accountability board and addresses the board's composition, jurisdiction, time lines and disclosure restrictions related to the board's activities. He noted that he is not seeking the committee's endorsement but wants to introduce the committee to the contents of the bill.

The committee discussed whether certain records should be publicly released, the deadlines included in the bill, the complaint review process provided for in the bill, Procurement Code violations, administrative and civil enforcement authority, advisory opinions and subpoena powers.

Creation of Excessive Force Unit — .205039

Andres Valdez, Rich Ciccarello and John Comstock, Vecinos United, testified with Representative Roybal Caballero about legislation to create an entity to oversee cases involving police use of force. Representative Roybal Caballero told the committee that the bill has been produced in light of national and local events involving the excessive use of force. Mr. Valdez discussed criminal, civil and administrative aspects of police accountability. Mr. Ciccarello discussed issues related to public mistrust of law enforcement and said that trust is essential to ensuring that communities are safe and that the justice system is fair.

The committee discussed measures to prevent violence in interactions with law enforcement, ways to improve the legislation, exclusive authority and conflicts of interest and recommended changing the name to "use of force" rather than "excessive force".

The committee endorsed the bill with opposition from one member.

Domestic Violence, Orders of Protection and Possession of Firearms — .204414

Miranda Viscoli, co-president, New Mexicans to Prevent Gun Violence, introduced Sheila Lewis from Santa Fe Safe and Lieutenant Michelle Williams from the Santa Fe Police Department and explained the legislation. Lieutenant Williams explained that the intent of the legislation is to remove guns from dangerous situations and to return the guns at a later, and safer, time. She informed the committee that police officer ambushes have significantly increased recently, and a majority of those attacks happen during domestic violence calls.

The committee discussed the terms related to removal of weapons, a possible requirement of finding a person dangerous before a weapon is removed, possible revisions to the proposed bill and the success of similar legislation in other states. The committee endorsed the legislation.

Recess

The committee recessed at 4:22 p.m.

Friday, November 18

The committee reconvened at 9:00 a.m.

New Mexico SAFE

Adriann Barboa, field director, Strong Families New Mexico, and Steve Allen, director of public policy, American Civil Liberties Union of New Mexico (ACLU), talked to the committee about New Mexico SAFE, a coalition of organizations that together form an apolitical, fiscally responsible, evidence-based umbrella organization that aims to make the state safer for children and families.

New Mexico SAFE created a litmus test to grade bills according to four criteria: 1) public safety; 2) the extent to which a bill is apolitical; 3) fiscal responsibility; and 4) the extent

to which the policy is evidence-based. The test was used to assess several criminal justice-related bills in 2016, and the group plans to use the test again in 2017.

Of the bills from 2016 assessed using this tool, Senate Bill 170 received the highest grade. That bill would have required an appropriation on any bill that includes increased criminal sentences, which would cover the costs associated with longer periods of incarceration for offenders. Mr. Allen said that the policy provided in that bill would allow the legislature to have a conversation about the costs required to pay for the criminal justice system.

Tony Ortiz, deputy director, New Mexico Sentencing Commission (NMSC), talked about the analysis done by the commission. He said that the commission looks at bills that are related to criminal justice, are progressing through the legislative process and are maintaining a high profile. Mr. Ortiz said that with the cuts to the NMSC's budget, it would not be possible for every criminal justice-related bill introduced in 2017 to be analyzed using the tool.

When asked by a legislator if New Mexico SAFE or its constituent organizations aim to reduce the penalty for homicide, Mr. Allen said that it may be wiser to spend money preventing crime than spending it on locking people up for longer sentences. The legislator and Mr. Allen reached an impasse when discussing whether increased DWI penalties are the reason there are fewer cases of DWI.

Another legislator said that the public wants to see people punished and that there will always be things that are done in the political realm that are not necessarily the most cost beneficial or the most effective as law enforcement tools, but they are done because the public demands it. So whether it is releasing nonviolent offenders, the death penalty or three strikes laws, there are things that will happen in the sphere of criminal justice that are sure to upset everyone, wherever they lie on the political spectrum. A different member said that both sides of the political aisle are currently supporting criminal justice reform, and it is time to seize on that momentum.

A final point was made that people, including legislators themselves, look at where organizations stand on bills, and they say, " I don't know the specifics, but I usually oppose those groups, so I oppose this bill.". When there are diverse groups, not just issue-wise but politically, it can be helpful to prevent automatic responses and assumptions about a group's work.

Electronic Communications Privacy Act — .205041

Mr. Allen said that the proposed legislation is modeled after a California bill from a few years ago that has diverse support. The bill would require law enforcement to obtain a warrant to access a person's electronic information after the person's arrest. Mr. Allen added that when this issue went before the United States Supreme Court, the justices unanimously held that a warrant is required.

During the ensuing discussion, Senator Wirth said that the bill fills a void where law has not caught up with technology. He also clarified that the bill includes an emergency provision when there is a good-faith belief that there is an imminent threat to life or of serious injury. The committee endorsed the bill without opposition, and Senator Wirth said that he would introduce the bill.

Judiciary's Proposals — Consideration of Legislation

Separate Language Access and Jury Funds — .204544

Celina Jones, general counsel, AOC, and Oscar Arevalo, fiscal services director, AOC, said that, currently, jury members and witnesses are paid from the fund used to pay court interpreters, which presents administrative hurdles and fiscal challenges. Ms. Jones said that the bill passed the legislature in a previous session but was vetoed by the governor.

The committee endorsed the legislation without opposition.

Create Judge Pro Tem Fund — .204546

Mr. Arevalo said that the Judge Pro Tem Fund is small but necessary, and the amount required fluctuates from year to year, meaning that in some years, money in the fund reverts to the General Fund, and in other years, the AOC has to request additional funding. Ms. Jones said that, like the previous bill, an earlier version passed but was vetoed by the governor.

The committee endorsed the bill without opposition and agreed that Senator Martinez would introduce the bill.

Close Two Magistrate Courts — .204609

Ms. Jones said that the magistrate courts in Questa and Quemado have limited activity, and court consolidation is appropriate with respect to those courts. The committee endorsed the bill without opposition and agreed that the bill would be introduced by Representative Christine Trujillo.

AOC Director to Receive Funds — .204545

Mr. Arevalo explained the importance of the AOC director's ability to receive funds directly, as provided for in the bill. The committee endorsed the bill without opposition and agreed that it would be introduced by Senator Martinez.

Sliding Alternative Dispute Resolution Fee Scale — .204490

Ms. Jones said the hope with this bill is to increase the use of mediation in New Mexico courts. Mediation, she said, provides significant savings to the judicial system and allows courts to focus on the more complicated cases that cannot be resolved in mediation.

The committee discussed the bill, but did not move to endorse the bill.

Constitutional Amendment — Legislative Authority to Regulate Appellate Jurisdiction — .204574

This senate joint resolution would amend Article 6 of the Constitution of New Mexico to streamline and update the court venues for appeals. It would also allow the legislature to make future decisions over New Mexico courts' appellate structure. In response to a question, Ms. Jones said that district courts are currently burdened with appeals from cases involving traffic offenses, and the amendment would allow those appeals to be heard directly by the New Mexico Court of Appeals, as with most other cases.

The committee endorsed the bill without opposition.

Children, Youth and Families Department (CYFD) Legislative Priorities — Consideration of Legislation

Crimes Against CYFD Workers — .204975

Amanda Romero, supervisor, Office of General Counsel, CYFD, said that creating the crime of assault against a CYFD worker would create parity among department employees and umpires, teachers and other professionals who already have the protections provided in the legislation. Ms. Romero said that enacting this new law might not necessarily act as a deterrent, but it could affect morale and retention rates at the CYFD.

A committee member expressed hesitancy about creating protected groups and special protections as provided in the bill. Another legislator said that the department is seeking parity with other professionals, but that might not be a wise use of the state's money. The legislator suggested saving money through criminal justice reform rather than creating enhanced crimes against CYFD workers. The savings through reform could be used to ensure that the department is adequately staffed with well-paid workers.

Some committee members expressed concern that the bill called for significant increases in criminal penalties.

Supervised Release for Delinquent Children — .204976

Jennifer Saavedra, deputy secretary, CYFD, said that the proposed bill would replace outdated language referring to juvenile "parole" with references to "supervised release" and would provide for absconding juveniles to continue on supervised release after absconding. She explained that 90 days of supervised release is critically important to the treatment of a juvenile.

Deputy Secretary Saavedra said that in the 2016 regular session, a similar bill died because of insufficient time in the session. This 2017 bill includes language agreed to in the Senate Judiciary Committee, whose members supported the bill unanimously in the 2016 session. The committee endorsed the bill without opposition and agreed that it would be introduced by Representative Rehm.

New Mexico Criminal Defense Lawyers Association (NMCDLA) — Legislative Priorities

Rikki-Lee Chavez, legislative coordinator, NMCDLA, said that the NMCDLA is a member of New Mexico SAFE, which gave a presentation to the committee earlier in the day. Matthew Coyte, president, NMCDLA, said that different members of the association have various areas of expertise, and they provide insight on many bills.

Mr. Coyte provided the committee with statistics that encourage him to work against enhanced sentencing and mandatory minimums. In New Mexico, there were 157 exonerations last year, and of those, 68 of the defendants pled guilty, meaning that many innocent defendants are pleading guilty to crimes they did not commit to avoid risking a long sentence.

Margaret Strickland, president-elect, NMCDLA, said that it costs the state $35,000 to $40,000 per year to incarcerate someone, and that amount does not include the cost of administering the criminal justice system. She said that passing criminal bills without associated appropriations translates into unfunded mandates.

Finally, Bennett Baur, interim chief public defender, said that public defender offices in the state are so underfunded and overworked that they are struggling to meet the state's constitutional and ethical obligations to provide defendants with effective assistance of counsel.

Mr. Baur closed by saying that a lack of an expungement law in New Mexico means that crime bills that pass into law here carry many collateral consequences to the state's inhabitants.

Hemp Bill — 205096.1

Senator McSorley said that this version of the bill has all of the changes made in the 2016 House Agriculture, Water and Wildlife Committee and mirrors the changes made in the United States Congress. The committee endorsed the bill without opposition and agreed it would be carried by Senator McSorley.

Uniform Law Bills — Consideration of Legislation

Revised Uniform Fiduciary Access to Digital Assets Act, Conforming Amendment to the Uniform Probate Code — .204346

Fletcher Catron, attorney, Catron, Catron & Glassman, P.A., said that this bill would allow a fiduciary to access electronic account information that is controlled by a principal. Mr. Catron said that 20 states have adopted this uniform law. The committee endorsed the legislation without opposition and agreed that Senator Wirth would introduce the bill.

Uniform Partition of Heirs Property Act, Technical Amendments to the Uniform Probate Code and Uniform Trust Decanting Act — .204354

Mr. Catron explained that this bill's goal is to avoid a scheme that developers have devised to dispossess heirs of family land. The committee endorsed the bill without opposition and agreed it would be introduced by Senator Wirth.

Uniform Collateral Consequences of Conviction Act — .204347

Jack Burton, commissioner, Uniform Law Commission, said that this proposed bill is about reintegration for offenders after release from incarceration. The bill would remove barriers to reintegration, such as a lack of education, job training, occupational licensing, employment and access to public benefits, and it would help prevent recidivism. Mr. Burton said that the uniform act does not include a provision for the Parole Board to have certain authority and duties that would not be practical, given the structure of the Parole Board. The committee endorsed the bill without opposition and agreed it would be introduced by Senator Cervantes.

Uniform Amendment to Section 55-3-309 NMSA 1978 of the Uniform Commercial Code — .204694

Mr. Burton explained that this proposed bill would bring New Mexico into uniformity again. The committee endorsed the bill without opposition.

Revised Uniform Limited Liability Company Act and Updates to the Business Corporation Act — .204345

Mr. Burton noted that this bill was requested and supported by business lawyers in the state. The committee endorsed the bill without opposition and agreed it would be introduced by Representative Cook.

Adjournment

There being no further business before the committee, the fifth meeting of the Courts, Criminal and Justice committee for the 2016 interim adjourned at 2:49 p.m.

ENDORSED LEGISLATION

HOUSE BILL

53RD LEGISLATURE - STATE OF NEW MEXICO - FIRST SESSION, 2017

INTRODUCED BY

DISCUSSION DRAFT

FOR THE COURTS, CORRECTIONS AND JUSTICE COMMITTEE

AN ACT

RELATING TO DOMESTIC VIOLENCE; PROHIBITING INDIVIDUALS SUBJECT TO CERTAIN ORDERS OF PROTECTION FROM POSSESSING OR PURCHASING FIREARMS; PROVIDING PROCEDURES FOR RELINQUISHMENT AND RETURN OF FIREARMS; PROVIDING A PENALTY.

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

SECTION 1. Section 40-13-5 NMSA 1978 (being Laws 1987, Chapter 286, Section 5, as amended) is amended to read:

"40-13-5. ORDER OF PROTECTION--CONTENTS--REMEDIES--TITLE TO PROPERTY NOT AFFECTED--MUTUAL ORDER OF PROTECTION.--

A. Upon finding that domestic abuse has occurred or upon stipulation of the parties, the court shall enter an order of protection ordering the restrained party:

(1) to refrain from abusing the protected party or any other household member; and

(2) if the order is not a temporary order of protection and after the restrained party has received notice of the order and had an opportunity to be heard:

(a) to relinquish any firearm in the restrained party's immediate possession, care, custody or control or subject to the restrained party's immediate possession, care, custody or control; and

(b) to refrain from purchasing, receiving, possessing or attempting to purchase, receive or possess any firearm while the order of protection is in effect.

B. In an order of protection entered pursuant to Subsection A of this section, the court shall specifically describe the acts the court has ordered the restrained party to do or refrain from doing. As a part of any order of protection, the court may:

(1) grant sole possession of the residence or household to the protected party during the period the order of protection is effective or order the restrained party to provide temporary suitable alternative housing for the protected party and any children to whom the restrained party owes a legal obligation of support;

(2) award temporary custody of any children involved when appropriate and provide for visitation rights, child support and temporary support for the protected party on a basis that gives primary consideration to the safety of the

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protected party and the children;

(3) order that the restrained party shall not initiate contact with the protected party;

(4) restrain a party from transferring, concealing, encumbering or otherwise disposing of the other party's property or the joint property of the parties except in the usual course of business or for the necessities of life and require the parties to account to the court for all such transferences, encumbrances and expenditures made after the order is served or communicated to the restrained party;

(5) order the restrained party to reimburse the protected party or any other household member for expenses reasonably related to the occurrence of domestic abuse, including medical expenses, counseling expenses, the expense of seeking temporary shelter, expenses for the replacement or repair of damaged property or the expense of lost wages;

(6) order the restrained party to participate in, at the restrained party's expense, professional counseling programs deemed appropriate by the court, including counseling programs for perpetrators of domestic abuse, alcohol abuse or abuse of controlled substances; and

(7) order other injunctive relief as the court deems necessary for the protection of a party, including orders to law enforcement agencies as provided by this section.

[~~B.~~] C. The order of protection shall contain a

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notice that violation of any provision of the order constitutes contempt of court and may result in a fine or imprisonment or both. The court shall notify the relevant district attorney of a violation of an order of protection.

[~~C.~~] D. If the order of protection supersedes or alters prior orders of the court pertaining to domestic matters between the parties, the order shall say so on its face. If an action relating to child custody or child support is pending or has concluded with entry of an order at the time the petition for an order of protection was filed, the court may enter an initial order of protection, but the portion of the order dealing with child custody or child support will then be transferred to the court that has or continues to have jurisdiction over the pending or prior custody or support action.

[~~D.~~] E. A mutual order of protection shall be issued only in cases where both parties have petitioned the court and the court makes detailed findings of fact indicating that both parties acted primarily as aggressors and that neither party acted primarily in self-defense.

[~~E. No~~] F. Notwithstanding provisions of the Family Violence Protection Act that require a restrained party to relinquish firearms, an order issued [~~under the Family Violence Protection~~] pursuant to that act shall not affect title to any property or allow a party to transfer, conceal,

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encumber or otherwise dispose of another party's property or the joint or community property of the parties.

[~~F.~~] G. Either party may request a review hearing to amend an order of protection. An order of protection involving child custody or support may be modified without proof of a substantial or material change of circumstances.

[~~G.~~] H. An order of protection shall not be issued unless a petition or a counter petition has been filed."

SECTION 2. A new section of the Family Violence Protection Act is enacted to read:

"[NEW MATERIAL] REMOVAL OF FIREARMS--PENALTY.--

A. A relinquishment of firearms ordered pursuant to Section 40-13-5 NMSA 1978 shall occur by the restrained party immediately surrendering any firearm in the restrained party's immediate possession, care, custody or control or subject to the restrained party's immediate possession, care, custody or control in a safe manner, upon request of a law enforcement officer, to the control of that officer, after the restrained party is served with the order of protection. A law enforcement officer who serves an order of protection that indicates that the restrained party possesses a firearm shall request that any firearm in the restrained party's immediate possession, care, custody or control or subject to the restrained party's immediate possession, care, custody or control be immediately surrendered. Alternatively, if a

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request is not made by a law enforcement officer, or if a restrained party states that the restrained party wishes to surrender a firearm to a federally licensed firearms dealer, the relinquishment shall occur within twenty-four hours of the service of the order on the restrained party by surrendering the firearm in a safe manner to the control of a law enforcement official or to a federally licensed firearms dealer. A law enforcement officer or federally licensed firearms dealer taking possession of a firearm pursuant to this subsection shall issue a receipt to the person relinquishing the firearm at the time of relinquishment.

B. If a restrained party surrenders a firearm to a law enforcement officer or federally licensed firearms dealer, the restrained party shall, within forty-eight hours after being served with the order of protection, file:

(1) the receipt issued to the restrained party pursuant to Subsection A of this section with the court that issued the order of protection. Failure to file a receipt shall constitute a violation of the order of protection; and

(2) a copy of the receipt issued to the restrained party pursuant to Subsection A of this section with the law enforcement agency that served the order of protection. Failure to file a copy of the receipt shall constitute a violation of the order of protection.

C. A restrained party shall file a declaration of

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non-surrender with the court that issued the order of protection and the law enforcement agency that served the order if the restrained party does not have a firearm in the restrained party's immediate possession, care, custody or control or subject to the restrained party's immediate possession, care, custody or control.

D. A law enforcement agency that serves an order of protection or takes possession of relinquished firearms as provided in this section shall inform the protected party of the relinquishment within five days of relinquishment or of receiving a receipt filed pursuant to Subsection C of this section.

E. A law enforcement agency is immune from civil or criminal liability for any damage or deterioration of relinquished firearms stored or transported pursuant to this section. This subsection shall not apply if the damage or deterioration occurred as a result of recklessness, gross negligence or intentional misconduct by the law enforcement agency.

F. A search warrant may be issued for any firearm that is owned by, or is in the possession of or is in the care, custody or control of, a person who is prohibited from possessing a firearm pursuant to Section 30-7-16 NMSA 1978, if the person has been lawfully served with an order in accordance with Section 40-13-5 NMSA 1978 and the person has failed to

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relinquish any firearms as ordered.

G. If a restrained party declines to relinquish any firearm based on the assertion of the right against self-incrimination as provided by the fifth amendment to the United States constitution and Article 2, Section 15 of the constitution of New Mexico, the court may grant use immunity for the act of relinquishing a firearm pursuant to this section.

H. Upon expiration or termination of an order of protection:

(1) the restrained party may petition for the return of any relinquished firearms. Within thirty days of the receipt of a petition for the return of relinquished firearms, the law enforcement agency to which the firearms were surrendered shall return the firearms unless:

(a) the firearms have been stolen;

(b) the restrained party is prohibited from possessing a firearm under state or federal law; or

(c) another order of protection pursuant to the Family Violence Protection Act is issued against the restrained party; and

(2) the restrained party may request return of relinquished firearms from a federally licensed firearms dealer to whom the firearms were surrendered. The federally licensed firearms dealer shall transfer the firearms as if the dealer

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were selling the firearms from the dealer's own inventory.

I. A law enforcement agency that returns firearms as provided in Subsection H of this section shall notify the protected party of the return of the firearms to the restrained party within five days of return.

J. If a restrained party fails to petition for the return of relinquished firearms, the law enforcement agency in possession of the relinquished firearms may dispose of the firearms as allowed by law.

K. If a restrained party who seeks return of relinquished firearms is prohibited from possessing a firearm under state or federal law, the restrained party shall be afforded an opportunity to sell the firearm through a federally licensed firearms dealer.

L. If a firearm that was relinquished has been stolen, upon recovery, the firearm shall be restored to the restrained party upon the restrained party's identification of the firearm and provision of proof of ownership, unless the restrained party is not allowed to possess a firearm pursuant to this section or any or state or federal law.

M. A restrained party owning or possessing a firearm in violation of this section or an order entered pursuant to Section 40-13-5 NMSA 1978 is guilty of a misdemeanor.

N. As used in this section:

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(1) "federally licensed firearms dealer" means a licensed importer, licensed manufacturer or licensed dealer required to conduct national instant criminal background checks under 18 U.S.C. Section 922(t);

(2) "firearm" means any weapon that will or is designed to or may readily be converted to expel a projectile by the action of an explosion; the frame or receiver of any such weapon; or any firearm muffler or firearm silencer. "Firearm" includes any handgun, rifle or shotgun;

(3) "protected party" means a person who is or was protected by an order of protection; and

(4) "restrained party" means a person who is or was restrained by an order of protection."

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SENATE BILL

53RD LEGISLATURE - STATE OF NEW MEXICO - FIRST SESSION, 2017

INTRODUCED BY

FOR THE COURTS, CORRECTIONS AND JUSTICE COMMITTEE

AN ACT

RELATING TO PAROLE; REVISING THE PAROLE BOARD'S PROCEDURE FOR CONSIDERING, GRANTING OR DENYING PAROLE TO CERTAIN INMATES.

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

SECTION 1. Section 31-21-10 NMSA 1978 (being Laws 1980, Chapter 28, Section 1, as amended) is amended to read:

"31-21-10. PAROLE AUTHORITY AND PROCEDURE.--

A. An inmate of an institution who was sentenced to life imprisonment [~~becomes eligible for a parole hearing~~] shall be paroled after the inmate has served thirty years of the sentence [~~Before ordering the parole of an inmate sentenced to life imprisonment~~] unless the board makes a finding that the inmate is unable or unwilling to fulfill the obligations of a law-abiding citizen. The board shall enter specific findings in support of its decision after:

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(1) [~~interview~~] interviewing the inmate at the institution where the inmate is committed; and

(2) [~~consider~~] considering all pertinent information concerning the inmate, including

[~~(a) the circumstances of the offense;~~

~~(b) mitigating and aggravating circumstances;~~

~~(c) whether a deadly weapon was used in the commission of the offense;~~

~~(d) whether the inmate is a habitual offender;~~

~~(e) the reports filed under Section 31-21-9 NMSA 1978; and~~

~~(f) the~~] reports of [~~such physical and~~] mental examinations [~~as have been~~] of the inmate made while the inmate was held in an institution

[~~(3) make a finding that a parole is in the best interest of society and the inmate; and~~

~~(4) make a finding that the inmate is able and willing to fulfill the obligations of a law-abiding citizen~~].

B. The board shall not deny parole to an inmate who was sentenced to life based solely on the fact that the inmate intentionally took the life of another person.

C. If parole is denied, the inmate sentenced to life imprisonment shall again become entitled to a parole

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hearing at two-year intervals. The board may, on its own motion, reopen any case in which a hearing has already been granted and parole denied.

[~~B.~~] D. Unless the board finds that it is in the best interest of society and the parolee to reduce the period of parole, a person who was sentenced to life imprisonment shall be required to undergo a minimum period of parole of five years. During the period of parole, the person shall be under the guidance and supervision of the board.

[~~C.~~] E. Only an inmate of an institution who was sentenced to life imprisonment without possibility of release or parole is [~~not eligible~~] ineligible for parole and shall remain incarcerated for the entirety of the inmate's natural life.

[~~D.~~] F. Except for certain sex offenders as provided in Section 31-21-10.1 NMSA 1978, an inmate who was convicted of a first, second or third degree felony and who has served the sentence of imprisonment imposed by the court in an institution designated by the corrections department shall be required to undergo a two-year period of parole. An inmate who was convicted of a fourth degree felony and who has served the sentence of imprisonment imposed by the court in an institution designated by the corrections department shall be required to undergo a one-year period of parole. During the period of parole, the person shall be under the guidance and supervision

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of the board.

[~~E.~~] G. Every person while on parole shall remain in the legal custody of the institution from which the person was released but shall be subject to the orders of the board. The board shall furnish to each inmate as a prerequisite to release under its supervision a written statement of the conditions of parole that shall be accepted and agreed to by the inmate as evidenced by the inmate's signature affixed to a duplicate copy to be retained in the files of the board. The board shall also require as a prerequisite to release the submission and approval of a parole plan. If an inmate refuses to affix the inmate's signature to the written statement of the conditions of parole or does not have an approved parole plan, the inmate shall not be released and shall remain in the custody of the institution in which the inmate has served the inmate's sentence, excepting parole, until such time as the period of parole the inmate was required to serve, less meritorious deductions, if any, expires, at which time the inmate shall be released from that institution without parole, or until such time that the inmate evidences acceptance and agreement to the conditions of parole as required or receives approval for the inmate's parole plan or both. Time served from the date that an inmate refuses to accept and agree to the conditions of parole or fails to receive approval for the inmate's parole plan shall reduce the period, if any, to be

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served under parole at a later date. If the district court has ordered that the inmate make restitution to a victim as provided in Section 31-17-1 NMSA 1978, the board shall include restitution as a condition of parole. The board shall also personally apprise the inmate of the conditions of parole and the inmate's duties relating thereto.

[~~F.~~] H. When a person on parole has performed the obligations of the person's release for the period of parole provided in this section, the board shall make a final order of discharge and issue the person a certificate of discharge.

[~~G.~~] I. Pursuant to the provisions of Section 31-18-15 NMSA 1978, the board shall require the inmate as a condition of parole:

(1) to pay the actual costs of parole services to the adult probation and parole division of the corrections department for deposit to the corrections department intensive supervision fund not exceeding one thousand eight hundred dollars ($1,800) annually to be paid in monthly installments of not less than twenty-five dollars ($25.00) and not more than one hundred fifty dollars ($150), as set by the appropriate district supervisor of the adult probation and parole division, based upon the financial circumstances of the defendant. The defendant's payment of the supervised parole costs shall not be waived unless the board holds an evidentiary hearing and finds that the defendant is unable to pay the costs. If the board

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waives the defendant's payment of the supervised parole costs and the defendant's financial circumstances subsequently change so that the defendant is able to pay the costs, the appropriate district supervisor of the adult probation and parole division shall advise the board and the board shall hold an evidentiary hearing to determine whether the waiver should be rescinded; and

(2) to reimburse a law enforcement agency or local crime stopper program for the amount of any reward paid by the agency or program for information leading to the inmate's arrest, prosecution or conviction.

[~~H.~~] J. The provisions of this section shall apply to all inmates except geriatric, permanently incapacitated and terminally ill inmates eligible for the medical and geriatric parole program as provided by the Parole Board Act."

SECTION 2. EFFECTIVE DATE.--The effective date of the provisions of this act is July 1, 2017.

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SENATE BILL

53RD LEGISLATURE - STATE OF NEW MEXICO - FIRST SESSION, 2017

INTRODUCED BY

DISCUSSION DRAFT

FOR THE COURTS, CORRECTIONS AND JUSTICE COMMITTEE

AN ACT

RELATING TO EMPLOYMENT OF EX-CONVICTS; EXTENDING THE PROVISIONS OF THE CRIMINAL OFFENDER EMPLOYMENT ACT TO INCLUDE PRIVATE EMPLOYERS.

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

SECTION 1. Section 28-2-3 NMSA 1978 (being Laws 1974, Chapter 78, Section 3, as amended) is amended to read:

"28-2-3. EMPLOYMENT ELIGIBILITY DETERMINATION.--

A. Subject to the provisions of Subsection B of this section and Sections 28-2-4 and 28-2-5 NMSA 1978, in determining eligibility for any private employment or employment with the state or any of its political subdivisions or for a license, permit, certificate or other authority to engage in any regulated trade, business or profession, [~~the~~] an employer or a board or other department or agency having

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jurisdiction may take into consideration a conviction, but the conviction shall not operate as an automatic bar to obtaining private or public employment or license or other authority to practice the trade, business or profession. An employer or a board, department or agency of the state or any of its political subdivisions shall not make an inquiry regarding a conviction on an initial application for employment, if the employer, board, department, agency or political subdivision uses an initial application, and shall only take into consideration a conviction after the applicant has been selected as a finalist for the position.

B. The following criminal records shall not be used, distributed or disseminated in connection with an application for any [~~public~~] employment, license or other authority:

(1) records of arrest not followed by a valid conviction; and

(2) misdemeanor convictions not involving moral turpitude."

SECTION 2. Section 28-2-4 NMSA 1978 (being Laws 1974, Chapter 78, Section 4, as amended by Laws 1997, Chapter 238, Section 5 and by Laws 1997, Chapter 251, Section 1) is amended to read:

"28-2-4. POWER TO REFUSE, RENEW, SUSPEND OR REVOKE PRIVATE OR PUBLIC EMPLOYMENT OR LICENSE.--

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A. Any private employer or board or other agency having jurisdiction over employment by the state or any of its political subdivisions or the practice of any trade, business or profession may refuse to grant or renew or may suspend or revoke any private or public employment or license or other authority to engage in the [~~public~~] employment, trade, business or profession for any one or any combination of the following causes:

(1) where the applicant, employee or licensee has been convicted of a felony or a misdemeanor involving moral turpitude and the criminal conviction directly relates to the particular employment, trade, business or profession;

(2) where the applicant, employee or licensee has been convicted of a felony or a misdemeanor involving moral turpitude and the criminal conviction does not directly relate to the particular employment, trade, business or profession, if the private employer or the board or other agency determines after investigation that the person so convicted has not been sufficiently rehabilitated to warrant the public trust; or

(3) where the applicant, employee or licensee has been convicted of homicide, kidnapping, trafficking in controlled substances, criminal sexual penetration or related sexual offenses or child abuse and the applicant, employee or licensee has applied for reinstatement, renewal or issuance of a teaching certificate, a license to operate a child-care

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facility or employment at a child-care facility, regardless of rehabilitation.

B. The private employer or board or other agency shall explicitly state in writing the reasons for a decision [~~which~~] that prohibits the person from engaging in the employment, trade, business or profession if the decision is based in whole or in part on conviction of any crime described in Paragraphs (1) and (3) of Subsection A of this section. Completion of probation or parole supervision or expiration of a period of three years after final discharge or release from any term of imprisonment without any subsequent conviction shall create a presumption of sufficient rehabilitation for purposes of Paragraph (2) of Subsection A of this section."

SECTION 3. EFFECTIVE DATE.--The effective date of the provisions of this act is July 1, 2017.

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BILL

53RD LEGISLATURE - STATE OF NEW MEXICO - FIRST SESSION, 2017

INTRODUCED BY

DISCUSSION DRAFT

ENDORSED BY THE COURTS, CORRECTIONS AND JUSTICE COMMITTEE

AN ACT

RELATING TO THE DELINQUENCY ACT; REPLACING TERMS REFERENCING PAROLE WITH THOSE REFERENCING SUPERVISED RELEASE; ALLOWING A CHILDREN'S COURT ATTORNEY TO FILE A PETITION ALLEGING THAT A CHILD HAS WILLFULLY ABSCONDED FROM SUPERVISED RELEASE; ALLOWING THE COURT TO EXTEND THE COMMITMENT OF A CHILD; ALLOWING FOR THE TOLLING OF THE SUPERVISED RELEASE PERIOD UPON THE ISSUANCE OF A WARRANT.

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

SECTION 1. Section 32A-2-25 NMSA 1978 (being Laws 1993, Chapter 77, Section 54, as amended) is amended to read:

"32A-2-25. [~~PAROLE REVOCATION~~] SUPERVISED RELEASE--PROCEDURES.--

A. A child on [~~parole from an agency that has legal custody~~] supervised release who violates a term of [~~parole~~]

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supervised release may be proceeded against in a [~~parole revocation~~] supervised release proceeding conducted by the department [~~or the supervising agency~~] or by a hearing officer contracted by the department [~~who is neutral to the child and the agency~~] in accordance with procedures established by the department in cooperation with the juvenile [~~parole~~] public safety advisory board and any other person designated by the department. If a child willfully absconds from supervised release, the children's court attorney from the district where the child was initially committed may file a petition pursuant to Subsection E of this section.

B. A juvenile probation [~~and parole~~] officer may detain a child on [~~parole status~~] supervised release who is alleged to have violated a term or condition of [~~parole~~] supervised release until the completion and review of a preliminary [~~parole~~] supervised release revocation hearing. A child may waive the right to a preliminary [~~parole~~] supervised release revocation hearing after consultation with the child's attorney, parent, guardian or custodian.

[~~B.~~] C. If a retake warrant is issued by the department upon the completion of the preliminary [~~parole~~] supervised release revocation hearing, or if a child waived the right to a preliminary supervised release revocation hearing, the juvenile [~~institution~~] facility to which the warrant is issued shall promptly transport the child to that [~~institution~~]

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facility at the expense of the department. If a child absconds from [~~parole supervision~~] supervised release and is apprehended in another state after the issuance of a [~~retake~~] warrant by the [~~department~~] district court, the juvenile justice division of the department [~~shall~~] may cause the return of the child to this state at the expense of the department.

D. The issuance of a warrant upon an allegation that the child has absconded from supervised release shall toll the supervised release period. After a hearing upon return, if the court finds that the child absconded from supervised release, the time from the date of the violation to the date of the child's arrest shall not be counted as time served on supervised release.

E. The children's court attorney may file a petition alleging that a child has willfully absconded from supervised release. If the court finds that the child willfully absconded from supervised release and that it is necessary to safeguard the welfare of the child or the public's safety, the court may extend the child's commitment not to exceed six months on a short-term commitment, not to exceed one year on a long-term commitment or until the child reaches the age of twenty-one. The petition shall be filed in the district where the child was initially committed. Extension of the child's commitment under this subsection shall follow the procedures to extend a child's commitment provided in Section

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32A-2-23 NMSA 1978."

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SENATE BILL

53RD LEGISLATURE - STATE OF NEW MEXICO - FIRST SESSION, 2017

INTRODUCED BY

ENDORSED BY THE COURTS, CORRECTIONS AND JUSTICE COMMITTEE

AN ACT

RELATING TO THE ADMINISTRATIVE OFFICE OF THE COURTS; ALLOWING THE DIRECTOR TO RECEIVE FUNDS TO CARRY OUT THE DUTIES OF THE OFFICE.

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

SECTION 1. Section 34-9-3 NMSA 1978 (being Laws 1959, Chapter 162, Section 3, as amended) is amended to read:

"34-9-3. DIRECTOR--DUTIES.--The director of the administrative office of the courts shall, under the supervision and direction of the supreme court:

A. supervise all matters relating to administration of the courts;

B. examine fiscal matters and the state of the dockets of the courts, secure information as to the courts' need of assistance and prepare and transmit to the supreme

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court statistical data and reports as to the business of the courts;

C. submit to the supreme court and to the legislature by January 30 of each year a report of the activities of the administrative office of the courts and of the state of business of the courts, including the statistical data submitted to the supreme court pursuant to Subsection B of this section, and the director's recommendations. This report is a public document;

D. deal with the problems of finance of those courts supported by legislative appropriation and be concerned with adequate but economical financing of each of these courts and the equitable distribution of available funds among them. For this purpose, the director shall receive, adjust and approve proposed budgets submitted by these courts prior to submission of the budgets to the state budget division of the department of finance and administration for inclusion in the executive budget. The district courts of all counties within a judicial district shall be included within a single budget. Budget proposals shall be submitted by the courts at the time and in the form prescribed by the director;

E. perform other duties in aid of the administration of justice and the administration and dispatch of the business of the courts as directed by the supreme court. The courts shall comply with all requests of the director for

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information; [~~and~~]

F. encourage that any behavioral health services, including mental health and substance abuse services, funded, provided, contracted for or approved by the administrative office of the courts be in compliance with the requirements of Section 9-7-6.4 NMSA 1978; and

G. apply for and receive, in the name of the administrative office of the courts, any public or private funds, including United States government funds, available to carry out its programs, duties or services."

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SENATE BILL

53RD LEGISLATURE - STATE OF NEW MEXICO - FIRST SESSION, 2017

INTRODUCED BY

FOR THE COURTS, CORRECTIONS AND JUSTICE COMMITTEE

AN ACT

RELATING TO CRIMINAL JUSTICE; ENACTING THE UNIFORM COLLATERAL CONSEQUENCES OF CONVICTION ACT.

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

SECTION 1. [NEW MATERIAL] SHORT TITLE.--This act may be cited as the "Uniform Collateral Consequences of Conviction Act".

SECTION 2. [NEW MATERIAL] DEFINITIONS.--As used in the Uniform Collateral Consequences of Conviction Act:

A. "collateral consequence" means a collateral sanction or a disqualification;

B. "collateral sanction" means a penalty, disability or disadvantage, however denominated, imposed on an individual as a result of the individual's conviction of an offense that applies by operation of law, whether or not the

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penalty, disability or disadvantage is included in the judgment or sentence. "Collateral sanction" does not include imprisonment, probation, parole, supervised release, forfeiture, restitution, fine, assessment or costs of prosecution;

C. "convicted" and "conviction" include an adjudication as a youthful offender or serious youthful offender that results in an adult sentence;

D. "decision-maker" means the state acting through the following entities or their employees:

(1) a department;

(2) an agency;

(3) an officer; or

(4) an instrumentality, including a political subdivision, an educational institution, a board or a commission or a government contractor, including a subcontractor, made subject to the Uniform Collateral Consequences of Conviction Act by contract, by law other than the Uniform Collateral Consequences of Conviction Act or by ordinance;

E. "disqualification" means a penalty, disability or disadvantage, however denominated, that an administrative agency, governmental official or court in a civil proceeding is authorized, but not required, to impose on an individual on grounds relating to the individual's conviction of an offense;

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F. "identification agency" means the New Mexico sentencing commission, acting in conjunction with the district attorneys of New Mexico, the attorney general and the public defender department;

G. "offense" means a felony pursuant to the law of New Mexico, another state or the United States;

H. "person" means an individual, corporation, business trust, estate, trust, partnership, limited liability company, association, joint venture, public corporation, government or governmental subdivision, agency or instrumentality or any other legal or commercial entity; and

I. "state" means a state of the United States, the District of Columbia, Puerto Rico, the United States Virgin Islands or any territory or insular possession subject to the jurisdiction of the United States.

SECTION 3. [NEW MATERIAL] LIMITATION ON SCOPE.--

A. The Uniform Collateral Consequences of Conviction Act does not provide a basis for:

(1) invalidating a plea, conviction or sentence;

(2) a cause of action for money damages; or

(3) a claim for relief from or defense to the application of a collateral consequence based on a failure to comply with Section 4, 5 or 6 of the Uniform Collateral Consequences of Conviction Act.

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B. The Uniform Collateral Consequences of Conviction Act does not affect:

(1) the duty an individual's attorney owes to the individual, except as provided in Section 5 of the Uniform Collateral Consequences of Conviction Act;

(2) a claim or right of a victim of an offense; or

(3) a right or remedy pursuant to law other than the Uniform Collateral Consequences of Conviction Act available to an individual convicted of an offense.

SECTION 4. [NEW MATERIAL] IDENTIFICATION, COLLECTION AND PUBLICATION OF LAWS REGARDING COLLATERAL CONSEQUENCES.--

A. The identification agency:

(1) shall identify or cause to be identified any provision in the constitution of New Mexico and New Mexico's statutes published in the New Mexico Statutes Annotated that imposes a collateral sanction or authorizes the imposition of a disqualification, and any provision of law that may afford relief from a collateral consequence;

(2) not later than six months after the effective date of the Uniform Collateral Consequences of Conviction Act, shall prepare or cause to be prepared a collection of citations to, and the text or short descriptions of, the provisions identified pursuant to Paragraph (1) of this subsection;

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(3) shall update or cause to be updated the collection provided for in Paragraph (2) of this subsection within three months after the laws enacted during each session of the legislature are published in the New Mexico Statutes Annotated; and

(4) in complying with Paragraphs (1) and (2) of this subsection, may rely on the study of New Mexico's collateral sanctions, disqualifications and relief provisions prepared by the national institute of justice described in Section 510 of the Court Security Improvement Act of 2007, Pub. L. 110-177.

B. As required by Subsection A of this section, the identification agency shall include or cause to be included the following statements in a prominent manner at the beginning of the collection:

(1) "This collection has not been enacted into law and does not have the force of law.";

(2) "An error or omission in this collection, or in any reference work cited in this collection, is not a reason for invalidating a plea, conviction or sentence or for not imposing a collateral sanction or authorizing a disqualification.";

(3) "The laws of other jurisdictions and New Mexico counties and municipalities and the New Mexico Administrative Code are not included in this collection and may

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impose additional collateral sanctions and authorize additional disqualifications."; and

(4) "This collection does not include any law or other provision regarding the imposition of or relief from a collateral sanction or a disqualification enacted or adopted after [*insert date the collection was prepared or last updated*].".

C. The identification agency shall publish or cause to be published in the manner provided in Subsection D of this section the collection prepared and updated as required by Subsection A of this section. If available, the identification agency shall publish or cause to be published, as part of the collection, the title and internet address of:

(1) the most recent collection of collateral consequences imposed by federal law; and

(2) any provision of federal law that may afford relief from a collateral consequence.

D. The collection provided for in Subsection C of this section shall be published on the website of the identification agency and shall be available to the public on the internet without charge not later than three weeks after it is created or updated.

SECTION 5. [NEW MATERIAL] NOTICE OF COLLATERAL CONSEQUENCES IN PRETRIAL PROCEEDING AND AT GUILTY PLEA.--

A. Except as provided in Subsection C of this

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section, counsel representing an individual charged with an offense shall cause information substantially similar to the following to be communicated to the individual during pretrial proceedings and shall discuss the information with the individual:

"NOTICE OF ADDITIONAL LEGAL CONSEQUENCES

If you plead guilty or nolo contendere to an offense, or are convicted of an offense, you may suffer additional legal consequences beyond jail or prison, probation, periods of parole and fines. These consequences may include:

1. being unable to get or keep some licenses, permits or jobs;

2. being unable to get or keep benefits such as public housing or education;

3. receiving a harsher sentence if you are convicted of another offense in the future;

4. having the government take your property; and

5. being unable to vote or possess a firearm.

If you are not a United States citizen, a guilty plea or nolo contendere plea or conviction may also result in your deportation, removal or exclusion from admission to the United States or denial of citizenship.

The law may provide ways to obtain some relief from these consequences.

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Further information about the consequences of conviction is available on the internet at [*insert internet address of the collection of laws published pursuant to Subsections C and D of Section 4 of the Uniform Collateral Consequences of Conviction Act*].".

B. Before a court accepts a plea of guilty or nolo contendere from an individual, the court shall confirm that the individual received and understands the notice required by Subsection A of this section and has had an opportunity to discuss the notice with counsel.

C. The notice required pursuant to Subsection A of this section need not be given until six months have elapsed after the collection of laws required pursuant to Section 4 of the Uniform Collateral Consequences of Conviction Act is first available on the internet pursuant to Subsections C and D of Section 4 of that act.

D. This section does not limit the duty that an individual's counsel otherwise owes to the individual.

SECTION 6. [NEW MATERIAL] NOTICE OF COLLATERAL CONSEQUENCES AT SENTENCING AND UPON RELEASE.--

A. An individual convicted of an offense shall be given notice as provided in Subsections B and C of this section:

(1) that collateral consequences may apply because of the conviction;

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(2) of the internet address of the collection of laws published pursuant to Subsections C and D of Section 4 of the Uniform Collateral Consequences of Conviction Act;

(3) that there may be ways to obtain relief from collateral consequences;

(4) of contact information for government or nonprofit agencies, groups or organizations, if any, offering assistance to individuals seeking relief from collateral consequences; and

(5) of when an individual convicted of an offense may vote pursuant to New Mexico law.

B. Except as provided in Subsection D of this section, the individual's counsel shall provide the notice set forth in Subsection A of this section not more than thirty and, if practicable, at lease five days before sentencing.

C. Except as provided in Subsection D of this section, if an individual is sentenced to imprisonment or other incarceration, the officer or agency releasing the individual shall provide the notice set forth in Subsection A of this section not more than thirty and, if practicable, at least five days before release.

D. The notice required pursuant to Subsection A of this section need not be given until six months have elapsed after the collection of laws required pursuant to Section 4 of the Uniform Collateral Consequences of Conviction Act is first

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available on the internet pursuant to Subsections C and D of Section 4 of that act.

SECTION 7. [NEW MATERIAL] AUTHORIZATION REQUIRED FOR COLLATERAL SANCTION--AMBIGUITY.--

A. A collateral sanction may be imposed only by statute or ordinance or by a rule authorized by law and adopted in accordance with applicable law.

B. A law creating a collateral consequence that is ambiguous as to whether it imposes a collateral sanction or authorizes a disqualification shall be construed as authorizing a disqualification.

SECTION 8. [NEW MATERIAL] DECISION TO DISQUALIFY.--In deciding whether to impose a disqualification, a decision-maker shall undertake an individualized assessment to determine whether the benefit or opportunity at issue should be denied the individual. In making that decision, the decision-maker may consider, if substantially related to the benefit or opportunity at issue, the particular facts and circumstances involved in the offense and the essential elements of the offense. A conviction itself shall not be considered except as having established the elements of the offense. The decision-maker shall also consider other relevant information, including the effect on third parties of granting the benefit or opportunity and whether the individual has been granted relief such as an order of limited relief.

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SECTION 9. [NEW MATERIAL] EFFECT OF CONVICTION BY ANOTHER STATE OR THE UNITED STATES--RELIEVED OR PARDONED CONVICTION.--

A. For purposes of authorizing or imposing a collateral consequence in New Mexico, a conviction of an offense in a court of another state or the United States is deemed a conviction of the offense in New Mexico with the same elements. If there is no offense in New Mexico with the same elements, the conviction is deemed a conviction of the most serious offense in New Mexico that is established by the elements of the offense. A misdemeanor in the jurisdiction of conviction shall not be deemed a felony in New Mexico, and an offense lesser than a misdemeanor in the jurisdiction of conviction shall not be deemed a conviction of a felony or misdemeanor in New Mexico.

B. For purposes of authorizing or imposing a collateral consequence in New Mexico, a juvenile adjudication in another state or the United States shall not be deemed a conviction of a felony, misdemeanor or offense lesser than a misdemeanor in New Mexico.

C. A conviction that is reversed, overturned or otherwise vacated by a court of competent jurisdiction of New Mexico, another state or the United States on grounds other than rehabilitation or good behavior shall not serve as the basis for authorizing or imposing a collateral consequence in New Mexico.

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D. A pardon issued by another state or the United States has the same effect for purposes of authorizing, imposing and relieving a collateral consequence in New Mexico as it has in the issuing jurisdiction.

E. A conviction that has been relieved by expungement, sealing, annulment, set-aside or vacation by a court of competent jurisdiction of another state or the United States on grounds of rehabilitation or good behavior, or for which civil rights are restored pursuant to statute, has the same effect for purposes of authorizing or imposing collateral consequences in New Mexico as it has in the jurisdiction of conviction; provided, however, that such relief or restoration of civil rights does not relieve collateral consequences applicable pursuant to the law of New Mexico for which relief could not be granted pursuant to Section 11 of the Uniform Collateral Consequences of Conviction Act or for which relief was expressly withheld by the court order or by the law of the jurisdiction that relieved the conviction. An individual convicted in another jurisdiction may seek relief pursuant to Section 10 of the Uniform Collateral Consequences of Conviction Act from any collateral consequence for which relief was not granted in the issuing jurisdiction except those consequences listed in Section 11 of that act.

F. A charge or prosecution in any jurisdiction that has been finally terminated without a conviction and imposition

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of sentence based on participation in a deferred adjudication or diversion program shall not serve as the basis for authorizing or imposing a collateral consequence in New Mexico. This subsection does not affect the validity of any restriction or condition imposed by law as part of participation in the deferred adjudication or diversion program, before or after the termination of the charge or prosecution.

SECTION 10. [NEW MATERIAL] ORDER OF LIMITED RELIEF.--

A. An individual convicted of an offense may petition for an order of limited relief from one or more collateral sanctions related to employment, education, housing, public benefits or occupational licensing. The petition may be presented to the sentencing court at or before sentencing.

B. Except as otherwise provided in Section 12 of the Uniform Collateral Consequences of Conviction Act, the court may issue an order of limited relief relieving one or more of the collateral sanctions described in Subsection A of this section if, after reviewing the petition, the individual's criminal history, any filing by a victim pursuant to Section 14 of the Uniform Collateral Consequences of Conviction Act or a prosecutor and any other relevant evidence, it finds the individual has established by a preponderance of the evidence that:

(1) granting the petition will materially assist the individual in obtaining or maintaining employment,

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education, housing, public benefits or occupational licensing;

(2) the individual has substantial need for the relief requested in order to live a law-abiding life; and

(3) granting the petition would not pose an unreasonable risk to the safety or welfare of the public or any individual.

C. An order of limited relief shall specify:

(1) the collateral sanction from which relief is granted; and

(2) any restriction imposed pursuant to Subsection A of Section 12 of the Uniform Collateral Consequences of Conviction Act.

D. An order of limited relief relieves a collateral sanction to the extent provided in the order.

E. If a collateral sanction has been relieved pursuant to this section, a decision-maker may consider the conduct underlying a conviction as provided in Section 8 of the Uniform Collateral Consequences of Conviction Act.

SECTION 11. [NEW MATERIAL] COLLATERAL SANCTIONS NOT SUBJECT TO ORDER OF LIMITED RELIEF.--An order of limited relief shall not be issued to relieve the following collateral sanctions:

A. requirements imposed by the Sex Offender Registration and Notification Act;

B. a motor vehicle license suspension, revocation,

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limitation or ineligibility pursuant to the Motor Vehicle Code, for which restoration or relief is available pursuant to law other than the Uniform Collateral Consequences of Conviction Act;

C. ineligibility for certification as a law enforcement officer pursuant to the Law Enforcement Training Act or for employment as a correctional officer pursuant to the Corrections Act; or

D. prohibitions imposed pursuant to Section 30-7-16 NMSA 1978 making it unlawful for felons to receive, transport or possess a firearm or destructive device while in this state.

SECTION 12. [NEW MATERIAL] ISSUANCE OF ORDER OF LIMITED RELIEF.--

A. The prosecutor shall be notified of a request for an order of limited relief. The court may issue an order of limited relief subject to restriction, condition or additional requirement.

B. The court shall order any test, report, investigation or disclosure by the individual it reasonably believes necessary to its decision to issue an order of limited relief. If there are disputed issues of material fact or law, the individual and any prosecutor notified pursuant to Subsection A of this section or another prosecutorial agency designated by a prosecutor notified pursuant to Subsection A of this section may submit evidence and be heard on those issues.

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SECTION 13. [NEW MATERIAL] RELIANCE ON ORDER AS EVIDENCE OF DUE CARE.--In a judicial or administrative proceeding alleging negligence or other fault, an order of limited relief may be introduced as evidence of a person's due care in hiring, retaining, licensing, leasing to, admitting to a school or program or otherwise transacting business or engaging in activity with the individual to whom the order was issued if the person knew of the order at the time of the alleged negligence or other fault.

SECTION 14. [NEW MATERIAL] VICTIM'S RIGHTS.--A victim of an offense may participate in a proceeding for issuance of an order of limited relief in the same manner as at a sentencing proceeding pursuant to the Victims of Crime Act.

SECTION 15. [NEW MATERIAL] UNIFORMITY OF APPLICATION AND CONSTRUCTION.--In applying and construing the Uniform Collateral Consequences of Conviction Act, consideration shall be given to the need to promote uniformity of the law with respect to its subject matter among states that enact it.

SECTION 16. [NEW MATERIAL] SAVING AND TRANSITIONAL PROVISIONS.--

A. Except as provided in Subsection B of this section, the Uniform Collateral Consequences of Conviction Act applies to collateral consequences whenever enacted or imposed unless the law creating the collateral consequence expressly states that the Uniform Collateral Consequences of Conviction

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Act does not apply.

B. The Uniform Collateral Consequences of Conviction Act does not apply to the imposition of a collateral sanction on an individual until the date that is six months after the collection of laws required pursuant to Section 4 of the Uniform Collateral Consequences of Conviction Act is first available on the internet pursuant to Subsections C and D of Section 4 of that act, but a collateral sanction validly imposed before that date may be the subject of relief pursuant to that act.

SECTION 17. EFFECTIVE DATE.--The effective date of the provisions of this act is January 1, 2018.

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HOUSE BILL

53RD LEGISLATURE - STATE OF NEW MEXICO - FIRST SESSION, 2017

INTRODUCED BY

FOR THE COURTS, CORRECTIONS AND JUSTICE COMMITTEE

AN ACT

RELATING TO LAW ENFORCEMENT; ENACTING THE USE OF FORCE ACT; ESTABLISHING THE SPECIAL USE OF FORCE UNIT AS A DIVISION IN THE OFFICE OF THE ATTORNEY GENERAL; REQUIRING EXCESSIVE USE OF FORCE CASES TO BE BROUGHT TO A HEARING IN DISTRICT COURT; MAKING AN APPROPRIATION.

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

SECTION 1. [NEW MATERIAL] SHORT TITLE.--This act may be cited as the "Use of Force Act".

SECTION 2. [NEW MATERIAL] DEFINITION.--As used in the Use of Force Act, "excessive use of force case" means a case that arises out of an action taken by a law enforcement officer while the officer was acting in the officer's official capacity, including:

A. a shooting by a law enforcement officer;

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B. an allegation of assault, battery or homicide by a law enforcement officer; or

C. any other allegation of the use of excessive force brought against a law enforcement officer.

SECTION 3. [NEW MATERIAL] ESTABLISHMENT OF SPECIAL USE OF FORCE UNIT.--

A. The "special use of force unit" is established as a division of the office of the attorney general.

B. Notwithstanding any other provision of law, the special use of force unit has exclusive powers of investigation and prosecution of alleged excessive use of force cases by law enforcement officers in the state.

C. The attorney general shall ensure the allocation of sufficient staff and resources to the special use of force unit as may be required to ensure the swift and competent investigation and prosecution of excessive use of force cases.

SECTION 4. [NEW MATERIAL] EXCESSIVE USE OF FORCE CASES IN DISTRICT COURT.--An excessive use of force case shall be presented in a preliminary hearing or inquiry before the district court in the judicial district in whose jurisdiction the incident occurred for a determination of probable cause and shall not be presented to a grand jury.

SECTION 5. APPROPRIATION.--One million five hundred thousand dollars ($1,500,000) is appropriated from the general fund to the office of the attorney general for expenditure in

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fiscal year 2018 to establish the special use of force unit. Any unexpended or unencumbered balance remaining at the end of fiscal year 2018 shall revert to the general fund.

BILL

53RD LEGISLATURE - STATE OF NEW MEXICO - FIRST SESSION, 2017

INTRODUCED BY

DISCUSSION DRAFT

FOR THE COURTS, CORRECTIONS AND JUSTICE COMMITTEE

AN ACT

RELATING TO BUSINESS; REPEALING THE LIMITED LIABILITY COMPANY ACT; ENACTING THE REVISED UNIFORM LIMITED LIABILITY COMPANY ACT; REPEALING AND REENACTING A PROVISION OF LAW PERTAINING TO RESTATED ARTICLES OF INCORPORATION; MAKING TECHNICAL AND CONFORMING CHANGES TO THE BUSINESS CORPORATION ACT; PROVIDING PENALTIES.

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

ARTICLE 1

GENERAL PROVISIONS

SECTION 101. [NEW MATERIAL] SHORT TITLE.--Sections 101 through 1103 of this act may be cited as the "Revised Uniform Limited Liability Company Act".

SECTION 102. [NEW MATERIAL] DEFINITIONS.--As used in the Revised Uniform Limited Liability Company Act:

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A. "certificate of organization" means the certificate required by Section 201 of the Revised Uniform Limited Liability Company Act and includes the certificate as amended or restated;

B. "contribution", except when used in the phrase "right of contribution", means property or a benefit described in Section 402 of the Revised Uniform Limited Liability Company Act that is provided by a person to a limited liability company to become a member or in the person's capacity as a member;

C. "debtor in bankruptcy" means a person that is the subject of:

(1) an order for relief under Title 11 of the United States Code or a comparable order under a successor statute of general application; or

(2) a comparable order under federal, state or foreign law governing insolvency;

D. "distribution":

(1) means a transfer of money or other property from a limited liability company to a person on account of a transferable interest or in the person's capacity as a member; and

(2) includes:

(a) a redemption or other purchase by a limited liability company of a transferable interest; and

(b) a transfer to a member in return for

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the member's relinquishment of a right to participate as a member in the management or conduct of the company's activities and affairs or to have access to records or other information concerning the company's activities and affairs; but

(3) excludes:

(a) reasonable compensation for present or past services; or

(b) payments made in the ordinary course of business under a bona fide retirement plan or other bona fide benefits program;

E. "foreign limited liability company" means an unincorporated entity that is formed under the law of a jurisdiction other than New Mexico and that would be a limited liability company if formed under the law of New Mexico;

F. "jurisdiction", when used to refer to a political entity, means the United States, a state, a foreign country or a political subdivision of a foreign country;

G. "jurisdiction of formation" means the jurisdiction whose law governs the internal affairs of an entity;

H. "limited liability company", except when used in the phrase "foreign limited liability company" or when used in Article 10 of the Revised Uniform Limited Liability Company Act, means an entity formed under that act or an entity that becomes subject to that act under Article 10 or Section 110 of

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that act;

I. "manager" means a person that, under the operating agreement of a manager-managed limited liability company, is responsible, alone or in concert with others, for performing the management functions stated in Subsection C of Section 407 of the Revised Uniform Limited Liability Company Act;

J. "manager-managed limited liability company" means a limited liability company that qualifies under Subsection A of Section 407 of the Revised Uniform Limited Liability Company Act;

K. "member" means a person that has become a member of a limited liability company under Section 401 of the Revised Uniform Limited Liability Company Act and that has not dissociated under Section 602 of that act;

L. "member-managed limited liability company" means a limited liability company that is not a manager-managed limited liability company;

M. "operating agreement" means the agreement, regardless of whether it is referred to as an operating agreement, and regardless of whether it is oral, in a record, implied or in any combination thereof, of all the members of a limited liability company, including a sole member, concerning the matters described in Subsection A of Section 110 of the Revised Uniform Limited Liability Company Act; "operating

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agreement" includes the agreement as amended or restated;

N. "organizer" means a person that acts under Section 201 of the Revised Uniform Limited Liability Company Act to form a limited liability company and that need not be nor become a member or manager of the company formed;

O. "person" means an individual, a business corporation, a nonprofit corporation, a partnership, a limited partnership, a limited liability company, a general cooperative association, an unincorporated nonprofit association, a statutory trust, a business trust, a common-law business trust, an estate, a trust, an association, a joint venture, a public corporation, a government, a governmental subdivision, agency or instrumentality or any other legal or commercial entity;

P. "principal office" means the principal executive office of a limited liability company or foreign limited liability company, regardless of whether the office is located in New Mexico;

Q. "property" means all property, whether real, personal, a combination of real and personal, tangible or intangible, or any right or interest therein;

R. "record", when used as a noun, means information that is inscribed on a tangible medium or that is stored in an electronic or other medium and is retrievable in a perceivable form;

S. "registered agent" means an agent of a limited

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liability company or foreign limited liability company that is authorized to receive service of any process, notice or demand required or permitted by law to be served on the company;

T. "registered foreign limited liability company" means a foreign limited liability company that is registered to do business in New Mexico under a statement of registration filed by the secretary of state;

U. "sign" means, with the present intent to authenticate or adopt a record, to:

(1) execute or adopt a tangible symbol; or

(2) attach to or logically associate with the record an electronic symbol, sound or process;

V. "state" means a state of the United States, the District of Columbia, Puerto Rico, the United States Virgin Islands or a territory or insular possession subject to the jurisdiction of the United States;

W. "transfer" includes an assignment, a conveyance, a sale, a lease, an encumbrance, including a mortgage and a security interest, a gift and a transfer by operation of law;

X. "transferable interest" means the right, as initially owned by a person in the person's capacity as a member, to receive distributions from a limited liability company, regardless of whether the person remains a member or continues to own any part of the right; "transferable interest" applies to any fraction of the interest, regardless of who owns

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it; and

Y. "transferee" means a person to which all or part of a transferable interest has been transferred, regardless of whether the transferor is a member, and includes a person that owns a transferable interest under Paragraph (3) of Subsection A of Section 603 of the Revised Uniform Limited Liability Company Act.

SECTION 103. [NEW MATERIAL] KNOWLEDGE--NOTICE.--

A. A person knows a fact when the person:

(1) has actual knowledge of it; or

(2) is deemed to know it under Paragraph (1) of Subsection D of this section or law other than the Revised Uniform Limited Liability Company Act.

B. A person has notice of a fact when the person:

(1) has reason to know the fact from all of the facts known to the person at the time in question; or

(2) is deemed to have notice of the fact under Paragraph (2) of Subsection D of this section.

C. Subject to Subsection F of Section 210 of the Revised Uniform Limited Liability Company Act, a person notifies another person of a fact by taking steps reasonably required to inform the other person in ordinary course, regardless of whether those steps cause the other person to know the fact.

D. A person that is not a member is deemed:

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(1) to know of a limitation on authority to transfer real property as provided in Subsection G of Section 302 of the Revised Uniform Limited Liability Company Act; and

(2) to have notice of a limited liability company's:

(a) dissolution ninety days after a statement of dissolution under Subparagraph (a) of Paragraph (2) of Subsection B of Section 702 of that act becomes effective;

(b) termination ninety days after a statement of termination under Subparagraph (f) of Paragraph (2) of Subsection B of Section 702 of that act becomes effective; and

(c) participation in a merger, an interest exchange, a conversion or a domestication, ninety days after articles of merger, interest, exchange, conversion or domestication under Article 10 of that act become effective.

SECTION 104. [NEW MATERIAL] GOVERNING LAW.--The law of New Mexico governs:

A. the internal affairs of a limited liability company; and

B. the liability of a member as member and a manager as manager for a debt, obligation or other liability of a limited liability company.

SECTION 105. [NEW MATERIAL] OPERATING AGREEMENT--SCOPE,

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FUNCTION AND LIMITATIONS.--

A. Except as otherwise provided in Subsections C and D of this section, the operating agreement governs:

(1) relations among the members as members and between the members and the limited liability company;

(2) the rights and duties under the Revised Uniform Limited Liability Company Act of a person in the capacity of manager;

(3) the activities and affairs of the company and the conduct of those activities and affairs; and

(4) the means and conditions for amending the operating agreement.

B. To the extent that the operating agreement does not provide for a matter described in Subsection A of this section, the Revised Uniform Limited Liability Company Act governs the matter.

C. An operating agreement shall not:

(1) vary the law applicable under Section 104 of the Revised Uniform Limited Liability Company Act;

(2) vary a limited liability company's capacity under Section 109 of that act to sue and be sued in its own name;

(3) vary any requirement, procedure or other provision of that act pertaining to:

(a) registered agents; or

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(b) the secretary of state, including provisions pertaining to records authorized or required to be delivered to the secretary of state for filing under that act;

(4) vary the provisions of Section 204 of that act;

(5) alter or eliminate the duty of loyalty or the duty of care, except as otherwise provided in Subsection D of this section;

(6) eliminate the contractual obligation of good faith and fair dealing under Subsection D of Section 409 of that act, except that the operating agreement may prescribe the standards, if not manifestly unreasonable, by which the performance of the obligation is to be measured;

(7) relieve or exonerate a person from liability for conduct involving bad faith, willful or intentional misconduct or a knowing violation of law;

(8) unreasonably restrict the duties and rights under Section 410 of that act, except that the operating agreement may impose reasonable restrictions on the availability and use of information obtained under that section and may define appropriate remedies, including liquidated damages, for a breach of a reasonable restriction on use;

(9) vary the causes of dissolution specified in Paragraph (4) of Subsection A of Section 701 of that act;

(10) vary the requirement to wind up the

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company's activities and affairs as specified in Subsections A and E and Paragraph (1) of Subsection B of Section 702 of that act;

(11) unreasonably restrict the right of a member to maintain an action under Article 8 of that act;

(12) vary the provisions of Section 805 of that act, except that the operating agreement may provide that the company may not have a special litigation committee;

(13) vary the right of a member to approve a merger under Paragraph (2) of Subsection A of Section 1009 of that act, an interest exchange under Paragraph (2) of Subsection A of Section 1015 of that act, a conversion under Paragraph (2) of Subsection A of Section 1021 of that act or a domestication under Paragraph (2) of Subsection A of Section 1027 of that act;

(14) vary the required contents of a plan of merger under Subsection A of Section 1008 of that act, a plan of interest exchange under Subsection A of Section 1014 of that act, a plan of conversion under Subsection A of Section 1020 of that act or a plan of domestication under Subsection A of Section 1012 of that act; and

(15) except as otherwise provided in Section 106 and Subsection B of Section 107 of that act, restrict the rights under that act of a person other than a member or manager.

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D. Subject to Paragraph (7) of Subsection C of this section, and without limiting other terms that may be included in an operating agreement, the operating agreement may:

(1) specify the method by which a specific act or transaction that would otherwise violate the duty of loyalty may, after full disclosure of all material facts, be authorized or ratified by one or more disinterested and independent persons;

(2) alter the prohibition in Paragraph (2) of Subsection A of Section 405 of the Revised Uniform Limited Liability Company Act so that the prohibition requires only that the company's total assets not be less than the sum of its total liabilities;

(3) to the extent that the operating agreement of a member-managed limited liability company expressly relieves a member of a responsibility that the member otherwise would have under that act and imposes that responsibility on one or more other members, eliminate or limit a fiduciary duty of the member relieved of the responsibility that would have pertained to the responsibility; and

(4) if not manifestly unreasonable:

(a) alter or eliminate the aspects of the duty of loyalty stated in Subsections B and I of Section 409 of that act;

(b) identify specific types or

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categories of activities that do not violate the duty of loyalty;

(c) alter the duty of care; however, the operating agreement shall not authorize conduct involving bad faith, willful or intentional misconduct or a knowing violation of law; and

(d) alter or eliminate any other fiduciary duty.

E. The court shall decide as a matter of law whether a term of an operating agreement is manifestly unreasonable under Paragraph (6) of Subsection C or Paragraph (3) of Subsection D of this section. The court:

(1) shall make its determination as of the time the challenged term became part of the operating agreement and by considering only circumstances existing at that time; and

(2) may invalidate the term only if, in light of the purposes, activities and affairs of the limited liability company, it is readily apparent that:

(a) the objective of the term is unreasonable; or

(b) the term is an unreasonable means to achieve the term's objective.

SECTION 106. [NEW MATERIAL] OPERATING AGREEMENT--EFFECT ON LIMITED LIABILITY COMPANY AND PERSON BECOMING MEMBER--PRE-

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FORMATION AGREEMENT.--

A. A limited liability company is bound by and may enforce the operating agreement, regardless of whether the company has itself manifested assent to the operating agreement.

B. A person that becomes a member of a limited liability company is deemed to assent to the operating agreement.

C. Two or more persons intending to become the initial members of a limited liability company may make an agreement providing that, upon the formation of the company, the agreement will become the operating agreement. One person intending to become the initial member of a limited liability company may assent to terms providing that, upon the formation of the company, the terms will become the operating agreement.

SECTION 107. [NEW MATERIAL] OPERATING AGREEMENT--EFFECT ON THIRD PARTIES AND RELATIONSHIP TO RECORDS EFFECTIVE ON BEHALF OF LIMITED LIABILITY COMPANY.--

A. An operating agreement may specify that its amendment requires the approval of a person that is not a party to the agreement or the satisfaction of a condition. An amendment is ineffective if its adoption does not include the required approval or satisfy the specified condition.

B. The obligations of a limited liability company and its members to a person in the person's capacity as a

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transferee or a person dissociated as a member are governed by the operating agreement. Subject only to a court order issued under Paragraph (2) of Subsection B of Section 503 of the Revised Uniform Limited Liability Company Act to effectuate a charging order, an amendment to the operating agreement made after a person becomes a transferee or is dissociated as a member:

(1) is effective with regard to any debt, obligation or other liability of the limited liability company or its members to the person in the person's capacity as a transferee or person dissociated as a member; and

(2) is not effective to the extent that the amendment imposes a new debt, obligation or other liability on the transferee or person dissociated as a member.

C. If a record delivered by a limited liability company to the secretary of state for filing becomes effective and contains a provision that would be ineffective under Subsection C or Paragraph (3) of Subsection D of Section 105 of the Revised Uniform Limited Liability Company Act if contained in the operating agreement, the provision is ineffective in the record.

D. Subject to Subsection C of this section, if a record delivered by a limited liability company to the secretary of state for filing becomes effective and conflicts with a provision of the operating agreement:

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(1) the agreement prevails as to members, persons dissociated as members, transferees and managers; and

(2) the record prevails as to other persons to the extent that they reasonably rely on the record.

SECTION 108. [NEW MATERIAL] NATURE, PURPOSE AND DURATION OF LIMITED LIABILITY COMPANY.--

A. A limited liability company is an entity distinct from its member or members.

B. A limited liability company may have any lawful purpose, regardless of whether it is for profit.

C. A limited liability company has perpetual duration.

SECTION 109. [NEW MATERIAL] POWERS.--A limited liability company has the capacity to sue and be sued in its own name and the power to do all things necessary or convenient to carry on its activities and affairs.

SECTION 110. [NEW MATERIAL] APPLICATION TO EXISTING RELATIONSHIPS.--

A. The Revised Uniform Limited Liability Company Act governs only:

(1) a limited liability company formed on or after July 1, 2018; and

(2) except as otherwise provided in this section, a limited liability company formed before July 1, 2018 that:

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(a) elects, in the manner provided in its operating agreement or by law for amending the operating agreement, to be subject to that act; and

(b) presents to the secretary of state for filing an amended and restated certificate of organization stating that it desires to be subject to that act.

B. For purposes of applying the Revised Uniform Limited Liability Company Act to a limited liability company formed before July 1, 2018 and that follows Subparagraphs (a) and (b) of Paragraph (2) of Subsection A of this section, except as otherwise agreed:

(1) the company's articles of organization are deemed to be the company's certificate of organization; and

(2) for purposes of applying the definition in Subsection J of Section 102 of that act and subject to Subsection D of Section 107 of that act, language in the company's articles of organization designating the company's management structure operates as if that language were in the operating agreement.

C. Except as otherwise provided in Subsection E of this section, until a limited liability company formed before July 1, 2018 elects to be governed by the Revised Uniform Limited Liability Company Act, the company shall continue to be governed by the provisions of the Limited Liability Company Act as if that act had not been repealed, except that the company

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shall not be renewed unless so provided in the original agreement or in the manner provided in its limited liability company agreement or by law for amending a limited liability company agreement.

D. After July 1, 2018, the Revised Uniform Limited Liability Company Act governs a foreign limited liability company formed at any time.

E. Sections 117, 212, 702 and 704 through 710 of the Revised Uniform Limited Liability Company Act apply to limited liability companies formed before July 1, 2018.

SECTION 111. [NEW MATERIAL] SUPPLEMENTAL PRINCIPLES OF LAW.--Unless displaced by particular provisions of the Revised Uniform Limited Liability Company Act, the principles of law and equity supplement that act.

SECTION 112. [NEW MATERIAL] NAMES PERMITTED.--

A. The name of a limited liability company shall contain the phrase "limited liability company" or "limited company" or the abbreviation "L.L.C.", "LLC", "L.C." or "LC". "Limited" may be abbreviated as "Ltd.", and "company" may be abbreviated as "Co.".

B. Except as otherwise provided in Subsection D of this section, the name of a limited liability company, and the name under which a foreign limited liability company may register to do business in New Mexico, shall be distinguishable on the records of the secretary of state from the name:

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(1) of an existing person whose formation required the filing of a record by the secretary of state and that is not at the time administratively dissolved;

(2) of a limited liability partnership whose statement of qualification is in effect;

(3) under which a person is registered to do business in New Mexico by the filing of a record by the secretary of state;

(4) reserved under Section 113 of the Revised Uniform Limited Liability Company Act or another law of New Mexico providing for the reservation of a name by the filing of a record by the secretary of state; and

(5) registered under Section 114 of that act or another law of New Mexico providing for the registration of a name by the filing of a record by the secretary of state.

C. If a person consents in a record to the use of its name and submits an undertaking in a form satisfactory to the secretary of state to change its name to a name that is distinguishable on the records of the secretary of state from any name in any category of names specified in Subsection B of this section, the name of the consenting person may be used by the person to which the consent was given.

D. Except as otherwise provided in Subsection E of this section, in determining whether a name is the same as or not distinguishable on the records of the secretary of state

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from the name of another person, words, phrases or abbreviations indicating a type of person, such as "corporation", "corp.", "incorporated", "Inc.", "professional corporation", "P.C.", "PC", "professional association", "P.A.", "PA", "Limited", "Ltd.", "limited partnership", "L.P.", "LP", "limited liability partnership", "L.L.P.", "LLP", "registered limited liability partnership", "R.L.L.P.", "RLLP", "limited liability limited partnership", "L.L.L.P.", "LLLP", "registered limited liability limited partnership", "R.L.L.L.P.", "RLLLP", "limited liability company", "L.L.C." and "LLC", shall not be taken into account.

E. A person may consent in a record to the use of a name that is not distinguishable on the records of the secretary of state from its name except for the addition of a word, phrase or abbreviation indicating the type of person as provided in Subsection D of this section. In such a case, the person need not change its name in accordance with Subsection B of this section.

F. A limited liability company or foreign limited liability company may use a name that is not distinguishable from a name described in Paragraphs (1) through (5) of Subsection B of this section if the company delivers to the secretary of state a certified copy of a final judgment of the district court establishing the right of the company to use the name in New Mexico.

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SECTION 113. [NEW MATERIAL] RESERVATION OF NAME.--

A. A person may reserve the exclusive use of a name that complies with Section 112 of the Revised Uniform Limited Liability Company Act by delivering an application to the secretary of state for filing. The application shall state the name and address of the applicant and the name to be reserved. If the secretary of state finds that the name is available, the secretary of state shall reserve the name for the applicant's exclusive use for one hundred twenty days.

B. The owner of a reserved name may transfer the reservation to another person by delivering to the secretary of state a signed notice in a record of the transfer that states the name and address of the person to which the reservation is being transferred.

SECTION 114. [NEW MATERIAL] REGISTRATION OF NAME.--

A. A foreign limited liability company not registered to do business in New Mexico under Article 9 of the Revised Uniform Limited Liability Company Act may register its name, or an alternate name adopted under Section 906 of that act, if the name is distinguishable on the records of the secretary of state from the names that are not available under Section 112 of that act.

B. To register its name or an alternate name adopted under Section 906 of the Revised Uniform Limited Liability Company Act, a foreign limited liability company

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shall deliver to the secretary of state for filing an application stating the company's name, the jurisdiction and date of its formation and any alternate name adopted under Section 906 of that act. If the secretary of state finds that the name applied for is available, the secretary of state shall register the name for the applicant's exclusive use.

C. The registration of a name under this section is effective for one year after the date of registration.

D. A foreign limited liability company whose name registration is effective may renew the registration for successive one-year periods by delivering, not earlier than three months before the expiration of the registration, to the secretary of state for filing a renewal application that complies with this section. When filed, the renewal application renews the registration for a succeeding one-year period.

E. A foreign limited liability company whose name registration is effective may register as a foreign limited liability company under the registered name or consent in a signed record to the use of that name by another person that is not an individual.

SECTION 115. [NEW MATERIAL] REGISTERED OFFICE AND REGISTERED AGENT--CHANGE OF PRINCIPAL PLACE OF BUSINESS.--

A. A limited liability company shall maintain in New Mexico:

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(1) a registered office, which may be the same as the limited liability company's principal place of business; and

(2) a registered agent for service of process on the limited liability company that is either:

(a) an individual resident of New Mexico;

(b) a domestic corporation, limited liability company or partnership having a place of business in New Mexico that is the same as the registered office; or

(c) a foreign corporation, limited liability company or partnership authorized to transact business in New Mexico whose place of business is the same as the registered office.

B. A limited liability company may change its registered office or registered agent by delivering to the secretary of state a statement setting forth:

(1) the name of the limited liability company;

(2) the name of its current registered agent;

(3) the street address of its current registered office; and

(4) if its current registered agent is to be changed:

(a) the name of its successor registered agent;

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(b) the street address of the successor registered agent's place of business;

(c) a statement that such address is the same as the current address of the limited liability company's current registered office or, if there is a concurrent change in the address of the registered office, as the new address of the registered office; and

(d) a statement of the successor registered agent that the agent accepts the appointment;

(5) if the current address of the place of business of its current registered agent is to be changed, the new street address of the place of business of the current registered agent and a statement that the new street address is the same as the address of the limited liability company's registered office or, if there is a concurrent change in the address of the registered office, as the new street address of the registered office; or

(6) if the address of its current registered office is to be changed, the new street address to which the current registered office is to be changed and a statement that the new address is the same as the street address of the place of business of the current registered agent of the limited liability company or, if there is a concurrent change of the current registered agent, of the successor registered agent of the limited liability company.

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C. If a registered agent changes the street address of the registered agent's business office, the registered agent may change the street address of the registered office of any limited liability company for which the registered agent is the registered agent by notifying the limited liability company in writing of the change and signing, either manually or in facsimile, and delivering to the secretary of state for filing a statement that complies with this section but need not be responsive to Paragraph (4) of Subsection B of this section and recites that the company has been notified of the change.

D. If the secretary of state finds that the statement conforms to this section, the secretary of state shall file the statement in the secretary of state's office and, upon such filing, the change of registered agent, change of address of the registered office or change of the registered agent's place of business shall become effective and fulfill any requirement that such change be reported to the secretary of state.

E. A registered agent of a limited liability company may resign as registered agent by delivering a written notice, executed in duplicate, to the secretary of state, who shall mail a copy of the notice to the limited liability company at its principal place of business as shown on the records of the secretary of state. The resigning registered agent's appointment terminates thirty days after receipt of the

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notice by the secretary of state or on the effective date of the appointment of a successor registered agent, whichever occurs first.

F. A limited liability company shall notify the secretary of state of a change in the street address of its principal place of business by delivering a written statement to the secretary of state setting forth such change.

SECTION 116. [NEW MATERIAL] SERVICE OF PROCESS.--A limited liability company or a foreign limited liability company, regardless of whether registered under the Uniform Revised Limited Partnership Act, shall be served with process in the manner prescribed by law and the New Mexico Rules of Civil Procedure.

SECTION 117. [NEW MATERIAL] FILING, SERVICE AND COPYING FEES.--The secretary of state shall charge and collect, for:

A. filing the original certificate of organization and issuing a certificate of organization, a fee of fifty dollars ($50.00);

B. filing amended or restated articles of merger and issuing a certificate of amended or restated articles, a fee of fifty dollars ($50.00);

C. filing articles of merger, conversion or consolidation and issuing a certificate of consolidation, a fee of one hundred dollars ($100);

D. filing articles of dissolution or revocation of

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dissolution, a fee of twenty-five dollars ($25.00);

E. issuing a certificate of good standing, a certificate of registration or a certificate for any purpose not otherwise specified, a fee of twenty-five dollars ($25.00);

F. furnishing written information on any limited liability company, a fee of twenty-five dollars ($25.00);

G. providing any number of pages of documents or instruments pertaining to one limited liability company, a fee of ten dollars ($10.00); however, the secretary of state is required to furnish only one copy of each page at this fee;

H. providing a certification of documents or instruments pertaining to a limited liability company, a fee of twenty-five dollars ($25.00);

I. accepting an application for reservation of a name or for filing a notice of the transfer of any name reservation, a fee of twenty dollars ($20.00);

J. filing a statement of change of address of registered office or registered agent, or both, a fee of twenty dollars ($20.00);

K. filing an agent's statement of change of address of registered agent, a fee of twenty dollars ($20.00);

L. issuing a registration to a foreign limited liability company, a fee of one hundred dollars ($100);

M. filing an amendment of the registration of a foreign limited liability company, a fee of fifty dollars

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($50.00);

N. filing an application for cancellation of registration of a foreign limited liability company and issuing a certificate of cancellation, a fee of twenty-five dollars ($25.00); and

O. filing a triennial report or any other report, statement, instrument or document not otherwise specified, a fee of twenty dollars ($20.00).

SECTION 118. [NEW MATERIAL] DELIVERY OF RECORD.--

A. Except as otherwise provided in the Revised Uniform Limited Liability Company Act, permissible means of delivery of a record include delivery by hand, mail, conventional commercial practice and electronic transmission.

B. Delivery of a record to the secretary of state is effective only when it is received by the secretary of state.

SECTION 119. [NEW MATERIAL] RESERVATION OF POWER TO AMEND OR REPEAL.--The legislature may amend or repeal all or part of the Revised Uniform Limited Liability Company Act, and all limited liability companies and foreign limited liability companies subject to that act are governed by the amendment or repeal.

ARTICLE 2

FORMATION; CERTIFICATE OF ORGANIZATION AND OTHER FILINGS

SECTION 201. [NEW MATERIAL] FORMATION OF LIMITED

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LIABILITY COMPANY--CERTIFICATE OF ORGANIZATION--FILING.--

A. One or more persons may act as organizers to form a limited liability company by delivering to the secretary of state for filing a certificate of organization.

B. A certificate of organization shall state:

(1) the name, which shall comply with Section 112 of the Revised Uniform Limited Liability Company Act, of the limited liability company;

(2) the street address of the company's registered office and the name of the registered agent at that office; and

(3) the street and mailing address of the company's principal office, if different from the street address of its registered office.

C. A certificate of organization may contain statements as to matters other than those required by Subsection B of this section, but those statements shall not vary or otherwise affect the provisions specified in Subsection C or D of Section 105 of the Revised Uniform Limited Liability Company Act in a manner inconsistent with that section. However, a statement in a certificate of organization is not effective as a statement of authority.

D. A limited liability company is formed when the certificate of organization becomes effective and at least one person has become a member.

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E. The organizer or organizers of a limited liability company shall file with the secretary of state:

(1) the signed original of the articles of organization, together with a duplicate copy, which may be either signed, photocopied or conformed;

(2) the statement of the person appointed registered agent, accepting appointment as registered agent; and

(3) any other documents required to be filed under the Revised Uniform Limited Liability Company Act.

F. The secretary of state may accept a facsimile transmission for filing.

G. If the secretary of state determines that the documents delivered for filing conform with the Revised Uniform Limited Liability Company Act, the secretary of state shall, when all required filing fees have been paid:

(1) endorse on each signed original and duplicate copy the word "filed" and the date of its acceptance for filing;

(2) retain a signed original in the files of the secretary of state; and

(3) return each duplicate copy to the person who delivered it to the secretary of state or to that person's representative.

SECTION 202. [NEW MATERIAL] AMENDMENT OR RESTATEMENT OF

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CERTIFICATE OF ORGANIZATION.--

A. A certificate of organization may be amended or restated at any time.

B. To amend its certificate of organization, a limited liability company shall deliver to the secretary of state for filing an amendment stating:

(1) the name of the company;

(2) the date of filing of its initial certificate; and

(3) the text of the amendment.

C. To restate its certificate of organization to consolidate all amendments into a single document, a limited liability company shall deliver to the secretary of state for filing a restatement, designated as a restatement in its heading. The restatement may include one or more new amendments. The restated certificate of organization supersedes the original certificate of organization and all previous amendments and restatements.

D. If a member of a member-managed limited liability company or a manager of a manager-managed limited liability company knows that any information in a filed certificate of organization was inaccurate when the certificate was filed or has become inaccurate due to changed circumstances, the member or manager shall promptly:

(1) cause the certificate to be amended; or

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(2) if appropriate, deliver to the secretary of state for filing a statement of change in accordance with Section 115 of the Revised Uniform Limited Liability Company Act or a statement of correction in accordance with Section 209 of that act.

SECTION 203. [NEW MATERIAL] SIGNING OF RECORDS TO BE DELIVERED FOR FILING TO SECRETARY OF STATE.--

A. A record delivered to the secretary of state for filing under the Revised Uniform Limited Liability Company Act shall be signed as follows:

(1) except as otherwise provided in Paragraphs (2) and (3) of this subsection, a record signed by a limited liability company or a registered foreign limited liability company shall be signed by a person authorized by the company;

(2) a limited liability company's initial certificate of organization shall be signed by at least one person acting as an organizer;

(3) a record delivered on behalf of a dissolved limited liability company or a dissolved registered foreign limited liability company that has no member shall be signed by the person winding up the company's activities and affairs under Subsection C of Section 702 of that act or under similar provisions of the jurisdiction of formation of a dissolved registered foreign limited liability company or a person appointed under Subsection D of Section 702 of that act

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or under similar provisions of the jurisdiction of formation of a dissolved registered foreign limited liability company to wind up the activities and affairs;

(4) a statement of denial by a person under Section 303 of that act shall be signed by that person; and

(5) any other record delivered on behalf of a person to the secretary of state for filing shall be signed by that person.

B. Any record delivered for filing under the Revised Uniform Limited Liability Company Act may be signed by an agent. When that act requires a particular individual to sign a record and the individual is deceased or incapacitated, the record may be signed by a legal representative of the individual.

C. A person that signs a record as an agent or a legal representative affirms as a fact that the person is authorized to sign the record.

SECTION 204. [NEW MATERIAL] SIGNING AND FILING PURSUANT TO JUDICIAL ORDER.--

A. If a person required by the Revised Uniform Limited Liability Company Act to sign a record or deliver a record to the secretary of state for filing under that act does not do so, any other person that is aggrieved may petition the district court to order:

(1) the person to sign the record;

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(2) the person to deliver the record to the secretary of state for filing; or

(3) the secretary of state to file the record unsigned.

B. If a petitioner under Subsection A of this section is not the limited liability company or foreign limited liability company to which the record pertains, the petitioner shall make the company or foreign company a party to the action.

C. A record filed under Paragraph (3) of Subsection A of this section is effective without being signed.

SECTION 205. [NEW MATERIAL] LIABILITY FOR INACCURATE INFORMATION IN FILED RECORD.--

A. If a record delivered to the secretary of state for filing under the Revised Uniform Limited Liability Company Act and filed by the secretary of state contains inaccurate information, a person that suffers a loss by reliance on the information may recover damages for the loss from:

(1) a person that signed the record, or caused another to sign it on the person's behalf, and knew the information to be inaccurate at the time that the record was signed; and

(2) subject to Subsection B of this section, a member of a member-managed limited liability company or a manager of a manager-managed limited liability company, if:

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(a) the record was delivered for filing on behalf of the company; and

(b) the member or manager knew or had notice of the inaccuracy for a reasonably sufficient time before the information was relied upon so that, before the reliance, the member or manager reasonably could have: 1) effected an amendment under Section 202 of the Revised Uniform Limited Liability Company Act; 2) filed a petition under Section 204 of that act; or 3) delivered to the secretary of state for filing a statement of change under Section 115 of that act or a statement of correction under Section 209 of that act.

B. To the extent that the operating agreement of a member-managed limited liability company expressly relieves a member of responsibility for maintaining the accuracy of information contained in records delivered on behalf of the company to the secretary of state for filing under the Revised Uniform Limited Liability Company Act and imposes that responsibility on one or more other members, the liability stated in Paragraph (2) of Subsection A of this section applies to those other members and not to the member that the operating agreement relieves of the responsibility.

C. An individual who signs a record authorized or required to be filed under the Revised Uniform Limited Liability Company Act affirms under penalty of perjury that the

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information stated in the record is accurate.

SECTION 206. [NEW MATERIAL] FILING REQUIREMENTS.--

A. To be filed by the secretary of state under the Revised Uniform Limited Liability Company Act, a record shall be received by the secretary of state, comply with that act and:

(1) have its filing required or permitted by that act;

(2) be physically delivered in written form unless and to the extent that the secretary of state permits electronic delivery of records;

(3) have its words in English and its numbers in Arabic or Roman numerals. However, the name of an entity need not be in English if written in English letters or Arabic or Roman numerals;

(4) be signed by a person authorized or required by that act to sign the record; and

(5) state the name and capacity, if any, of each individual who signed the record, either on behalf of the individual or the person authorized or required to sign it, but the record need not contain a seal, attestation, acknowledgment or verification.

B. If a law other than the Revised Uniform Limited Liability Company Act prohibits the disclosure by the secretary of state of information contained in a record delivered to the

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secretary of state for filing, the secretary of state shall file the record if the record otherwise complies with that act. However, the secretary of state may redact the information whose disclosure is prohibited.

C. When a record is delivered to the secretary of state for filing, a fee, tax, interest or penalty required to be paid under the Revised Uniform Limited Liability Company Act or other law shall be paid in a manner permitted by the secretary of state or required by that law.

D. A record delivered in written form shall be accompanied by an identical or conformed copy.

E. The secretary of state may provide forms for filings that are required or permitted to be made by the Revised Uniform Limited Liability Company Act. However, except as otherwise provided in Subsection F of this section, the use of such forms is not required.

F. The secretary of state may require that a cover sheet for a filing or a triennial report be on a form prescribed by the secretary of state.

SECTION 207. [NEW MATERIAL] EFFECTIVE DATE AND TIME.-- Except as otherwise provided in Section 208 of the Revised Uniform Limited Liability Company Act, and subject to Subsection D of Section 209 of that act, a record filed under that act is effective:

A. on the date and at the time of its filing by the

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secretary of state, as provided in Subsection B of Section 210 of that act;

B. if later than the time specified in Subsection A of this section, on the date of filing and at the time specified in the record as its effective time;

C. at the specified delayed effective date and time, which shall not be more than ninety days after the date of filing; or

D. if a delayed effective date, but no time, is specified, at 12:01 a.m. on the date specified, which shall not be more than ninety days after the date of filing.

SECTION 208. [NEW MATERIAL] WITHDRAWAL OF FILED RECORD BEFORE EFFECTIVENESS.--

A. Except as otherwise provided in Sections 1010, 1016, 1022 and 1028 of the Revised Uniform Limited Liability Company Act, a record delivered to the secretary of state for filing may be withdrawn before it takes effect by delivering to the secretary of state for filing a statement of withdrawal.

B. A statement of withdrawal shall:

(1) be signed by each person that signed the record being withdrawn, except as otherwise agreed by those persons;

(2) identify the record to be withdrawn; and

(3) if signed by fewer than all the persons that signed the record being withdrawn, state that the record

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is withdrawn in accordance with the agreement of all the persons that signed the record.

C. On filing by the secretary of state of a statement of withdrawal, the action or transaction evidenced by the original record does not take effect.

SECTION 209. [NEW MATERIAL] CORRECTING FILED RECORD.--

A. A person on whose behalf a filed record was delivered to the secretary of state for filing may correct the record if:

(1) the record at the time of filing was inaccurate;

(2) the record was defectively signed; or

(3) the electronic transmission of the record to the secretary of state was defective.

B. To correct a filed record, a person on whose behalf the record was delivered to the secretary of state shall deliver to the secretary of state for filing a statement of correction.

C. A statement of correction shall:

(1) not state a delayed effective date;

(2) be signed by the person correcting the filed record;

(3) identify the filed record to be corrected;

(4) specify the inaccuracy or defect to be corrected; and

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(5) correct the inaccuracy or defect.

D. A statement of correction is effective as of the effective date of the filed record that it corrects except as to persons relying on the uncorrected filed record and adversely affected by the correction. For those purposes and as to those persons, the statement of correction is effective when filed.

SECTION 210. [NEW MATERIAL] DUTY OF SECRETARY OF STATE TO FILE--REVIEW OF REFUSAL TO FILE--DELIVERY OF RECORD BY SECRETARY OF STATE.--

A. The secretary of state shall file a record that complies with the Revised Uniform Limited Liability Company Act and that is delivered to the secretary of state for filing. The duty of the secretary of state stated in this section is ministerial.

B. When the secretary of state files a record, the secretary of state shall record it as filed on the date and at the time of its delivery. After filing a record, the secretary of state shall deliver to the person that submitted the record a copy of the record with an acknowledgment of the date and time of filing and, in the case of a statement of denial, also to the limited liability company to which the statement pertains.

C. If the secretary of state refuses to file a record, the secretary of state shall, within fifteen business

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days after the record is delivered:

(1) return the record or notify the person that submitted the record of the refusal; and

(2) provide a brief explanation in a record of the reason for the refusal.

D. If the secretary of state refuses to file a record, the person that submitted the record may petition the district court to compel the filing of the record. The record and the explanation of the secretary of state of the refusal to file shall be attached to the petition. The court may decide the matter in a summary proceeding.

E. The filing of or refusal to file a record does not:

(1) affect the validity or invalidity of the record in whole or in part; or

(2) create a presumption that the information contained in the record is correct or incorrect.

F. The secretary of state may deliver any record to a person by delivering it:

(1) in person to the person that submitted it;

(2) to the address of the person's registered agent;

(3) to the principal office of the person; or

(4) to another address that the person provides to the secretary of state for delivery.

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SECTION 211. [NEW MATERIAL] CERTIFICATE OF GOOD STANDING OR REGISTRATION.--

A. On request of any person, the secretary of state shall issue a certificate of good standing for a limited liability company or a certificate of registration for a registered foreign limited liability company.

B. A certificate issued under Subsection A of this section shall state:

(1) the limited liability company's name or the registered foreign limited liability company's name used in New Mexico;

(2) in the case of a limited liability company:

(a) that a certificate of organization has been filed and has taken effect;

(b) the date that the certificate became effective;

(c) if the records of the secretary of state reflect that the company's period of duration is less than perpetual, the period of the company's duration; and

(d) that: 1) no statement of dissolution, statement of administrative dissolution or statement of termination has been filed; 2) the records of the secretary of state do not otherwise reflect that the company has been dissolved or terminated; and 3) a proceeding is not

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pending under Section 708 of the Revised Uniform Limited Liability Company Act;

(3) in the case of a registered foreign limited liability company, that it is registered to do business in New Mexico;

(4) that all fees, taxes, interest and penalties owed to New Mexico by the limited liability company or foreign limited liability company and collected through the secretary of state have been paid, if:

(a) payment is reflected in the records of the secretary of state; and

(b) nonpayment affects the good standing or registration of the company or foreign company;

(5) that the most recent triennial report required by Section 212 of the Revised Uniform Limited Liability Company Act has been delivered to the secretary of state for filing; and

(6) other facts reflected in the records of the secretary of state pertaining to the limited liability company or foreign limited liability company that the person requesting the certificate reasonably requests.

C. Subject to any qualification stated in the certificate, a certificate issued by the secretary of state under Subsection A of this section may be relied on as conclusive evidence of the facts stated in the certificate.

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SECTION 212. [NEW MATERIAL] TRIENNIAL REPORT FOR SECRETARY OF STATE.--

A. A limited liability company or registered foreign limited liability company shall deliver to the secretary of state for filing a triennial report that states:

(1) the name of the company or foreign company;

(2) the street and mailing addresses of its principal office and, if different, the street address of its office in this state, if any;

(3) if the company does not have an office in this state, the street address of its registered office in New Mexico and the name of its registered agent at that office;

(4) if the company is member managed, the name of at least one member;

(5) if the company is manager managed, the name of at least one manager; and

(6) in the case of a foreign company, its jurisdiction of formation and any alternate name adopted under Subsection A of Section 906 of the Revised Uniform Limited Liability Company Act.

B. Information in the triennial report shall be current as of the date that the report is signed by the limited liability company or registered foreign limited liability company.

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C. The first triennial report shall be delivered to the secretary of state for filing by the end of the third calendar month that follows the date on which the limited liability company's certificate of organization became effective or the registered foreign limited liability company registered to do business in New Mexico. A subsequent report shall be delivered to the secretary of state for filing every third year thereafter, during the calendar month in which the first report was filed. The secretary of state may provide by rule for the orderly transition over several years of report filing for limited liability companies organized before July 1, 2018 and for registered foreign limited liability companies registered before July 1, 2018.

D. If a triennial report does not contain the information required by this section, the secretary of state shall promptly notify the reporting limited liability company or registered foreign limited liability company of the deficiency in a record and return the report for correction.

E. A supplemental report shall be filed with the secretary of state within thirty days if, after filing a triennial report, there is a change in the information contained in that report.

SECTION 213. [NEW MATERIAL] FAILURE TO FILE REPORTS--PENALTY.--

A. A limited liability company that is required to

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file a triennial report and that fails to submit the report within the time prescribed for a reporting period shall incur a civil penalty of two hundred dollars ($200) in addition to the fee for filing the report. The civil penalty shall be paid upon filing the report. Sixty days after written notice of failure to file a report has been mailed to the limited liability company's mailing address as shown in the last triennial report or supplemental report filed with the secretary of state, the limited liability company shall have its certificate of organization canceled by the secretary of state without further proceedings, unless the report is filed and all fees and penalties are paid within that sixty-day period.

B. A registered foreign limited liability company that is required to file a triennial report and that fails to submit the report within the time prescribed for a reporting period shall incur a civil penalty of two hundred dollars ($200) in addition to the fee for filing the report. The civil penalty shall be paid upon filing the report. Sixty days after written notice of failure to file a report has been mailed to the registered foreign limited liability company's mailing address as shown in the last triennial report or supplemental report filed with the secretary of state, the registered foreign limited liability company shall have its registration to do business in this state canceled by the secretary of state

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without further proceedings, unless the report is filed and all fees and penalties are paid within that sixty-day period. Nothing in this section authorizes a forfeiture of the right or privilege of engaging in interstate commerce.

C. A limited liability company or registered foreign limited liability company that is not exempted from filing a supplemental report and that fails to submit the required report within the time prescribed for a reporting period shall incur a civil penalty of two hundred dollars ($200) in addition to the fee for filing the report. The civil penalty shall be paid upon filing the report.

SECTION 214. [NEW MATERIAL] CANCELED LIMITED LIABILITY COMPANIES STRICKEN FROM SECRETARY OF STATE FILES.--A limited liability company whose certificate of organization has been canceled by the secretary of state under Section 213 of the Revised Uniform Limited Liability Company Act shall be stricken from the files of the secretary of state without further proceedings. A registered foreign limited liability company whose registration to do business in the state has been canceled by the secretary of state under that section shall be stricken from the files of the secretary of state without further proceedings.

SECTION 215. [NEW MATERIAL] ELECTRONIC FILING AND CERTIFICATION OF DOCUMENTS--USE OF ELECTRONIC PAYMENT OF FEES.--

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A. The secretary of state may adopt rules permitting the electronic filing of documents, including original documents, and the certification of electronically filed documents when filing or certification is required or permitted under the Revised Uniform Limited Liability Company Act. The rules shall provide for the appropriate treatment of electronic filings for the purposes of satisfying requirements for original documents or copies and shall provide the requirements for signature with respect to electronic filings. If the secretary of state accepts the filing of a document by electronic transmission, the secretary of state may accept for filing a document containing a copy of a signature, however made. As used in this subsection:

(1) "electronic" means relating to technology having electrical, digital, magnetic, wireless, optical, electromagnetic or similar capabilities; and

(2) "electronic filing" means filing by facsimile, email or other electronic transmission.

B. The secretary of state may accept, in lieu of cash or check, a credit or debit card or other means of payment specified in the secretary of state's rules as payment of a fee, civil penalty or other financial liability required by the Revised Uniform Limited Liability Company Act. The secretary of state shall determine the credit or debit cards or other means of payment that may be accepted for payment.

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ARTICLE 3

RELATIONS OF MEMBERS AND MANAGERS

TO PERSONS DEALING WITH LIMITED LIABILITY COMPANY

SECTION 301. [NEW MATERIAL] NO AGENCY POWER OF MEMBER AS MEMBER.--

A. A member is not an agent of a limited liability company solely by reason of being a member.

B. A person's status as a member does not prevent or restrict a law other than the Revised Uniform Limited Liability Company Act from imposing liability on a limited liability company because of the person's conduct.

SECTION 302. [NEW MATERIAL] STATEMENT OF AUTHORITY.--

A. A limited liability company or a registered foreign limited liability company may deliver to the secretary of state for filing a statement of authority. The statement:

(1) shall include the name of the company, the name and street and mailing addresses of its registered agent in New Mexico and, if the company is a registered foreign limited liability company, the jurisdiction of its formation;

(2) with respect to any position that exists in or with respect to the company, may state the authority, or limitations on the authority, of all persons holding the position to:

(a) sign an instrument transferring real property held in the name of the company; or

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(b) enter into other transactions on behalf of, or otherwise act for or bind, the company; and

(3) may state the authority, or limitations on the authority, of a specific person to:

(a) sign an instrument transferring real property held in the name of the company; or

(b) enter into other transactions on behalf of, or otherwise act for or bind, the company.

B. To amend or cancel a statement of authority filed by the secretary of state, a limited liability company or a registered foreign limited liability company shall deliver to the secretary of state for filing an amendment or cancellation stating:

(1) the name of the company and, if the company is a registered foreign limited liability company, the jurisdiction of its formation;

(2) the name and street and mailing addresses of the company's registered agent in New Mexico;

(3) the date the statement being affected became effective; and

(4) the contents of the amendment or a declaration that the statement is canceled.

C. A statement of authority affects only the power of a person to bind a limited liability company or a registered foreign limited liability company to persons that are not

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members.

D. Subject to Subsection C of this section and Subsection D of Section 103 of the Revised Uniform Limited Liability Company Act, and except as otherwise provided in Subsections F, G and H of this section, a limitation on the authority of a person or a position contained in an effective statement of authority is not by itself evidence of a person's knowledge or notice of the limitation.

E. Subject to Subsection C of this section, a grant of authority not pertaining to transfers of real property and contained in an effective statement of authority is conclusive in favor of a person that gives value in reliance on the grant, except to the extent that when the person gives value:

(1) the person has knowledge to the contrary;

(2) the statement has been canceled or restrictively amended under Subsection B of this section; or

(3) a limitation on the grant is contained in another statement of authority that became effective after the statement containing the grant became effective.

F. Subject to Subsection C of this section, an effective statement of authority that grants authority to transfer real property held in the name of the limited liability company, a certified copy of which statement is recorded in the office for recording transfers of the real property, is conclusive in favor of a person that gives value

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in reliance on the grant without knowledge to the contrary, except to the extent that when the person gives value:

(1) the statement has been canceled or restrictively amended under Subsection B of this section and a certified copy of the cancellation or restrictive amendment has been recorded in the office for recording transfers of the real property; or

(2) a limitation on the grant is contained in another statement of authority that became effective after the statement containing the grant became effective, and a certified copy of the later-effective statement is recorded in the office for recording transfers of the real property.

G. Subject to Subsection C of this section, if a certified copy of an effective statement containing a limitation on the authority to transfer real property held in the name of a limited liability company or a registered foreign limited liability company is recorded in the office for recording transfers of that real property, all persons are deemed to know of the limitation.

H. Subject to Subsection I of this section, an effective statement of withdrawal, a termination of registration or a withdrawal of registration is a cancellation of any filed statement of authority for the purposes of Subsection F of this section and is a limitation on authority for the purposes of Subsection G of this section.

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I. After a statement of dissolution becomes effective or after a termination of registration or a withdrawal of registration, a limited liability company or a registered foreign limited liability company may deliver to the secretary of state for filing and, if appropriate, may record a statement of authority that is designated as a post-dissolution, post-termination or post-withdrawal, as applicable, statement of authority. The statement operates as provided in Subsections F and G of this section.

J. Unless earlier canceled, an effective statement of authority is canceled by operation of law five years after the date on which the statement, or its most recent amendment, becomes effective. This cancellation operates without need for any recording under Subsection F or G of this section.

K. An effective statement of denial operates as a restrictive amendment under this section and may be recorded by certified copy for purposes of Paragraph (1) of Subsection F of this section.

SECTION 303. [NEW MATERIAL] STATEMENT OF DENIAL.--A person named in a filed statement of authority granting that person authority may deliver to the secretary of state for filing a statement of denial that:

A. provides the name of the limited liability company or the registered foreign limited liability company and the caption of the statement of authority to which the

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statement of denial pertains; and

B. denies the grant of authority.

SECTION 304. [NEW MATERIAL] LIABILITY OF MEMBERS AND MANAGERS.--

A. A debt, obligation or other liability of a limited liability company is solely the debt, obligation or other liability of the company. A member or manager is not personally liable, directly or indirectly, by way of contribution or otherwise, for a debt, obligation or other liability of the company solely by reason of being or acting as a member or manager. This subsection applies regardless of the dissolution of the company.

B. The failure of a limited liability company to observe formalities relating to the exercise of its powers or management of its activities and affairs is not a ground for imposing liability on a member or manager for a debt, an obligation or another liability of the company.

ARTICLE 4

RELATIONS OF MEMBERS TO EACH OTHER AND TO LIMITED LIABILITY COMPANY

SECTION 401. [NEW MATERIAL] BECOMING MEMBER.--

A. If a limited liability company is to have only one member upon formation, the person becomes a member as agreed by that person and the organizer of the company. That person and the organizer may, but need not, be different

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persons. If different, the organizer acts on behalf of the initial member.

B. If a limited liability company is to have more than one member upon formation, those persons become members as agreed by the persons before the formation of the company. The organizer acts on behalf of the persons in forming the company and may, but need not, be one of the persons.

C. After formation of a limited liability company, a person becomes a member:

(1) as provided in the operating agreement;

(2) as the result of a transaction effective under Article 10 of the Revised Uniform Limited Liability Company Act;

(3) with the affirmative vote or consent of all of the members; or

(4) as provided in Paragraph (3) of Subsection A of Section 701 of that act.

D. A person may become a member without:

(1) acquiring a transferable interest; or

(2) making or being obligated to make a contribution to the limited liability company.

SECTION 402. [NEW MATERIAL] FORM OF CONTRIBUTION.--A contribution may consist of property transferred to, services performed for or another benefit provided to the limited liability company or an agreement to transfer property to,

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perform services for or provide another benefit to the company.

SECTION 403. [NEW MATERIAL] LIABILITY FOR CONTRIBUTIONS.--

A. A person's obligation to make a contribution to a limited liability company is not excused by the person's death, disability, termination or other inability to perform personally.

B. If a person does not fulfill an obligation to make a contribution other than money, the person is obligated at the option of the limited liability company to contribute money equal to the value of the part of the contribution that has not been made.

C. The obligation of a person to make a contribution may be compromised only by the affirmative vote or consent of all of the members. If a creditor of a limited liability company extends credit or otherwise acts in reliance on an obligation described in Subsection A of this section without knowledge or notice of a compromise under this subsection, the creditor may enforce the obligation.

SECTION 404. [NEW MATERIAL] SHARING OF AND RIGHT TO DISTRIBUTIONS BEFORE DISSOLUTION.--

A. A distribution made by a limited liability company before its dissolution and winding up shall be in equal shares among members and persons dissociated as members, except to the extent necessary to comply with a transfer effective

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under Section 502 of the Revised Uniform Limited Liability Company Act or charging order in effect under Section 503 of that act.

B. A person has a right to a distribution before the dissolution and winding up of a limited liability company only if the company decides to make an interim distribution. A person's dissociation does not entitle the person to a distribution.

C. A person does not have a right to demand or receive a distribution from a limited liability company in a form other than money. Except as otherwise provided in Subsection D of Section 707 of the Revised Uniform Limited Liability Company Act, a company may distribute an asset in kind only if each part of the asset is fungible with each other part and each person receives a percentage of the asset equal in value to the person's share of distributions.

D. If a member or transferee becomes entitled to receive a distribution, the member or transferee has the status of, and is entitled to all remedies available to, a creditor of the limited liability company with respect to the distribution. However, the company's obligation to make a distribution is subject to offset for any amount owed to the company by the member or a person dissociated as a member on whose account the distribution is made.

SECTION 405. [NEW MATERIAL] LIMITATIONS ON

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DISTRIBUTIONS.--

A. A limited liability company shall not make a distribution, including a distribution under Section 707 of the Revised Uniform Limited Liability Company Act, if after the distribution:

(1) the company would not be able to pay its debts as they become due in the ordinary course of the company's activities and affairs; or

(2) the company's total assets would be less than the sum of its total liabilities plus the amount that would be needed, if the company were to be dissolved and wound up at the time of the distribution, to satisfy the preferential rights upon dissolution and winding up of members and transferees whose preferential rights are superior to the rights of persons receiving the distribution.

B. A limited liability company may base a determination that a distribution is not prohibited under Subsection A of this section on:

(1) financial statements prepared on the basis of accounting practices and principles that are reasonable in the circumstances; or

(2) a fair valuation or other method that is reasonable under the circumstances.

C. Except as otherwise provided in Subsection E of this section, the effect of a distribution under Subsection A

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of this section is measured:

(1) in the case of a distribution as defined in Paragraph (2) of Subsection D of Section 102 of the Revised Uniform Limited Liability Company Act, as of the earlier of the date that:

(a) money or other property is transferred or debt is incurred by the limited liability company; or

(b) the person entitled to the distribution ceases to own the interest or right being acquired by the company in return for the distribution;

(2) in the case of any other distribution of indebtedness, as of the date the indebtedness is distributed; and

(3) in all other cases, as of the date the:

(a) distribution is authorized, if the payment occurs within one hundred twenty days after that date; or

(b) payment is made, if the payment occurs more than one hundred twenty days after the distribution is authorized.

D. A limited liability company's indebtedness to a member or transferee incurred by reason of a distribution made in accordance with this section is at parity with the company's indebtedness to its general, unsecured creditors, except to the

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extent that it is subordinated by agreement.

E. A limited liability company's indebtedness, including indebtedness issued as a distribution, is not a liability for purposes of Subsection A of this section if the terms of the indebtedness provide that payment of principal and interest is made only if and to the extent that payment of a distribution could be made under this section. If the indebtedness is issued as a distribution, each payment of principal or interest is treated as a distribution, the effect of which is measured on the date the payment is made.

F. In measuring the effect of a distribution under Section 707 of the Revised Uniform Limited Liability Company Act, the liabilities of a dissolved limited liability company do not include a claim that has been disposed of under Section 704, 705 or 706 of that act.

SECTION 406. [NEW MATERIAL] LIABILITY FOR IMPROPER DISTRIBUTIONS.--

A. Except as otherwise provided in Subsection B of this section, if a member of a member-managed limited liability company or manager of a manager-managed limited liability company consents to a distribution made in violation of Section 405 of the Revised Uniform Limited Liability Company Act and in consenting to the distribution fails to comply with Section 409 of that act, the member or manager is personally liable to the company for the amount of the distribution that exceeds the

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amount that could have been distributed without the violation of Section 405 of that act.

B. To the extent that the operating agreement of a member-managed limited liability company expressly relieves a member of the authority and responsibility to consent to distributions and imposes that authority and responsibility on one or more other members, the liability stated in Subsection A of this section applies to the other members and not the member that the operating agreement relieves of the authority and responsibility.

C. A person that receives a distribution knowing that the distribution violated Section 405 of the Revised Uniform Limited Liability Company Act is personally liable to the limited liability company, but only to the extent that the distribution received by the person exceeded the amount that could have been properly paid under Section 405 of that act.

D. A person against which an action is commenced because the person is liable under Subsection A of this section may:

(1) implead any other person that is liable under that subsection and seek to enforce a right of contribution from the person; and

(2) implead any person that received a distribution in violation of Subsection C of this section and seek to enforce a right of contribution from the person in the

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amount that the person received in violation of that subsection.

E. An action under this section is barred unless it is commenced within two years after the distribution.

SECTION 407. [NEW MATERIAL] MANAGEMENT OF LIMITED LIABILITY COMPANY.--

A. A limited liability company is a member-managed limited liability company unless the operating agreement:

(1) expressly provides that:

(a) the company is or will be "manager-managed";

(b) the company is or will be "managed by managers"; or

(c) management of the company is or will be "vested in managers"; or

(2) includes words of similar import.

B. In a member-managed limited liability company:

(1) except as expressly provided in the Revised Uniform Limited Liability Company Act, the management and conduct of the company are vested in the members;

(2) each member has equal rights in the management and conduct of the company's activities and affairs;

(3) a difference arising among members as to a matter in the ordinary course of the activities and affairs of the company may be decided by a majority of the members; and

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(4) the affirmative vote or consent of all the members is required to:

(a) undertake an act outside the ordinary course of the activities and affairs of the company; or

(b) amend the operating agreement.

C. In a manager-managed limited liability company:

(1) except as expressly provided in the Revised Uniform Limited Liability Company Act, any matter relating to the activities and affairs of the company is decided exclusively by the manager or, if there is more than one manager, by a majority of the managers;

(2) each manager has equal rights in the management and conduct of the company's activities and affairs;

(3) the affirmative vote or consent of all members is required to:

(a) undertake an act outside the ordinary course of the company's activities and affairs; or

(b) amend the operating agreement;

(4) a manager may be chosen at any time by the affirmative vote or consent of a majority of the members and remains a manager until a successor has been chosen, unless the manager at an earlier time resigns, is removed, dies or, in the case of a manager that is not an individual, terminates. A manager may be removed, without notice or cause, at any time by

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the affirmative vote or consent of a majority of the members;

(5) a person need not be a member to be a manager, but the dissociation of a member that is also a manager removes the person as a manager. If a person that is both a manager and a member ceases to be a manager, that cessation does not by itself dissociate the person as a member; and

(6) a person's ceasing to be a manager does not discharge any debt, obligation or other liability to the limited liability company or members that the person incurred while a manager.

D. An action requiring the vote or consent of members under the Revised Uniform Limited Liability Company Act may be taken without a meeting, and a member may appoint a proxy or other agent to vote, consent or otherwise act for the member by signing an appointing record, personally or by the member's agent.

E. The dissolution of a limited liability company does not affect the applicability of this section. However, a person that wrongfully causes dissolution of the company loses the right to participate in management as a member and a manager.

F. A limited liability company shall reimburse a member for an advance to the company beyond the amount of capital that the member agreed to contribute.

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G. A payment or advance made by a member that gives rise to an obligation of the limited liability company under Subsection F of this section or Subsection A of Section 408 of the Revised Uniform Limited Liability Company Act constitutes a loan to the company that accrues interest from the date of the payment or advance.

H. A member is not entitled to remuneration for services performed for a member-managed limited liability company, except for reasonable compensation for services rendered in winding up the activities of the company.

SECTION 408. [NEW MATERIAL] REIMBURSEMENT--INDEMNIFICATION--ADVANCEMENT--INSURANCE.--

A. A limited liability company shall reimburse a member of a member-managed company or the manager of a manager-managed company for any payment made by the member or manager in the course of the member's or manager's activities on behalf of the company if the member or manager complied with Sections 405, 407 and 409 of the Revised Uniform Limited Liability Company Act in making the payment.

B. A limited liability company shall indemnify and hold harmless a person with respect to any claim or demand against the person and any debt, obligation or other liability incurred by the person by reason of the person's former or present capacity as a member or manager, if the claim, demand, debt, obligation or other liability does not arise from the

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person's breach of Section 405, 407 or 409 of the Revised Uniform Limited Liability Company Act.

C. In the ordinary course of its activities and affairs, a limited liability company may advance reasonable expenses, including attorney fees and costs, incurred by a person in connection with a claim or demand against the person by reason of the person's former or present capacity as a member or manager, if the person promises to repay the company if the person ultimately is determined not to be entitled to be indemnified as provided in Subsection B of this section.

D. A limited liability company may purchase and maintain insurance on behalf of a member or manager against liability asserted against or incurred by the member or manager in that capacity or arising from that status even if, under Paragraph (7) of Subsection C of Section 105 of the Revised Uniform Limited Liability Company Act, the operating agreement could not eliminate or limit the person's liability to the company for the conduct giving rise to the liability.

SECTION 409. [NEW MATERIAL] STANDARDS OF CONDUCT FOR MEMBERS AND MANAGERS.--

A. A member of a member-managed limited liability company owes to the company and, subject to Section 801 of the Revised Uniform Limited Liability Company Act, the other members the duties of loyalty and care stated in Subsections B and C of this section.

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B. The fiduciary duty of loyalty of a member in a member-managed limited liability company includes the duties to:

(1) account to the company and hold as trustee for it any property, profit or benefit derived by the member:

(a) in the conduct or winding up of the company's activities and affairs;

(b) from a use by the member of the company's property; or

(c) from the appropriation of a company opportunity;

(2) refrain from dealing with the company in the conduct or winding up of the company's activities and affairs as or on behalf of a person having an interest adverse to the company; and

(3) refrain from competing with the company in the conduct of the company's activities and affairs before the dissolution of the company.

C. The duty of care of a member of a member-managed limited liability company in the conduct or winding up of the company's activities and affairs is to refrain from engaging in:

(1) grossly negligent or reckless conduct;

(2) willful or intentional misconduct; and

(3) knowing violation of law.

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D. A member shall discharge the duties and obligations under the Revised Uniform Limited Liability Company Act or the operating agreement and exercise any rights consistently with the contractual obligation of good faith and fair dealing.

E. A member does not violate a duty or obligation under the Revised Uniform Limited Liability Company Act or the operating agreement solely because the member's conduct furthers the member's own interest.

F. All the members of a member-managed limited liability company or a manager-managed limited liability company may authorize or ratify, after full disclosure of all material facts, a specific act or transaction that otherwise would violate the duty of loyalty.

G. It is a defense to a claim under Paragraph (2) of Subsection B of this section and any comparable claim in equity or at common law that the transaction was fair to the limited liability company.

H. If, as permitted by Subsection F or Paragraph (6) of Subsection I of this section or the operating agreement, a member enters into a transaction with the limited liability company that otherwise would be prohibited by Paragraph (2) of Subsection B of this section, then the member's rights and obligations arising from the transaction are the same as those of a person that is not a member.

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I. In a manager-managed limited liability company:

(1) Subsections A, B, C and G of this section apply to the manager or managers and not the members;

(2) the duty under Paragraph (3) of Subsection B of this section continues until winding up is completed;

(3) Subsection D of this section applies to managers and members;

(4) Subsection E of this section applies only to members;

(5) the power to ratify under Subsection F of this section applies only to the members; and

(6) subject to Subsection D of this section, a member does not have a duty to the company or to any other member solely by reason of being a member.

SECTION 410. [NEW MATERIAL] RIGHTS TO INFORMATION OF MEMBER, MANAGER AND PERSON DISSOCIATED AS MEMBER.--

A. In a member-managed limited liability company:

(1) on reasonable notice, a member may inspect and copy during regular business hours, at a reasonable location specified by the company, any record maintained by the company regarding the company's activities, affairs, financial condition and other circumstances, to the extent that the information is material to the member's rights and duties under the operating agreement or the Revised Uniform Limited Liability Company Act;

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(2) the company shall furnish to each member:

(a) without demand, any information concerning the company's activities, affairs, financial condition and other circumstances that the company knows and is material to the proper exercise of the member's rights and duties under the operating agreement or the Revised Uniform Limited Liability Company Act, except to the extent that the company can establish that it reasonably believes the member already knows the information; and

(b) on demand, any other information concerning the company's activities, affairs, financial condition and other circumstances, except to the extent that the demand for the information demanded is unreasonable or otherwise improper under the circumstances; and

(3) the duty to furnish information under Paragraph (2) of this subsection also applies to each member to the extent that the member knows any of the information described in that paragraph.

B. In a manager-managed limited liability company:

(1) the informational rights stated in Subsection A of this section and the duty stated in Paragraph (3) of Subsection A of this section apply to the managers and not the members;

(2) during regular business hours and at a reasonable location specified by the company, a member may

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inspect and copy information regarding the activities, affairs, financial condition and other circumstances of the company as is just and reasonable if:

(a) the member seeks the information for a purpose reasonably related to the member's interest as a member;

(b) the member makes a demand in a record received by the company, describing with reasonable particularity the information sought and the purpose for seeking the information; and

(c) the information sought is directly connected to the member's purpose;

(3) within ten days after receiving a demand under Subparagraph (b) of Paragraph (2) of this subsection, the company shall in a record inform the member that made the demand of:

(a) what information the company will provide in response to the demand and the place and time that the company will provide the information; and

(b) the company's reasons for declining, if the company declines to provide any demanded information; and

(4) whenever the Revised Uniform Limited Liability Company Act or an operating agreement provides for a member to vote on or give or withhold consent to a matter,

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before the vote is cast or consent is given or withheld, the company shall, without demand, provide the member with all information known to the company and material to the member's decision.

C. Subject to Subsection H of this section, on ten days' demand made in a record received by a limited liability company, a person dissociated as a member may have access to the information to which the person was entitled while a member if:

(1) the information pertains to the period during which the person was a member;

(2) the person seeks the information in good faith; and

(3) the person satisfies the requirements imposed on a member by Paragraph (2) of Subsection B of this section.

D. A limited liability company shall respond to a demand made under Subsection C of this section in the manner provided in Paragraph (3) of Subsection B of this section.

E. A limited liability company may charge a person that makes a demand under this section the reasonable costs of labor and material for copying.

F. A member or person dissociated as a member may exercise the rights under this section through an agent or, in the case of an individual under legal disability, a legal

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representative. A restriction or condition imposed by the operating agreement or under Subsection H of this section applies both to the agent or legal representative and to the member or person dissociated as a member.

G. Subject to Section 504 of the Revised Uniform Limited Liability Company Act, the rights stated in this section do not extend to a person as transferee.

H. In addition to any restriction or condition stated in its operating agreement, a limited liability company, as a matter within the ordinary course of its activities and affairs, may impose reasonable restrictions and conditions on access to and use of information to be furnished under this section, including designating information confidential and imposing nondisclosure and safeguarding obligations on the recipient. In a dispute concerning the reasonableness of a restriction under this subsection, the company has the burden of proving reasonableness.

ARTICLE 5

TRANSFERABLE INTERESTS AND RIGHTS OF TRANSFEREES AND CREDITORS

SECTION 501. [NEW MATERIAL] NATURE OF TRANSFERABLE INTEREST.--A transferable interest is personal property.

SECTION 502. [NEW MATERIAL] TRANSFER OF TRANSFERABLE INTEREST.--

A. Subject to Subsection F of Section 503 of the Revised Uniform Limited Liability Company Act, a transfer, in

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whole or in part, of a transferable interest:

(1) is permissible;

(2) does not by itself cause a member's dissociation or a dissolution and winding up of the limited liability company's activities and affairs; and

(3) subject to Section 504 of that act, does not entitle the transferee to:

(a) participate in the management or conduct of the company's activities and affairs; or

(b) except as otherwise provided in Subsection C of this section, have access to records or other information concerning the company's activities and affairs.

B. A transferee has the right to receive, in accordance with the transfer, distributions to which the transferor would otherwise be entitled.

C. In a dissolution and winding up of a limited liability company, a transferee is entitled to an account of the company's transactions only from the date of dissolution.

D. A transferable interest may be evidenced by a certificate of the interest issued by a limited liability company in a record, and, subject to the provisions of this section, the interest represented by a certificate may be transferred by a transfer of the certificate.

E. A limited liability company need not give effect to a transferee's rights under this section until the company

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knows or has notice of the transfer.

F. A transfer of a transferable interest in violation of a restriction on transfer contained in the operating agreement is ineffective if the intended transferee has knowledge or notice of the restriction at the time of transfer.

G. Except as otherwise provided in Paragraph (2) of Subsection E of Section 602 of the Revised Uniform Limited Liability Company Act, if a member transfers a transferable interest, the transferor retains the rights of a member other than the transferable interest transferred and retains all the duties and obligations of a member.

H. If a member transfers a transferable interest to a person that becomes a member with respect to the transferred interest, the transferee is liable for the member's obligations under Sections 403 and 406 of the Revised Uniform Limited Liability Company Act known to the transferee when the transferee becomes a member.

SECTION 503. [NEW MATERIAL] CHARGING ORDER.--

A. On application by a judgment creditor of a member or transferee, a court may enter a charging order against the transferable interest of the judgment debtor for the unsatisfied amount of the judgment. Except as otherwise provided in Subsection F of this section, a charging order constitutes a lien on a judgment debtor's transferable interest

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and requires the limited liability company to pay over to the person to which the charging order was issued any distribution that otherwise would be paid to the judgment debtor.

B. To the extent necessary to effectuate the collection of distributions under a charging order in effect under Subsection A of this section, the court may:

(1) appoint a receiver of the distributions subject to the charging order, with the power to make all inquiries that the judgment debtor might have made; and

(2) make all other orders necessary to give effect to the charging order.

C. Upon a showing that distributions under a charging order will not pay the judgment debt within a reasonable time, the court may foreclose the lien and order the sale of the transferable interest. Except as otherwise provided in Subsection F of this section, the purchaser at the foreclosure sale obtains only the transferable interest, does not thereby become a member and is subject to Section 502 of the Revised Uniform Limited Liability Company Act.

D. At any time before foreclosure under Subsection C of this section, the member or transferee whose transferable interest is subject to a charging order issued under Subsection A of this section may extinguish the charging order by satisfying the judgment and filing a certified copy of the satisfaction with the court that issued the charging order.

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E. At any time before foreclosure under Subsection C of this section, a limited liability company or one or more members whose transferable interests are not subject to the charging order may pay to the judgment creditor the full amount due under the judgment and thereby succeed to the rights of the judgment creditor, including the charging order.

F. If a court orders foreclosure of a charging order lien against the sole member of a limited liability company:

(1) the court shall confirm the sale;

(2) the purchaser at the sale obtains the member's entire interest, not only the member's transferable interest;

(3) the purchaser thereby becomes a member; and

(4) the person whose interest was subject to the foreclosed charging order is dissociated as a member.

G. The Revised Uniform Limited Liability Company Act does not deprive a member or transferee of the benefit of any exemption law applicable to the transferable interest of the member or transferee.

H. This section provides the exclusive remedy by which a person seeking in the capacity of judgment creditor to enforce a judgment against a member or transferee may satisfy the judgment from the judgment debtor's transferable interest.

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SECTION 504. [NEW MATERIAL] POWER OF LEGAL REPRESENTATIVE OF DECEASED MEMBER.--If a member dies, the deceased member's legal representative may exercise:

A. the rights of a transferee provided in Subsection C of Section 502 of the Revised Uniform Limited Liability Company Act; and

B. for the purposes of settling the estate, the rights that the deceased member had under Section 410 of that act.

ARTICLE 6

DISSOCIATION

SECTION 601. [NEW MATERIAL] POWER TO DISSOCIATE AS MEMBER--WRONGFUL DISSOCIATION.--

A. A person may dissociate as a member at any time, rightfully or wrongfully, by withdrawing as a member by express will under Subsection A of Section 602 of the Revised Uniform Limited Liability Company Act.

B. A person's dissociation as a member is wrongful only if the dissociation:

(1) is in breach of an express provision of the operating agreement; or

(2) occurs before the completion of the winding up of the limited liability company and:

(a) the person withdraws as a member by express will;

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(b) the person is expelled as a member by judicial order under Subsection F of Section 602 of the Revised Uniform Limited Liability Company Act;

(c) the person is dissociated under Subsection H of Section 602 of that act; or

(d) in the case of a person that is not a trust other than a business trust, an estate or an individual, the person is expelled or otherwise dissociated as a member because it willfully dissolved or terminated.

C. A person that wrongfully dissociates as a member is liable to the limited liability company and, subject to Section 801 of the Revised Uniform Limited Liability Company Act, to the other members for damages caused by the dissociation. The liability is in addition to any debt, obligation or other liability of the member to the company or the other members.

SECTION 602. [NEW MATERIAL] EVENTS CAUSING DISSOCIATION.--A person is dissociated as a member when:

A. the limited liability company knows or has notice of the person's express will to withdraw as a member, but if the person has specified a withdrawal date later than the date the company knew or had notice, on that later date;

B. an event stated in the operating agreement as causing the person's dissociation occurs;

C. the person's entire interest is transferred in a

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foreclosure sale under Subsection F of Section 503 of the Revised Uniform Limited Liability Company Act;

D. the person is expelled as a member under the operating agreement;

E. the person is expelled as a member by the affirmative vote or consent of all the other members if:

(1) it is unlawful to carry on the limited liability company's activities and affairs with the person as a member;

(2) there has been a transfer of all the person's transferable interest in the company other than a:

(a) transfer for security purposes; or

(b) charging order in effect under Section 503 of the Revised Uniform Limited Liability Company Act that has not been foreclosed;

(3) the person is an entity and:

(a) the company notifies the person that the person will be expelled as a member because the person has filed a statement of dissolution or the equivalent, the person has been administratively dissolved, the person's charter or the equivalent has been revoked or the person's right to conduct business has been suspended by the person's jurisdiction of formation; and

(b) within ninety days after the notification: 1) the statement of dissolution or the

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equivalent has not been withdrawn, rescinded or revoked; 2) the person has not been reinstated; or 3) the person's charter or the equivalent or right to conduct business has not been reinstated; or

(4) the person is an unincorporated entity that has been dissolved and whose activities and affairs are being wound up;

F. on application by the limited liability company or a member in a direct action taken under Section 801 of the Revised Uniform Limited Liability Company Act, the person is expelled as a member by judicial order because the person:

(1) has engaged or is engaging in wrongful conduct that has affected adversely and materially, or will affect adversely and materially, the company's activities and affairs;

(2) has committed willfully or persistently, or is committing willfully and persistently, a material breach of the operating agreement or a duty or obligation under Section 409 of the Revised Uniform Limited Liability Company Act; or

(3) has engaged in or is engaging in conduct relating to the company's activities and affairs that makes it not reasonably practicable to carry on the activities and affairs with the person as a member;

G. in the case of an individual:

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(1) the individual dies; or

(2) in a member-managed limited liability company:

(a) a guardian or general conservator for the individual is appointed; or

(b) a court orders that the individual has otherwise become incapable of performing the individual's duties as a member under the Revised Uniform Limited Liability Company Act or the operating agreement;

H. in a member-managed limited liability company, the person:

(1) becomes a debtor in bankruptcy;

(2) signs an assignment for the benefit of creditors; or

(3) seeks, consents to or acquiesces in the appointment of a trustee, receiver or liquidator of the person or of all or substantially all the person's property;

I. in the case of a person that is a testamentary or inter vivos trust or is acting as a member by virtue of being a trustee of such a trust, the trust's entire transferable interest in the limited liability company is distributed;

J. in the case of a person that is an estate or is acting as a member by virtue of being a personal representative of an estate, the estate's entire transferable interest in the

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limited liability company is distributed;

K. in the case of a person that is not an individual, the existence of the person terminates;

L. the limited liability company participates in a merger under Article 10 of the Revised Uniform Limited Liability Company Act and:

(1) the company is not the surviving entity; or

(2) otherwise as a result of the merger, the person ceases to be a member;

M. the limited liability company participates in an interest exchange under Article 10 of the Revised Uniform Limited Liability Company Act and, as a result of the interest exchange, the person ceases to be a member;

N. the limited liability company participates in a conversion under Article 10 of the Revised Uniform Limited Liability Company Act;

O. the limited liability company participates in a domestication under Article 10 of the Revised Uniform Limited Liability Company Act and, as a result of the domestication, the person ceases to be a member; or

P. the limited liability company dissolves and completes winding up.

SECTION 603. [NEW MATERIAL] EFFECT OF DISSOCIATION.--

A. If a person is dissociated as a member:

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(1) the person's right to participate as a member in the management and conduct of the limited liability company's activities and affairs terminates;

(2) the person's duties and obligations as a member under Section 409 of the Revised Uniform Limited Liability Company Act end with regard to matters arising and events occurring after the person's dissociation; and

(3) subject to Section 504 and Article 10 of that act, a transferable interest owned by the person in the person's capacity as a member immediately before dissociation is owned by the person solely as a transferee.

B. A person's dissociation as a member does not of itself discharge the person from debt, an obligation or another liability to the limited liability company or the other members that the person incurred while a member.

ARTICLE 7

DISSOLUTION AND WINDING UP

SECTION 701. [NEW MATERIAL] EVENTS CAUSING DISSOLUTION.--

A. A limited liability company is dissolved and its activities and affairs shall be wound up upon the occurrence of:

(1) an event or circumstance that the operating agreement states causes dissolution;

(2) the affirmative vote or consent of all the members;

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(3) the passage of ninety consecutive days during which the company has no members, unless before the end of the period:

(a) consent to admit at least one specified person as a member is given by transferees owning the rights to receive a majority of distributions as transferees at the time the consent is to be effective; and

(b) at least one person becomes a member in accordance with the consent;

(4) on application by a member, the entry by the district court of an order dissolving the company on the grounds that:

(a) the conduct of all or substantially all the company's activities and affairs is unlawful;

(b) it is not reasonably practicable to carry on the company's activities and affairs in conformity with the certificate of organization and the operating agreement; or

(c) the managers or those members in control of the company: 1) have acted, are acting or will act in a manner that is illegal or fraudulent; or 2) have acted or are acting in a manner that is oppressive and was, is or will be directly harmful to the applicant; or

(5) the signing and filing of a statement of administrative dissolution by the secretary of state under

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Section 708 of the Revised Uniform Limited Liability Company Act.

B. In a proceeding brought under Subparagraph (c) of Paragraph (4) of Subsection A of this section, the court may order a remedy other than dissolution.

SECTION 702. [NEW MATERIAL] WINDING UP.--

A. A dissolved limited liability company shall wind up its activities and affairs and, except as otherwise provided in Section 703 of the Revised Uniform Limited Liability Company Act, the company continues after dissolution only for the purpose of winding up.

B. In winding up its activities, a limited liability company:

(1) shall discharge the company's debts, obligations and other liabilities, settle and close the company's activities and affairs and marshal and distribute the assets of the company; and

(2) may:

(a) deliver to the secretary of state for filing a statement of dissolution stating the name of the company and that the company is dissolved;

(b) preserve the company activities, affairs and property as a going concern for a reasonable time;

(c) prosecute and defend actions and proceedings, whether civil, criminal or administrative;

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(d) transfer the company's property;

(e) settle disputes by mediation or arbitration;

(f) deliver to the secretary of state for filing a statement of termination stating the name of the company and that the company is terminated; and

(g) perform other acts necessary or appropriate to the winding up.

C. If a dissolved limited liability company has no members, the legal representative of the last person to have been a member may wind up the activities and affairs of the company. If the person does so, the person has the powers of a sole manager under Subsection C of Section 407 of the Revised Uniform Limited Liability Company Act and is deemed to be a manager under Subsection A of Section 304 of that act.

D. If the legal representative under Subsection C of this section declines or fails to wind up the limited liability company's activities and affairs, a person may be appointed to do so by the consent of transferees owning a majority of the rights to receive distributions as transferees at the time the consent is to be effective. A person appointed under this subsection:

(1) has the powers of a sole manager under Subsection C of Section 407 of the Revised Uniform Limited Liability Company Act and is deemed to be a manager for the

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purposes of Subsection A of Section 304 of that act; and

(2) shall deliver promptly to the secretary of state for filing an amendment to the company's certificate of organization stating:

(a) that the company has no members;

(b) the name and street and mailing addresses of the person; and

(c) that the person has been appointed under this subsection to wind up the company.

E. The district court may order judicial supervision of the winding up of a dissolved limited liability company, including the appointment of a person to wind up the company's activities and affairs:

(1) on the application of a member, if the applicant establishes good cause;

(2) on the application of a transferee, if:

(a) the company does not have any members;

(b) the legal representative of the last person to have been a member declines or fails to wind up the company's activities; and

(c) within a reasonable time following the dissolution, a person has not been appointed under Subsection C of this section; or

(3) in connection with a proceeding under

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Paragraph (4) of Subsection A of Section 701 of the Revised Uniform Limited Liability Company Act.

SECTION 703. [NEW MATERIAL] RESCINDING DISSOLUTION.--

A. Unless a statement of termination applicable to the limited liability company is effective, the district court has entered an order dissolving the company under Paragraph (4) of Subsection A of Section 701 of the Revised Uniform Limited Liability Company Act or the secretary of state has dissolved the company under Section 708 of that act, a limited liability company may rescind its dissolution.

B. Rescinding dissolution under this section requires:

(1) the affirmative vote or consent of each member; and

(2) if the limited liability company has delivered to the secretary of state for filing a statement of dissolution and:

(a) the statement has not become effective, delivery to the secretary of state for filing of a statement of withdrawal under Section 208 of the Revised Uniform Limited Liability Company Act applicable to the statement of dissolution; or

(b) if the statement of dissolution has become effective, delivery to the secretary of state for filing a statement of rescission stating the name of the company and

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that dissolution has been rescinded under this section.

C. If a limited liability company rescinds its dissolution:

(1) the company resumes carrying on its activities and affairs as if dissolution had never occurred;

(2) subject to Paragraph (3) of this subsection, any liability incurred by the company after the dissolution and before the rescission is effective is determined as if dissolution had never occurred; and

(3) the rights of a third party arising out of conduct in reliance on the dissolution before the third party knew or had notice of the rescission shall not be adversely affected.

SECTION 704. [NEW MATERIAL] KNOWN CLAIMS AGAINST DISSOLVED LIMITED LIABILITY COMPANY.--

A. Except as otherwise provided in Subsection D of this section, a dissolved limited liability company may give notice of a known claim under Subsection B of this section, which has the effect provided in Subsection C of this section.

B. A dissolved limited liability company may in a record notify its known claimants of the dissolution. The notice shall:

(1) specify the information required to be included in a claim;

(2) state that a claim shall be in writing and

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provide a mailing address to which the claim is to be sent;

(3) state the deadline for receipt of a claim, which shall not be less than one hundred twenty days after the date the notice is received by the claimant; and

(4) state that the claim will be barred if not received by the deadline.

C. A claim against a dissolved limited liability company is barred if the requirements of Subsection B of this section are met and:

(1) the claim is not received by the specified deadline; or

(2) if the claim is timely received but rejected by the company:

(a) the company causes the claimant to receive a notice in a record stating that the claim is rejected and will be barred unless the claimant commences an action against the company to enforce the claim within ninety days after the claimant receives the notice; and

(b) the claimant does not commence the required action within the ninety days after the claimant receives the notice.

D. This section does not apply to a claim based on an event occurring after the date of dissolution or a liability that on that date is contingent.

SECTION 705. [NEW MATERIAL] OTHER CLAIMS AGAINST

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DISSOLVED LIMITED LIABILITY COMPANY.--

A. A dissolved limited liability company may publish notice of its dissolution and request persons having claims against the company to present them in accordance with the notice.

B. A notice under Subsection A of this section shall:

(1) be published at least once in a newspaper of general circulation in the county in New Mexico in which the dissolved limited liability company's principal office is located or, if the principal office is not located in New Mexico, in the county in which the office of the company's registered agent is or was last located;

(2) describe the information required to be contained in a claim, state that the claim must be in writing and provide a mailing address to which the claim is to be sent; and

(3) state that a claim against the company is barred unless an action to enforce the claim is commenced within three years after publication of the notice.

C. If a dissolved limited liability company publishes a notice in accordance with Subsection B of this section, unless the claimant commences an action to enforce the claim against the company within three years after the publication date of the notice, the claim of each of the

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following claimants is barred:

(1) a claimant that did not receive notice in a record under Section 704 of the Revised Uniform Limited Liability Company Act;

(2) a claimant whose claim was timely sent to the company but not acted on; and

(3) a claimant whose claim is contingent at, or based on an event occurring after, the date of dissolution.

D. A claim not barred under this section or Section 704 of the Revised Uniform Limited Liability Company Act may be enforced:

(1) against a dissolved limited liability company, to the extent of its undistributed assets; and

(2) except as otherwise provided in Section 706 of that act, if assets of the company have been distributed after dissolution, against a member or transferee to the extent of that person's proportionate share of the claim or of the company's assets distributed to the member or transferee after dissolution, whichever is less. However, a person's total liability for all claims under this paragraph shall not exceed the total amount of assets distributed to the person after dissolution.

SECTION 706. [NEW MATERIAL] COURT PROCEEDINGS.--

A. A dissolved limited liability company that has published a notice under Section 705 of the Revised Uniform

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Limited Liability Company Act may file an application with the district court in the county in New Mexico where the company's principal office is located or, if the principal office is not located in New Mexico, where the office of its registered agent is or was last located, for a determination of the amount and form of security to be provided for payment of claims that are reasonably expected to arise after the date of dissolution based on facts known to the company and:

(1) at the time of application:

(a) are contingent; or

(b) have not been made known to the company; or

(2) are based on an event occurring after the date of dissolution.

B. Security is not required for any claim that is or is reasonably anticipated to be barred under Section 705 of the Revised Uniform Limited Liability Company Act.

C. Within ten days after the filing of an application under Subsection A of this section, the dissolved limited liability company shall give notice of the proceeding to each claimant holding a contingent claim known to the company.

D. In a proceeding under this section, the court may appoint a guardian ad litem to represent all claimants whose identities are unknown. The reasonable fees and expenses

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of the guardian, including all reasonable expert witness fees, shall be paid by the dissolved limited liability company.

E. A dissolved limited liability company that provides security in the amount and form ordered by the court under Subsection A of this section satisfies the company's obligations with respect to claims that are contingent, have not been made known to the company or are based on an event occurring after the date of dissolution, and such claims shall not be enforced against a member or transferee on account of assets received in liquidation.

SECTION 707. [NEW MATERIAL] DISPOSITION OF ASSETS IN WINDING UP.--

A. In winding up its activities and affairs, a limited liability company shall apply its assets to discharge its obligations to creditors, including members that are creditors.

B. After a limited liability company complies with Subsection A of this section, any surplus shall be distributed in the following order, subject to any charging order in effect under Section 503 of the Revised Uniform Limited Liability Company Act:

(1) to each person owning a transferable interest that reflects contributions made and not previously returned, an amount equal to the value of the unreturned contributions; and

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(2) among persons owning transferable interests, in proportion to their respective rights to share in distributions immediately before the dissolution of the company.

C. If a limited liability company does not have sufficient surplus to comply with Paragraph (1) of Subsection B of this section, any surplus shall be distributed among the owners of transferable interests in proportion to the value of the respective unreturned contributions.

D. All distributions made under Subsections B and C of this section shall be paid in money.

SECTION 708. [NEW MATERIAL] ADMINISTRATIVE DISSOLUTION.--

A. The secretary of state may commence a proceeding under Subsection B of this section to dissolve a limited liability company administratively if the company does not:

(1) pay, within six months after it is due, a fee, tax or penalty required to be paid to the secretary of state;

(2) deliver, within six months after it is due, its triennial report to the secretary of state; or

(3) have a registered agent in New Mexico for thirty consecutive days.

B. If the secretary of state determines that one or more grounds exist for administratively dissolving a limited liability company, the secretary of state shall serve the

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company with notice in a record of the secretary of state's determination.

C. If, within sixty days after service of the notice under Subsection B of this section, a limited liability company does not cure or demonstrate to the satisfaction of the secretary of state the nonexistence of each ground determined by the secretary of state, the secretary of state shall administratively dissolve the company by signing a statement of administrative dissolution that recites the grounds for dissolution and the effective date of dissolution. The secretary of state shall file the statement and serve a copy on the company in accordance with Section 210 of the Revised Uniform Limited Liability Company Act.

D. A limited liability company that is administratively dissolved continues in existence as an entity but shall not carry on any activities except as necessary to wind up its activities and affairs and liquidate its assets under Sections 702 and 704 through 707 of the Revised Uniform Limited Liability Company Act or to apply for reinstatement under Section 709 of that act.

E. The administrative dissolution of a limited liability company does not terminate the authority of its registered agent.

SECTION 709. [NEW MATERIAL] REINSTATEMENT.--

A. A limited liability company that is

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administratively dissolved under Section 708 of the Revised Uniform Limited Liability Company Act may apply to the secretary of state for reinstatement within two years after the effective date of dissolution. The application shall state:

(1) the name of the company at the time of its administrative dissolution and, if needed, a different name that satisfies Section 112 of that act;

(2) the address of the principal office of the company and the name and street and mailing addresses of its registered agent;

(3) the effective date of the company's administrative dissolution; and

(4) that the grounds for dissolution did not exist or have been cured.

B. To be reinstated, a limited liability company shall pay all fees, taxes, interest and penalties that were due to the secretary of state at the time of the company's administrative dissolution and all fees, taxes, interest and penalties that would have been due to the secretary of state while the company was administratively dissolved.

C. If the secretary of state determines that an application under Subsection A of this section contains the required information, is satisfied that the information is correct and determines that all payments required to be made to the secretary of state under Subsection B of this section have

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been made, the secretary of state shall:

(1) cancel the statement of administrative dissolution and prepare a statement of reinstatement that states the secretary of state's determination and the effective date of reinstatement; and

(2) file the statement of reinstatement and serve a copy on the limited liability company.

D. When reinstatement under this section is effective:

(1) the reinstatement relates back to and takes effect as of the effective date of the administrative dissolution;

(2) the limited liability company resumes carrying on its activities and affairs as if the administrative dissolution had not occurred; and

(3) the rights of a person arising out of an act or omission in reliance on the dissolution before the person knew or had notice of the reinstatement are not affected.

SECTION 710. [NEW MATERIAL] JUDICIAL REVIEW OF DENIAL OF REINSTATEMENT.--

A. If the secretary of state denies a limited liability company's application for reinstatement following administrative dissolution, the secretary of state shall serve the company with a notice in a record that explains the reasons

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for the denial.

B. A limited liability company may seek judicial review of denial of reinstatement in the district court within thirty days after service of the notice of denial.

ARTICLE 8

ACTIONS BY MEMBERS

SECTION 801. [NEW MATERIAL] DIRECT ACTION BY MEMBER.--

A. Subject to Subsection B of this section, a member may maintain a direct action against another member, a manager or the limited liability company to enforce the member's rights and to protect the member's interests, including rights and interests under the operating agreement or the Revised Uniform Limited Liability Company Act or arising independently of the membership relationship.

B. A member maintaining a direct action under this section shall plead and prove an actual or threatened injury that is not solely the result of an injury suffered or threatened to be suffered by the limited liability company.

SECTION 802. [NEW MATERIAL] DERIVATIVE ACTION.--A member may maintain a derivative action to enforce a right of a limited liability company if:

A. the member first makes a demand on the other members in a member-managed limited liability company, or the managers of a manager-managed limited liability company, requesting that they cause the company to bring an action to

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enforce the right, and the managers or other members do not bring the action within a reasonable time; or

B. a demand made under Subsection A of this section would be futile.

SECTION 803. [NEW MATERIAL] PROPER PLAINTIFF.--A derivative action to enforce a right of a limited liability company may be maintained only by a person that is a member at the time the action is commenced and:

A. was a member when the conduct giving rise to the action occurred; or

B. whose status as a member devolved on the person by operation of law or under the operating agreement from a person that was a member at the time of the conduct.

SECTION 804. [NEW MATERIAL] PLEADING.--In a derivative action, the complaint shall state with particularity:

A. the date and content of the plaintiff's demand and the response to the demand by the other members or managers; or

B. why the demand should be excused as futile.

SECTION 805. [NEW MATERIAL] SPECIAL LITIGATION COMMITTEE.--

A. If a limited liability company is named as or made a party in a derivative proceeding, the company may appoint a special litigation committee to investigate the claims asserted in the proceeding and determine whether

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pursuing the action is in the best interests of the company. If the company appoints a special litigation committee, on motion by the committee made in the name of the company, except for good cause shown, the court shall stay discovery for the time reasonably necessary to permit the committee to make its investigation. This subsection does not prevent a court from:

(1) enforcing a person's right to information under Section 410 of the Revised Uniform Limited Liability Company Act; or

(2) granting extraordinary relief in the form of a temporary restraining order or preliminary injunction.

B. A special litigation committee shall be composed of one or more disinterested and independent individuals, who may be members.

C. A special litigation committee may be appointed:

(1) in a member-managed limited liability company:

(a) by the affirmative vote or consent of a majority of the members not named as parties in the proceeding; or

(b) if all members are named as parties in the proceeding, by a majority of the members named as defendants; or

(2) in a manager-managed limited liability company:

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(a) by a majority of the managers not named as parties in the proceeding; or

(b) if all managers are named as parties in the proceeding, by a majority of the managers named as defendants.

D. After appropriate investigation, a special litigation committee may determine that it is in the best interests of the limited liability company that the proceeding:

(1) continue under the control of the plaintiff;

(2) continue under the control of the committee;

(3) be settled on terms approved by the committee; or

(4) be dismissed.

E. After making a determination under Subsection D of this section, a special litigation committee shall file with the court a statement of its determination and its report supporting its determination and shall serve each party with a copy of the determination and report. The court shall determine whether the members of the committee were disinterested and independent and whether the committee conducted its investigation and made its recommendation in good faith, independently and with reasonable care, with the committee having the burden of proof. If the court finds that

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the members of the committee were disinterested and independent and that the committee acted in good faith, independently and with reasonable care, the court shall enforce the determination of the committee. Otherwise, the court shall dissolve the stay of discovery entered under Subsection A of this section and allow the action to continue under the control of the plaintiff.

SECTION 806. [NEW MATERIAL] PROCEEDS AND EXPENSES.--

A. Except as otherwise provided in Subsection B of this section:

(1) any proceeds or other benefits of a derivative action, whether by judgment, compromise or settlement, belong to the limited liability company and not to the plaintiff; and

(2) if the plaintiff receives any proceeds, the plaintiff shall remit them immediately to the company.

B. If a derivative action is successful in whole or in part, the court may award the plaintiff reasonable expenses, including reasonable attorney fees and costs, from the recovery of the limited liability company.

C. A derivative action on behalf of a limited liability company shall not be voluntarily dismissed or settled without the court's approval.

ARTICLE 9

FOREIGN LIMITED LIABILITY COMPANIES

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SECTION 901. [NEW MATERIAL] GOVERNING LAW.--

A. The law of the jurisdiction of formation of a foreign limited liability company governs:

(1) the internal affairs of the company;

(2) the liability of a member as member and a manager as manager for a debt, obligation or other liability of the company; and

(3) the liability of a series of the company.

B. A foreign limited liability company is not precluded from registering to do business in New Mexico because of any difference between the law of its jurisdiction of formation and the law of New Mexico.

C. Registration of a foreign limited liability company to do business in New Mexico does not authorize the foreign company to engage in any activities and affairs or exercise any power that a limited liability company may not engage in or exercise in New Mexico.

SECTION 902. [NEW MATERIAL] REGISTRATION TO DO BUSINESS IN NEW MEXICO.--

A. A foreign limited liability company shall not do business in New Mexico until it registers with the secretary of state under Article 9 of the Revised Uniform Limited Liability Company Act.

B. A foreign limited liability company doing business in New Mexico may not maintain an action or proceeding

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in New Mexico unless it is registered to do business in New Mexico.

C. The failure of a foreign limited liability company to register to do business in New Mexico does not impair the validity of a contract or act of the company or preclude it from defending an action or proceeding in New Mexico.

D. A limitation on the liability of a member or manager of a foreign limited liability company is not waived solely because the company does business in New Mexico without registering to do business in New Mexico.

E. Subsections A and B of Section 901 of the Revised Uniform Limited Liability Company Act apply even if a foreign limited liability company fails to register under Article 9 of that act.

SECTION 903. [NEW MATERIAL] FOREIGN REGISTRATION STATEMENT.--To register to do business in New Mexico, a foreign limited liability company shall deliver a foreign registration statement to the secretary of state for filing. The statement shall state:

A. the name of the company and, if the name does not comply with Section 112 of the Revised Uniform Limited Liability Company Act, an alternate name adopted under Subsection A of Section 906 of that act;

B. that the company is a foreign limited liability

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company;

C. the company's jurisdiction of formation;

D. the street and mailing addresses of the company's principal office and, if the law of the company's jurisdiction of formation requires the company to maintain an office in that jurisdiction, the street and mailing addresses of the required office;

E. the name and address of a registered agent for service of process, which agent meets the requirements of Section 115 of the Revised Uniform Limited Liability Company Act, whose original, signed statement, together with a copy, which may be a photocopy of the original after it was signed or a photocopy that is conformed to the original, to the effect that such person accepts designation as the registered agent of the foreign limited liability company, shall be submitted with the application; and

F. that the secretary of state is appointed the agent of the foreign limited liability company for service of process if no agent has been appointed upon resignation of an already appointed registered agent or, if appointed, the agent's authority has been revoked or the agent cannot be found or served in the exercise of reasonable diligence.

SECTION 904. [NEW MATERIAL] AMENDMENT OF FOREIGN REGISTRATION STATEMENT.--A registered foreign limited liability company shall deliver to the secretary of state for filing an

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amendment to its foreign registration statement if there is a change in:

A. the name of the company;

B. the company's jurisdiction of formation;

C. an address required by Subsection D of Section 903 of the Revised Uniform Limited Liability Company Act; or

D. the name and street and mailing addresses of the company's registered agent in New Mexico.

SECTION 905. [NEW MATERIAL] ACTIVITIES NOT CONSTITUTING DOING BUSINESS.--

A. Activities of a foreign limited liability company that do not constitute doing business in New Mexico under Article 9 of the Revised Uniform Limited Liability Company Act include:

(1) maintaining, defending, mediating, arbitrating or settling an action or proceeding;

(2) carrying on an activity concerning the company's internal affairs, including holding meetings of its members or managers;

(3) maintaining accounts in financial institutions;

(4) maintaining offices or agencies for the transfer, exchange and registration of securities of the company or maintaining trustees or depositories with respect to those securities;

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(5) selling through independent contractors;

(6) soliciting or obtaining orders, whether by mail or through employees or agents or otherwise, if the orders require acceptance outside New Mexico before they become contracts;

(7) creating as borrower or lender or acquiring indebtedness or mortgages or other security interests in real or personal property;

(8) securing or collecting debts or enforcing mortgages or security interests in property securing the debts and holding, protecting or maintaining property;

(9) conducting an isolated transaction that is not in the course of similar transactions;

(10) owning, without more, property;

(11) investing in or acquiring, in transactions outside New Mexico, royalties and other nonoperating mineral interests; executing division orders, contracts of sale and other instruments incidental to the ownership of such nonoperating mineral interests; and, in general, owning, without more, real or personal property;

(12) conducting an isolated transaction that is completed within thirty days and that is not one in the course of repeated transactions of a like nature; and

(13) transacting business in interstate commerce.

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B. A person does not do business in New Mexico solely by being a member or manager of a foreign limited liability company that does business in New Mexico.

C. This section does not apply in determining the contacts or activities that may subject a foreign limited liability company to service of process, taxation or regulation under the law of New Mexico other than those in the Revised Uniform Limited Liability Company Act.

SECTION 906. [NEW MATERIAL] NONCOMPLYING NAME OF FOREIGN LIMITED LIABILITY COMPANY.--

A. A foreign limited liability company whose name does not comply with Section 112 of the Revised Uniform Limited Liability Company Act shall not register to do business in New Mexico until it adopts, for the purpose of doing business in New Mexico, an alternate name that complies with that section. After registering to do business in New Mexico with an alternate name, a company shall do business in New Mexico under:

(1) the alternate name; or

(2) the company's name, with the addition of its jurisdiction of formation.

B. If a registered foreign limited liability company changes its name to one that does not comply with Section 112 of the Revised Uniform Limited Liability Company Act, it may not do business in New Mexico until it complies

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with Subsection A of this section by amending its registration to adopt an alternate name that complies with Section 112 of that act.

SECTION 907. [NEW MATERIAL] WITHDRAWAL DEEMED ON CONVERSION TO DOMESTIC FILING ENTITY OR DOMESTIC LIMITED LIABILITY PARTNERSHIP.--A registered foreign limited liability company that converts to a domestic limited liability partnership or to a domestic entity whose formation requires delivery of a record to the secretary of state for filing is deemed to have withdrawn its registration on the effective date of the conversion.

SECTION 908. [NEW MATERIAL] WITHDRAWAL ON DISSOLUTION OR CONVERSION TO NONFILING ENTITY OTHER THAN LIMITED LIABILITY PARTNERSHIP.--

A. A registered foreign limited liability company that has dissolved and completed winding up or has converted to a domestic or foreign entity whose formation does not require the public filing of a record, other than a limited liability partnership, shall deliver a statement of withdrawal to the secretary of state for filing. The statement shall state, in the case of a company that has:

(1) completed winding up:

(a) its name and jurisdiction of formation; and

(b) that the company surrenders its

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registration to do business in New Mexico; and

(2) converted:

(a) the name of the converting company and its jurisdiction of formation;

(b) the type of entity to which the company has converted and its jurisdiction of formation;

(c) that the converted entity surrenders the converting company's registration to do business in New Mexico and revokes the authority of the converting company's registered agent to act as registered agent in New Mexico on behalf of the company or the converted entity; and

(d) a mailing address to which service of process may be made under Subsection B of this section.

B. After a withdrawal under this section is effective, service of process in an action or proceeding based on a cause of action arising during the time that the foreign limited liability company was registered to do business in New Mexico may be made under Section 116 of the Revised Uniform Limited Liability Company Act.

SECTION 909. [NEW MATERIAL] TRANSFER OF REGISTRATION.--

A. When a registered foreign limited liability company has merged into a foreign entity that is not registered to do business in New Mexico or has converted to a foreign entity required to register with the secretary of state to do business in New Mexico, the foreign entity shall deliver to the

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secretary of state for filing an application for transfer of registration. The application shall state:

(1) the name of the registered foreign limited liability company before the merger or conversion;

(2) that, before the merger or conversion, the registration pertained to a foreign limited liability company;

(3) the name of the applicant foreign entity into which the foreign limited liability company has merged or to which it has been converted and, if the name does not comply with Section 112 of the Revised Uniform Limited Liability Company Act, an alternate name adopted under Subsection A of Section 906 of that act;

(4) the type of entity of the applicant foreign entity and its jurisdiction of formation;

(5) the street and mailing addresses of the principal office of the applicant foreign entity and, if the law of the entity's jurisdiction of formation requires the entity to maintain an office in that jurisdiction, the street and mailing addresses of that office; and

(6) the name and street and mailing addresses of the applicant foreign entity's registered agent in New Mexico.

B. When an application for transfer of registration takes effect, the registration of the foreign limited liability company to do business in New Mexico is transferred without

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interruption to the foreign entity into which the company has merged or to which it has been converted.

SECTION 910. [NEW MATERIAL] TERMINATION OF REGISTRATION.--

A. The secretary of state may terminate the registration of a registered foreign limited liability company in the manner provided in Subsections B and C of this section if the company does not:

(1) pay, within sixty days after the due date, any fee, tax, interest or penalty required to be paid to the secretary of state under the Revised Uniform Limited Liability Company Act or a law other than one in that act;

(2) deliver to the secretary of state for filing, within sixty days after the due date, a triennial report required by Section 212 of that act;

(3) have a registered agent as required by Section 115 of that act; or

(4) deliver to the secretary of state for filing a statement of a change under Section 115 of that act within thirty days after a change has occurred in the name or address of the registered agent.

B. The secretary of state may terminate the registration of a registered foreign limited liability company by:

(1) filing a notice of termination or noting

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the termination in the records of the secretary of state; and

(2) delivering a copy of the notice or the information in the notation to the company's registered agent or, if the company does not have a registered agent, to the company's principal office.

C. The notice shall state, or the information in the notation shall include:

(1) the effective date of the termination, which shall be at least sixty days after the date that the secretary of state delivers the copy; and

(2) the grounds for termination under Subsection A of this section.

D. The authority of a registered foreign limited liability company to do business in New Mexico ceases on the effective date of the notice of termination or notation under Subsection B of this section, unless before that date the company cures each ground for termination stated in the notice or notation. If the company cures each ground, the secretary of state shall file a record so stating.

SECTION 911. [NEW MATERIAL] WITHDRAWAL OF REGISTRATION OF REGISTERED FOREIGN LIMITED LIABILITY COMPANY.--

A. A registered foreign limited liability company may withdraw its registration by delivering a statement of withdrawal to the secretary of state for filing. The statement of withdrawal must state:

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(1) the name of the company and its jurisdiction of formation;

(2) that the company is not doing business in New Mexico and that it withdraws its registration to do business in New Mexico;

(3) that the company revokes the authority of its registered agent to accept service on its behalf in New Mexico; and

(4) an address to which service of process may be made under Subsection B of this section.

B. After the withdrawal of the registration of a foreign limited liability company, service of process in any action or proceeding based on a cause of action arising during the time that the company was registered to do business in New Mexico may be made under Section 116 of the Revised Uniform Limited Liability Company Act.

SECTION 912. [NEW MATERIAL] ACTION BY ATTORNEY GENERAL.--The attorney general may maintain an action to enjoin a foreign limited liability company from doing business in New Mexico in violation of Article 9 of the Revised Uniform Limited Liability Company Act.

ARTICLE 10

MERGER, INTEREST EXCHANGE, CONVERSION AND DOMESTICATION

SECTION 1001. [NEW MATERIAL] DEFINITIONS.--As used in this article:

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A. "acquired entity" means the entity, all of one or more classes or series of interests of which are acquired in an interest exchange;

B. "acquiring entity" means the entity that acquires all of one or more classes or series of interests of the acquired entity in an interest exchange;

C. "conversion" means a transaction authorized under Sections 1019 through 1024 of the Revised Uniform Limited Liability Company Act;

D. "converted entity" means the converting entity as it continues in existence after a conversion;

E. "converting entity" means the domestic entity that approves a plan of conversion under Section 1021 of the Revised Uniform Limited Liability Company Act or the foreign entity that approves a conversion under the law of its jurisdiction of formation;

F. "distributional interest" means the right under an unincorporated entity's organic law and organic rules to receive distributions from the entity;

G. "domestic", with respect to an entity, means governed as to the entity's internal affairs by the law of New Mexico;

H. "domesticated limited liability company" means the domesticating limited liability company as it continues in existence after a domestication;

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I. "domesticating limited liability company" means the domestic limited liability company that approves a plan of domestication under Section 1027 of the Revised Uniform Limited Liability Company Act or the foreign limited liability company that approves a domestication under the law of its jurisdiction of formation;

J. "domestication" means a transaction authorized by Sections 1025 through 1030 of the Revised Uniform Limited Liability Company Act;

K. "entity":

(1) means:

(a) a business corporation;

(b) a nonprofit corporation;

(c) a general partnership, including a limited liability partnership;

(d) a limited partnership, including a limited liability limited partnership;

(e) a limited liability company;

(f) a general cooperative association;

(g) an unincorporated nonprofit association;

(h) a statutory trust, business trust or common-law business trust; or

(i) another person that has: 1) a legal existence separate from any interest holder of that person; or

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2) the power to acquire an interest in real property in its own name; but

(2) does not include:

(a) an individual;

(b) a trust with a predominantly donative purpose or a charitable trust;

(c) an association or relationship that is not an entity listed in Paragraph (1) of this subsection and is not a partnership under the rules stated in Section 202(c) of the Uniform Partnership Act (1997) (Last Amended 2013), Section 7 of the Uniform Partnership Act (1914) or a similar provision of the law of another jurisdiction;

(d) a decedent's estate; or

(e) a government or a governmental subdivision, agency or instrumentality;

L. "filing entity" means an entity whose formation requires the filing of a public organic record. "Filing entity" does not include a limited liability partnership;

M. "foreign", with respect to an entity, means an entity governed as to its internal affairs by the law of a jurisdiction other than New Mexico;

N. "governance interest" means a right under the organic law or organic rules of an unincorporated entity, other than as a governor, an agent, an assignee or a proxy, to:

(1) receive or demand access to information

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concerning, or the books and records of, the entity;

(2) vote for or consent to the election of the governors of the entity; or

(3) receive notice of or vote on or consent to an issue involving the internal affairs of the entity;

O. "governor" means:

(1) a director of a business corporation;

(2) a director or trustee of a nonprofit corporation;

(3) a general partner of a general partnership;

(4) a general partner of a limited partnership;

(5) a manager of a manager-managed limited liability company;

(6) a member of a member-managed limited liability company;

(7) a director of a general cooperative association;

(8) a manager of an unincorporated nonprofit association;

(9) a trustee of a statutory trust, business trust or common-law business trust; or

(10) another person under whose authority the powers of an entity are exercised and under whose direction the

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activities and affairs of the entity are managed under the organic law and organic rules of the entity;

P. "interest" means a:

(1) share in a business corporation;

(2) membership in a nonprofit corporation;

(3) partnership interest in a general partnership;

(4) partnership interest in a limited partnership;

(5) membership interest in a limited liability company;

(6) share in a general cooperative association;

(7) membership in an unincorporated nonprofit association;

(8) beneficial interest in a statutory trust, business trust or common-law business trust; or

(9) governance interest or distributional interest in another type of unincorporated entity;

Q. "interest exchange" means a transaction authorized by Sections 1013 through 1018 of the Revised Uniform Limited Liability Company Act;

R. "interest holder" means:

(1) a shareholder of a business corporation;

(2) a member of a nonprofit corporation;

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(3) a general partner of a general partnership;

(4) a general partner of a limited partnership;

(5) a limited partner of a limited partnership;

(6) a member of a limited liability company;

(7) a shareholder of a general cooperative association;

(8) a member of an unincorporated nonprofit association;

(9) a beneficiary or beneficial owner of a statutory trust, business trust or common-law business trust; or

(10) any other direct holder of an interest;

S. "interest holder liability" means:

(1) personal liability for a liability of an entity that is imposed on a person:

(a) solely by reason of the status of the person as an interest holder; or

(b) by the organic rules of the entity that make one or more specified interest holders or categories of interest holders liable in their capacity as interest holders for all or specified liabilities of the entity; or

(2) an obligation of an interest holder under

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the organic rules of an entity to contribute to the entity;

T. "merger" means a transaction authorized by Sections 1007 through 1012 of the Revised Uniform Limited Liability Company Act;

U. "merging entity" means an entity that is a party to a merger and exists immediately before the merger becomes effective;

V. "organic law" means the law of an entity's jurisdiction of formation governing the internal affairs of the entity;

W. "organic rules" means the public organic record and private organic rules of an entity;

X. "plan" means a plan of merger, plan of interest exchange, plan of conversion or plan of domestication;

Y. "plan of conversion" means a plan under Section 1020 of the Revised Uniform Limited Liability Company Act;

Z. "plan of domestication" means a plan under Section 1026 of the Revised Uniform Limited Liability Company Act;

AA. "plan of interest exchange" means a plan under Section 1014 of the Revised Uniform Limited Liability Company Act;

BB. "plan of merger" means a plan under Section 1008 of the Revised Uniform Limited Liability Company Act;

CC. "private organic rules" means the rules,

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regardless of whether in a record, that govern the internal affairs of an entity, are binding on all of its interest holders and are not part of its public organic record, if any. "Private organic rules" includes the:

(1) bylaws of a business corporation;

(2) bylaws of a nonprofit corporation;

(3) partnership agreement of a general partnership;

(4) partnership agreement of a limited partnership;

(5) operating agreement of a limited liability company;

(6) bylaws of a general cooperative association;

(7) governing principles of an unincorporated nonprofit association; and

(8) trust instrument of a statutory trust or similar rules of a business trust or common-law business trust;

DD. "protected agreement" means:

(1) a record evidencing indebtedness and any related agreement in effect on July 1, 2018;

(2) an agreement that is binding on an entity on that date;

(3) the organic rules of an entity in effect on that date; or

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(4) an agreement that is binding on any of the governors or interest holders of an entity on that date;

EE. "public organic record" means the record the filing of which by the secretary of state is required to form an entity and any amendment to or restatement of that record. "Public organic record" includes the:

(1) articles of incorporation of a business corporation;

(2) articles of incorporation of a nonprofit corporation;

(3) certificate of limited partnership of a limited partnership;

(4) certificate of organization of a limited liability company;

(5) articles of incorporation of a general cooperative association; and

(6) certificate of trust of a statutory trust or similar record of a business trust;

FF. "registered foreign entity" means a foreign entity that is registered to do business in New Mexico under a record filed by the secretary of state;

GG. "statement of conversion" means a statement under Section 1023 of the Revised Uniform Limited Liability Company Act;

HH. "statement of domestication" means a statement

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under Section 1029 of the Revised Uniform Limited Liability Company Act;

II. "statement of interest exchange" means a statement under Section 1017 of the Revised Uniform Limited Liability Company Act;

JJ. "statement of merger" means a statement under Section 1011 of the Revised Uniform Limited Liability Company Act;

KK. "surviving entity" means the entity that continues in existence after or is created by a merger; and

LL. "type of entity" means a generic form of entity:

(1) recognized at common law; or

(2) formed under an organic law, regardless of whether some entities formed under that organic law are subject to provisions of that law that create different categories of the form of entity.

SECTION 1002. [NEW MATERIAL] RELATIONSHIP OF ARTICLE 10 OF THE REVISED UNIFORM LIMITED LIABILITY COMPANY ACT TO OTHER LAWS.--

A. Article 10 of the Revised Uniform Limited Liability Company Act does not authorize an act prohibited by, and does not affect the application or requirements of, a law other than one in that article.

B. A transaction effected under Article 10 of the

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Revised Uniform Limited Liability Company Act shall not create or impair a right, a duty or an obligation of a person under a statutory law of New Mexico other than one in that article relating to a change in control, takeover, business combination, control-share acquisition or similar transaction involving a domestic merging, acquired, converting or domesticating business corporation unless, if the corporation:

(1) does not survive the transaction, the transaction satisfies any requirements of the law; or

(2) survives the transaction, the approval of the plan is by a vote of the shareholders or directors that would be sufficient to create or impair the right, duty or obligation directly pursuant to the provisions of the law.

SECTION 1003. [NEW MATERIAL] REQUIRED NOTICE OR APPROVAL.--

A. A domestic or foreign entity that is required to give notice to, or obtain the approval of, a governmental agency or officer of New Mexico to be a party to a merger shall give the notice or obtain the approval to be a party to an interest exchange, conversion or domestication.

B. Property held for a charitable purpose under the law of New Mexico by a domestic or foreign entity immediately before a transaction under Article 10 of the Revised Uniform Limited Liability Company Act becomes effective shall not, as a result of the transaction, be diverted from the objects for

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which it was donated, granted, devised or otherwise transferred unless, to the extent required by or under the law of New Mexico concerning cy-pres or other law dealing with non-diversion of charitable assets, the entity obtains an appropriate order of the district court specifying the disposition of the property. The attorney general shall be given notice and an opportunity to be heard.

C. A bequest, devise, gift, grant or promise contained in a will or other instrument of donation, subscription or conveyance that is made to a merging entity that is not the surviving entity and that takes effect or remains payable after the merger inures to the surviving entity.

D. A trust obligation that would govern property if transferred to a non-surviving entity applies to property that is transferred to the surviving entity under this section.

SECTION 1004. [NEW MATERIAL] NONEXCLUSIVITY.--The fact that a transaction effected under this article produces a certain result does not preclude the same result from being accomplished in another manner permitted by a law other than one in this article.

SECTION 1005. [NEW MATERIAL] REFERENCE TO EXTERNAL FACTS.--A plan may refer to facts ascertainable outside the plan if the manner in which the facts will operate upon the plan is specified in the plan. The facts may include the

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occurrence of an event or a determination or action by a person, regardless of whether the event, determination or action is within the control of a party to the transaction.

SECTION 1006. [NEW MATERIAL] APPRAISAL RIGHTS.--An interest holder of a domestic merging, acquired, converting or domesticating limited liability company is entitled to contractual appraisal rights in connection with a transaction under Article 10 of the Revised Uniform Limited Liability Company Act to the extent provided in the operating agreement or the plan.

SECTION 1007. [NEW MATERIAL] MERGER AUTHORIZED.--

A. By complying with Sections 1007 through 1012 of the Revised Uniform Limited Liability Company Act:

(1) one or more domestic limited liability companies may merge with one or more domestic or foreign entities into a domestic or foreign surviving entity; and

(2) two or more foreign entities may merge into a domestic limited liability company.

B. By complying with Sections 1007 through 1012 of the Revised Uniform Limited Liability Company Act applicable to foreign entities, a foreign entity may be a party to a merger under those sections or may be the surviving entity in such a merger if the merger is authorized by the law of the foreign entity's jurisdiction of formation.

SECTION 1008. [NEW MATERIAL] PLAN OF MERGER.--

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A. A domestic limited liability company may become a party to a merger under Sections 1007 through 1012 of the Revised Uniform Limited Liability Company Act by approving a plan of merger. The plan shall be in a record and contain:

(1) as to each merging entity, its name, jurisdiction of formation and type of entity;

(2) if the surviving entity is to be created in the merger, a statement to that effect and the entity's name, jurisdiction of formation and type of entity;

(3) the manner of converting the interests in each party to the merger into interests, securities, obligations, money, other property, rights to acquire interests or securities or any combination of the foregoing;

(4) if the surviving entity exists before the merger, any proposed amendments to its:

(a) public organic record, if any; and

(b) private organic rules that are, or are proposed to be, in a record;

(5) if the surviving entity is to be created in the merger:

(a) its proposed public organic record, if any; and

(b) the full text of its private organic rules that are proposed to be in a record;

(6) the other terms and conditions of the

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merger; and

(7) any other provision required by the law of a merging entity's jurisdiction of formation or the organic rules of a merging entity.

B. In addition to the requirements in Subsection A of this section, a plan of merger may contain any other provision not prohibited by law.

SECTION 1009. [NEW MATERIAL] APPROVAL OF MERGER.--

A. A plan of merger is not effective unless it has been approved:

(1) by a domestic merging limited liability company, by all of the members of the company who are entitled to vote on or consent to any matter; and

(2) in a record, by each member of a domestic merging limited liability company that will have interest holder liability for debts, obligations and other liabilities that arise after the merger becomes effective, unless:

(a) the operating agreement of the company provides in a record for the approval of a merger in which some or all of its members become subject to interest holder liability by the affirmative vote or consent of fewer than all of the members; and

(b) the member consented in a record to or voted for that provision of the operating agreement or became a member after the adoption of that provision.

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B. A merger involving a domestic merging entity that is not a limited liability company is not effective unless the merger is approved by that entity in accordance with its organic law.

C. A merger involving a foreign merging entity is not effective unless the merger is approved by the foreign entity in accordance with the law of the foreign entity's jurisdiction of formation.

SECTION 1010. [NEW MATERIAL] AMENDMENT OR ABANDONMENT OF PLAN OF MERGER.--

A. A plan of merger may be amended only with the consent of each party to the plan, except as otherwise provided in the plan.

B. A domestic merging limited liability company may approve an amendment of a plan of merger:

(1) in the same manner as the plan was approved, if the plan does not provide for the manner in which it may be amended; or

(2) by the company's managers or members in the manner provided in the plan. However, a member that was entitled to vote on or consent to approval of the merger may vote on or consent to any amendment of the plan that will change:

(a) the amount or kind of interests, securities, obligations, money, other property, rights to

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acquire interests or securities or any combination of the foregoing, to be received by the interest holders of any party to the plan;

(b) the public organic record, if any, or private organic rules of the surviving entity that will be in effect immediately after the merger becomes effective, except for changes that do not require approval of the interest holders of the surviving entity under its organic law or organic rules; or

(c) any other term or condition of the plan, if the change would adversely affect the member in any material respect.

C. After a plan of merger has been approved and before a statement of merger becomes effective, the plan may be abandoned as provided in the plan. Unless prohibited by the plan, a domestic merging limited liability company may abandon the plan in the same manner as the plan was approved.

D. If a plan of merger is abandoned after a statement of merger has been delivered to the secretary of state for filing and before the statement becomes effective, a statement of abandonment, signed by a party to the plan, shall be delivered to the secretary of state for filing before the statement of merger becomes effective. The statement of abandonment takes effect on filing, and the merger is abandoned and does not become effective. The statement of abandonment

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shall contain:

(1) the name of each party to the plan of merger;

(2) the date on which the statement of merger was filed by the secretary of state; and

(3) a statement that the merger has been abandoned in accordance with this section.

SECTION 1011. [NEW MATERIAL] STATEMENT OF MERGER--EFFECTIVE DATE OF MERGER.--

A. A statement of merger shall be signed by each merging entity and delivered to the secretary of state for filing.

B. A statement of merger shall contain:

(1) the name, jurisdiction of formation and type of entity of each merging entity that is not the surviving entity;

(2) the name, jurisdiction of formation and type of entity of the surviving entity;

(3) a statement that the merger was approved by each domestic merging entity, if any, in accordance with Sections 1007 through 1012 of the Revised Uniform Limited Liability Company Act and by each foreign merging entity, if any, in accordance with the law of its jurisdiction of formation;

(4) if the surviving entity exists before the

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merger and is a domestic filing entity, any amendment to its public organic record approved as part of the plan of merger;

(5) if the surviving entity is created by the merger and is a domestic filing entity, its public organic record, as an attachment;

(6) if the surviving entity is created by the merger and is a domestic limited liability partnership, its statement of qualification, as an attachment; and

(7) if the surviving entity is a foreign entity that is not a registered foreign entity, a mailing address to which the secretary of state may send any process served on the secretary of state under Subsection E of Section 1012 of the Revised Uniform Limited Liability Company Act.

C. In addition to the requirements of Subsection B of this section, a statement of merger may contain any other provision not prohibited by law.

D. If the surviving entity is a domestic entity, its public organic record, if any, must satisfy the requirements of the law of New Mexico, except that the public organic record does not need to be signed.

E. A plan of merger that is signed by all of the merging entities and that meets all the requirements of Subsection B of this section may be delivered to the secretary of state for filing instead of a statement of merger and on filing has the same effect. If a plan of merger is filed as

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provided in this subsection, references in Article 10 of the Revised Uniform Limited Liability Company Act to a statement of merger refer to the plan of merger filed under this subsection.

F. If the surviving entity is a domestic limited liability company, the merger is effective when the statement of merger is effective. In all other cases, the merger is effective on the later of:

(1) the date and time provided by the organic law of the surviving entity; or

(2) when the statement is effective.

SECTION 1012. [NEW MATERIAL] EFFECT OF MERGER.--

A. When a merger becomes effective:

(1) the surviving entity continues or comes into existence;

(2) each merging entity that is not the surviving entity ceases to exist;

(3) all property of each merging entity vests in the surviving entity without transfer, reversion or impairment;

(4) all debts, obligations and other liabilities of each merging entity are debts, obligations and other liabilities of the surviving entity;

(5) except as otherwise provided by law or the plan of merger, all the rights, privileges, immunities, powers and purposes of each merging entity vest in the surviving

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entity;

(6) if the surviving entity exists before the merger:

(a) all its property continues to be vested in it without transfer, reversion or impairment;

(b) it remains subject to all its debts, obligations and other liabilities; and

(c) all its rights, privileges, immunities, powers and purposes continue to be vested in it;

(7) the name of the surviving entity may be substituted for the name of any merging entity that is a party to any pending action or proceeding;

(8) if the surviving entity exists before the merger, its:

(a) public organic record, if any, is amended to the extent provided in the statement of merger; and

(b) private organic rules that are to be in a record, if any, are amended to the extent provided in the plan of merger;

(9) if the surviving entity is created by the merger, its private organic rules are effective, and if it is a:

(a) filing entity, its public organic record is effective; and

(b) limited liability partnership, its

statement of qualification is effective; and

(10) the interests in each merging entity that are to be converted in the merger are converted, and the interest holders of those interests are entitled only to the rights provided to them under the plan of merger and to any appraisal rights they have under Section 1006 of the Revised Uniform Limited Liability Company Act and the merging entity's organic law.

B. Except as otherwise provided in the organic law or organic rules of a merging entity, the merger does not give rise to any rights that an interest holder, a governor or a third party would have upon a dissolution, liquidation or winding up of the merging entity.

C. When a merger becomes effective, a person that did not have interest holder liability with respect to any of the merging entities and that becomes subject to interest holder liability with respect to a domestic entity as a result of the merger has interest holder liability only to the extent provided by the organic law of that entity and only for those debts, obligations and other liabilities that arise after the merger becomes effective.

D. When a merger becomes effective, the interest holder liability of a person that ceases to hold an interest in a domestic merging limited liability company with respect to which the person had interest holder liability is subject to

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the following rules:

(1) the merger does not discharge any interest holder liability under the Revised Uniform Limited Liability Company Act to the extent that the interest holder liability arose before the merger became effective;

(2) the person does not have interest holder liability under that act for any debt, obligation or other liability that arises after the merger becomes effective;

(3) that act continues to apply to the release, collection or discharge of any interest holder liability preserved under Paragraph (1) of this subsection as if the merger had not occurred; and

(4) the person has whatever rights of contribution from any other person as provided by that act, a law other than one in that act or the operating agreement of the domestic merging limited liability company with respect to any interest holder liability preserved under Paragraph (1) of this subsection as if the merger had not occurred.

E. When a merger becomes effective, a foreign entity that is the surviving entity may be served with process in New Mexico for the collection and enforcement of any debts, obligations or other liabilities of a domestic merging limited liability company as provided in Section 116 of the Revised Uniform Limited Liability Company Act.

F. When a merger becomes effective, the

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registration to do business in New Mexico of any foreign merging entity that is not the surviving entity is canceled.

SECTION 1013. [NEW MATERIAL] INTEREST EXCHANGE AUTHORIZED.--

A. By complying with Sections 1013 through 1018 of the Revised Uniform Limited Liability Company Act:

(1) a domestic limited liability company may acquire all of one or more classes or series of interests of another domestic entity or a foreign entity in exchange for interests, securities, obligations, money, other property, rights to acquire interests or securities or any combination of the foregoing; or

(2) all of one or more classes or series of interests of a domestic limited liability company may be acquired by another domestic entity or a foreign entity in exchange for interests, securities, obligations, money, other property, rights to acquire interests or securities or any combination of the foregoing.

B. By complying with Sections 1013 through 1018 of the Revised Uniform Limited Liability Company Act applicable to foreign entities, a foreign entity may be the acquiring or acquired entity in an interest exchange under Sections 1013 through 1018 of that act if the interest exchange is authorized by the law of the foreign entity's jurisdiction of formation.

C. If a protected agreement contains a provision

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that applies to a merger of a domestic limited liability company but does not refer to an interest exchange, the provision applies to an interest exchange in which the domestic limited liability company is the acquired entity as if the interest exchange were a merger until the provision is amended after July 1, 2018.

SECTION 1014. [NEW MATERIAL] PLAN OF INTEREST EXCHANGE.--

A. A domestic limited liability company may be the acquired entity in an interest exchange under Sections 1013 through 1018 of the Revised Uniform Limited Liability Company Act by approving a plan of interest exchange. The plan shall be in a record and shall contain:

(1) the name of the acquired entity;

(2) the name, jurisdiction of formation and type of entity of the acquiring entity;

(3) the manner of converting the interests in the acquired entity into interests, securities, obligations, money, other property, rights to acquire interests or securities or any combination of the foregoing;

(4) any proposed amendments to the:

(a) certificate of organization of the acquired entity; and

(b) operating agreement of the acquired entity that are, or are proposed to be, in a record;

(5) the other terms and conditions of the

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interest exchange; and

(6) any other provision required by the law of New Mexico or the operating agreement of the acquired entity.

B. In addition to the requirements of Subsection A of this section, a plan of interest exchange may contain any other provision not prohibited by law.

SECTION 1015. [NEW MATERIAL] APPROVAL OF INTEREST EXCHANGE.--

A. A plan of interest exchange is not effective unless it has been approved:

(1) by all the members of a domestic acquired limited liability company entitled to vote on or consent to any matter; and

(2) in a record, by each member of the domestic acquired limited liability company that will have interest holder liability for debts, obligations and other liabilities that arise after the interest exchange becomes effective, unless:

(a) the operating agreement of the company provides in a record for the approval of an interest exchange or a merger in which some or all its members become subject to interest holder liability by the affirmative vote or consent of fewer than all the members; and

(b) the member consented in a record to or voted for that provision of the operating agreement or

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became a member after the adoption of that provision.

B. An interest exchange involving a domestic acquired entity that is not a limited liability company is not effective unless it is approved by the domestic entity in accordance with its organic law.

C. An interest exchange involving a foreign acquired entity is not effective unless it is approved by the foreign entity in accordance with the law of the foreign entity's jurisdiction of formation.

D. Except as otherwise provided in its organic law or organic rules, the interest holders of the acquiring entity are not required to approve the interest exchange.

SECTION 1016. [NEW MATERIAL] AMENDMENT OR ABANDONMENT OF PLAN OF INTEREST EXCHANGE.--

A. A plan of interest exchange may be amended only with the consent of each party to the plan, except as otherwise provided in the plan.

B. A domestic acquired limited liability company may approve an amendment of a plan of interest exchange:

(1) in the same manner as the plan was approved, if the plan does not provide for the manner in which it may be amended; or

(2) by its managers or members in the manner provided in the plan. However, a member that was entitled to vote on or consent to approval of the interest exchange is

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entitled to vote on or consent to any amendment of the plan that will change:

(a) the amount or kind of interests, securities, obligations, money, other property, rights to acquire interests or securities or any combination of the foregoing, to be received by any of the members of the acquired company under the plan;

(b) the certificate of organization or operating agreement of the acquired company that will be in effect immediately after the interest exchange becomes effective, except for changes that do not require approval of the members of the acquired company under the Revised Uniform Limited Liability Company Act or the operating agreement; or

(c) any other terms or conditions of the plan, if the change would adversely affect the member in any material respect.

C. After a plan of interest exchange has been approved and before a statement of interest exchange becomes effective, the plan may be abandoned as provided in the plan. Unless prohibited by the plan, a domestic acquired limited liability company may abandon the plan in the same manner the plan was approved.

D. If a plan of interest exchange is abandoned after a statement of interest exchange has been delivered to the secretary of state for filing and before the statement

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becomes effective, a statement of abandonment, signed by the acquired limited liability company, shall be delivered to the secretary of state for filing before the statement of interest exchange becomes effective. The statement of abandonment takes effect on filing, and the interest exchange is abandoned and does not become effective. The statement of abandonment shall contain:

(1) the name of the acquired company;

(2) the date on which the statement of interest exchange was filed by the secretary of state; and

(3) a statement that the interest exchange has been abandoned in accordance with this section.

SECTION 1017. [NEW MATERIAL] STATEMENT OF INTEREST EXCHANGE--EFFECTIVE DATE OF INTEREST EXCHANGE.--

A. A statement of interest exchange shall be signed by a domestic acquired limited liability company and delivered to the secretary of state for filing.

B. A statement of interest exchange shall contain:

(1) the name of the acquired limited liability company;

(2) the name, jurisdiction of formation and type of entity of the acquiring entity;

(3) a statement that the plan of interest exchange was approved by the acquired company in accordance with Sections 1013 through 1018 of the Revised Uniform Limited

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Liability Company Act; and

(4) any amendments to the company's certificate of organization approved as part of the plan of interest exchange.

C. In addition to the requirements of Subsection B of this section, a statement of interest exchange may contain any other provision not prohibited by law.

D. A plan of interest exchange that is signed by a domestic acquired limited liability company and that meets all the requirements of Subsection B of this section may be delivered to the secretary of state for filing instead of a statement of interest exchange and on filing has the same effect. If a plan of interest exchange is filed as provided in this subsection, references in Article 10 of the Revised Uniform Limited Liability Company Act to a statement of interest exchange refer to the plan of interest exchange filed under this subsection.

E. An interest exchange is effective when the statement of interest exchange is effective.

SECTION 1018. [NEW MATERIAL] EFFECT OF INTEREST EXCHANGE.--

A. When an interest exchange in which the acquired entity is a domestic limited liability company becomes effective, the:

(1) interests in the acquired company that are

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the subject of the interest exchange are converted, and the members holding those interests are entitled only to the rights provided to them by the plan of interest exchange and to any appraisal rights that they have under Section 1006 of the Revised Uniform Limited Liability Company Act;

(2) acquiring entity becomes the interest holder of the interests in the acquired company stated in the plan of interest exchange to be acquired by the acquiring entity;

(3) certificate of organization of the acquired company is amended to the extent provided in the statement of interest exchange; and

(4) provisions of the operating agreement of the acquired company that are to be in a record, if any, are amended to the extent provided in the plan of interest exchange.

B. Except as otherwise provided in the operating agreement of a domestic acquired limited liability company, the interest exchange does not give rise to any rights that a member, manager or third party would have upon a dissolution, liquidation or winding up of the acquired company.

C. When an interest exchange becomes effective, a person that did not have interest holder liability with respect to a domestic acquired limited liability company and that becomes subject to interest holder liability with respect to a

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domestic entity as a result of the interest exchange has interest holder liability only to the extent provided by the organic law of the entity and only for those debts, obligations and other liabilities that arise after the interest exchange becomes effective.

D. When an interest exchange becomes effective, the interest holder liability of a person that ceases to hold an interest in a domestic acquired limited liability company with respect to which the person had interest holder liability is subject to the following rules:

(1) the interest exchange does not discharge any interest holder liability under the Revised Uniform Limited Liability Company Act to the extent that the interest holder liability arose before the interest exchange became effective;

(2) the person does not have interest holder liability under that act for any debt, obligation or other liability that arises after the interest exchange becomes effective;

(3) that act continues to apply to the release, collection or discharge of any interest holder liability preserved under Paragraph (1) of this subsection as if the interest exchange had not occurred; and

(4) the person has whatever rights of contribution from any other person as are provided by that act, a law other than one in that act or the operating agreement of

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the acquired company with respect to any interest holder liability preserved under Paragraph (1) of this subsection as if the interest exchange had not occurred.

SECTION 1019. [NEW MATERIAL] CONVERSION AUTHORIZED.--

A. By complying with Sections 1019 through 1024 of the Revised Uniform Limited Liability Company Act, a domestic limited liability company may become a:

(1) domestic entity that is a different type of entity; or

(2) foreign entity that is a different type of entity, if the conversion is authorized by the law of the foreign entity's jurisdiction of formation.

B. By complying with the provisions of Sections 1019 through 1024 of the Revised Uniform Limited Liability Company Act applicable to foreign entities, a foreign entity that is not a foreign limited liability company may become a domestic limited liability company if the conversion is authorized by the law of the foreign entity's jurisdiction of formation.

C. If a protected agreement contains a provision that applies to a merger of a domestic limited liability company but does not refer to a conversion, the provision applies to a conversion of the company as if the conversion were a merger until the provision is amended after July 1, 2018.

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SECTION 1020. [NEW MATERIAL] PLAN OF CONVERSION.--

A. A domestic limited liability company may convert to a different type of entity under Sections 1019 through 1024 of the Revised Uniform Limited Liability Company Act by approving a plan of conversion. The plan shall be in a record and contain:

(1) the name of the converting limited liability company;

(2) the name, jurisdiction of formation and type of entity of the converted entity;

(3) the manner of converting the interests in the converting limited liability company into interests, securities, obligations, money, other property, rights to acquire interests or securities or any combination of the foregoing;

(4) the proposed public organic record of the converted entity if it will be a filing entity;

(5) the full text of the private organic rules of the converted entity that are proposed to be in a record;

(6) the other terms and conditions of the conversion; and

(7) any other provision required by the law of New Mexico or the operating agreement of the converting limited liability company.

B. In addition to the requirements in Subsection A

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of this section, a plan of conversion may contain any other provision not prohibited by law.

SECTION 1021. [NEW MATERIAL] APPROVAL OF CONVERSION.--

A. A plan of conversion is not effective unless it has been approved:

(1) by a domestic converting limited liability company, by all the members of the limited liability company entitled to vote on or consent to any matter; and

(2) in a record, by each member of a domestic converting limited liability company that will have interest holder liability for debts, obligations and other liabilities that arise after the conversion becomes effective, unless:

(a) the operating agreement of the company provides in a record for the approval of a conversion or a merger in which some or all of its members become subject to interest holder liability by the affirmative vote or consent of fewer than all the members; and

(b) the member voted for or consented in a record to that provision of the operating agreement or became a member after the adoption of that provision.

B. A conversion involving a domestic converting entity that is not a limited liability company is not effective unless it is approved by the domestic converting entity in accordance with its organic law.

C. A conversion of a foreign converting entity is

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not effective unless it is approved by the foreign entity in accordance with the law of the foreign entity's jurisdiction of formation.

SECTION 1022. [NEW MATERIAL] AMENDMENT OR ABANDONMENT OF PLAN OF CONVERSION.--

A. A plan of conversion of a domestic converting limited liability company may be amended:

(1) in the same manner as the plan was approved, if the plan does not provide for the manner in which it may be amended; or

(2) by its managers or members in the manner provided in the plan, but a member that was entitled to vote on or consent to approval of the conversion is entitled to vote on or consent to any amendment of the plan that will change:

(a) the amount or kind of interests, securities, obligations, money, other property, rights to acquire interests or securities or any combination of the foregoing, to be received by any of the members of the converting company under the plan;

(b) the public organic record, if any, or private organic rules of the converted entity that will be in effect immediately after the conversion becomes effective, except for changes that do not require the approval of the interest holders of the converted entity under its organic law or organic rules; or

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(c) any other terms or conditions of the plan, if the change would adversely and materially affect the member.

B. After a plan of conversion has been approved by a domestic converting limited liability company and before a statement of conversion becomes effective, the plan may be abandoned as provided in the plan. Unless prohibited by the plan, a domestic converting limited liability company may abandon the plan in the same manner as the plan was approved.

C. If a plan of conversion is abandoned after a statement of conversion has been delivered to the secretary of state for filing and before the statement becomes effective, a statement of abandonment, signed by the converting entity, shall be delivered to the secretary of state for filing before the statement of conversion becomes effective. The statement of abandonment takes effect on filing, and the conversion is abandoned and does not become effective. The statement of abandonment shall contain:

(1) the name of the converting limited liability company;

(2) the date on which the statement of conversion was filed by the secretary of state; and

(3) a statement that the conversion has been abandoned in accordance with the provisions of this section.

SECTION 1023. [NEW MATERIAL] STATEMENT OF CONVERSION--

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EFFECTIVE DATE OF CONVERSION.--

A. A statement of conversion shall be signed by the converting entity and delivered to the secretary of state for filing.

B. A statement of conversion shall contain:

(1) the name, jurisdiction of formation and type of entity of the converting entity;

(2) the name, jurisdiction of formation and type of entity of the converted entity;

(3) if the converting entity is a domestic limited liability company, a statement that the plan of conversion was approved in accordance with Sections 1019 through 1024 of the Revised Uniform Limited Liability Company Act or, if the converting entity is a foreign entity, a statement that the conversion was approved by the foreign entity in accordance with the law of its jurisdiction of formation;

(4) if the converted entity is a domestic filing entity, its public organic record, as an attachment;

(5) if the converted entity is a domestic limited liability partnership, its statement of qualification, as an attachment; and

(6) if the converted entity is a foreign entity, a mailing address to which the secretary of state may send any process served on the secretary of state under

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Subsection E of Section 1024 of the Revised Uniform Limited Liability Company Act.

C. In addition to the requirements of Subsection B of this section, a statement of conversion may contain any other provision not prohibited by law.

D. If the converted entity is a domestic entity, its public organic record, if any, shall satisfy the requirements of the law of New Mexico, except that the public organic record does not need to be signed.

E. A plan of conversion that is signed by a domestic converting limited liability company and that meets all the requirements in Subsection B of this section may be delivered to the secretary of state for filing instead of a statement of conversion and on filing has the same effect. If a plan of conversion is filed as provided in this subsection, references in Article 10 of the Revised Uniform Limited Liability Company Act to a statement of conversion refer to the plan of conversion filed under this subsection.

F. If the converted entity is a domestic limited liability company, the conversion is effective when the statement of conversion is effective. In all other cases, the conversion is effective on the later of:

(1) the date and time provided by the organic law of the converted entity; or

(2) when the statement is effective.

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SECTION 1024. [NEW MATERIAL] EFFECT OF CONVERSION.--

A. When a conversion becomes effective:

(1) the converted entity is:

(a) organized under and subject to the organic law of the converted entity; and

(b) without interruption, the same entity as the converting entity;

(2) all property of the converting entity continues to be vested in the converted entity without transfer, reversion or impairment;

(3) all debts, obligations and other liabilities of the converting entity continue as debts, obligations and other liabilities of the converted entity;

(4) except as otherwise provided by law or the plan of conversion, all the rights, privileges, immunities, powers and purposes of the converting entity remain in the converted entity;

(5) the name of the converted entity may be substituted for the name of the converting entity in any pending action or proceeding;

(6) the certificate of organization of the converted entity is effective;

(7) the provisions of the operating agreement of the converted entity that are to be in a record, if any, approved as part of the plan of conversion are effective; and

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(8) the interests in the converting entity are converted, and the interest holders of the converting entity are entitled only to the rights provided to them under the plan of conversion and to any appraisal rights they have under Section 1006 of the Revised Uniform Limited Liability Company Act.

B. Except as otherwise provided in the operating agreement of a domestic converting limited liability company, the conversion does not give rise to any right that a member, manager or third party would have upon a dissolution, liquidation or winding up of the converting entity.

C. When a conversion becomes effective, a person that did not have interest holder liability with respect to the converting entity and becomes subject to interest holder liability with respect to a domestic entity as a result of the conversion has interest holder liability only to the extent provided by the organic law of the entity and only for those debts, obligations and other liabilities that arise after the conversion becomes effective.

D. When a conversion becomes effective, the interest holder liability of a person that ceases to hold an interest in a domestic converting limited liability company with respect to which the person had interest holder liability is subject to the following rules:

(1) the conversion does not discharge any

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interest holder liability under the Revised Uniform Limited Liability Company Act to the extent that the interest holder liability arose before the conversion became effective;

(2) the person does not have interest holder liability under that act for any debt, obligation or other liability that arises after the conversion becomes effective;

(3) that act continues to apply to the release, collection or discharge of any interest holder liability preserved under Paragraph (1) of this subsection as if the conversion had not occurred; and

(4) the person has whatever rights of contribution from any other person as are provided by that act, a law other than one in that act or the organic rules of the converting entity with respect to any interest holder liability preserved under Paragraph (1) of this subsection as if the conversion had not occurred.

E. When a conversion becomes effective, a foreign entity that is the converted entity may be served with process in New Mexico for the collection and enforcement of any of its debts, obligations and other liabilities as provided in Section 116 of the Revised Uniform Limited Liability Company Act.

F. If the converting entity is a registered foreign entity, its registration to do business in New Mexico is canceled when the conversion becomes effective.

G. A conversion does not require the entity to wind

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up its affairs and does not constitute or cause the dissolution of the entity.

SECTION 1025. [NEW MATERIAL] DOMESTICATION AUTHORIZED.--

A. By complying with Sections 1025 through 1030 of the Revised Uniform Limited Liability Company Act, a domestic limited liability company may become a foreign limited liability company if the domestication is authorized by the law of the foreign jurisdiction.

B. By complying with the provisions of Sections 1025 through 1030 of the Revised Uniform Limited Liability Company Act applicable to foreign limited liability companies, a foreign limited liability company may become a domestic limited liability company if the domestication is authorized by the law of the foreign limited liability company's jurisdiction of formation.

C. If a protected agreement contains a provision that applies to a merger of a domestic limited liability company but does not refer to a domestication, the provision applies to a domestication of the limited liability company as if the domestication were a merger until the provision is amended after July 1, 2018.

SECTION 1026. [NEW MATERIAL] PLAN OF DOMESTICATION.--

A. A domestic limited liability company may become a foreign limited liability company in a domestication by approving a plan of domestication. The plan shall be in a

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record and shall contain:

(1) the name of the domesticating limited liability company;

(2) the name and jurisdiction of formation of the domesticated limited liability company;

(3) the manner of converting the interests in the domesticating limited liability company into interests, securities, obligations, money, other property, rights to acquire interests or securities or any combination of the foregoing;

(4) the proposed certificate of organization of the domesticated limited liability company;

(5) the full text of the provisions of the operating agreement of the domesticated limited liability company that are proposed to be in a record;

(6) the other terms and conditions of the domestication; and

(7) any other provision required by the law of New Mexico or the operating agreement of the domesticating limited liability company.

B. In addition to the requirements of Subsection A of this section, a plan of domestication may contain any other provision not prohibited by law.

SECTION 1027. [NEW MATERIAL] APPROVAL OF DOMESTICATION.--

A. A plan of domestication of a domestic

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domesticating limited liability company is not effective unless it has been approved:

(1) by all the members entitled to vote on or consent to any matter; and

(2) in a record, by each member that will have interest holder liability for debts, obligations and other liabilities that arise after the domestication becomes effective, unless:

(a) the operating agreement of the domesticating company in a record provides for the approval of a domestication or merger in which some or all of its members become subject to interest holder liability by the affirmative vote or consent of fewer than all the members; and

(b) the member voted for or consented in a record to that provision of the operating agreement or became a member after the adoption of that provision.

B. A domestication of a foreign domesticating limited liability company is not effective unless it is approved in accordance with the law of the foreign limited liability company's jurisdiction of formation.

SECTION 1028. [NEW MATERIAL] AMENDMENT OR ABANDONMENT OF PLAN OF DOMESTICATION.--

A. A plan of domestication of a domestic domesticating limited liability company may be amended:

(1) in the same manner as the plan was

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approved, if the plan does not provide for the manner in which it may be amended; or

(2) by its managers or members in the manner provided in the plan, but a member that was entitled to vote on or consent to the approval of the domestication is entitled to vote on or consent to any amendment of the plan that will change:

(a) the amount or kind of interests, securities, obligations, money, other property, rights to acquire interests or securities or any combination of the foregoing, to be received by any of the members of the domesticating limited liability company under the plan;

(b) the certificate of organization or operating agreement of the domesticated limited liability company that will be in effect immediately after the domestication becomes effective, except for changes that do not require the approval of the members of the domesticated limited liability company under its organic law or operating agreement; or

(c) any other terms or conditions of the plan, if the change would adversely affect the member in any material respect.

B. After a plan of domestication has been approved by a domestic domesticating limited liability company and before a statement of domestication becomes effective, the plan

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may be abandoned as provided in the plan. Unless prohibited by the plan, a domestic domesticating limited liability company may abandon the plan in the same manner as the plan was approved.

C. If a plan of domestication is abandoned after a statement of domestication has been delivered to the secretary of state for filing and before the statement becomes effective, a statement of abandonment, signed by the domesticating limited liability company, shall be delivered to the secretary of state for filing before the statement of domestication becomes effective. The statement of abandonment takes effect on filing, and the domestication is abandoned and does not become effective. The statement of abandonment shall contain:

(1) the name of the domesticating limited liability company;

(2) the date on which the statement of domestication was filed by the secretary of state; and

(3) a statement that the domestication has been abandoned in accordance with this section.

SECTION 1029. [NEW MATERIAL] STATEMENT OF DOMESTICATION--EFFECTIVE DATE OF DOMESTICATION.--

A. A statement of domestication shall be signed by the domesticating limited liability company and delivered to the secretary of state for filing.

B. A statement of domestication shall contain:

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(1) the name and jurisdiction of formation of the domesticating limited liability company;

(2) the name and jurisdiction of formation of the domesticated limited liability company;

(3) if the domesticating limited liability company is a domestic limited liability company, a statement that the plan of domestication was approved in accordance with Sections 1025 through 1030 of the Revised Uniform Limited Liability Company Act or, if the domesticating limited liability company is a foreign limited liability company, a statement that the domestication was approved in accordance with the law of its jurisdiction of formation;

(4) the certificate of organization of the domesticated limited liability company, as an attachment; and

(5) if the domesticated entity is a foreign limited liability company, a mailing address to which the secretary of state may send any process served on the secretary of state under Subsection E of Section 1030 of the Revised Uniform Limited Liability Company Act.

C. In addition to the requirements of Subsection B of this section, a statement of domestication may contain any other provision not prohibited by law.

D. The certificate of organization of a domestic domesticated limited liability company shall satisfy the requirements of the Revised Uniform Limited Liability Company

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Act, but the certificate does not need to be signed.

E. A plan of domestication that is signed by a domestic domesticating limited liability company and that meets all of the requirements of Subsection B of this section may be delivered to the secretary of state for filing instead of a statement of domestication and on filing has the same effect. If a plan of domestication is filed as provided in this subsection, references in Article 10 of the Revised Uniform Limited Liability Company Act to a statement of domestication refer to the plan of domestication filed under this subsection.

F. If the domesticated entity is a domestic limited liability company, the domestication is effective when the statement of domestication is effective. If the domesticated entity is a foreign limited liability company, the domestication is effective on the later of:

(1) the date and time provided by the organic law of the domesticated entity; or

(2) when the statement is effective.

SECTION 1030. [NEW MATERIAL] EFFECT OF DOMESTICATION.--

A. When a domestication becomes effective:

(1) the domesticated entity is:

(a) organized under and subject to the organic law of the domesticated entity; and

(b) without interruption, the same entity as the domesticating entity;

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(2) all property of the domesticating entity continues to be vested in the domesticated entity without transfer, reversion or impairment;

(3) all debts, obligations and other liabilities of the domesticating entity continue as debts, obligations and other liabilities of the domesticated entity;

(4) except as otherwise provided by law or the plan of domestication, all the rights, privileges, immunities, powers and purposes of the domesticating entity remain in the domesticated entity;

(5) the name of the domesticated entity may be substituted for the name of the domesticating entity in any pending action or proceeding;

(6) the certificate of organization of the domesticated entity is effective;

(7) the provisions of the operating agreement of the domesticated entity that are to be in a record, if any, and that are approved as part of the plan of domestication, are effective; and

(8) the interests in the domesticating entity are converted to the extent and as approved in connection with the domestication, and the members of the domesticating entity are entitled only to the rights provided to them under the plan of domestication and to any appraisal rights they have under Section 1006 of the Revised Uniform Limited Liability Company

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Act.

B. Except as otherwise provided in the organic law or operating agreement of the domesticating limited liability company, the domestication does not give rise to any rights that a member, manager or third party would otherwise have upon a dissolution, liquidation or winding up of the domesticating company.

C. When a domestication becomes effective, a person that did not have interest holder liability with respect to the domesticating limited liability company and that becomes subject to interest holder liability with respect to a domestic company as a result of the domestication has interest holder liability only to the extent provided by the Revised Uniform Limited Liability Company Act and only for those debts, obligations and other liabilities that arise after the domestication becomes effective.

D. When a domestication becomes effective, the interest holder liability of a person that ceases to hold an interest in a domestic domesticating limited liability company with respect to which the person had interest holder liability is subject to the following rules:

(1) the domestication does not discharge any interest holder liability under the Revised Uniform Limited Liability Company Act to the extent that the interest holder liability arose before the domestication became effective;

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(2) a person does not have interest holder liability under that act for any debt, obligation or other liability that arises after the domestication becomes effective;

(3) that act continues to apply to the release, collection or discharge of any interest holder liability preserved under Paragraph (1) of this subsection as if the domestication had not occurred; and

(4) a person has whatever rights of contribution from any other person as provided by that act, a law other than one in that act or the operating agreement of the domestic domesticating limited liability company with respect to any interest holder liability preserved under Paragraph (1) of this subsection as if the domestication had not occurred.

E. When a domestication becomes effective, a foreign limited liability company that is the domesticated company may be served with process in New Mexico for the collection and enforcement of any of its debts, obligations and liabilities as provided in Section 116 of the Revised Uniform Limited Liability Company Act.

F. If the domesticating limited liability company is a registered foreign entity, the registration of the company is canceled when the domestication becomes effective.

G. A domestication does not require a domestic

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domesticating limited liability company to wind up its affairs and does not constitute or cause the dissolution of the company.

ARTICLE 11

MISCELLANEOUS PROVISIONS

SECTION 1101. [NEW MATERIAL] UNIFORMITY OF APPLICATION AND CONSTRUCTION.--In applying and construing the provisions of the Revised Uniform Limited Liability Company Act, consideration shall be given to the need to promote uniformity of the law with respect to its subject matter among states that enact it.

SECTION 1102. [NEW MATERIAL] RELATION TO ELECTRONIC SIGNATURES IN GLOBAL AND NATIONAL COMMERCE ACT.--The Revised Uniform Limited Liability Company Act modifies, limits and supersedes the federal Electronic Signatures in Global and National Commerce Act, 15 U.S.C. Section 7001 et seq., but does not modify, limit or supersede Section 101(c) of that act, 15 U.S.C. Section 7001(c) or authorize electronic delivery of any of the notices described in Section 103(b) of that act, 15 U.S.C. Section 7003(b).

SECTION 1103. [NEW MATERIAL] SAVING CLAUSE.--The Revised Uniform Limited Liability Company Act does not affect an action commenced, a proceeding brought or a right accrued before July 1, 2018.

SECTION 1104. Section 53-13-7 NMSA 1978 (being Laws 1975,

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Chapter 64, Section 32, as amended) is repealed and a new Section 53-13-7 NMSA 1978 is enacted to read:

"53-13-7. [NEW MATERIAL] RESTATED ARTICLES OF INCORPORATION.--

A. A corporation's board of directors may restate its articles of incorporation at any time, with or without shareholder approval, to consolidate all amendments into a single document.

B. If the restated articles of incorporation include one or more new amendments that require shareholder approval, the new amendments shall be adopted or approved as provided in Sections 53-13-2 and 53-13-3 NMSA 1978.

C. A corporation that restates its articles of incorporation shall deliver to the secretary of state for filing the original and a copy of restated articles of incorporation setting forth the name of the corporation and the text of the restated articles of incorporation together with a certificate that:

(1) states that the restated articles of incorporation consolidate all amendments into one document; and

(2) if one or more new amendments are included in the restated articles of incorporation, also includes the statements required by Subsections B, C, D, E and F of Section 53-13-4 NMSA 1978.

D. The restated articles of incorporation shall be

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executed by the corporation by an authorized officer. The copy may be signed, photocopied or conformed. If the secretary of state finds that the restated articles of incorporation conform to law, the secretary of state shall, when all fees have been paid:

(1) endorse on the original and a copy the word "filed" and the month, date and year of the filing;

(2) file the original in the secretary of state's office; and

(3) issue a restated certificate of incorporation to which the secretary of state shall affix the file-stamped copy.

E. The restated certificate of incorporation, together with the file-stamped copy of the restated articles of incorporation affixed to it, shall be returned by the secretary of state to the corporation or its representative. Unless the secretary of state disapproves under Subsection A of Section 53-18-2 NMSA 1978, the restated articles of incorporation shall become effective upon delivery of the restated articles of incorporation to the secretary of state or on such later date, not more than thirty days after delivery of the restated articles of incorporation, to the secretary of state, as is provided for in the restated articles of incorporation. The restated articles of incorporation shall supersede the original articles of incorporation and all previous amendments.

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F. The secretary of state may certify restated articles of incorporation as the articles of incorporation currently in effect, without including the certificate information required by Subsection C of this section."

SECTION 1105. A new Section 53-14-2.1 NMSA 1978 is enacted to read:

"53-14-2.1. [NEW MATERIAL] PROCEDURE FOR CONVERSION.--A domestic corporation may become a domestic limited liability company or limited partnership, and any domestic limited liability company or limited partnership may become a domestic corporation, in either case pursuant to a plan of conversion approved by the domestic corporation in the manner provided in the Business Corporation Act. The board of directors of the corporation shall, by resolution adopted by the board, approve a plan conversion setting forth:

A. the name of the corporation, limited liability company or limited partnership proposing to convert, which is hereinafter designated as the "converting entity", and the name of the corporation, limited liability company or limited partnership into which the converting entity proposes to convert, which is hereinafter designated as the "converted entity";

B. the terms and conditions of the proposed conversion;

C. the manner and basis of converting shares or

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other interests in the converting entity into interests in the converted entity or the cash or other consideration to be paid or delivered as a result of the conversion of the shareholder's interests or a combination of these; and

D. other provisions with respect to the proposed conversion as deemed necessary or desirable."

SECTION 1106. A new Section 53-14-2.2 NMSA 1978 is enacted to read:

"53-14-2.2. [NEW MATERIAL] PROCEDURE FOR DOMESTICATION.--A domestic corporation may become a foreign corporation pursuant to a plan of domestication approved in the manner provided in the Business Corporation Act if the domestication is authorized by the laws of the state under which the foreign corporation is organized. The board of directors of the domestic corporation shall, by resolution adopted by the board, approve a plan of domestication setting forth:

A. the name of the corporation proposing to domesticate to another state, which shall hereinafter be referred to as the "domesticating corporation";

B. the name and state of organization of the foreign corporation into which the corporation proposes to domesticate, which is hereinafter referred to as the "domesticated corporation";

C. the terms and conditions of the proposed domestication;

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D. the manner and basis of converting the shares of the domesticating corporation into the shares, obligations or other securities of the domesticated corporation or, in whole or in part, into cash or other property; and

E. other provisions with respect to the proposed domestication as deemed necessary or desirable."

SECTION 1107. Section 53-14-3 NMSA 1978 (being Laws 1967, Chapter 81, Section 70, as amended) is amended to read:

"53-14-3. APPROVAL BY SHAREHOLDERS.--

A. The board of directors of each domestic corporation, [~~in the case of a~~] upon approving a plan of merger, [~~or~~] consolidation, [~~and the board of directors of the corporation the shares of which are to be acquired in the case of an exchange, upon approving a plan of merger, consolidation or~~] exchange, conversion or domestication, shall, by resolution, direct that the plan be submitted to a vote at a meeting of its shareholders, which may be either an annual or a special meeting. Written notice shall be given to each shareholder of record, whether or not entitled to vote at the meeting, not less than twenty days before the meeting, in the manner provided in the Business Corporation Act for the giving of notice of meetings of shareholders and, whether the meeting is an annual or a special meeting, shall state that the purpose or one of the purposes is to consider the proposed plan. A copy or a summary of the plan shall be included in or enclosed

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with the notice.

B. At each meeting, a vote of the shareholders shall be taken on the proposed plan. The plan shall be approved upon receiving the affirmative vote of the holders of a majority of the shares entitled to vote thereon of each such corporation, unless any class of shares of any such corporation is entitled to vote thereon as a class, in which event, as to such corporation, the plan shall be approved upon receiving the affirmative vote of the holders of a majority of the shares of each class of shares entitled to vote thereon, [~~Any~~] except that:

(1) any class of shares of any such corporation shall be entitled to vote as a class if any such plan contains any provision [~~which~~] that, if contained in a proposed amendment to articles of incorporation, would entitle such class of shares to vote as a class and, in the case of an exchange, if the class is included in the exchange; and

(2) if the articles of incorporation or bylaws of any such corporation contain a provision that applies to a merger of the corporation but does not refer to a conversion or a domestication, the provision applies to a conversion or a domestication of the corporation as if the conversion or the domestication were a merger until the provision is amended after July 1, 2018.

C. After such approval by a vote of the

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shareholders of each such corporation and at any time prior to the filing of the articles of merger, [~~or~~] consolidation, [~~or~~] exchange, conversion or domestication, the merger, [~~or~~] consolidation, [~~or~~] exchange, conversion or domestication may be abandoned pursuant to provisions therefor, if any, set forth in the plan.

D. [~~(1)~~] Notwithstanding the provisions of Subsections A and B of this section, submission of a plan of merger to a vote at a meeting of shareholders of a surviving corporation shall not be required if:

[~~(a)~~] (1) the articles of incorporation of the surviving corporation do not differ except in name from those of the corporation before the merger;

[~~(b)~~] (2) each holder of shares of the surviving corporation [~~which~~] that were outstanding immediately before the effective date of the merger is to hold the same number of shares with identical rights immediately after;

[~~(c)~~] (3) the number of voting shares outstanding immediately after the merger, plus the number of voting shares issuable on conversion of other securities issued by virtue of the terms of the merger and on exercise of rights and warrants so issued, will not exceed by more than twenty percent the number of voting shares outstanding immediately before the merger; and

[~~(d)~~] (4) the number of participating shares

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outstanding immediately after the merger, plus the number of participating shares issuable on conversion of other securities issued by virtue of the terms of the merger and on exercise of rights and warrants so issued, will not exceed by more than twenty percent the number of participating shares outstanding immediately before the merger.

[~~(2)~~] E. As used in [~~this~~] Subsection D of this section:

[~~(a)~~] (1) "voting shares" means shares [~~which~~] that entitle their holders to vote unconditionally in election of directors; and

[~~(b)~~] (2) "participating shares" means shares [~~which~~] that entitle their holders to participate without limitations in distribution of earnings or surplus."

SECTION 1108. Section 53-14-4 NMSA 1978 (being Laws 1967, Chapter 81, Section 71, as amended) is amended to read:

"53-14-4. ARTICLES OF MERGER, CONSOLIDATION, [~~OR~~] EXCHANGE, CONVERSION OR DOMESTICATION.--

A. Upon receiving the approvals required by Sections 53-14-1, 53-14-2, 53-14-2.1, 53-14-2.2 and 53-14-3 NMSA 1978, articles of merger, [~~or articles of~~] consolidation, conversion or domestication shall be executed by each domestic corporation by an authorized officer and shall set forth:

(1) the plan of merger, [~~or the plan of~~] consolidation, conversion or domestication;

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(2) as to each domestic corporation, either:

(a) the number of shares outstanding and, if the shares of any class are entitled to vote as a class, the designation and number of outstanding shares of each such class; or

(b) a statement that the vote of shareholders is not required by virtue of Subsection D of Section 53-14-3 NMSA 1978;

(3) as to each domestic corporation, the approval of whose shareholders is required:

(a) the number of shares required for approval if that number is different from a majority;

(b) the number of shares voted for and against the plan, respectively; and

(c) if the shares of any class are entitled to vote as a class, the number of shares of each such class required for approval if that number is different from a majority and the number of shares of each such class voted for and against the plan, respectively; and

(4) as to the domestic acquiring corporation in a plan of exchange, a statement that the adoption plan and performance of its terms were duly approved by its board of directors and such other requisite corporate action, if any, as may be required of it.

B. The original of the articles of merger,

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consolidation, [~~or~~] exchange, conversion or domestication, together with a copy, which may be signed, photocopied or conformed, shall be delivered to the [~~commission~~] secretary of state. If the [~~commission~~] secretary of state finds that the articles conform to law, [~~it~~] the secretary of state shall, when all fees have been paid:

(1) endorse on the original and copy the word "filed" and the month, day and year of the filing;

(2) file the original in [~~its~~] the secretary of state's office; and

(3) issue a certificate of merger, consolidation, [~~or~~] exchange, conversion or domestication to which [~~it~~] the secretary of state shall affix the file-stamped copy.

C. The certificate of merger, consolidation, [~~or~~] exchange, conversion or domestication, together with the file-stamped copy of the articles affixed to it, shall be returned by the [~~commission~~] secretary of state to the surviving, new, [~~or~~] acquiring or domesticated corporation, to the converted corporation, limited liability company or limited partnership or [~~its~~] to the representative of any of them."

SECTION 1109. Section 53-14-6 NMSA 1978 (being Laws 1967, Chapter 81, Section 73, as amended) is amended to read:

"53-14-6. EFFECT OF MERGER, CONSOLIDATION, [~~OR~~] EXCHANGE, CONVERSION OR DOMESTICATION.--

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A. Unless the [~~commission~~] secretary of state disapproves pursuant to Subsection A of Section 53-18-2 NMSA 1978:

(1) a merger, consolidation, [~~or~~] exchange or conversion shall become effective upon delivery of the articles of merger, consolidation, [~~or~~] exchange or conversion to the [~~commission~~] secretary of state or on such later date, not more than thirty days [~~subsequent to~~] after the delivery thereof to the [~~commission~~] secretary of state, as shall be provided for in the plan; and

(2) a domestication to a state other than this state shall become effective upon the later of:

(a) the date provided by the laws of the state under which the domesticated corporation is organized; and

(b) delivery of the articles of domestication to the secretary of state, or such later date, not more than thirty days after the delivery thereof to the secretary of state, as shall be provided in the plan.

B. When a merger, [~~or~~] consolidation, conversion or domestication has become effective:

[~~A.~~] (1) the several corporations that are parties to the plan of merger or consolidation shall be a single corporation, which, in the case of a merger, shall be that corporation designated in the plan of merger as the

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surviving corporation and, in the case of a consolidation, shall be the new corporation provided for in the plan of consolidation;

(2) the converted corporation, limited liability company or limited partnership that is party to the plan of conversion shall be the same entity without interruption as any converting corporation, limited liability company or limited partnership provided for in the plan of conversion;

(3) the domesticated corporation that is party to the plan of domestication shall be subject to the laws of the state under which it is organized and shall be the same corporation without interruption as the domesticating corporation provided for in the plan of domestication;

[~~B.~~] (4) the separate existence of all corporations that are parties to the plan of merger or consolidation, except the surviving or new corporation, shall cease;

[~~C.~~] (5) the surviving [~~or~~] corporation, new corporation and converted corporation shall have all the rights, privileges, immunities and powers and shall be subject to all the duties and liabilities of a corporation organized under the Business Corporation Act. The domesticated corporation shall have all the rights, privileges, immunities and powers, and shall be subject to all the duties and

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liabilities, of a corporation organized under the laws of the state under which it is organized;

[~~D.~~] (6) the surviving, [~~or~~] new, converted or domesticated corporation shall thereupon possess all the rights, privileges, immunities and franchises of a public or private nature of each of the merging [~~or~~], consolidating, converting or domesticating corporations, limited liability companies or limited partnerships; and all property, real, personal and mixed and all debts due on whatever account, including subscriptions to shares, and all other choses in action and every other interest of, or belonging to, or due to, each of the corporations, limited liability companies or limited partnerships so merged, [~~or~~] consolidated, converted or domesticated shall be taken and deemed to be transferred to and vested in [~~such~~] the single corporation without further act or deed, and the title to any real estate, or any interest therein, vested in any of such corporations shall not revert or be in any way impaired by reason of the merger, [~~or~~] consolidation, conversion or domestication;

[~~E.~~] (7) the surviving, [~~or~~] new, converted or domesticated corporation shall thenceforth be responsible and liable for all the liabilities and obligations of each of the corporations, limited liability companies or limited partnerships so merged [~~or~~], consolidated, converted or domesticated, and any claim existing or action or proceeding

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pending by or against any of such corporations may be prosecuted as if the merger or consolidation had not taken place, or the surviving, [~~or~~] new, converted or domesticated corporation may be substituted in its place. Neither the rights of creditors nor any liens upon the property of any such corporation, limited liability company or limited partnership shall be impaired by the merger, [~~or~~] consolidation, conversion or domestication. Neither a conversion nor a domestication constitutes or causes the dissolution of any such domesticating corporation or converting corporation or the winding up of the affairs or dissolution of any such converting limited liability company or limited partnership;

[~~F.~~] (8) in the case of a merger, the articles of incorporation of the surviving corporation shall be deemed to be amended to the extent, if any, that changes in its articles of incorporation are stated in the plan of merger, and, in the case of a consolidation, the statements set forth in the articles of consolidation and [~~which~~] that are required or permitted to be set forth in the articles of incorporation of corporations organized under the Business Corporation Act shall be deemed to be the original articles of incorporation of the new corporation; [~~and~~

~~G.~~] (9) when a merger, consolidation, [~~or~~] exchange, conversion or domestication has become effective, the shares of the corporation or corporations party to the plan

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that are, under the terms of the plan, to be converted or exchanged shall cease to exist, in the case of a merger or consolidation, or be deemed to be exchanged, in the case of an exchange, and the holders of such shares shall thereafter be entitled only to the shares, obligations, other securities, cash or other property into which they shall have been converted or for which they shall have been exchanged, in accordance with the plan, subject to any rights under Section 53-14-4 NMSA 1978; and

(10) when a domestication has become effective, if the domesticated corporation is a foreign corporation and if it is to transact business in this state, it shall comply with the provisions of the Business Corporation Act with respect to foreign corporations, and in every case it shall file with the secretary of state:

(a) an agreement that the domesticating corporation may be served with process in this state in any proceeding for the enforcement of any obligation of the corporation and in any proceeding for the enforcement of the rights of a dissenting shareholder in connection with the domestication;

(b) an irrevocable appointment of the secretary of state as the corporation's agent to accept service of process in any such proceeding; and

(c) an agreement that the corporation

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will promptly pay to such dissenting shareholders of any such domesticating corporation the amount, if any, to which they are entitled under the Business Corporation Act with respect to the rights of dissenting shareholders."

SECTION 1110. Section 53-14-7 NMSA 1978 (being Laws 1967, Chapter 81, Section 74, as amended) is amended to read:

"53-14-7. MERGER, CONSOLIDATION, [~~OR~~] EXCHANGE OF SHARES OR CONVERSION BETWEEN DOMESTIC AND FOREIGN CORPORATIONS, LIMITED LIABILITY COMPANIES AND LIMITED PARTNERSHIPS--DOMESTICATION BY FOREIGN CORPORATIONS INTO DOMESTIC CORPORATIONS.--

A. One or more foreign corporations and one or more domestic corporations may be merged or consolidated or participate in an exchange [~~in the following manner, if~~] with a foreign corporation; a foreign corporation, a foreign limited liability company or a foreign limited partnership may be converted into a domestic corporation; and a foreign corporation may become a New Mexico corporation by domestication if, in any of those cases, the merger, consolidation, [~~or~~] exchange, conversion or domestication is permitted by the laws of the state under which each foreign corporation, foreign limited liability company or foreign limited partnership is organized and if:

(1) each domestic corporation [~~shall comply~~] complies with the provisions of the Business Corporation Act

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with respect to the merger, consolidation, [~~or~~] exchange, conversion or domestication, as the case may be, of domestic corporations, and each foreign corporation, [~~shall comply~~] foreign limited liability company or foreign limited partnership complies with the applicable provisions of the laws of the state under which it is organized; and

(2) [~~if~~] in the case in which the surviving, [~~or~~] new or converted corporation in a merger, [~~or~~] consolidation or conversion is to be governed by the laws of any state other than this state [~~it shall comply~~] and is to transact business in this state, the corporation complies with the provisions of the Business Corporation Act with respect to foreign corporations [~~if it is to transact business in this state, and in every case it shall file~~] and it files with the [~~commission~~] secretary of state:

(a) an agreement that it may be served with process in this state in any proceeding for the enforcement of any obligation of any domestic corporation [~~which~~] that is a party to the merger, [~~or~~] consolidation or conversion and in any proceeding for the enforcement of the rights of a dissenting shareholder of any such domestic corporation against the surviving, [~~or~~] new or converted corporation;

(b) an irrevocable appointment of the secretary of state as its agent to accept service of process in

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any such proceeding; and

(c) an agreement that it will promptly pay to the dissenting shareholders of any such domestic corporation the amount, if any, to which [~~they~~] it shall be entitled under the provisions of the Business Corporation Act with respect to the rights of dissenting shareholders.

B. The effect of such merger, [~~or~~] consolidation, conversion or domestication shall be the same as in the case of the merger, [~~or~~] consolidation, conversion or domestication of domestic corporations if the surviving, [~~or~~] new, converted or domesticated corporation is to be governed by the laws of this state. If the surviving, [~~or~~] new or converted corporation is to be governed by the laws of any state other than this state, the effect of such merger, [~~or~~] consolidation or conversion shall be the same as in the case of the merger, [~~or~~] consolidation or conversion of domestic corporations except insofar as the laws of such other state provide otherwise. If the domesticated corporation is to be governed by the laws of any state but this state, the effect of such domestication shall be as stated in Paragraph (5) of Subsection B of Section 53-14-6 NMSA 1978. At any time prior to the filing of the articles of merger, [~~or~~] consolidation, conversion or domestication, the merger, [~~or~~] consolidation, conversion or domestication may be abandoned pursuant to provisions therefor, if any, set forth in the plan of merger, [~~or~~] consolidation,

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conversion or domestication."

SECTION 1111. REPEAL.--Sections 53-19-1 through 53-19-74 NMSA 1978 (being Laws 1993, Chapter 280, Sections 1 through 58, Laws 1995, Chapter 213, Sections 7 and 8, Laws 2001, Chapter 200, Section 79, Laws 1995, Chapter 213, Sections 9 through 13, Laws 1993, Chapter 280, Sections 63 through 66, Laws 2001, Chapter 200, Sections 74 and 75 and Laws 1993, Chapter 280, Sections 67 through 74, as amended) are repealed.

SECTION 1112. EFFECTIVE DATE.--The effective date of the provisions of Sections 101 through 1103 and Section 1111 of this act is July 1, 2018. The effective date of the provisions of Sections 1104 through 1110 of this act is January 1, 2018.

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SENATE BILL

53RD LEGISLATURE - STATE OF NEW MEXICO - FIRST SESSION, 2017

INTRODUCED BY

FOR THE COURTS, CORRECTIONS AND JUSTICE COMMITTEE

AN ACT

RELATING TO CIVIL LIBERTIES; ENACTING THE ELECTRONIC COMMUNICATIONS PRIVACY ACT; PROVIDING PERSONAL PROTECTIONS FROM GOVERNMENT ACCESS TO ELECTRONIC COMMUNICATIONS.

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

SECTION 1. [NEW MATERIAL] SHORT TITLE.--This act may be cited as the "Electronic Communications Privacy Act".

SECTION 2. [NEW MATERIAL] DEFINITIONS.--As used in the Electronic Communications Privacy Act:

A. "adverse result" means:

(1) danger to the life or physical safety of a natural person;

(2) flight from prosecution;

(3) destruction of or tampering with evidence;

(4) intimidation of a potential witness; or

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(5) serious jeopardy to an investigation;

B. "authorized possessor" means a natural person who owns and possesses an electronic device or a natural person who, with the owner's consent, possesses an electronic device;

C. "electronic communication" means the transfer of a sign, a signal, a writing, an image, a sound, a datum or intelligence of any nature in whole or in part by a wire, radio, electromagnetic, photoelectric or photo-optical system;

D. "electronic communication information":

(1) means information about an electronic communication or the use of an electronic communication service, including:

(a) the contents, sender, recipients, format or the sender's or recipients' precise or approximate location at any point during the communication;

(b) the time or date the communication was created, sent or received; and

(c) any information, including an internet protocol address, pertaining to a person or device participating in the communication; and

(2) excludes subscriber information;

E. "electronic communication service" means a service that:

(1) allows its subscribers or users to send or receive electronic communications, including by acting as an

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intermediary in the transmission of electronic communications; or

(2) stores electronic communication information;

F. "electronic device" means a device that stores, generates or transmits information in electronic form;

G. "electronic device information":

(1) means information stored on or generated through the operation of an electronic device; and

(2) includes the current and prior locations of the device;

H. "electronic information" means electronic communication information or electronic device information;

I. "government entity" means:

(1) a department, agency or political subdivision of the state; or

(2) a natural person acting for or on behalf of the state or a political subdivision of the state;

J. "service provider" means a person offering an electronic communication service;

K. "specific consent":

(1) means consent provided directly to a government entity seeking information; and

(2) includes consent provided when the government entity is the addressee, the intended recipient or a

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member of the intended audience of an electronic communication, regardless of whether the originator of the communication had actual knowledge that the addressee, intended recipient or member of the specific audience is a government entity, except where the government entity has taken deliberate steps to hide the government entity's government association; and

L. "subscriber information" means:

(1) the name, street address, telephone number, email address or other similar type of contact information provided by a subscriber to a service provider to establish or maintain an account or communication channel;

(2) a subscriber or account number or identifier; or

(3) the length and type of service used by a user or a service-provider subscriber.

SECTION 3. [NEW MATERIAL] GOVERNMENT ENTITY--PROSCRIBED ACTS--PERMITTED ACTS--WARRANTS--INFORMATION RETENTION--EMERGENCY.--

A. Except as otherwise provided in this section, a government entity shall not:

(1) compel or incentivize the production of or access to electronic communication information from a service provider;

(2) compel the production of or access to electronic device information from a person other than the

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device's authorized possessor; or

(3) access electronic device information by means of physical interaction or electronic communication with the electronic device.

B. A government entity may compel the production of or access to electronic communication information from a service provider or compel the production of or access to electronic device information from a person other than the authorized possessor of the device only if the production or access is made:

(1) under a warrant that complies with the requirements in Subsection D of this section; or

(2) under a wiretap order.

C. A government entity may access electronic device information by means of physical interaction or electronic communication with the device only if that access is made:

(1) under a warrant that complies with the requirements in Subsection D of this section;

(2) under a wiretap order;

(3) with the specific consent of the device's authorized possessor;

(4) with the specific consent of the device's owner if the device has been reported as lost or stolen;

(5) because the government entity believes in good faith that the device is lost, stolen or abandoned, in

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which case, the government entity may access that information only for the purpose of attempting to identify, verify or contact the device's authorized possessor; or

(6) because the government entity believes in good faith that an emergency involving danger of death or serious physical injury to a natural person requires access to the electronic device information.

D. A warrant for the search and seizure of electronic information shall:

(1) describe with particularity the information to be seized by specifying the time periods covered and, as appropriate and reasonable, the natural persons or accounts targeted, the applications or services covered and the types of information sought;

(2) except when the information obtained is exculpatory with respect to the natural person targeted, require that any information obtained through the execution of the warrant that is unrelated to the objective of the warrant be destroyed within thirty days after the information is seized and be not subject to further review, use or disclosure; and

(3) comply with all New Mexico and federal laws, including laws prohibiting, limiting or imposing additional requirements on the use of search warrants.

E. When issuing a warrant or order for electronic information or upon a petition of the target or recipient of

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the warrant or order, a court may appoint a special master charged with ensuring that only the information necessary to achieve the objective of the warrant or order is produced or accessed.

F. A service provider may voluntarily disclose electronic communication information or subscriber information if the law otherwise permits that disclosure.

G. If a government entity receives electronic communication information as provided in Subsection F of this section, the government entity shall destroy that information within ninety days after the disclosure unless the government entity:

(1) has or obtains the specific consent of the sender or recipient of the electronic communication about which information was disclosed; or

(2) obtains a court order under Subsection H of this section.

H. A court may issue an order authorizing the retention of electronic communication information:

(1) only upon a finding that the conditions justifying the initial voluntary disclosure persist; and

(2) lasting only for the time those conditions persist or there is probable cause to believe that the information constitutes criminal evidence.

I. Information retained as provided in Subsection H

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of this section shall be shared only with a person that agrees to limit the person's use of the information to the purposes identified in the court order and that:

(1) is legally obligated to destroy the information upon the expiration or rescindment of the court order; or

(2) voluntarily agrees to destroy the information upon the expiration or rescindment of the court order.

J. If a government entity obtains electronic information because of an emergency that involves danger of death or serious physical injury to a natural person and that requires access to the electronic information without delay, the government entity shall file with the appropriate court within three days after obtaining the electronic information:

(1) an application for a warrant or order authorizing the production of electronic information and, if applicable, a request supported by a sworn affidavit for an order delaying notification as provided in Subsection B of Section 4 of the Electronic Communications Privacy Act; or

(2) a motion seeking approval of the emergency disclosures that sets forth the facts giving rise to the emergency and, if applicable, a request supported by a sworn affidavit for an order delaying notification as provided in Subsection B of Section 4 of the Electronic Communications

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Privacy Act.

K. A court that receives an application or motion as provided in Subsection J of this section shall promptly rule on the application or motion. If the court finds that the facts did not give rise to an emergency or if the court rejects the application for a warrant or order on any other ground, the court shall order:

(1) the immediate destruction of all information obtained; and

(2) the immediate notification provided in Subsection A of Section 4 of the Electronic Communications Privacy Act if that notice has not already been given.

L. This section does not limit the authority of a government entity to use an administrative, grand jury, trial or civil discovery subpoena to require:

(1) an originator, addressee or intended recipient of an electronic communication to disclose any electronic communication information associated with that communication;

(2) when a person that provides electronic communications services to its officers, directors, employees or agents for those officers, directors, employees or agents to carry out their duties, the person to disclose the electronic communication information associated with an electronic communication to or from the officer, director, employee or

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agent; or

(3) a service provider to provide subscriber information.

M. This section does not prohibit the intended recipient of an electronic communication from voluntarily disclosing electronic communication information concerning that communication to a government entity.

N. Nothing in this section shall be construed to expand any authority under New Mexico law to compel the production of or access to electronic information.

SECTION 4. [NEW MATERIAL] WARRANT--EMERGENCY--GOVERNMENT DUTIES--NOTIFICATION.--

A. Except as otherwise provided in this section, a government entity that executes a warrant or obtains electronic information in an emergency as provided in Section 3 of the Electronic Communications Privacy Act shall:

(1) serve upon or deliver, by registered or first-class mail, electronic mail or other means reasonably calculated to be effective, to the identified targets of the warrant or emergency request, a notice that informs the recipient that information about the recipient has been compelled or requested and that states with reasonable specificity the nature of the government investigation under which the information is sought;

(2) serve or deliver the notice:

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(a) contemporaneously with the execution of a warrant; or

(b) in the case of an emergency, within three days after obtaining the electronic information; and

(3) include with the notice:

(a) a copy of the warrant; or

(b) a written statement setting forth the facts giving rise to the emergency.

B. When a government entity seeks a warrant or obtains electronic information in an emergency as provided in Section 3 of the Electronic Communications Privacy Act, the government entity may request from a court an order delaying notification and prohibiting any party providing information from notifying any other party that information has been sought. The government entity shall support the request with a sworn affidavit. The court:

(1) shall issue the order if the court determines that there is reason to believe that notification may have an adverse result, but for no more than ninety days and only for the period that the court finds there is reason to believe that the notification may have that adverse result; and

(2) may grant one or more extensions of the delay of up to ninety days each on the grounds provided in Paragraph (1) of this subsection.

C. When the period of delay of a notification

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ordered by a court as provided in Subsection B of this section expires, the government entity that requested the order shall serve upon or deliver, by registered or first-class mail, electronic mail or other means reasonably calculated to be effective, as specified by the court issuing the order, to the identified targets of the warrant:

(1) a document that includes the information described in Subsection A of this section; and

(2) a copy of all electronic information obtained or a summary of that information, including, at a minimum:

(a) the number and types of records disclosed;

(b) the date and time when the earliest and latest records were created; and

(c) a statement of the grounds for the court's determination to grant a delay in notifying the targeted person.

D. If there is no identified target of a warrant or emergency request at the time of the warrant's or request's issuance, the government entity shall submit to the attorney general within three days after the execution of the warrant or request issuance the information described in Subsection A of this section. If an order delaying notice is obtained under Subsection B of this section, the government entity shall

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submit to the attorney general when the period of delay of the notification expires the information described in Subsection C of this section. The attorney general shall publish all those reports on the attorney general's website within ninety days after receipt. The attorney general shall redact names and other personal identifying information from the reports.

E. Except as otherwise provided in this section, nothing in the Electronic Communications Privacy Act prohibits or limits a service provider or any other party from disclosing information about a request or demand for electronic information.

SECTION 5. [NEW MATERIAL] VIOLATIONS OF LAW.--

A. A person in a trial, hearing or proceeding may move to suppress any electronic information obtained or retained in violation of the United States constitution, the constitution of New Mexico or the Electronic Communications Privacy Act. The motion shall be made, determined and subject to review in accordance with the procedures provided in law.

B. The attorney general may commence a civil action to compel a government entity to comply with the Electronic Communications Privacy Act.

C. A natural person, service provider or other recipient of a warrant, order or other legal process obtained in violation of the United States constitution, the constitution of New Mexico or the Electronic Communications

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Privacy Act may petition the court that issued the warrant, order or process to void or modify it or order the destruction of any information obtained in violation of those sources of law.

SECTION 6. [NEW MATERIAL] ANNUAL REPORTING.--

A. A government entity that obtains electronic communication information under the Electronic Communications Privacy Act shall report to the attorney general beginning in 2019 and every year thereafter on or before February 1. The report shall include, to the extent it reasonably can be determined:

(1) the number of times electronic information was sought or obtained under the Electronic Communications Privacy Act;

(2) the number of times each of the following were sought and, for each, the number of records obtained:

(a) electronic communication content;

(b) location information;

(c) electronic device information, excluding location information; and

(d) other electronic communication information; and

(3) for each type of information listed in Paragraph (2) of this subsection:

(a) the number of times that type of

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information was sought or obtained under: 1) a wiretap order issued under the Electronic Communications Privacy Act; 2) a search warrant issued under the Electronic Communications Privacy Act; and 3) an emergency request as provided in Subsection J of Section 3 of the Electronic Communications Privacy Act;

(b) the number of persons whose information was sought or obtained;

(c) the number of instances in which information sought or obtained did not specify a target natural person;

(d) for demands or requests issued upon a service provider, the number of those demands or requests that were fully complied with, partially complied with and refused;

(e) the number of times notice to targeted persons was delayed and the average length of the delay;

(f) the number of times records were shared with other government entities or any department or agency of the federal government and the government entity, department or agency names with which the records were shared;

(g) for location information, the average period for which location information was obtained or received; and

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(h) the number of times electronic information obtained under the Electronic Communications Privacy Act led to a conviction and the number of instances in which electronic information was sought or obtained that were relevant to the criminal proceedings leading to those convictions.

B. Beginning in 2019 and every year thereafter, on or before April 1, the attorney general shall publish on the attorney general's website:

(1) the individual reports from each government entity that requests or compels the production of contents or records pertaining to an electronic communication or location information; and

(2) a summary aggregating each of the items in Subsection A of this section.

C. Nothing in the Electronic Communications Privacy Act prohibits or restricts a service provider from producing an annual report summarizing the demands or requests it receives under the Electronic Communications Privacy Act.

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HOUSE BILL

53RD LEGISLATURE - STATE OF NEW MEXICO - FIRST SESSION, 2017

INTRODUCED BY

FOR THE COURTS, CORRECTIONS AND JUSTICE COMMITTEE

AN ACT

RELATING TO PROPERTY; AMENDING THE UNIFORM COMMERCIAL CODE; PROVIDING THAT THE TRANSFEREE OF A NOTE CAN ENFORCE IT IF A DIRECT OR INDIRECT TRANSFEROR COULD HAVE ENFORCED IT; PROVIDING FOR A LOST-NOTE AFFIDAVIT.

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

SECTION 1. Section 55-3-309 NMSA 1978 (being Laws 1992, Chapter 114, Section 122) is amended to read:

"55-3-309. ENFORCEMENT OF LOST, DESTROYED OR STOLEN INSTRUMENT--LOST-NOTE AFFIDAVIT.--

(a) A person not in possession of an instrument is entitled to enforce the instrument if (i) the person seeking to enforce the instrument was [~~in possession of the instrument and~~] entitled to enforce [~~it~~] the instrument when loss of possession occurred or has directly or indirectly acquired

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ownership of the instrument from a person that was entitled to enforce the instrument when loss of possession occurred, (ii) the loss of possession was not the result of a transfer by the person or a lawful seizure and (iii) the person cannot reasonably obtain possession of the instrument because the instrument was destroyed, its whereabouts cannot be determined or it is in the wrongful possession of an unknown person or a person that cannot be found or is not amenable to service of process.

(b) A person seeking enforcement of an instrument under Subsection (a) of this section must prove the terms of the instrument and the person's right to enforce the instrument. If that proof is made, Section 55-3-308 NMSA 1978 applies to the case as if the person seeking enforcement had produced the instrument. The court may not enter judgment in favor of the person seeking enforcement unless it finds that the person required to pay the instrument is adequately protected against loss that might occur by reason of a claim by another person to enforce the instrument. Adequate protection may be provided by any reasonable means.

(c) In an action to foreclose a lien on real property that is secured by the instrument, the creditor must attest to the facts required by Subsection (a) of this section in (i) a verified complaint or (ii) an affidavit or a statement affirmed under penalty of perjury under the law of New Mexico

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and attached to the complaint. An affidavit substantially in the following form is sufficient:

"LOST-NOTE AFFIDAVIT

_____ [*Name of affiant*] (Affiant) being sworn deposes and says:

1. Affiant is _____ [*Title or position*] of _____ [*Name of creditor*] (Lender) and is authorized to make this affidavit on Lender's behalf.

2. Lender is the legal owner of a promissory note (Note) executed by _____ _____ [*Name(s) of obligor(s)*] in the original principal amount of $_____ [*dollar amount*], dated _____ [*insert date*] and secured by _____ [*Name of instrument*] recorded in _____ [*recording reference*]. Lender has not sold, assigned, pledged, or otherwise transferred the Note to any person. The Note is free and clear of all claims and encumbrances.

3. The Note is lost, destroyed, or stolen and for this reason cannot be produced.

4. On [*insert date*], Affiant made a diligent search for the Note by personal examination of the books and records of Lender, as follows:

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_____

_____

[*describe search efforts, including the books and records examined by Affiant*]

_____ [*Name of affiant*].

[ADD ACKNOWLEDGMENT]".""

SECTION 2. APPLICABILITY.--The provisions of this act apply to:

A. an instrument if the loss of possession occurred before, on or after January 1, 2018;

B. an instrument if the right to enforce the instrument was acquired before, on or after January 1, 2018;

C. a judicial proceeding commenced on or after January 1, 2018; and

D. a judicial proceeding commenced before January 1, 2018, unless the court finds that a provision of this act would interfere substantially with the effective conduct of the judicial proceeding or would prejudice the rights of a party, in which case the superseded law, and not that provision, applies.

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

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SENATE BILL

53RD LEGISLATURE - STATE OF NEW MEXICO - FIRST SESSION, 2017

INTRODUCED BY

FOR THE COURTS, CORRECTIONS AND JUSTICE COMMITTEE

AN ACT

RELATING TO FIDUCIARIES; ENACTING THE REVISED UNIFORM FIDUCIARY ACCESS TO DIGITAL ASSETS ACT; MAKING CONFORMING TECHNICAL AMENDMENTS TO THE UNIFORM PROBATE CODE.

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 "Revised Uniform Fiduciary Access to Digital Assets Act".

SECTION 2. [NEW MATERIAL] DEFINITIONS.--As used in the Revised Uniform Fiduciary Access to Digital Assets Act:

A. "account" means an arrangement under a terms-of-service agreement in which a custodian carries, maintains, processes, receives or stores a digital asset of the user or provides goods or services to the user;

B. "agent" means an attorney-in-fact granted

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authority under a durable or nondurable power of attorney;

C. "carries" means engages in the transmission of an electronic communication;

D. "catalogue of electronic communications" means information that identifies each person with which a user has had an electronic communication the time and date of the communication and the electronic address of the person;

E. "conservator" means a person appointed by a court to manage the estate of a living individual. The term includes a limited conservator;

F. "content of an electronic communication" means information concerning the substance or meaning of the communication that:

(1) has been sent or received by a user;

(2) is in electronic storage by a custodian providing an electronic-communication service to the public or is carried or maintained by a custodian providing a remote-computing service to the public; and

(3) is not readily accessible to the public;

G. "court" means the district court;

H. "custodian" means a person that carries, maintains, processes, receives or stores a digital asset of a user;

I. "designated recipient" means a person chosen by a user using an online tool to administer digital assets of the

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user;

J. "digital asset" means an electronic record in which an individual has a right or interest. The term does not include an underlying asset or liability unless the asset or liability is itself an electronic record;

K. "electronic" means relating to technology having electrical, digital, magnetic, wireless, optical, electromagnetic or similar capabilities;

L. "electronic communication" has the meaning set forth in 18 U.S.C. Section 2510(12), as amended;

M. "electronic-communication service" means a custodian that provides to a user the ability to send or receive an electronic communication;

N. "fiduciary" means an original, additional or successor personal representative, conservator, agent or trustee;

O. "information" means data, text, images, videos, sounds, codes, computer programs, software, databases or the like;

P. "online tool" means an electronic service provided by a custodian that allows the user, in an agreement distinct from the terms-of-service agreement between the custodian and user, to provide directions for disclosure or nondisclosure of digital assets to a third person;

Q. "person" means an individual, estate,

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partnership, association, trust, business or nonprofit entity, public corporation, government or governmental subdivision, agency or instrumentality or other legal or commercial entity;

R. "personal representative" means an executor, administrator, special administrator or person that performs substantially the same function under law of this state other than the Revised Uniform Fiduciary Access to Digital Assets Act;

S. "power of attorney" means a record that grants an agent authority to act in the place of a principal;

T. "principal" means an individual who grants authority to an agent in a power of attorney;

U. "protected person" means an individual for whom a conservator has been appointed. The term includes an individual for whom an application for the appointment of a conservator is pending;

V. "record" means information that is inscribed on a tangible medium or that is stored in an electronic or other medium and is retrievable in perceivable form;

W. "remote-computing service" means a custodian that provides to a user computer-processing services or the storage of digital assets by means of an electronic communications system, as defined in 18 U.S.C. Section 2510(14), as amended;

X. "terms-of-service agreement" means an agreement

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that controls the relationship between a user and a custodian;

Y. "trustee" means a fiduciary with legal title to property under an agreement or declaration that creates a beneficial interest in another. The term includes a successor trustee;

Z. "user" means a person that has an account with a custodian; and

AA. "will" includes a codicil, testamentary instrument that only appoints an executor and instrument that revokes or revises a testamentary instrument.

SECTION 3. [NEW MATERIAL] APPLICABILITY.--

A. The Revised Uniform Fiduciary Access to Digital Assets Act applies to:

(1) a fiduciary acting under a will or power of attorney executed before, on or after July 1, 2017;

(2) a personal representative acting for a decedent who died before, on or after July 1, 2017;

(3) a conservatorship proceeding commenced before, on or after July 1, 2017; and

(4) a trustee acting under a trust created before, on or after July 1, 2017.

B. The Revised Uniform Fiduciary Access to Digital Assets Act applies to a custodian if the user resides in this state or resided in this state at the time of the user's death.

C. The Revised Uniform Fiduciary Access to Digital

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Assets Act does not apply to a digital asset of an employer used by an employee in the ordinary course of the employer's business.

SECTION 4. [NEW MATERIAL] USER DIRECTION FOR DISCLOSURE OF DIGITAL ASSETS.--

A. A user may use an online tool to direct the custodian to disclose to a designated recipient or not to disclose some or all of the user's digital assets, including the content of electronic communications. If the online tool allows the user to modify or delete a direction at all times, a direction regarding disclosure using an online tool overrides a contrary direction by the user in a will, trust, power of attorney or other record.

B. If a user has not used an online tool to give direction under Subsection A of this section or if the custodian has not provided an online tool, the user may allow or prohibit in a will, trust, power of attorney or other record disclosure to a fiduciary of some or all of the user's digital assets, including the content of electronic communications sent or received by the user.

C. A user's direction under Subsection A or B of this section overrides a contrary provision in a terms-of-service agreement that does not require the user to act affirmatively and distinctly from the user's assent to the terms of service.

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SECTION 5. [NEW MATERIAL] TERMS-OF-SERVICE AGREEMENT.--

A. The Revised Uniform Fiduciary Access to Digital Assets Act does not change or impair a right of a custodian or a user under a terms-of-service agreement to access and use digital assets of the user.

B. The Revised Uniform Fiduciary Access to Digital Assets Act does not give a fiduciary or designated recipient any new or expanded rights other than those held by the user for whom, or for whose estate, the fiduciary or designated recipient acts or represents.

C. A fiduciary's or designated recipient's access to digital assets may be modified or eliminated by a user, by federal law or by a terms-of-service agreement if the user has not provided direction under Section 4 of the Revised Uniform Fiduciary Access to Digital Assets Act.

SECTION 6. [NEW MATERIAL] PROCEDURE FOR DISCLOSING DIGITAL ASSETS.--

A. When disclosing digital assets of a user under the Revised Uniform Fiduciary Access to Digital Assets Act, the custodian may at its sole discretion:

(1) grant a fiduciary or designated recipient full access to the user's account;

(2) grant a fiduciary or designated recipient partial access to the user's account sufficient to perform the tasks with which the fiduciary or designated recipient is

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charged; or

(3) provide a fiduciary or designated recipient a copy in a record of any digital asset that, on the date the custodian received the request for disclosure, the user could have accessed if the user were alive and had full capacity and access to the account.

B. A custodian may assess a reasonable administrative charge for the cost of disclosing digital assets under the Revised Uniform Fiduciary Access to Digital Assets Act.

C. A custodian need not disclose under the Revised Uniform Fiduciary Access to Digital Assets Act a digital asset deleted by a user.

D. If a user directs or a fiduciary requests a custodian to disclose under the Revised Uniform Fiduciary Access to Digital Assets Act some, but not all, of the user's digital assets, the custodian need not disclose the assets if segregation of the assets would impose an undue burden on the custodian. If the custodian believes the direction or request imposes an undue burden, the custodian or fiduciary may seek an order from the court to disclose:

(1) a subset limited by date of the user's digital assets;

(2) all of the user's digital assets to the fiduciary or designated recipient;

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(3) none of the user's digital assets; or

(4) all of the user's digital assets to the court for review in camera.

SECTION 7. [NEW MATERIAL] DISCLOSURE OF CONTENT OF ELECTRONIC COMMUNICATIONS OF DECEASED USER.--If a deceased user consented to, or a court directs, disclosure of the contents of electronic communications of the user, the custodian shall disclose to the personal representative of the estate of the user the content of an electronic communication sent or received by the user if the representative gives the custodian:

A. a written request for disclosure in physical or electronic form;

B. a certified copy of the death certificate of the user;

C. a certified copy of the letters of administration or letters testamentary of the personal representative or a small estate affidavit pursuant to the provisions of Section 45-3-1201 NMSA 1978;

D. unless the user provided direction using an online tool, a copy of the user's will, trust, power of attorney or other record evidencing the user's consent to disclosure of the content of electronic communications; and

E. if requested by the custodian:

(1) a number, username, address or other unique subscriber or account identifier assigned by the

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custodian to identify the user's account;

(2) evidence linking the account to the user; or

(3) a finding by the court that:

(a) the user had a specific account with the custodian, identifiable by the information specified in Paragraph (1) of this subsection;

(b) disclosure of the content of electronic communications of the user would not violate 18 U.S.C. Section 2701 et seq., as amended, 47 U.S.C. Section 222, as amended, or other applicable law;

(c) unless the user provided direction using an online tool, the user consented to disclosure of the content of electronic communications; or

(d) disclosure of the content of electronic communications of the user is reasonably necessary for administration of the estate.

SECTION 8. [NEW MATERIAL] DISCLOSURE OF OTHER DIGITAL ASSETS OF A DECEASED USER.--Unless the user prohibited disclosure of digital assets or the court directs otherwise, a custodian shall disclose to the personal representative of the estate of a deceased user a catalogue of electronic communications sent or received by the user and digital assets, other than the content of electronic communications, of the user, if the representative gives the custodian:

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A. a written request for disclosure in physical or electronic form;

B. a certified copy of the death certificate of the user;

C. a certified copy of the letters of administration or letters testamentary of the personal representative or a small estate affidavit pursuant to the provisions of Section 45-3-1201 NMSA 1978; and

D. if requested by the custodian:

(1) a number, username, address or other unique subscriber or account identifier assigned by the custodian to identify the user's account;

(2) evidence linking the account to the user;

(3) an affidavit stating that disclosure of the user's digital assets is reasonably necessary for administration of the estate; or

(4) a finding by the court that:

(a) the user had a specific account with the custodian, identifiable by the information specified in Paragraph (1) of this subsection; or

(b) disclosure of the user's digital assets is reasonably necessary for administration of the estate.

SECTION 9. [NEW MATERIAL] DISCLOSURE OF CONTENT OF ELECTRONIC COMMUNICATIONS OF PRINCIPAL.--To the extent a power

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of attorney expressly grants an agent authority over the content of electronic communications sent or received by the principal and unless directed otherwise by the principal or the court, a custodian shall disclose to the agent the content if the agent gives the custodian:

A. a written request for disclosure in physical or electronic form;

B. an original or copy of the power of attorney expressly granting the agent authority over the content of electronic communications of the principal;

C. a certification by the agent, under penalty of perjury, that the power of attorney is in effect; and

D. if requested by the custodian:

(1) a number, username, address or other unique subscriber or account identifier assigned by the custodian to identify the principal's account; or

(2) evidence linking the account to the principal.

SECTION 10. [NEW MATERIAL] DISCLOSURE OF OTHER DIGITAL ASSETS OF PRINCIPAL.--Unless otherwise ordered by the court, directed by the principal or provided by a power of attorney, a custodian shall disclose to an agent with specific authority over digital assets or general authority to act on behalf of a principal a catalogue of electronic communications sent or received by the principal and digital assets, other than the

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content of electronic communications, of the principal if the agent gives the custodian:

A. a written request for disclosure in physical or electronic form;

B. an original or a copy of the power of attorney that gives the agent specific authority over digital assets or general authority to act on behalf of the principal;

C. a certification by the agent, under penalty of perjury, that the power of attorney is in effect; and

D. if requested by the custodian:

(1) a number, username, address or other unique subscriber or account identifier assigned by the custodian to identify the principal's account; or

(2) evidence linking the account to the principal.

SECTION 11. [NEW MATERIAL] DISCLOSURE OF DIGITAL ASSETS HELD IN TRUST WHEN TRUSTEE IS AN ORIGINAL USER.--Unless otherwise ordered by the court or provided in a trust, a custodian shall disclose to a trustee that is an original user of an account any digital asset of the account held in trust, including a catalogue of electronic communications of the trustee and the content of electronic communications.

SECTION 12. [NEW MATERIAL] DISCLOSURE OF CONTENTS OF ELECTRONIC COMMUNICATIONS HELD IN TRUST WHEN TRUSTEE IS NOT AN ORIGINAL USER.--Unless otherwise ordered by the court, directed

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by the user or provided in a trust, a custodian shall disclose to a trustee that is not an original user of an account the content of an electronic communication sent or received by an original or successor user and carried, maintained, processed, received or stored by the custodian in the account of the trust if the trustee gives the custodian:

A. a written request for disclosure in physical or electronic form;

B. a certified copy of the trust instrument or a certified copy of the trust instrument or a certification of trust under Section 46A-10-1013 NMSA 1978 that includes consent to disclosure of the content of electronic communications to the trustee;

C. a certification by the trustee, under penalty of perjury, that the trust exists and the trustee is a currently acting trustee of the trust; and

D. if requested by the custodian:

(1) a number, username, address or other unique subscriber or account identifier assigned by the custodian to identify the trust's account; or

(2) evidence linking the account to the trust.

SECTION 13. [NEW MATERIAL] DISCLOSURE OF OTHER DIGITAL ASSETS HELD IN TRUST WHEN TRUSTEE IS NOT AN ORIGINAL USER.--Unless otherwise ordered by the court, directed by the user or provided in a trust, a custodian shall disclose, to a

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trustee that is not an original user of an account, a catalogue of electronic communications sent or received by an original or successor user and stored, carried or maintained by the custodian in an account of the trust and any digital assets, other than the content of electronic communications, in which the trust has a right or interest if the trustee gives the custodian:

A. a written request for disclosure in physical or electronic form;

B. a certified copy of the trust instrument or a certified copy of the trust instrument or a certification of trust under Section 46A-10-1013 NMSA 1978;

C. a certification by the trustee, under penalty of perjury, that the trust exists and the trustee is a currently acting trustee of the trust; and

D. if requested by the custodian:

(1) a number, username, address or other unique subscriber or account identifier assigned by the custodian to identify the trust's account; or

(2) evidence linking the account to the trust.

SECTION 14. [NEW MATERIAL] DISCLOSURE OF DIGITAL ASSETS TO CONSERVATOR OF A PROTECTED PERSON.--

A. After an opportunity for a hearing under Chapter 45, Article 5 NMSA 1978, the court may grant a conservator access to the digital assets of a protected person.

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B. Unless otherwise ordered by the court or directed by the user, a custodian shall disclose to a conservator the catalogue of electronic communications sent or received by a protected person and any digital assets, other than the content of electronic communications, in which the protected person has a right or interest if the conservator gives the custodian:

(1) a written request for disclosure in physical or electronic form;

(2) a certified copy of the court order that gives the conservator authority over the digital assets of the protected person; and

(3) if requested by the custodian:

(a) a number, username, address or other unique subscriber or account identifier assigned by the custodian to identify the account of the protected person; or

(b) evidence linking the account to the protected person.

C. A conservator with general authority to manage the assets of a protected person may request a custodian of the digital assets of the protected person to suspend or terminate an account of the protected person for good cause. A request made under this section shall be accompanied by a certified copy of the court order giving the conservator authority over the protected person's property.

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SECTION 15. [NEW MATERIAL] FIDUCIARY DUTY AND AUTHORITY.--

A. The legal duties imposed on a fiduciary charged with managing tangible property apply to the management of digital assets, including:

(1) the duty of care;

(2) the duty of loyalty; and

(3) the duty of confidentiality.

B. A fiduciary's or designated recipient's authority with respect to a digital asset of a user:

(1) except as otherwise provided in Section 4 of the Revised Uniform Fiduciary Access to Digital Assets Act, is subject to the applicable terms of service;

(2) is subject to other applicable law, including copyright law;

(3) in the case of a fiduciary, is limited by the scope of the fiduciary's duties; and

(4) may not be used to impersonate the user.

C. A fiduciary with authority over the property of a decedent, protected person, principal or settlor has the right to access any digital asset in which the decedent, protected person, principal or settlor had a right or interest and that is not held by a custodian or subject to a terms-of-service agreement.

D. A fiduciary acting within the scope of the

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fiduciary's duties is an authorized user of the property of the decedent, protected person, principal or settlor for the purpose of applicable computer-fraud and unauthorized-computer-access laws, including the Computer Crimes Act.

E. A fiduciary with authority over the tangible, personal property of a decedent, protected person, principal or settlor:

(1) has the right to access the property and any digital asset stored in it; and

(2) is an authorized user for the purpose of computer-fraud and unauthorized-computer-access laws, including those offenses enumerated in the Computer Crimes Act.

F. A custodian may disclose information in an account to a fiduciary of the user when the information is required to terminate an account used to access digital assets licensed to the user.

G. A fiduciary of a user may request a custodian to terminate the user's account. A request for termination shall be in writing, in either physical or electronic form, and accompanied by:

(1) if the user is deceased, a certified copy of the death certificate of the user;

(2) a certified copy of the letters of administration or letters testamentary of the personal representative or a small estate affidavit pursuant to the

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provisions of Section 45-3-1201 NMSA 1978, court order, power of attorney or trust giving the fiduciary authority over the account; and

(3) if requested by the custodian:

(a) a number, username, address or other unique subscriber or account identifier assigned by the custodian to identify the user's account;

(b) evidence linking the account to the user; or

(c) a finding by the court that the user had a specific account with the custodian, identifiable by the information specified in Subparagraph (a) of this paragraph.

SECTION 16. [NEW MATERIAL] CUSTODIAN COMPLIANCE AND IMMUNITY.--

A. Not later than sixty days after receipt of the information required under Sections 7 through 15 of the Revised Uniform Fiduciary Access to Digital Assets Act, a custodian shall comply with a request under the Revised Uniform Fiduciary Access to Digital Assets Act from a fiduciary or designated recipient to disclose digital assets or terminate an account. If the custodian fails to comply, the fiduciary or designated recipient may apply to the court for an order directing compliance.

B. An order under Subsection A of this section directing compliance shall contain a finding that compliance is

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not in violation of 18 U.S.C. Section 2702, as amended.

C. A custodian may notify the user that a request for disclosure or to terminate an account was made under the Revised Uniform Fiduciary Access to Digital Assets Act.

D. A custodian may deny a request under the Revised Uniform Fiduciary Access to Digital Assets Act from a fiduciary or designated recipient for disclosure of digital assets or to terminate an account if the custodian is aware of any lawful access to the account following the receipt of the fiduciary's request.

E. The Revised Uniform Fiduciary Access to Digital Assets Act does not limit a custodian's ability to obtain or require a fiduciary or designated recipient requesting disclosure or termination under the Revised Uniform Fiduciary Access to Digital Assets Act to obtain a court order that:

(1) specifies that an account belongs to the protected person or principal;

(2) specifies that there is sufficient consent from the protected person or principal to support the requested disclosure; and

(3) contains a finding required by law other than the Revised Uniform Fiduciary Access to Digital Assets Act.

F. A custodian and its officers, employees and agents are immune from liability for an act or omission done in

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good faith in compliance with the Revised Uniform Fiduciary Access to Digital Assets Act.

SECTION 17. [NEW MATERIAL] UNIFORMITY OF APPLICATION AND CONSTRUCTION.--In applying and construing the Revised Uniform Fiduciary Access to Digital Assets Act, consideration shall be given to the need to promote uniformity of the law with respect to its subject matter among states that enact it.

SECTION 18. [NEW MATERIAL] RELATION TO ELECTRONIC SIGNATURES IN GLOBAL AND NATIONAL COMMERCE ACT.--The Revised Uniform Fiduciary Access to Digital Assets Act modifies, limits or supersedes the federal Electronic Signatures in Global and National Commerce Act, 15 U.S.C. Section 7001 et seq., but does not modify, limit or supersede Section 101(c) of that act, 15 U.S.C. Section 7001(c), or authorize electronic delivery of any of the notices described in Section 103(b) of that act, 15 U.S.C. Section 7003(b).

SECTION 19. Section 45-3-711 NMSA 1978 (being Laws 1975, Chapter 257, Section 3-711) is amended to read:

"45-3-711. POWERS OF PERSONAL REPRESENTATIVES--IN GENERAL.--

A. Until termination of [~~his~~] a personal representative's appointment, a personal representative has the same power over the title to property of the estate that an absolute owner would have, [~~subject only to his trust to use and apply the property~~] in trust however, for the benefit of

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creditors whose claims have been allowed and others interested in the estate. This power may be exercised without notice, hearing or order of court.

B. A personal representative has access to and authority over a digital asset of the decedent to the extent provided by the Revised Uniform Fiduciary Access to Digital Assets Act."

SECTION 20. EFFECTIVE DATE.--The effective date of the provisions of this act is January 1, 2018.

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HOUSE BILL

53RD LEGISLATURE - STATE OF NEW MEXICO - FIRST SESSION, 2017

INTRODUCED BY

FOR THE COURTS, CORRECTIONS AND JUSTICE COMMITTEE

AN ACT

RELATING TO PROPERTY; ENACTING THE UNIFORM PARTITION OF HEIRS PROPERTY ACT AND MAKING CONFORMING AMENDMENTS TO THE UNIFORM PROBATE CODE; AMENDING PROCEDURES FOR SELF-PROVING WILLS IN THE UNIFORM PROBATE CODE; MAKING A TECHNICAL AMENDMENT TO THE UNIFORM TRUST DECANTING ACT.

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

SECTION 1. [NEW MATERIAL] SHORT TITLE.--Sections 1 through 13 of this act may be cited as the "Uniform Partition of Heirs Property Act".

SECTION 2. [NEW MATERIAL] DEFINITIONS.--As used in the Uniform Partition of Heirs Property Act:

A. "ascendant" means an individual who precedes another individual in lineage, in the direct line of ascent from the other individual;

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B. "collateral" means an individual who is related to another individual under the law of intestate succession of this state but who is not the other individual's ascendant or descendant;

C. "descendant" means an individual who follows another individual in lineage, in the direct line of descent from the other individual;

D. "determination of value" means a court order determining the fair market value of heirs property under Section 6 or 10 of the Uniform Partition of Heirs Property Act or adopting the valuation of the property agreed to by all cotenants;

E. "heirs property" means real property held in tenancy in common that satisfies all of the following requirements as of the filing of a partition action:

(1) there is no agreement in a record binding all the cotenants that governs the partition of the property;

(2) one or more of the cotenants acquired title from a relative, whether living or deceased; and

(3) any of the following applies:

(a) twenty percent or more of the interests are held by cotenants who are relatives;

(b) twenty percent or more of the interests are held by an individual who acquired title from a relative, whether living or deceased; or

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(c) twenty percent or more of the cotenants are relatives;

F. "partition by sale" means a court-ordered sale of the entire heirs property, whether by auction, sealed bids or open-market sale, conducted under Section 10 of the Uniform Partition of Heirs Property Act;

G. "partition in kind" means the division of heirs property into physically distinct and separately titled parcels;

H. "record" means information that is inscribed on a tangible medium or that is stored in an electronic or other medium and is retrievable in perceivable form; and

I. "relative" means an ascendant, descendant or collateral or an individual otherwise related to another individual by blood, marriage, adoption or law of this state other than the Uniform Partition of Heirs Property Act.

SECTION 3. [NEW MATERIAL] APPLICABILITY--RELATION TO OTHER LAW.--

A. The Uniform Partition of Heirs Property Act applies to partition actions filed on or after July 1, 2017.

B. In an action to partition real property under Chapter 42, Article 5 NMSA 1978, the court shall determine whether the property is heirs property. If the court determines that the property is heirs property, the property shall be partitioned under the Uniform Partition of Heirs

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Property Act unless all of the cotenants otherwise agree in a record.

C. The Uniform Partition of Heirs Property Act supplements Chapter 42, Article 5 NMSA 1978 and, if an action is governed by the Uniform Partition of Heirs Property Act, replaces provisions of Chapter 42, Article 5 NMSA 1978 that are inconsistent with the Uniform Partition of Heirs Property Act.

SECTION 4. [NEW MATERIAL] SERVICE--NOTICE BY POSTING.--

A. The Uniform Partition of Heirs Property Act does not limit or affect the method by which service of a complaint in a partition action may be made.

B. If the plaintiff in a partition action seeks an order of notice by publication and the court determines that the property may be heirs property, the plaintiff, not later than ten days after the court's determination, shall post and maintain while the action is pending a conspicuous sign on the property that is the subject of the action. The sign must state that the action has commenced and identify the name and address of the court and the common designation by which the property is known. The court may require the plaintiff to publish on the sign the name of the plaintiff and the known defendants.

SECTION 5. [NEW MATERIAL] COMMISSIONERS.--If the court appoints commissioners pursuant to Section 42-5-6 NMSA 1978, each commissioner, in addition to the requirements and

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disqualifications applicable to commissioners in Section 42-5-6 NMSA 1978, shall be disinterested and impartial and not a party to or a participant in the action.

SECTION 6. [NEW MATERIAL] DETERMINATION OF VALUE.--

A. Except as otherwise provided in Subsections B and C of this section, if the court determines that the property that is the subject of a partition action is heirs property, the court shall determine the fair market value of the property by ordering an appraisal pursuant to Subsection D of this section.

B. If all cotenants have agreed to the value of the property or to another method of valuation, the court shall adopt that value or the value produced by the agreed method of valuation.

C. If the court determines that the evidentiary value of an appraisal is outweighed by the cost of the appraisal, the court, after an evidentiary hearing, shall determine the fair market value of the property and send notice to the parties of the value.

D. If the court orders an appraisal, the court shall appoint a disinterested real estate appraiser licensed in this state to determine the fair market value of the property assuming sole ownership of the fee simple estate. On completion of the appraisal, the appraiser shall file a sworn or verified appraisal with the court.

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E. If an appraisal is conducted pursuant to Subsection D of this section, not later than ten days after the appraisal is filed, the court shall send notice to each party with a known address stating:

(1) the appraised fair market value of the property;

(2) that the appraisal is available at the clerk's office; and

(3) that a party may file with the court an objection to the appraisal not later than thirty days after the notice is sent, stating the grounds for the objection.

F. If an appraisal is filed with the court pursuant to Subsection D of this section, the court shall conduct a hearing to determine the fair market value of the property not sooner than thirty days after a copy of the notice of the appraisal is sent to each party under Subsection E of this section, whether or not an objection to the appraisal is filed under Paragraph (3) of Subsection E of this section. In addition to the court-ordered appraisal, the court may consider any other evidence of value offered by a party.

G. After a hearing under Subsection F of this section, but before considering the merits of the partition action, the court shall determine the fair market value of the property and send notice to the parties of the value.

SECTION 7. [NEW MATERIAL] COTENANT BUYOUT.--

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A. If any cotenant requests partition by sale, after the determination of value under Section 6 of the Uniform Partition of Heirs Property Act, the court shall send notice to the parties that any cotenant except a cotenant that requests partition by sale may buy all the interests of the cotenants that request partition by sale.

B. Not later than forty-five days after the notice is sent under Subsection A of this section, any cotenant except a cotenant that requests partition by sale may give notice to the court that it elects to buy all the interests of the cotenants that request partition by sale.

C. The purchase price for each of the interests of a cotenant that requests partition by sale is the value of the entire parcel determined under Section 6 of the Uniform Partition of Heirs Property Act multiplied by the cotenant's fractional ownership of the entire parcel.

D. After expiration of the period in Subsection B of this section, the following rules apply:

(1) if only one cotenant elects to buy all the interests of the cotenants that request partition by sale, the court shall notify all the parties of that fact;

(2) if more than one cotenant elects to buy all the interests of the cotenants that request partition by sale, the court shall allocate the right to buy those interests among the electing cotenants based on each electing cotenant's

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existing fractional ownership of the entire parcel divided by the total existing fractional ownership of all cotenants electing to buy and send notice to all the parties of that fact and of the price to be paid by each electing cotenant; and

(3) if no cotenant elects to buy all the interests of the cotenants that request partition by sale, the court shall send notice to all the parties of that fact and resolve the partition action under Subsections A and B of Section 8 of the Uniform Partition of Heirs Property Act.

E. If the court sends notice to the parties under Paragraph (1) or (2) of Subsection D of this section, the court shall set a date, not sooner than sixty days after the date the notice was sent, by which electing cotenants shall pay their apportioned price into the court. After this date, the following rules apply:

(1) if all electing cotenants timely pay their apportioned price into court, the court shall issue an order reallocating all the interests of the cotenants and disburse the amounts held by the court to the persons entitled to them;

(2) if no electing cotenant timely pays its apportioned price, the court shall resolve the partition action under Subsections A and B of Section 8 of the Uniform Partition of Heirs Property Act as if the interests of the cotenants that requested partition by sale were not purchased; and

(3) if one or more but not all of the electing

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cotenants fail to pay their apportioned price on time, the court, on motion, shall give notice to the electing cotenants that paid their apportioned price of the interest remaining and the price for all that interest.

F. Not later than twenty days after the court gives notice pursuant to Paragraph (3) of Subsection E of this section, any cotenant that paid may elect to purchase all of the remaining interest by paying the entire price into the court. After the twenty-day period, the following rules apply:

(1) if only one cotenant pays the entire price for the remaining interest, the court shall issue an order reallocating the remaining interest to that cotenant. The court shall issue promptly an order reallocating the interests of all of the cotenants and disburse the amounts held by it to the persons entitled to them;

(2) if no cotenant pays the entire price for the remaining interest, the court shall resolve the partition action under Subsections A and B of Section 8 of the Uniform Partition of Heirs Property Act as if the interests of the cotenants that requested partition by sale were not purchased; and

(3) if more than one cotenant pays the entire price for the remaining interest, the court shall reapportion the remaining interest among those paying cotenants, based on each paying cotenant's original fractional ownership of the

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entire parcel divided by the total original fractional ownership of all cotenants that paid the entire price for the remaining interest. The court shall issue promptly an order reallocating all of the cotenants' interests, disburse the amounts held by it to the persons entitled to them and promptly refund any excess payment held by the court.

G. Not later than forty-five days after the court sends notice to the parties pursuant to Subsection A of this section, any cotenant entitled to buy an interest under this section may request the court to authorize the sale as part of the pending action of the interests of cotenants named as defendants and served with the complaint but that did not appear in the action.

H. If the court receives a timely request under Subsection G of this section, the court, after hearing, may deny the request or authorize the requested additional sale on such terms as the court determines are fair and reasonable, subject to the following limitations:

(1) a sale authorized under this subsection may occur only after the purchase prices for all interests subject to sale under Subsections A through F of this section have been paid into court and those interests have been reallocated among the cotenants as provided in those subsections; and

(2) the purchase price for the interest of a

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nonappearing cotenant is based on the court's determination of value under Section 6 of the Uniform Partition of Heirs Property Act.

SECTION 8. [NEW MATERIAL] PARTITION ALTERNATIVES.--

A. If all the interests of all cotenants that requested partition by sale are not purchased by other cotenants pursuant to Section 7 of the Uniform Partition of Heirs Property Act or if, after conclusion of the buyout under that section, a cotenant remains that has requested partition in kind, the court shall order partition in kind unless the court, after consideration of the factors listed in Section 9 of the Uniform Partition of Heirs Property Act, finds that partition in kind will result in manifest prejudice to the cotenants as a group. In considering whether to order partition in kind, the court shall approve a request by two or more parties to have their individual interests aggregated.

B. If the court does not order partition in kind under Subsection A of this section, the court shall order partition by sale pursuant to Section 10 of the Uniform Partition of Heirs Property Act, or if no cotenant requested partition by sale, the court shall dismiss the action.

C. If the court orders partition in kind pursuant to Subsection A of this section, the court may require that one or more cotenants pay one or more other cotenants' amounts so that the payments, taken together with the value of the in-kind

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distributions to the cotenants, will make the partition in kind just and proportionate in value to the fractional interests held.

D. If the court orders partition in kind, the court shall allocate to the cotenants that are unknown, unlocatable or the subject of a default judgment, if their interests were not bought out pursuant to Section 7 of the Uniform Partition of Heirs Property Act, a part of the property representing the combined interests of these cotenants as determined by the court.

SECTION 9. [NEW MATERIAL] CONSIDERATIONS FOR PARTITION IN KIND.--

A. In determining under Subsection A of Section 8 of the Uniform Partition of Heirs Property Act whether partition in kind would result in manifest prejudice to the cotenants as a group, the court shall consider the following:

(1) whether the heirs property practicably can be divided among the cotenants;

(2) whether partition in kind would apportion the property in such a way that the aggregate fair market value of the parcels resulting from the division would be materially less than the value of the property if it were sold as a whole, taking into account the condition under which a court-ordered sale likely would occur;

(3) evidence of the collective duration of

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ownership or possession of the property by a cotenant and one or more predecessors in title or predecessors in possession to the cotenant who are or were relatives of the cotenant or each other;

(4) a cotenant's sentimental attachment to the property, including any attachment arising because the property has ancestral or other unique or special value to the cotenant;

(5) the lawful use being made of the property by a cotenant and the degree to which the cotenant would be harmed if the cotenant could not continue the same use of the property;

(6) the degree to which the cotenants have contributed their pro rata share of the property taxes, insurance and other expenses associated with maintaining ownership of the property or have contributed to the physical improvement, maintenance or upkeep of the property; and

(7) any other relevant factor.

B. The court shall not consider any one factor in Subsection A of this section to be dispositive without weighing the totality of all relevant factors and circumstances.

SECTION 10. [NEW MATERIAL] OPEN-MARKET SALE, SEALED BIDS OR AUCTION.--

A. If the court orders a sale of heirs property, the sale must be an open-market sale unless the court finds that a sale by sealed bids or an auction would be more

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economically advantageous and in the best interest of the cotenants as a group.

B. If the court orders an open-market sale and the parties, not later than ten days after the entry of the order, agree on a real estate broker licensed in this state to offer the property for sale, the court shall appoint the broker and establish a reasonable commission. If the parties do not agree on a broker, the court shall appoint a disinterested real estate broker licensed in this state to offer the property for sale and shall establish a reasonable commission. The broker shall offer the property for sale in a commercially reasonable manner at a price no lower than the determination of value and on the terms and conditions established by the court.

C. If the broker appointed under Subsection B of this section obtains within a reasonable time an offer to purchase the property for at least the determination of value:

(1) the broker shall comply with the reporting requirements in Section 11 of the Uniform Partition of Heirs Property Act; and

(2) the sale may be completed in accordance with state law other than the Uniform Partition of Heirs Property Act.

D. If the broker appointed under Subsection B of this section does not obtain within a reasonable time an offer to purchase the property for at least the determination of

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value, the court, after hearing, may:

(1) approve the highest outstanding offer, if any;

(2) redetermine the value of the property and order that the property continue to be offered for an additional time; or

(3) order that the property be sold by sealed bids or at an auction.

E. If the court orders a sale by sealed bids or an auction, the court shall set terms and conditions of the sale. If the court orders an auction, the auction must be conducted under Chapter 42, Article 5 NMSA 1978.

F. If a purchaser is entitled to a share of the proceeds of the sale, the purchaser is entitled to a credit against the price in an amount equal to the purchaser's share of the proceeds.

SECTION 11. [NEW MATERIAL] REPORT OF OPEN-MARKET SALE.--

A. Unless required to do so within a shorter time by Chapter 42, Article 5 NMSA 1978, a broker appointed under Subsection B of Section 10 of the Uniform Partition of Heirs Property Act to offer heirs property for open-market sale shall file a report with the court not later than seven days after receiving an offer to purchase the property for at least the value determined under Section 6 or 10 of the Uniform Partition of Heirs Property Act.

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B. The report required by Subsection A of this section shall contain the following information:

(1) a description of the property to be sold to each buyer;

(2) the name of each buyer;

(3) the proposed purchase price;

(4) the terms and conditions of the proposed sale, including the terms of any owner financing;

(5) the amounts to be paid to lienholders;

(6) a statement of contractual or other arrangements or conditions of the broker's commission; and

(7) other material facts relevant to the sale.

SECTION 12. [NEW MATERIAL] UNIFORMITY OF APPLICATION AND CONSTRUCTION.--In applying and construing the Uniform Partition of Heirs Property Act, consideration shall be given to the need to promote uniformity of the law with respect to its subject matter among states that enact it.

SECTION 13. [NEW MATERIAL] RELATION TO ELECTRONIC SIGNATURES IN GLOBAL AND NATIONAL COMMERCE ACT.--The Uniform Partition of Heirs Property Act modifies, limits and supersedes the federal Electronic Signatures in Global and National Commerce Act, 15 U.S.C. Section 7001 et seq., but does not modify, limit or supersede Section 101(c) of that act, 15 U.S.C. Section 7001(c), or authorize electronic delivery of any of the notices described in Section 103(b) of that act, 15

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U.S.C. Section 7003(b).

SECTION 14. Section 45-2-103 NMSA 1978 (being Laws 1993, Chapter 174, Section 6, as amended) is amended to read:

"45-2-103. SHARE OF HEIRS OTHER THAN SURVIVING SPOUSE.--

A. Any part of the intestate estate not passing to a decedent's surviving spouse pursuant to Section 45-2-102 NMSA 1978, or the entire intestate estate if there is no surviving spouse, passes in the following order to the individuals who survive the decedent:

(1) to the decedent's descendants by representation;

(2) if there is no surviving descendant, to the decedent's parents equally if both survive, or to the surviving parent if only one survives;

(3) if there is no surviving descendant or parent, to the descendants of the decedent's parents or either of them by representation;

(4) if there is no surviving descendant, parent or descendant of a parent, but the decedent is survived [~~on both the paternal and maternal sides~~] by one or more grandparents or descendants of grandparents, on both grandparents' sides:

(a) half to the decedent's [~~paternal~~] grandparents on one side equally if both survive, or to the [~~surviving paternal grandparent~~] survivor of them if only one

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survives, or to the descendants of the decedent's [~~paternal~~] grandparents on this side or either of them if both are deceased, the descendants taking by representation; and

(b) half to the decedent's [~~maternal~~] grandparents on the other side equally if both survive, or to the [~~surviving maternal grandparent~~] survivor of them if only one survives, or to the descendants of the decedent's [~~maternal~~] grandparents or either of them if both are deceased, the descendants taking by representation; and

(5) if there is no surviving descendant parent, or descendant of a parent, but the decedent is survived by one or more grandparents or descendants of grandparents [~~on the paternal but not the maternal side, or on the maternal but not the paternal~~] on one side but not the other side, to the decedent's relatives on the side with one or more surviving members in the manner described in Paragraph (4) of this subsection.

B. If there is no taker under Subsection A of this section, but the decedent has:

(1) one deceased spouse who has one or more descendants who survive the decedent, the estate or part thereof passes to that spouse's descendants by representation; or

(2) more than one deceased spouse who has one or more descendants who survive the decedent, an equal share of

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the estate or part thereof passes to each set of descendants by representation.

C. For purposes of Subsection B of this section, the term "deceased spouse" means an individual to whom the decedent was married at the individual's death, and does not include a spouse who was divorced from, or treated pursuant to Section 45-2-802 or Section 45-2-804 NMSA 1978 as divorced from, the decedent at the time of the decedent's death."

SECTION 15. Section 45-2-504 NMSA 1978 (being Laws 1993, Chapter 174, Section 27, as amended) is amended to read:

"45-2-504. SELF-PROVED WILL.--

A. A will may be simultaneously executed, attested and made self-proved by acknowledgment thereof by the testator and affidavits or affirmations under penalty of perjury of the witnesses, each made before an officer authorized to administer oaths under the laws of the state in which execution occurs and evidenced by the officer's certificate, under official seal, in substantially the following form:

~~["I, _____, the testator, sign my name to this instrument this _____ day of _____, and being first duly sworn, do hereby declare to the undersigned authority that I sign and execute this instrument as my will and that I sign it willingly (or willingly direct another to sign for me), that I execute it as my free and voluntary act for the purposes therein expressed, and that I am eighteen years of age or older, of sound mind and~~

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~~under no constraint or undue influence.~~]

"I, _____, the testator, swear or affirm under penalty of perjury on this _____ day of _____, that I request _____ and _____ to act as witnesses to my will; that I declare to them and the undersigned authority that this document is my will; that I sign this will in the presence of both witnesses; that they sign the will as witnesses in my presence and in the presence of each other; that the will was read by me (or read and explained to me) after being prepared and before I sign it; that it clearly and accurately expresses my wishes; that I sign it willingly (or willingly directed another to sign for me); that I make and sign the will as my free and voluntary act for the purposes expressed in the will; that I am eighteen years of age or older; that I am mentally capable of disposing of my estate by will; and that I am not acting under duress, menace, fraud or undue influence of any person.

_____

Testator

We, _____ and _____, the witnesses, [~~sign our names to this instrument, and being first duly sworn, do hereby declare to the undersigned authority that the testator signs and executes this instrument as his will and that he signs it willingly (or willingly directs another to sign for him), and that each of us, in the presence of the testator, and in the presence of each other hereby signs this will as witness to the~~

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~~testator's signing, and that to the best of our knowledge the testator is eighteen years of age or older, of sound mind and under no constraint or undue influence~~] do hereby swear or affirm under penalty of perjury on this _____ day of _____ to the undersigned authority that the testator, _____, declares that the attached document is his or her will; that the testator signs it willingly (or willingly directs another to sign for him or her); that the testator signs it in the presence of both of us and requests both of us to sign as witnesses; that each of us, in the presence of the testator and in the presence of each other, signs this will as witness to the testator's signing; that so far as we can determine, the testator is eighteen years of age or older; that the testator is not acting under duress, menace, fraud or undue influence of any person; and that the testator, in our opinion, is mentally capable of disposing of his or her estate by will.

_____

Witness

_____

Witness

[~~The~~] State of _____

County of _____

Subscribed and sworn to, or affirmed under penalty of perjury, and acknowledged before me by _____, the

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testator, and subscribed and sworn to, or affirmed under penalty of perjury, before me by _____ and _____, witnesses, this _____ day of _____.

(Seal)

(Signed) _____

_____

(Official capacity of officer)".

B. An attested will may be made self-proved at any time after its execution by the acknowledgment thereof by the testator and the affidavits or affirmation under penalty of perjury of the witnesses, each made before an officer authorized to administer oaths under the laws of the state in which the acknowledgment occurs and evidenced by the officer's certificate, under official seal, attached or annexed to the will in substantially the following form:

[~~"The State of _____~~

~~County of _____~~

~~We, _____, _____ and _____, the testator and the witnesses, respectively, whose names are signed to the attached or foregoing instrument, being first duly sworn, do hereby declare to the undersigned authority that the testator signed and executed the instrument as the testator's will and that he signed willingly (or willingly directed another to sign for him), and that he executed it as his free and voluntary act for the purposes therein expressed, and that each of the witnesses,~~

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~~in the presence of the testator, and in the presence of each other signed the will as witness, and that to the best of our knowledge the testator was at that time eighteen years of age or older, of sound mind and under no constraint or undue influence.~~

_____

~~Testator~~

_____

~~Witness~~

_____

~~Witness~~]

"I, _____, the testator, swear or affirm under penalty of perjury on this _____ day of _____ that I requested _____ and _____ to act as witnesses to my will; that I declared to them and the undersigned authority that this document is my will; that I signed this will in the presence of both witnesses; that they signed the will as witnesses in my presence and in the presence of each other; that the will was read by me (or read and explained to me) after being prepared and before I signed it; that it clearly and accurately expresses my wishes; that I signed it willingly (or willingly directed another to sign for me); that I made and signed the will as my free and voluntary act for the purposes expressed in the will; that I am eighteen years of age or older; that I am

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mentally capable of disposing of my estate by will; and that I am not acting under duress, menace, fraud or undue influence of any person.

_____

Testator

We, _____ and _____, the witnesses, do hereby swear or affirm under penalty of perjury on this _____ day of _____ that the testator, _____, declared the attached document to be his or her will; that the testator signed it willingly (or willingly directed another to sign for the testator); that the testator signed it in the presence of both of us and requested both of us to sign as witnesses; that each of us, in the presence of the testator and in the presence of each other, signed this will as witness to the testator's signing; that so far as we could determine, the testator is eighteen years of age or older; that the testator was not acting under duress, menace, fraud or undue influence of any person; and that the testator, in our opinion, was mentally capable of disposing of the testator's estate by will.

_____

Witness

_____

Witness

State of _____

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County of _____

Subscribed and sworn to, or affirmed under penalty of perjury, and acknowledged before me by _____, the testator, and subscribed and sworn to, or affirmed under penalty of perjury, before me by _____ and _____, witnesses, this _____ of _____.

(Seal)

(Signed) _____

_____

(Official capacity of officer)".

C. A signature affixed to a self-proving affidavit attached to a will is considered a signature affixed to the will if necessary to prove the will's due execution."

SECTION 16. Section 45-3-203 NMSA 1978 (being Laws 1975, Chapter 257, Section 3-203, as amended) is amended to read:

"45-3-203. PRIORITY AMONG PERSONS SEEKING APPOINTMENT AS PERSONAL REPRESENTATIVE.--

A. Whether the proceedings are formal or informal, persons who are not disqualified have priority for appointment in the following order:

(1) the person with priority as determined by a probated will, including a person nominated by a power conferred in a will;

(2) the surviving spouse of the decedent who is a devisee of the decedent;

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(3) other devisees of the decedent;

(4) the surviving spouse of the decedent;

(5) other heirs of the decedent; and

(6) [~~on application or petition of an interested person other than a spouse, devisee or heir, any qualified person~~] forty-five days after the death of the decedent, any creditor.

B. An objection to an appointment may be made only in formal proceedings. In case of objection, the priorities stated in Subsection A of this section apply except that:

(1) if the estate appears to be more than adequate to meet allowances and costs of administration but inadequate to discharge anticipated unsecured claims, the court, on petition of creditors, may appoint any qualified person; and

(2) in case of objection to appointment of a person other than one whose priority is determined by will by an heir or devisee appearing to have a substantial interest in the estate, the court may appoint a person who is acceptable to heirs and devisees whose interests in the estate appear to be worth in total more than half of the probable distributable value of the estate or, in default of this accord, any suitable person.

C. A person entitled to letters under Paragraphs (2) through (5) of Subsection A of this section or a person who

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has not reached the age of majority and who [~~might~~] would be entitled to letters but for the person's age may nominate a qualified person to act as personal representative by an appropriate writing filed with the court and thereby confer the person's relative priority for appointment on the person's nominee. Any person who has reached the age of majority may renounce the right to nominate or to an appointment by an appropriate writing filed with the court. When two or more persons entitled to letters under Paragraphs (2) through (5) of Subsection A of this section share a priority, all those who do not renounce [~~shall~~] must concur in nominating another to act for them or in applying for appointment by an appropriate writing filed with the court. The person so nominated shall have the same priority as those who nominated the person. A nomination or renunciation shall be signed by each person making it, the person's attorney or the person's representative authorized by Subsection D of this section.

D. Conservators of the estates of protected persons or, if there is no conservator, any guardian except a guardian ad litem of a minor or incapacitated person may exercise the same right to nominate, to object to another's appointment or to participate in determining the preference of a majority in interest of the heirs and devisees that the protected person would have if qualified for appointment.

E. Appointment of one who does not have [~~highest~~]

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priority, including [~~highest~~] priority resulting from renunciation or nomination determined pursuant to this section, may be made only in formal proceedings. Before appointing one without [~~highest~~] priority, the court shall determine that those having [~~highest~~] priority, although given notice of the proceedings, have failed to request appointment or to nominate another for appointment and that administration is necessary.

F. No person is qualified to serve as a personal representative who is:

(1) under the age of majority; or

(2) a person whom the court finds unsuitable in formal proceedings [~~or~~

~~(3) a creditor of the decedent unless the appointment is to be made after forty-five days have elapsed from the death of the decedent~~].

G. A personal representative appointed by a court of the decedent's domicile has priority over all other persons except where the decedent's will nominates different persons to be personal representatives in New Mexico and in the state of domicile. The domiciliary personal representative may nominate another, who shall have the same priority as the domiciliary personal representative.

H. This section governs priority for appointment of a successor personal representative but does not apply to the selection of a special administrator."

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SECTION 17. Section 45-3-703 NMSA 1978 (being Laws 1975, Chapter 257, Section 3-703, as amended) is amended to read:

"45-3-703. GENERAL DUTIES--RELATION AND LIABILITY TO PERSONS INTERESTED IN ESTATE--STANDING TO SUE.--

A. A personal representative is a fiduciary who shall observe the same standards of care applicable to trustees. A personal representative is under a duty to settle and distribute the estate of a decedent in accordance with the terms of any probated and effective will and the Uniform Probate Code and as expeditiously and efficiently as is consistent with the best interests of the estate. The personal representative shall use the authority conferred upon the personal representative by the Uniform Probate Code, the terms of the will, if any, and any order in proceedings to which the personal representative is party for the best interests of successors to the estate.

B. A personal representative may not be surcharged for acts of administration or distribution if the conduct in question was authorized at the time. Subject to other obligations of administration, an informally probated will authorizes a personal representative to administer and distribute the estate according to its terms.

C. An order of appointment of a personal representative, whether issued in informal or formal proceedings, authorizes a personal representative to distribute

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apparently intestate assets to the heirs of the decedent if, at the time of distribution, the personal representative is not aware of:

(1) a pending testacy proceeding;

(2) a proceeding to vacate an order entered in an earlier testacy proceeding;

(3) a formal proceeding questioning the personal representative's appointment or fitness to continue; or

(4) a supervised administration proceeding.

D. This section does not affect the duty of the personal representative to administer and distribute the estate in accordance with the rights of claimants whose claims have been allowed, the surviving spouse, any minor and dependent children and any pretermitted child of the decedent.

E. Except as to proceedings that do not survive the death of the decedent, a personal representative of a decedent domiciled in New Mexico at the decedent's death has the same standing to sue and be sued in the courts of New Mexico and the courts of any other jurisdiction as the decedent had immediately prior to death.

F. The personal representative must not delay distribution of an estate pending the possible birth of a posthumously conceived child unless the personal representative:

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(1) has received written notice or has actual knowledge that there is an intention to use a decedent's genetic material to create a child; and

(2) the birth of the child pursuant to the provisions of Section 45-2-120 NMSA 1978 or other law could have an effect on the personal representative's distribution of the estate. As used in this subsection, "genetic material" means eggs, sperm or embryos."

SECTION 18. Section 45-3-705 NMSA 1978 (being Laws 1975, Chapter 257, Section 3-705, as amended) is amended to read:

"45-3-705. DUTY OF PERSONAL REPRESENTATIVE--NOTICE TO HEIRS AND DEVISEES.--

A. Not later than [~~ten~~] thirty days after [~~his~~] appointment, every personal representative, except [~~any~~] a special administrator, shall give notice of [~~his~~] the appointment to the heirs and devisees, including, if there has been no formal testacy proceeding and if the personal representative was appointed on the assumption that the decedent died intestate, the devisees in any will mentioned in the application or petition for appointment of a personal representative.

B. The notice shall be delivered or [~~mailed~~] sent by ordinary mail to each of the heirs and devisees whose address is reasonably available to the personal representative. The duty does not extend to require notice to persons:

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(1) who have been adjudicated in a prior formal testacy proceeding to have no interest in the estate; or

(2) who are born more than thirty days after the personal representative's appointment, including children born by posthumous conception.

C. The notice shall:

(1) include the name and address of the personal representative;

(2) indicate that it is being sent to persons who have or may have some interest in the estate being administered;

(3) indicate whether bond has been filed; and

(4) describe the court where papers relating to the estate are on file.

[~~C.~~] D. The notice shall state that the estate is being administered by the personal representative pursuant to the provisions of the Uniform Probate Code without supervision by the court but that recipients are entitled to information regarding the administration from the personal representative and can petition the court in any matter relating to the estate, including distribution of assets and expenses of administration.

[~~D.~~] E. The personal representative shall file a statement with the appointing court giving the names and addresses of those persons notified pursuant to Subsection A of

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this section.

[~~E.~~] F. The personal representative's failure to give notice pursuant to this section is a breach of [~~his~~] duty to the persons concerned but does not affect the validity of [~~his~~] the appointment, [~~his~~] the personal representative's powers or other duties. A personal representative may inform other persons of [~~his~~] the appointment by delivery or ordinary mail."

SECTION 19. Section 45-3-911 NMSA 1978 (being Laws 1975, Chapter 257, Section 3-911) is amended to read:

"45-3-911. PARTITION FOR PURPOSE OF DISTRIBUTION.--

A. When two or more heirs or devisees are entitled to distribution of undivided interests in any real or personal property of the estate, the personal representative or one or more of the heirs or devisees may petition the district court prior to the formal or informal closing of the estate to make partition.

B. After notice to the interested heirs or devisees, the district court shall partition the property pursuant to the provisions of the Uniform Partition of Heirs Property Act.

C. The district court may direct the personal representative to sell any property [~~which cannot be partitioned without prejudice to the interested heirs and devisees and which cannot conveniently be allotted to any one~~

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~~party~~] pursuant to the provisions of the Uniform Partition of Heirs Property Act."

SECTION 20. Section 46-12-119 NMSA 1978 (being Laws 2016, Chapter 72, Section 1-119) is amended to read:

"46-12-119. TAX-RELATED LIMITATIONS.--

A. As used in this section:

(1) "grantor trust" means a trust as to which a settlor of a first trust is considered the owner under 26 U.S.C. Sections 671 through 677, as amended, or 26 U.S.C. Section 679, as amended;

(2) "Internal Revenue Code" means the United States Internal Revenue Code of 1986, as amended;

(3) "nongrantor trust" means a trust that is not a grantor trust; and

(4) "qualified benefits property" means property subject to the minimum distribution requirements of 26 U.S.C. Section 401(a)(9), as amended, and any applicable regulations or subject to any similar requirements that refer to 26 U.S.C. Section 401(a)(9), as amended or the regulations.

B. An exercise of the decanting power is subject to the following limitations:

(1) if a first trust contains property that qualified, or would have qualified but for provisions of the Uniform Trust Decanting Act other than those in this section, for a marital deduction for purposes of the gift or estate tax

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under the Internal Revenue Code or a state gift, estate or inheritance tax, the second-trust instrument shall not include or omit any term that, if included in or omitted from the trust instrument for the trust to which the property was transferred, would have prevented the transfer from qualifying for the deduction, or would have reduced the amount of the deduction, under the same provisions of the Internal Revenue Code or state law under which the transfer qualified;

(2) if the first trust contains property that qualified, or would have qualified but for provisions of the Uniform Trust Decanting Act other than those in this section, for a charitable deduction for purposes of the income, gift or estate tax under the Internal Revenue Code or a state income, gift, estate or inheritance tax, the second-trust instrument shall not include or omit any term that, if included in or omitted from the trust instrument for the trust to which the property was transferred, would have prevented the transfer from qualifying for the deduction, or would have reduced the amount of the deduction, under the same provisions of the Internal Revenue Code or state law under which the transfer qualified;

(3) if the first trust contains property that qualified, or would have qualified but for provisions of the Uniform Trust Decanting Act other than those in this section, for the exclusion from the gift tax described in 26 U.S.C.

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Section 2503(b), as amended, the second-trust instrument shall not include or omit a term that, if included in or omitted from the trust instrument for the trust to which the property was transferred, would have prevented the transfer from qualifying under 26 U.S.C. Section 2503(b), as amended. If the first trust contains property that qualified, or would have qualified but for provisions of the Uniform Trust Decanting Act other than those in this section, for the exclusion from the gift tax described in 26 U.S.C. Section 2503(b), as amended, by application of 26 U.S.C. Section 2503(c), as amended, the second-trust instrument shall not include or omit a term that, if included or omitted from the trust instrument for the trust to which the property was transferred, would have prevented the transfer from qualifying under 26 U.S.C. Section 2503(c), as amended;

(4) if the property of the first trust includes shares of stock in an S corporation, as defined in 26 U.S.C. Section 1361, as amended, and the first trust is, or, but for provisions of the Uniform Trust Decanting Act other than those in this section, would be, a permitted shareholder under any provision of 26 U.S.C. Section 1361, as amended, an authorized fiduciary may exercise the power with respect to part or all of the S-corporation stock only if any second trust receiving the stock is a permitted shareholder under 26 U.S.C. Section 1361(c)(2), as amended. If the property of the first

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trust includes shares of stock in an S corporation and the first trust is, or, but for provisions of the Uniform Trust Decanting Act other than those in this section, would be, a qualified subchapter-S trust within the meaning of 26 U.S.C. Section 1361(d), as amended, the second-trust instrument shall not include or omit a term that prevents the second trust from qualifying as a qualified subchapter-S trust;

(5) if the first trust contains property that qualified, or, but for provisions of the Uniform Trust Decanting Act other than those in this section, would have qualified, for a zero inclusion ratio for purposes of the generation-skipping transfer tax under 26 U.S.C. Section 2642(c), as amended, the second-trust instrument shall not include or omit a term that, if included in or omitted from the first-trust instrument, would have prevented the transfer to the first trust from qualifying for a zero inclusion ratio under 26 U.S.C. Section 2642(c), as amended;

(6) if the first trust is directly or indirectly the beneficiary of qualified benefits property, the second-trust instrument shall not include or omit any term that, if included in or omitted from the first-trust instrument, would have increased the minimum distributions required with respect to the qualified benefits property under 26 U.S.C. Section 401(a)(9), as amended, and any applicable regulations or any similar requirements that refer to 26 U.S.C.

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Section 401(a)(9), as amended, or the regulations. If an attempted exercise of the decanting power violates this paragraph, the trustee is deemed to have held the qualified benefits property and any reinvested distributions of the property as a separate share from the date of the exercise of the power, and Section [~~1-122 of the Uniform Trust Decanting Act~~] 46-12-122 NMSA 1978 applies to the separate share;

(7) if the first trust qualifies as a grantor trust because of the application of 26 U.S.C. Section 672(f)(2)(A), as amended, the second trust shall not include or omit a term that, if included in or omitted from the first-trust instrument, would have prevented the first trust from qualifying under 26 U.S.C. Section 672(f)(2)(A), as amended;

(8) as used in this paragraph, "tax benefit" means a federal or state tax deduction, exemption, exclusion or other benefit not otherwise listed in this section, except for a benefit arising from being a grantor trust. Subject to Paragraph (9) of this subsection, a second-trust instrument shall not include or omit a term that, if included in or omitted from the first-trust instrument, would have prevented qualification for a tax benefit if:

(a) the first-trust instrument expressly indicates an intent to qualify for the benefit or the first-trust instrument clearly is designed to enable the first trust to qualify for the benefit; and

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(b) the transfer of property held by the first trust or the first trust qualified, or, but for provisions of the Uniform Trust Decanting Act other than those in this section, would have qualified, for the tax benefit;

(9) subject to Paragraph (4) of this subsection:

(a) except as otherwise provided in Paragraph (7) of this subsection, the second trust may be a nongrantor trust, even if the first trust is a grantor trust; and

(b) except as otherwise provided in Paragraph (10) of this subsection, the second trust may be a grantor trust, even if the first trust is a nongrantor trust; and

(10) an authorized fiduciary shall not exercise the decanting power if a settlor objects in a signed record delivered to the fiduciary within the notice period and:

(a) the first trust and a second trust are both grantor trusts, in whole or in part, the first trust grants the settlor or another person the power to cause the [~~second~~] first trust to cease to be a grantor trust and the second trust does not grant an equivalent power to the settlor or other person; or

(b) the first trust is a nongrantor trust and a second trust is a grantor trust, in whole or in

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part, with respect to the settlor, unless: 1) the settlor has the power at all times to cause the second trust to cease to be a grantor trust; or 2) the first-trust instrument contains a provision granting the settlor or another person a power that would cause the first trust to cease to be a grantor trust and the second-trust instrument contains the same provision."

SECTION 21. EFFECTIVE DATE.--

A. The effective date of the provisions of Sections 14 and 20 of this act is July 1, 2017.

B. The effective date of the provisions of Sections 1 through 13 and 15 through 19 of this act is January 1, 2018.

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SENATE BILL

53RD LEGISLATURE - STATE OF NEW MEXICO - FIRST SESSION, 2017

INTRODUCED BY

ENDORSED BY THE COURTS, CORRECTIONS AND JUSTICE COMMITTEE

AN ACT

RELATING TO COURT ADMINISTRATION; CREATING THE LANGUAGE ACCESS FUND TO PROVIDE FOR LANGUAGE ACCESS SERVICES IN THE COURTS AND REMOVING LANGUAGE ACCESS SERVICES FROM THE JURY AND WITNESS FEE FUND.

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

SECTION 1. A new section of Chapter 34, Article 9 NMSA 1978 is enacted to read:

"[NEW MATERIAL] LANGUAGE ACCESS FUND--CREATED.--

A. There is created in the state treasury the "language access fund" to be administered by the administrative office of the courts.

B. All balances in the language access fund may be expended only upon appropriation by the legislature to the administrative office of the courts for the purpose of paying

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the costs of:

(1) court interpreters;

(2) operating and staffing the New Mexico center for language access to accomplish its mission to provide and support programs that will help the courts obtain, improve or increase the availability of language access services;

(3) operating and staffing language access services for the administrative office of the courts;

(4) training for the purpose of enhancing language access services in the courts; and

(5) additional activities deemed necessary by the director of the administrative office of the courts to meet constitutional and statutory requirements for language access services in the courts and for court-related activities.

C. All fees and other revenue collected by the New Mexico center for language access and interest earned on money in the language access fund shall be credited to the fund. Payments shall be made upon certification by judicial agencies of eligible amounts. No part of the fund shall revert at the end of any fiscal year.

D. Payments from the language access fund shall be made upon vouchers issued and signed by the director of the administrative office of the courts or the director's designee upon warrants drawn by the secretary of finance and administration."

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SECTION 2. Section 34-9-11 NMSA 1978 (being Laws 1993, Chapter 106, Section 1, as amended) is amended to read:

"34-9-11. JURY AND WITNESS FEE FUND CREATED--ADMINISTRATION--DISTRIBUTION.--

A. There is created in the state treasury the "jury and witness fee fund" to be administered by the administrative office of the courts.

B. All balances in the jury and witness fee fund may be expended only upon appropriation by the legislature to the administrative office of the courts for the purpose of paying the costs of:

(1) jurors and prospective jurors;

(2) witnesses of fact or character subpoenaed by the court, the prosecution or the defense;

(3) expert witnesses for grand juries and magistrate courts; and

[~~(4) court interpreters; and~~

~~(5)~~] (4) defending persons whom the court has ordered [~~the~~] a public defender to represent, when those persons do not meet the public [~~defender's~~] defender department's indigency standards.

C. All jury fees that the courts collect from parties requesting civil juries, except for jury demand fees as set forth in Section 35-6-1 NMSA 1978, and interest earned on money in the jury and witness fee fund shall be credited to the

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fund. Payments shall be made upon certification by judicial agencies of eligible amounts. No part of the fund shall revert at the end of any fiscal year.

D. Payments from the jury and witness fee fund shall be made upon vouchers issued and signed by the director of the administrative office of the courts or [~~his~~] the director's designee upon warrants drawn by the secretary of finance and administration."

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SENATE BILL

53RD LEGISLATURE - STATE OF NEW MEXICO - FIRST SESSION, 2017

INTRODUCED BY

ENDORSED BY THE COURTS, CORRECTIONS AND JUSTICE COMMITTEE

AN ACT

RELATING TO COURTS; CREATING THE JUDGE PRO TEMPORE FUND TO PAY THE COSTS OF JUDGES PRO TEMPORE; DECLARING AN EMERGENCY.

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

SECTION 1. [NEW MATERIAL] JUDGE PRO TEMPORE FUND--CREATED.--There is created in the state treasury the "judge pro tempore fund" to be administered by the administrative office of the courts. The fund shall be used to pay the costs of judges pro tempore. The fund shall consist of appropriations, gifts, grants, donations and bequests made to the fund. Income from the fund shall be credited to the fund, and money in the fund shall not revert or be transferred to any other fund at the end of a fiscal year. Payments from the judge pro tempore fund shall be made upon vouchers issued and signed by the director of the administrative office of the courts or the

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director's designee upon warrants drawn by the secretary of finance and administration.

SECTION 2. EMERGENCY.--It is necessary for the public peace, health and safety that this act take effect immediately.

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HOUSE BILL

53RD LEGISLATURE - STATE OF NEW MEXICO - FIRST SESSION, 2017

INTRODUCED BY

ENDORSED BY THE COURTS, CORRECTIONS AND JUSTICE COMMITTEE

AN ACT

RELATING TO COURTS; CLOSING MAGISTRATE CIRCUIT COURTS IN CATRON COUNTY AND TAOS COUNTY.

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

SECTION 1. Section 35-1-5 NMSA 1978 (being Laws 1968, Chapter 62, Section 7, as amended) is amended to read:

"35-1-5. MAGISTRATE COURT--CATRON DISTRICT.--There shall be one magistrate in Catron magistrate district whose principal court is in Reserve. [~~The magistrate shall ride circuit to Quemado on a regularly scheduled basis.~~]"

SECTION 2. Section 35-1-32 NMSA 1978 (being Laws 1968, Chapter 62, Section 34, as amended) is amended to read:

"35-1-32. MAGISTRATE COURT--TAOS DISTRICT.--There shall be two magistrates in Taos magistrate district, divisions 1 and 2 operating as a single court in Taos. [~~The magistrates shall~~

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~~rotate riding circuit to Questa on a regularly scheduled basis.~~]"

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SENATE JOINT RESOLUTION

53RD LEGISLATURE - STATE OF NEW MEXICO - FIRST SESSION, 2017

INTRODUCED BY

FOR THE COURTS, CORRECTIONS AND JUSTICE COMMITTEE

A JOINT RESOLUTION

PROPOSING AMENDMENTS TO ARTICLE 6 OF THE CONSTITUTION OF NEW MEXICO TO GIVE THE LEGISLATURE AUTHORITY TO PROVIDE FOR APPELLATE JURISDICTION BY STATUTE.

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

SECTION 1. It is proposed to amend Article 6, Section 2 of the constitution of New Mexico to read:

"[~~Appeals from a judgment of the district court imposing a sentence of death or life imprisonment shall be taken directly to the supreme court. In all other cases, criminal and civil~~] The supreme court shall exercise appellate jurisdiction of district court cases as [~~may be~~] provided by law; provided that an aggrieved party shall have an absolute right to one appeal."

SECTION 2. It is proposed to amend Article 6, Section 13 of the constitution of New Mexico to read:

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"The district court shall have original jurisdiction in all matters and causes not excepted in this constitution, and such jurisdiction of special cases and proceedings as [~~may be conferred~~] provided by law, and appellate jurisdiction of all cases originating in inferior courts and tribunals in their respective districts as provided by law, and supervisory control over the same. The district courts, or any judge thereof, shall have power to issue writs of habeas corpus, mandamus, injunction, quo warranto, certiorari, prohibition and all other writs, remedial or otherwise, in the exercise of their jurisdiction; provided that no such writs shall issue directed to judges or courts of equal or superior jurisdiction. The district courts shall also have the power of naturalization in accordance with the laws of the United States. Until otherwise provided by law, at least two terms of the district court shall be held annually in each county, at the county seat."

SECTION 3. It is proposed to amend Article 6, Section 27 of the constitution of New Mexico to read:

"Appeals shall be allowed in all cases from the final judgments and decisions of the probate courts and other inferior courts [~~to the district courts, and in all such appeals, trial shall be had de novo unless otherwise~~] as provided by law."

SECTION 4. The amendment proposed by this resolution

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shall be submitted to the people for their approval or rejection at the next general election or at any special election prior to that date that may be called for that purpose.

SENATE BILL

53RD LEGISLATURE - STATE OF NEW MEXICO - FIRST SESSION, 2017

INTRODUCED BY

FOR THE COURTS, CORRECTIONS AND JUSTICE COMMITTEE AND THE WATER AND NATURAL RESOURCES COMMITTEE

AN ACT

RELATING TO AGRICULTURE; ENACTING A NEW SECTION OF CHAPTER 76 NMSA 1978 TO PROVIDE AUTHORIZATION FOR THE NEW MEXICO DEPARTMENT OF AGRICULTURE TO ADOPT RULES FOR RESEARCH ON INDUSTRIAL HEMP; PROVIDING FOR THE ESTABLISHMENT OF THE NEW MEXICO INDUSTRIAL HEMP RESEARCH AND DEVELOPMENT FUND.

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

SECTION 1. A new section of Chapter 76 NMSA 1978 is enacted to read:

"[NEW MATERIAL] INDUSTRIAL HEMP RESEARCH--NEW MEXICO DEPARTMENT OF AGRICULTURE.--

A. As used in this section, "industrial hemp" means the plant Cannabis sativa L. and any part of the plant, whether growing or not, containing a delta-9-tetrahydrocannabinol concentration of no more than three-tenths percent on a dry weight basis.

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B. The intent of this section is to bring New Mexico into compliance with federal law.

C. Notwithstanding any other provision of law to the contrary, the New Mexico department of agriculture shall issue licenses pursuant to rules enacted under Subsection D of this section to grow industrial hemp for research and development purposes, including agricultural, agronomic, ecological, processing, sales and marketing research.

D. The director of the New Mexico department of agriculture shall adopt rules to establish and carry out the provisions of this section, including requirements for licensure, training of law enforcement personnel, inspection, recordkeeping, fees not to exceed program costs and compliance processes. An institution of higher education, person or business that plans to grow industrial hemp seed or industrial hemp fiber shall obtain a grower's license by submitting an application to the New Mexico department of agriculture pursuant to promulgated rules.

E. A person who holds a license issued pursuant to this section may grow industrial hemp for commercial or research and development purposes, including agricultural, agronomic, ecological, processing, sales and marketing research.

F. New Mexico state university shall establish a "New Mexico industrial hemp research and development fund".

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The fund consists of fees collected by the New Mexico department of agriculture for administration of the industrial hemp research and development program, donations, grants and income earned from investment of the fund and money otherwise accruing to the fund. Money in the fund shall not revert to any other fund at the end of a fiscal year. The New Mexico department of agriculture shall administer the fund, and money in the fund is subject to appropriation by the legislature to the New Mexico department of agriculture to conduct related programs. Money in the fund shall be disbursed on warrants signed by the secretary of finance and administration pursuant to vouchers signed by the director of the New Mexico department of agriculture or the director's authorized representative."

SECTION 2. Section 30-31-2 NMSA 1978 (being Laws 1972, Chapter 84, Section 2, as amended) is amended to read:

"30-31-2. DEFINITIONS.--As used in the Controlled Substances Act:

A. "administer" means the direct application of a controlled substance by any means to the body of a patient or research subject by a practitioner or the practitioner's agent;

B. "agent" includes an authorized person who acts on behalf of a manufacturer, distributor or dispenser. It does not include a common or contract carrier, public warehouseperson or employee of the carrier or warehouseperson;

C. "board" means the board of pharmacy;

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D. "bureau" means the narcotic and dangerous drug section of the criminal division of the United States department of justice, or its successor agency;

E. "controlled substance" means a drug or substance listed in Schedules I through V of the Controlled Substances Act or rules adopted thereto;

F. "counterfeit substance" means a controlled substance that bears the unauthorized trademark, trade name, imprint, number, device or other identifying mark or likeness of a manufacturer, distributor or dispenser other than the person who in fact manufactured, distributed or dispensed the controlled substance;

G. "deliver" means the actual, constructive or attempted transfer from one person to another of a controlled substance or controlled substance analog, whether or not there is an agency relationship;

H. "dispense" means to deliver a controlled substance to an ultimate user or research subject pursuant to the lawful order of a practitioner, including the administering, prescribing, packaging, labeling or compounding necessary to prepare the controlled substance for that delivery;

I. "dispenser" means a practitioner who dispenses and includes hospitals, pharmacies and clinics where controlled substances are dispensed;

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J. "distribute" means to deliver other than by administering or dispensing a controlled substance or controlled substance analog;

K. "drug" or "substance" means substances recognized as drugs in the official United States pharmacopoeia, official homeopathic pharmacopoeia of the United States or official national formulary or any respective supplement to those publications. It does not include devices or their components, parts or accessories;

L. "hashish" means the resin extracted from any part of marijuana, whether growing or not, and every compound, manufacture, salt, derivative, mixture or preparation of such resins;

M. "manufacture" means the production, preparation, compounding, conversion or processing of a controlled substance or controlled substance analog by extraction from substances of natural origin or independently by means of chemical synthesis or by a combination of extraction and chemical synthesis and includes any packaging or repackaging of the substance or labeling or relabeling of its container, except that this term does not include the preparation or compounding of a controlled substance:

(1) by a practitioner as an incident to administering or dispensing a controlled substance in the course of the practitioner's professional practice; or

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(2) by a practitioner, or by the practitioner's agent under the practitioner's supervision, for the purpose of or as an incident to research, teaching or chemical analysis and not for sale;

N. "marijuana" means all parts of the plant cannabis, including any and all varieties, species and subspecies of the genus Cannabis, whether growing or not, the seeds thereof and every compound, manufacture, salt, derivative, mixture or preparation of the plant or its seeds. It does not include the mature stalks of the plant, hashish, tetrahydrocannabinols extracted or isolated from marijuana, fiber produced from the stalks, oil or cake made from the seeds of the plant, any other compound, manufacture, salt, derivative, mixture or preparation of the mature stalks, fiber, oil or cake, or the sterilized seed of the plant that is incapable of germination; or the plant Cannabis sativa L. and any part of the plant, whether growing or not, containing a delta-9-tetrahydrocannabinol concentration of no more than three-tenths percent on a dry weight basis;

O. "narcotic drug" means any of the following, whether produced directly or indirectly by extraction from substances of vegetable origin or independently by means of chemical synthesis or by a combination of extraction and chemical synthesis:

(1) opium and opiate and any salt, compound,

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derivative or preparation of opium or opiate;

(2) any salt, compound, isomer, derivative or preparation that is a chemical equivalent of any of the substances referred to in Paragraph (1) of this subsection, except the isoquinoline alkaloids of opium;

(3) opium poppy and poppy straw, including all parts of the plant of the species Papaver somniferum L. except its seeds; or

(4) coca leaves and any salt, compound, derivative or preparation of coca leaves, any salt, compound, isomer, derivative or preparation that is a chemical equivalent of any of these substances except decocainized coca leaves or extractions of coca leaves that do not contain cocaine or ecgonine;

P. "opiate" means any substance having an addiction-forming or addiction-sustaining liability similar to morphine or being capable of conversion into a drug having addiction-forming or addiction-sustaining liability. "Opiate" does not include, unless specifically designated as controlled under Section 30-31-5 NMSA 1978, the dextrorotatory isomer of 3-methoxy-n-methylmorphinan and its salts, dextromethorphan. "Opiate" does include its racemic and levorotatory forms;

Q. "person" means an individual, partnership, corporation, association, institution, political subdivision, government agency or other legal entity;

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R. "practitioner" means a physician, certified advanced practice chiropractic physician, doctor of oriental medicine, dentist, physician assistant, certified nurse practitioner, clinical nurse specialist, certified nurse-midwife, prescribing psychologist, veterinarian, euthanasia technician, pharmacist, pharmacist clinician or other person licensed or certified to prescribe and administer drugs that are subject to the Controlled Substances Act;

S. "prescription" means an order given individually for the person for whom is prescribed a controlled substance, either directly from a licensed practitioner or the practitioner's agent to the pharmacist, including by means of electronic transmission, or indirectly by means of a written order signed by the prescriber, bearing the name and address of the prescriber, the prescriber's license classification, the name and address of the patient, the name and quantity of the drug prescribed, directions for use and the date of issue and in accordance with the Controlled Substances Act or rules adopted thereto;

T. "scientific investigator" means a person registered to conduct research with controlled substances in the course of the person's professional practice or research and includes analytical laboratories;

U. "ultimate user" means a person who lawfully possesses a controlled substance for the person's own use or

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for the use of a member of the person's household or for administering to an animal under the care, custody and control of the person or by a member of the person's household;

V. "drug paraphernalia" means all equipment, products and materials of any kind that are used, intended for use or designed for use in planting, propagating, cultivating, growing, harvesting, manufacturing, compounding, converting, producing, processing, preparing, testing, analyzing, packaging, repackaging, storing, containing, concealing, injecting, ingesting, inhaling or otherwise introducing into the human body a controlled substance or controlled substance analog in violation of the Controlled Substances Act. It includes:

(1) kits used, intended for use or designed for use in planting, propagating, cultivating, growing or harvesting any species of plant that is a controlled substance or controlled substance analog or from which a controlled substance can be derived;

(2) kits used, intended for use or designed for use in manufacturing, compounding, converting, producing, processing or preparing controlled substances or controlled substance analogs;

(3) isomerization devices used, intended for use or designed for use in increasing the potency of any species of plant that is a controlled substance;

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(4) testing equipment used, intended for use or designed for use in identifying or in analyzing the strength, effectiveness or purity of controlled substances or controlled substance analogs;

(5) scales or balances used, intended for use or designed for use in weighing or measuring controlled substances or controlled substance analogs;

(6) diluents and adulterants, such as quinine hydrochloride, mannitol, mannite dextrose and lactose, used, intended for use or designed for use in cutting controlled substances or controlled substance analogs;

(7) separation gins and sifters used, intended for use or designed for use in removing twigs and seeds from, or in otherwise cleaning and refining, marijuana;

(8) blenders, bowls, containers, spoons and mixing devices used, intended for use or designed for use in compounding controlled substances or controlled substance analogs;

(9) capsules, balloons, envelopes and other containers used, intended for use or designed for use in packaging small quantities of controlled substances or controlled substance analogs;

(10) containers and other objects used, intended for use or designed for use in storing or concealing controlled substances or controlled substance analogs;

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(11) hypodermic syringes, needles and other objects used, intended for use or designed for use in parenterally injecting controlled substances or controlled substance analogs into the human body;

(12) objects used, intended for use or designed for use in ingesting, inhaling or otherwise introducing marijuana, cocaine, hashish or hashish oil into the human body, such as:

(a) metal, wooden, acrylic, glass, stone, plastic or ceramic pipes, with or without screens, permanent screens, hashish heads or punctured metal bowls;

(b) water pipes;

(c) carburetion tubes and devices;

(d) smoking and carburetion masks;

(e) roach clips, meaning objects used to hold burning material, such as a marijuana cigarette, that has become too small to hold in the hand;

(f) miniature cocaine spoons and cocaine vials;

(g) chamber pipes;

(h) carburetor pipes;

(i) electric pipes;

(j) air-driven pipes;

(k) chilams;

(l) bongs; or

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(m) ice pipes or chillers; and

(13) in determining whether an object is drug paraphernalia, a court or other authority should consider, in addition to all other logically relevant factors, the following:

(a) statements by the owner or by anyone in control of the object concerning its use;

(b) the proximity of the object, in time and space, to a direct violation of the Controlled Substances Act or any other law relating to controlled substances or controlled substance analogs;

(c) the proximity of the object to controlled substances or controlled substance analogs;

(d) the existence of any residue of a controlled substance or controlled substance analog on the object;

(e) instructions, written or oral, provided with the object concerning its use;

(f) descriptive materials accompanying the object that explain or depict its use;

(g) the manner in which the object is displayed for sale; and

(h) expert testimony concerning its use;

W. "controlled substance analog" means a substance other than a controlled substance that has a chemical structure

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substantially similar to that of a controlled substance in Schedule I, II, III, IV or V or that was specifically designed to produce effects substantially similar to that of controlled substances in Schedule I, II, III, IV or V. Examples of chemical classes in which controlled substance analogs are found include the following:

(1) phenethylamines;

(2) N-substituted piperidines;

(3) morphinans;

(4) ecgonines;

(5) quinazolinones;

(6) substituted indoles; and

(7) arylcycloalkylamines.

Specifically excluded from the definition of "controlled substance analog" are those substances that are generally recognized as safe and effective within the meaning of the Federal Food, Drug, and Cosmetic Act or have been manufactured, distributed or possessed in conformance with the provisions of an approved new drug application or an exemption for investigational use within the meaning of Section 505 of the Federal Food, Drug, and Cosmetic Act;

X. "human consumption" includes application, injection, inhalation, ingestion or any other manner of introduction;

Y. "drug-free school zone" means a public school,

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parochial school or private school or property that is used for a public, parochial or private school purpose and the area within one thousand feet of the school property line, but it does not mean any post-secondary school; and

Z. "valid practitioner-patient relationship" means a professional relationship, as defined by the practitioner's licensing board, between the practitioner and the patient."

SECTION 3. Section 30-31-6 NMSA 1978 (being Laws 1972, Chapter 84, Section 6, as amended) is amended to read:

"30-31-6. SCHEDULE I.--The following controlled substances are included in Schedule I:

A. any of the following opiates, including their isomers, esters, ethers, salts, and salts of isomers, esters and ethers, unless specifically exempted, whenever the existence of these isomers, esters, ethers and salts is possible within the specific chemical designation:

(1) acetylmethadol;

(2) allylprodine;

(3) alphacetylmethadol;

(4) alphameprodine;

(5) alphamethadol;

(6) benzethidine;

(7) betacetylmethadol;

(8) betameprodine;

(9) betamethadol;

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(10) betaprodine;

(11) clonitazene;

(12) dextromoramide;

(13) dextrorphan;

(14) diampromide;

(15) diethylthiambutene;

(16) dimenoxadol;

(17) dimepheptanol;

(18) dimethylthiambutene;

(19) dioxaphetyl butyrate;

(20) dipipanone;

(21) ethylmethylthiambutene;

(22) etonitazene;

(23) etoxeridine;

(24) furethidine;

(25) hydroxypethidine;

(26) ketobemidone;

(27) levomoramide;

(28) levophenacylmorphan;

(29) morpheridine;

(30) noracymethadol;

(31) norlevorphanol;

(32) normethadone;

(33) norpipanone;

(34) phenadoxone;

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(35) phenampromide;

(36) phenomorphan;

(37) phenoperidine;

(38) piritramide;

(39) proheptazine;

(40) properidine;

(41) racemoramide; and

(42) trimeperidine;

B. any of the following opium derivatives, their salts, isomers and salts of isomers, unless specifically exempted, whenever the existence of these salts, isomers and salts of isomers is possible within the specific chemical designation:

(1) acetorphine;

(2) acetyldihydrocodeine;

(3) benzylmorphine;

(4) codeine methylbromide;

(5) codeine-N-oxide;

(6) cyprenorphine;

(7) desomorphine;

(8) dihydromorphine;

(9) etorphine;

(10) heroin;

(11) hydromorphinol;

(12) methyldesorphine;

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(13) methyldihydromorphine;

(14) morphine methylbromide;

(15) morphine methylsulfonate;

(16) morphine-N-oxide;

(17) myrophine;

(18) nicocodeine;

(19) nicomorphine;

(20) normorphine;

(21) pholcodine; and

(22) thebacon;

C. any material, compound, mixture or preparation that contains any quantity of the following hallucinogenic substances, their salts, isomers and salts of isomers, unless specifically exempted, whenever the existence of these salts, isomers and salts of isomers is possible within the specific chemical designation:

(1) 3,4-methylenedioxy amphetamine;

(2) 5-methoxy-3,4-methylenedioxy amphetamine;

(3) 3,4,5-trimethoxy amphetamine;

(4) bufotenine;

(5) diethyltryptamine;

(6) dimethyltryptamine;

(7) 4-methyl-2,5-dimethoxy amphetamine;

(8) ibogaine;

(9) lysergic acid diethylamide;

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(10) marijuana;

(11) mescaline;

(12) peyote, except as otherwise provided in the Controlled Substances Act;

(13) N-ethyl-3-piperidyl benzilate;

(14) N-methyl-3-piperidyl benzilate;

(15) psilocybin;

(16) psilocyn;

(17) tetrahydrocannabinols;

(18) hashish;

(19) synthetic cannabinoids, including:

(a) 1-[2-(4-(morpholinyl)ethyl]-3-(1-naphthoyl)indole;

(b) 1-butyl-3-(1-napthoyl)indole;

(c) 1-hexyl-3-(1-naphthoyl)indole;

(d) 1-pentyl-3-(1-naphthoyl)indole;

(e) 1-pentyl-3-(2-methoxyphenylacetyl) indole;

(f) cannabicyclohexanol (CP 47, 497 and homologues: 5-(1,1-dimethylheptyl)-2-[(1R,3S) -3-hydroxycyclohexyl]-phenol (CP-47,497); and 5-(1, 1-dimethyloctyl)-2-[(1R,3S)-3-hydroxycyclohexyl]-phenol;

(g) 6aR,10aR)-9-(hydroxymethyl) -6,6-dimethyl-3-(2-methyloctan-2-yl)-6a,7,10, 10a-tetrahydrobenzo[c]chromen-1-ol);

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(h) dexanabinol, (6aS,10aS)-9-(hydroxymethyl)-6,6-dimethyl-3-(2-methyloctan-2-yl)-6a,7,10,10a-tetrahydrobenzo[c]chromen-1-ol;

(i) 1-pentyl-3-(4-chloro naphthoyl) indole;

(j) (2-methyl-1-propyl-1H-indol-3-yl)-1-naphthalenyl-methanone; and

(k) 5-(1,1-dimethylheptyl)-2-(3-hydroxy cyclohexyl)-phenol;

(20) 3,4-methylenedioxymethcathinone;

(21) 3,4-methylenedioxypyrovalerone;

(22) 4-methylmethcathinone;

(23) 4-methoxymethcathinone;

(24) 3-fluoromethcathinone; and

(25) 4-fluoromethcathinone;

D. the enumeration of peyote as a controlled substance does not apply to the use of peyote in bona fide religious ceremonies by a bona fide religious organization, and members of the organization so using peyote are exempt from registration. Any person who manufactures peyote for or distributes peyote to the organization or its members shall comply with the federal Comprehensive Drug Abuse Prevention and Control Act of 1970 and all other requirements of law;

E. the enumeration of marijuana, tetrahydrocannabinols or chemical derivatives of

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tetrahydrocannabinol as Schedule I controlled substances does not apply to:

(1) cultivation of industrial hemp by qualified entities pursuant to rules adopted by the New Mexico department of agriculture; or

(2) the use of marijuana, tetrahydrocannabinols or chemical derivatives of tetrahydrocannabinol by certified patients pursuant to the Controlled Substances Therapeutic Research Act or by qualified patients pursuant to the provisions of the Lynn and Erin Compassionate Use Act; and

F. controlled substances added to Schedule I by rule adopted by the board pursuant to Section 30-31-3 NMSA 1978."

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SENATE BILL

53RD LEGISLATURE - STATE OF NEW MEXICO - FIRST SESSION, 2017

INTRODUCED BY

DISCUSSION DRAFT

FOR THE COURTS, CORRECTIONS AND JUSTICE COMMITTEE

AN ACT

MAKING AN APPROPRIATION TO THE LOCAL GOVERNMENT DIVISION OF THE DEPARTMENT OF FINANCE AND ADMINISTRATION FOR A MUNICIPAL POLICE DEPARTMENT CRIME LABORATORY TO PROCESS SEXUAL ASSAULT EXAMINATION KITS.

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

SECTION 1. APPROPRIATION.--One million two hundred thousand dollars ($1,200,000) is appropriated from the general fund to the local government division of the department of finance and administration in each of fiscal years 2018 through 2024 for expenditure in fiscal years 2018 through 2024 for a municipal police department crime laboratory to process sexual assault examination kits. Any unexpended or unencumbered balance remaining at the end of fiscal year 2024 shall revert to the general fund.

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LEGISLATIVE COUNCIL SERVICE
SANTA FE, NEW MEXICO