

Administrative Office of the Courts

Supreme Court of New Mexico

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REPORT TO THE LEGISLATIVE FINANCE COMMITTEE AND THE INTERIM COURTS, CORRECTIONS AND CRIMINAL JUSTICE COMMITTEE

This is a report as required by Senate Memorial 89, hereinafter "SM 89" (attached hereto as Exhibit 1) reporting on the study of the "ramifications of the transfer of county employees to the magistrate courts to operate compliance programs and possible fiscal systems in which program costs collected by compliance officers are deposited in to a non-reverting fund created in the state treasury to be administered by the administrative office of the courts to fund compliance operations and propose legislation to the legislative finance committee and any other appropriate interim legislative committee no later than October 1, 2015;"

A working committee, consisting of Curry County employees including compliance officers, the New Mexico Association of Counties representatives, magistrate judges and employees of the Administrative Office of the Courts (AOC), met on three separate occasions to study the issues presented in this memorial. At this time, additional information needs to be gathered in order to provide a final recommendation to the LFC, however this interim report will outline our progress so far and the challenges we still face.

A BRIEF HISTORY OF COUNTY MISDEMEANOR COMPLIANCE PROGRAMS

Per statute, NMSA 1978 Section 31-20-5.1 (attached hereto as Exhibit 2), counties may create a "misdemeanor compliance program" to monitor persons', convicted of a misdemeanor criminal offenses including driving while under the influence of intoxicating liquor or drugs, compliance with the conditions of probation imposed by a district or magistrate court. The statute allows for collection of fees of not less than fifteen (15) dollars and not more than fifty (50) dollars per month to the county of a public probation program for the term of the defendant's probation. The money collected by the county shall only be used to operate the misdemeanor compliance program. The majority of counties have implemented such a program, although they are configured in different ways (both as to fiscal and organizational administration). Additionally, the county's program shall comply with guidelines established by the administrative office of the courts.¹ The guidelines are attached hereto as Exhibit 3.

¹ AOC's Misdemeanor Compliance Program Guidelines were promulgated in 2009 and are found on the nmcourts.gov website.

County misdemeanor compliance programs are carried out by employees designated as Court Compliance Officers (CCO). These officers may be county employees or persons contracted by the county to carry out the program.² The CCO's powers and duties are set out in the AOC's guidelines and include monitoring the extent that defendants are complying with the conditions of their sentences; engage in phone calls and office visits with defendants to motivate them to comply with their sentences; encourage payment of fines and fees; receive and receipt compliance program costs and monthly fees, and restitution. In addition, the CCO may make random visits to clubs and bars; require periodic and/or random drug testing; monitor use of ignition interlock devices.³ Court Compliance Officers may conduct home visits under a specific set of conditions.⁴ The guidelines also provide for limitations on CCO powers including that CCOs do not have arrest powers and cannot carry firearms.⁵ To become a CCO, the person must meet minimum qualifications which include an associate degree and two years of experience in the judiciary, in a criminal justice position, in counseling or other human services discipline. Relevant education may substitute for experience and relevant experience may substitute for education at a rate of 30 semester hours equating to one year-full-time work experience.⁶

In many counties, compliance programs are a part of a larger comprehensive "alternative sentencing program" that may include pre-sentencing and diversion services as well as the post adjudication services provided by a misdemeanor compliance program. Many of these larger programs are funded through a combination of liquor excise tax funds, probation fees collected by the programs' compliance officers, and additional county funds. Many of the programs are completely county run, though some have municipal investment and involvement. The majority of CCOs are county employees, though it is not clear that is the case in every county. An estimate of the number of employees, provided by the New Mexico Association of Counties representative, is around 60 CCOs who serve an average of 7100 defendants.

As previously stated, Section 31-20-5.1 allows for the collection of fees to fund the compliance program. The statute is permissive and allows for a sliding fee. The Department of Finance Administration (DFA-LGD) reported to the AOC that the FY 2015, unaudited statewide collection of compliance fees totaled approximately \$1,066,000 and the counties spent approximately \$934,000 of those fees. In addition, DFA-LGD reported the total unaudited costs associated with compliance and tracking of defendants associated with these programs was approximately \$2,747,000. However, there is not a breakout between costs associated with compliance and tracking but DFA-LGD has indicated that the majority of these costs were associated with compliance.

Other funding sources are the Local DWI Fund (LDWI) that is administered by DFA-LGD per statute. The Local DWI Fund is the major funding source for the counties' "alternative sentencing programs" but it is unknown at this time how much of this funding is directed to misdemeanor compliance programs. Local Government Division's administrative responsibilities include all the purposes for which the counties can use their LDWI Fund distribution, not just the

² AOC Misdemeanor Compliance Program Guidelines, subsection 3

³ AOC Misdemeanor Compliance Program Guidelines, subsection 6a(i-iv.)

⁴ AOC Misdemeanor Compliance Program Guidelines, subsection 6a(v)

⁵ AOC Misdemeanor Compliance Program Guidelines, Subsection 7

⁶ AOC Misdemeanor Compliance Program Guidelines, Subsection 8

misdemeanor compliance programs. Such purposes are mostly related to DWI prevention, education, and treatment, though efforts to deal with domestic violence and drug abuse are also appropriate uses of the LDWI Funds. The Local Government Division has an LDWI Bureau Chief who oversees five DWI program managers, who are assigned multiple counties each for overseeing fund distribution, contract and program implementation, audit and reporting requirements.

The county programs also benefit from a training and operational oversight infrastructure that has developed over time through the DWI Coordinator Affiliates organization, the NM Association of Counties, local DWI planning councils, and the county DWI program coordinator. Training for county compliance officers is held annually via a week long face-to-face training at New Mexico Corrections Department, focusing on office and field safety procedures, technical writing, court appearances, self-defense, and CPR, among other responsibilities of the county compliance officers. County programs are also responsible for screening and tracking all DWI offenders in their jurisdiction using the tool specified in statute (the ADE screening tool), and some but not all county compliance officers are responsible for the requisite data entry in their counties.

Working group members from the Association of Counties and the San Juan County Alternative Sentencing (Compliance) Program favor retention of the existing structure. They report that the Association has worked closely with the AOC to develop the current robust training program for CCOs, supervision under the administration of the counties provides \$2 million in services with almost no cost to taxpayers from the existing fee-based and grant-funded programs, and local control remains in the counties where magistrate courts operate. They state that most magistrate courts are satisfied with the services provided under the current structure and it should be possible to resolve any issues local to Curry County without creating a parallel state compliance program for magistrate courts or uprooting the current system and transferring it to the AOC. The Curry County Magistrate Court sent out a questionnaire regarding the compliance programs in other magistrate courts and the results bear out the Association's findings. The questionnaire findings are attached hereto as Exhibit 4.

METROPOLITAN COURT PROBATION DIVISION PROGRAMS

The working committee has taken a look at the Bernalillo County Metropolitan Court Probation Department which consists of the Supervision Division (the Supervision Division) and the Specialty Courts Division to determine if their purpose and structure would serve as a guideline in structuring a court compliance program within the magistrate courts. In New Mexico, there is currently only one metropolitan court system established by statute. Like the magistrate courts, it is a court of limited jurisdiction and is authorized to adjudicate the same types of civil and criminal cases. Unlike the magistrate courts, the metropolitan court is a court of record for DWI and Domestic Violence cases.⁷ Unlike the magistrate courts, the metropolitan court is not a division of the AOC. In this respect the metropolitan court is on the same footing as the district courts around the state with its own officers and employees who do not answer directly to the AOC. The employees of the metropolitan court are classified differently and separately from those employed in the magistrate courts. Due to these and other differences, the job classifications between metropolitan court and magistrate courts are not interchangeable.

⁷ The Bernalillo Metropolitan Court became a court of record for these cases in 1994.

The Probation Department was established at the inception of the metropolitan court in 1980⁸. The Probation Division has thirty (37)⁹ probation officers, classified as Court Probation Officers 1 and Court Probation Officers 2¹⁰. The minimum qualification to be a Probation Officer 1 is a Bachelor's degree in criminal justice, social work or a related field from an accredited college or university and one year of experience in social services, probation as a corrections officer or work in a related field.¹¹ The minimum qualifications of Probation Officer II is a Bachelors degree in criminal justice, social work or a related field from an accredited college or university and three years of experience in social services, probation, as a corrections officer or work in a related field. The Court Probation Officers are involved with defendants in the pre-adjudication process by preparing presentence reports, appearing in court and making recommendations on sentencing, pre-adjudication drug and alcohol monitoring. Post-adjudication duties include ensuring compliance with sentencing, monitoring restitution, treatment compliance, preparing for probation violation hearings. Probation Officer II's are also working within the courts specialty court programs such as the DWI and Drug Court. These Court Probation Officers work in the courts but do not work outside the court setting.

Another classification of employees of the Probation Department, Specialty Courts Division are Surveillance Officers. These two officers are assigned to the DWI Drug Court Program and are not involved in standard supervision compliance.¹² The minimum qualifications for this position are a high school diploma or GED and two years of experience in social services, probation, as a corrections officer, or related field. The duties of the Surveillance Officer include performing both scheduled and spontaneous site visits to the participant's home, school, work or other locations to monitor program compliance; track and administer breath or urine drug tests; and supervise participants in work details, physical training or special projects as part of community service program requirements. They are also required to document their interaction with program participants and prepare reports detailing participant compliance and appear in court.

None of employees of the Probation Department are classified as CCOs and as can be seen by the minimum qualifications, a CCO qualifications fall somewhere between a Court Probation Officer and a Surveillance Officer. There are only two surveillance officers who work for the Probation Department in the Specialty Courts Division and these employee's salaries and benefits are currently grant funded. The rest of the Court Probation Officers and Staff are mainly general fund positions.

⁸ The authority for establishing this division in the metropolitan court is found at Section 31-21-21, NMSA 1978 which states, "All probationers are subject to the supervision of the board [of the Department of Corrections], unless otherwise specifically ordered by the court in a particular case. Nothing in the Probation and Parole Act [31-21-3 NMSA 1978] limits the authority of the court to impose or modify any general or specific condition of probation. The board may recommend and by order of the court may impose and modify any conditions of probation.

⁹ Two of the 37 positions are term positions funded by the Traffic Safety Bureau.

¹⁰ Four (4) Court Probation Officer 1 positions are assigned to the DWO FOP Program. Thirty-three (33) PO II positions operate throughout the department.

¹¹ Job classifications can be found on the nmcourts.gov website.

¹² Magistrate courts that have specialty courts, such as a DWI court, may have a surveillance officer assigned to perform similar, if not identical, duties to a Surveillance Officer in the metropolitan court. These officers are contracted by the county and are most likely funded by LDWI grants.

WORK STILL TO BE DONE AND QUESTIONS TO BE ANSWERED

The work group has met three times and there is more work to do before a final recommendation can be made to the LFC regarding the directive of Senate Memorial 89. Broadly speaking, the work involves the legal, fiscal and personnel and training challenges that must be clearly defined prior to any discussion of proposed legislative changes that would bring the magistrate court compliance program under the control of the magistrate courts.

Legal

While there is no clearly established law which prohibits the compliance officers being employed directly by the court, there are some concerns that this arrangement may present an appearance of impropriety on the part of the judge, and it may run afoul of judicial ethics provisions of the Code of Judicial Conduct.

- If compliance officers are under the direct supervision of the magistrate judge, then this may deprive defendants of their minimum due process right to a neutral and detached fact finder, at a probation violation hearing. *Morrissey v. Brewer*, 408 U.S. 471 (1972).
- Judges could face ethical violations under Cannons 1 and 2 of the Code of Judicial Conduct.
 - o 21-102. Promoting confidence in the judiciary. A judge shall act at all times in a manner that promotes public confidence in the independence, integrity, and impartiality of the judiciary and shall avoid impropriety and the appearance of impropriety.
 - o 21-202. Impartiality and fairness. A judge shall uphold and apply the law and shall perform all duties of judicial office fairly and impartially.
 - o 21-209. Ex parte communications. A judge shall not initiate, permit, or consider ex parte communications, or consider other communications made to the judge outside the presence of the parties or their lawyers, concerning a pending or impending matter.

In order to ensure the continuing integrity of the judiciary, it is recommended that the judges not be placed in direct, supervisory authority over the compliance officers, if they become employees of the court. In order to accomplish this, a new office would need to be created within the courts, under a new supervisory authority.

A more difficult issue is whether statutory authority for the compliance program would remain with the counties, perhaps with a local option for a court-run program, or would the entire compliance program be transferred to the courts? If there is a local option, a decision mechanism is needed to resolve any conflicts between the courts and a county over which type of program to operate. AOC would support having a single statewide program applied in magistrate courts, either the current county-based compliance program or a statewide compliance program administered through the AOC. The challenges presented by a patchwork of county and court-run statewide programs argue against a mixture. One such challenge is funding but others include program consistency, variable compensation, divergent training opportunities, inconsistent job descriptions, and different program priorities that exist now but could only be exaggerated by mixing in the state as a program

administrator alongside county administered programs.

Members of the working group from Curry County and the Curry County Magistrate Court support operation of a pilot program in their jurisdiction to allow the court to run the compliance program. If a pilot program were undertaken, AOC would favor a general fund appropriation for the reasons discussed under "Fiscal" later in this report. Statutory authority would be required to allow the AOC to establish guidelines applicable to court CCOs. A serious challenge would be presented by the question of employment and compensation unless the pilot operated under existing statutes through a Memorandum of Understanding between the court and county. Such an MOU has been drafted and would leave the existing CCOs in place, paid by Curry County, but directed by the Curry County Magistrate Court. Approval by the New Mexico Supreme Court would also be required for such a pilot program.

Structure and Training

To avoid internal conflicts of interest with the Magistrate Division, any administrative program created to oversee Magistrate Court compliance officers should probably be placed under the AOC's Court Services Division (CSD). Similar to the other programs in CSD, a Statewide Program Manager should be hired to oversee the program, replicating the role of the LDWI Bureau Chief in Local Government Division. Two or three field program managers (determined based on the actual number of compliance officers to be hired) would be hired to provide the same regional oversight currently provided by the DWI Program Managers at Local Government Division. The AOC's field program managers' scope of work would be both narrower than the DWI Program Managers and more specific. Narrower as their primary focus would be on the compliance activities provided by the Magistrate Court compliance officers, and more specific as they would have direct administrative, hire and fire, responsibility for those compliance officers in their assigned counties.

The training of compliance officers would have to be replicated within the AOC structure. Currently, the AOC has an online course that provides the basics of the classroom training provided by Local Government Division during its week long training at New Mexico Corrections Department. This would serve in the short term but would need to be strengthened by face-to-face sessions and supplemented by self-defense and CPR training, coordinated through the AOC statewide program manager.

As statute specifies the counties are responsible for screening and tracking DWI offenders through the ADE¹³ tool that responsibility would not likely carry over to the AOC and court compliance officers.

Fiscal

Significant recurring funding would be required in order for the county compliance programs to be placed under the direction of AOC. At this time, the AOC has not been able to ascertain how much additional funding beyond the collection of compliance fees would be necessary to fund this program statewide. Although fees and costs are assessed they must still be collected. The

¹³ Section 66-8-102 NMSA 1978

percentage of fees and cost collected by the counties are also unknown at this time.¹⁴ In addition, the revenue collected from fees used to operate a recurring program do not maintain the same level of inflationary growth associated with those recurring costs. Through its experience with other fee based funding, the AOC and the judiciary are hesitant to attempt funding, in whole or in part, for this permanent recurring program through a fee based legislation.

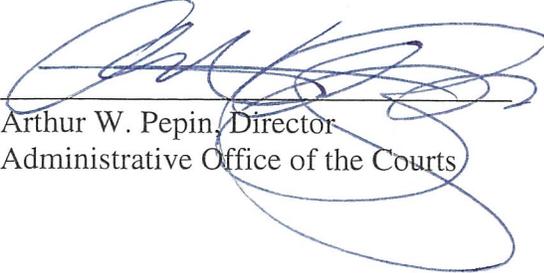
Other funding sources are the Local DWI Fund (LDWI) that is administered by DFA-LGD per statute. However, because the LDWI is restricted for use by the counties, the AOC would not be able to apply for grants under the current legislative scheme. The counties will still need that funding for all of their other statutorily mandated DWI prevention and treatment responsibilities. Therefore other sources will need to be identified. AOC believes it would be preferable and necessary that this funding come through general fund appropriations.

Personnel Considerations

The task of transferring county employees to the judiciary is daunting. Salary and benefits packages vary widely between counties. For example, Curry county salaries for CCOs are between \$11.34 and \$14.16 per hour. San Juan CCOs are paid upwards of \$19.00 per hour. PERA contributions also differ between counties themselves and the AOC. In addition it appears that insurance benefit contributions vary widely as well. Recommendations regarding job classification, pay and benefits equity are likely to take some time to assess. In addition to the CCOs, there will necessarily need to be an increase in the number of administrative personnel to address the increase in administrative duties that accompany any transfer of CCOs.

CONCLUSION

The transfer of a county compliance program to the judiciary is not a simple task. Many issues need to be explored more thoroughly prior to any recommendation that the process move forward. More time is needed to gather information to make a final recommendation as to the ramifications of such a move. The work group believes that the gathering of this information and its consideration will take at least a year to complete.


Arthur W. Pepin, Director
Administrative Office of the Courts

SEPTEMBER 29, 2015
Date

¹⁴ The San Juan County Representative indicates that her county collects approximately 54% of the fees and costs owed to the Magistrate Compliance Program in that county.



**New Mexico State Senate
OFFICE OF THE CHIEF CLERK**

LENORE M. NARANJO
CHIEF CLERK

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March 31, 2015

Arthur W. Pepin, Director
Administrative Office of the Courts
237 Don Gaspar
Santa Fe, NM 87501

Dear Mr. Pepin:

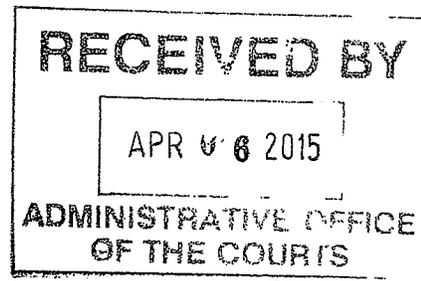
Please find the E&E copy of Senate Memorial 89 sponsored by Senator Stuart Ingle passed during the Fifty-Second Legislature, First Session, 2015. The memorial instructs my office to provide you with the enclosed.

If you have any questions, please do not hesitate to contact my office.

Sincerely,


Lenore M. Naranjo
Senate Chief Clerk

Enclosure





The Legislature
of the
State of New Mexico

52nd Legislature, 1st Session

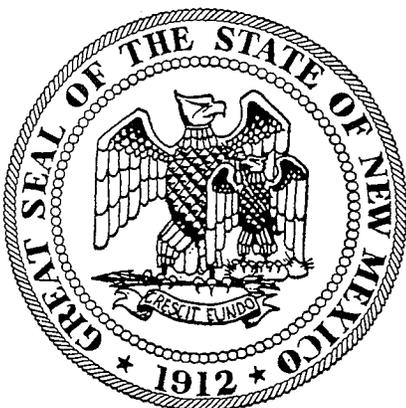
LAWS 2015

CHAPTER _____

SENATE MEMORIAL 89

Introduced by

SENATOR STUART INGLE



1 A MEMORIAL

2 REQUESTING THE ADMINISTRATIVE OFFICE OF THE COURTS, THE
3 NEW MEXICO ASSOCIATION OF COUNTIES AND THE CURRY COUNTY COURT
4 COMPLIANCE DEPARTMENT TO STUDY THE TRANSFER OF COUNTY
5 EMPLOYEES TO THE MAGISTRATE COURTS TO OPERATE COMPLIANCE
6 PROGRAMS.

7
8 WHEREAS, under current New Mexico law, certain offenders
9 are sentenced to terms of probation with specific probation
10 conditions; and

11 WHEREAS, county governments have employed individuals to
12 work with the magistrate courts in the capacity of court
13 compliance officers; and

14 WHEREAS, the duties and responsibilities of court
15 compliance officers include monitoring certain offenders
16 convicted of misdemeanors, including pre- and post-sentencing
17 reports, residential and employment visits and collection of
18 program costs; and

19 WHEREAS, the county compliance employees are not hired,
20 trained or supervised by the courts; and

21 WHEREAS, counties have independent hours of operation
22 and different rules, procedures and requirements than the
23 courts; and

24 WHEREAS, county rules for employees, including
25 compliance officers, may be inconsistent with the

1 requirements necessary to monitor the conditions of
2 probation; and

3 WHEREAS, the fees collected by the county compliance
4 employees are used to fund operations of the county
5 compliance operations;

6 NOW, THEREFORE, BE IT RESOLVED BY THE SENATE OF THE
7 STATE OF NEW MEXICO that the administrative office of the
8 courts, the New Mexico association of counties and the
9 Curry county court compliance department be requested to
10 study the ramifications of the transfer of county employees
11 to the magistrate courts to operate compliance programs and
12 possible fiscal systems in which program costs collected by
13 compliance officers are deposited into a nonreverting fund
14 created in the state treasury to be administered by the
15 administrative office of the courts to fund compliance
16 operations and propose legislation to the legislative finance
17 committee and any other appropriate interim legislative
18 committee not later than October 1, 2015; and

19 BE IT FURTHER RESOLVED that copies of this memorial be
20 transmitted to the co-chairs of the New Mexico legislative
21 council, the administrative office of the courts, the
22 New Mexico association of counties and the Curry county court
23 compliance department.

s/John A. Sanchez
John A. Sanchez, President
Senate

s/Lenore M. Naranjo
Lenore M. Naranjo, Chief Clerk
Senate

SM 89 – Transfer of County Employees

Hi Rosemary,

I spoke with Fern about this memorial and she recommended that you form a court committee or working group consisting perhaps of a designee from the MJA, someone from AOC Fiscal, a local (Curry County mag court) fiscal staffer, and maybe someone from HR. We might also ask whether the Supreme Court would like to designate a member.

Thanks, Celina

§ 31-20-5.1. Misdemeanor compliance programs; counties may establish; fees

West's New Mexico Statutes Annotated Chapter 31. Criminal Procedure Effective: June 14, 2013 (Approx. 2 pages)

West's New Mexico Statutes Annotated
Chapter 31. Criminal Procedure
Article 20. Sentencing (Refs & Amos)

Effective: June 14, 2013

N. M. S. A. 1978, § 31-20-5.1

§ 31-20-5.1. Misdemeanor compliance programs; counties may establish;
fees

Currentness

A. A county may create a "misdemeanor compliance program" to monitor defendants' compliance with the conditions of probation imposed by a district or magistrate court. The program shall be limited to participation by persons who have been convicted of a misdemeanor criminal offense specified in the Criminal Code, convicted of driving while under the influence of intoxicating liquor or drugs or convicted of driving while the person's driver's license is suspended or revoked pursuant to the Motor Vehicle Code.¹ A county's program shall comply with guidelines established by the administrative office of the courts.

B. As a condition of probation, the district or magistrate court may require the defendant to pay a fee of not less than fifteen dollars (\$15.00) nor more than fifty dollars (\$50.00) per month to the county for a public probation program for the term of the defendant's probation. Money collected by the county pursuant to this subsection shall be used only to operate the misdemeanor compliance program.

Credits

L. 2000, Ch. 49, § 1, eff. July 1, 2000; L. 2013, Ch. 104, § 1, eff. June 14, 2013.

Footnotes

1 NMSA 1978, § 66-1-1 et seq.

NMSA 1978, § 31-20-5.1, NM ST § 31-20-5.1

Current through the end of the First Special Session of the 52nd Legislature (2015)

End of Document

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MISDEMEANOR COMPLIANCE PROGRAM GUIDELINES

ISSUING AGENCY: Administrative Office of the Courts

STATUTORY AUTHORITY: Section 31-20-5.1 NMSA 1978

DURATION: Permanent

EFFECTIVE DATE: November 4, 2009

1. PURPOSE

The purpose of these guidelines is to ensure, through standards and limitations of powers, the safe and consistent handling of misdemeanor defendants who may be monitored or supervised by county-operated misdemeanor compliance programs.

Section 31-20-5.1 NMSA 1978 states that *A county may create a "misdemeanor compliance program" to monitor defendants' compliance with the conditions of probation imposed by a district or magistrate court . . . A county's program shall comply with guidelines established by the administrative office of the courts.*

2. LIMITATIONS

The program created under Sections 31-20-5.1 NMSA 1978 shall be *limited to participation by persons who have been convicted of a misdemeanor criminal offense specified in the Criminal Code, convicted of driving while under the influence of intoxicating liquor or drugs, or convicted of driving while the person's driver's license is suspended or revoked pursuant to the Motor Vehicle Code.*

3. PROGRAMS SHALL BE COUNTY OPERATED

Programs existing or formed pursuant to this statute shall be county run and are subject to these guidelines. Counties may hire compliance officers, or may contract with individuals or with public, private, or not-for-profit organizations to carry out the program.

4. PROGRAM NAME

Programs shall be called " _____ County Misdemeanor Compliance Program" (hereinafter referred to as MCP).

EXHIBIT

3

5. COMPLIANCE OFFICER TITLE

Officers hired by counties shall be called "Court Compliance Officers" (hereinafter referred to as CCO) to avoid the appearance of overlap with NM Department of Adult Probation and Parole probation officers.

6. CCO POWERS and DUTIES

a. A CCO shall have the power to:

- i. Determine the extent to which referred defendants are in compliance with their sentences for attending and completing court-ordered programs and treatments, through interaction with magistrate and district courts, law enforcement agencies, community service agencies, and other community services.
- ii. Through telephone calls and office visits, encourage and motivate referred defendants to comply fully with sentences from the courts, including but not limited to payment of fines, fees, and restitution.
- iii. Provide periodic defendant compliance and non-compliance reports to the courts, district attorney's office, and defense attorneys.
- iv. Receive and receipt compliance program costs and monthly fees from defendant.
- v. Set up and maintain a community service program within the county.
- vi. Track defendants sentenced to the probation program.

b. The CCO may have the following powers and duties, but only if such powers and duties are specifically given the CCO in the order, signed by both the judge and defendant, setting conditions of probation:

- i. Make random visits to bars and clubs. If the CCO observes a person under supervision violating probation, the CCO shall not confront the person but shall document the violation and submit appropriate notice to the court.
- ii. Require periodic and/or random testing of the defendants for alcohol and/or drug compliance.

- iii. Monitor the defendant's compliance with an electronic monitoring and/or alcohol monitoring program.
- iv. Monitor the defendant's use of an ignition interlock device.
- v. Conduct home visits if:
 - (1) the CCO has satisfactorily completed a curriculum including field-work safety training that has been pre-approved by the New Mexico Administrative Office of the Courts, or
 - (2) the Corrections Department affirms in writing that the CCO was formerly a certified probation and parole officer and left the employment of the Corrections Department in good standing, or
 - (3) the CCO was formerly a law enforcement officer and the agency for whom the CCO worked affirms in writing that the CCO left its employment as an officer in good standing, and
 - (4) the county has adopted a safety policy governing home visits including the above requirements and stipulating the conditions upon which home visits may be executed.

It is strongly recommended that CCOs go in pairs or with a law enforcement officer to make home visits.

7. CCO LIMITATIONS

- a. CCOs shall not have arrest powers and must observe and respect all due process rights of all defendants. Any arrest shall be made only by a law enforcement officer and only upon the issuance of a warrant as set forth in Rules 6-802 or 8-802 NMRA.
- b. CCOs shall not carry firearms.
- c. It is strongly recommended that CCOs shall wear body armor while in the field. If a CCO chooses not to do so, the CCO should provide the county with a written waiver. The form for such a waiver may be requested from the AOC Magistrate Court Division.

- d. CCO's shall not have access to offender medical or treatment specifics unless so authorized by appropriate waiver. Proof of attendance at court-ordered sessions and meetings may be required and shall not be restricted by this section.

8. CCO MINIMUM QUALIFICATIONS

Associate degree and two years of experience in the judiciary, in a criminal justice position, in counseling, or another human services discipline. Relevant education may substitute for experience and relevant experience may substitute for education at a rate of 30 semester hours equating to one year full-time work experience.

Knowledge of approved principles and practices of law enforcement and applicable laws and ordinances.

Knowledge of investigative techniques and practices.

Must be able to pass a rigid background investigation including work history, character, honesty, integrity, criminal record, driving record, etc.

Ability to work independently; to analyze and evaluate investigative materials; to communicate and interview effectively both orally and in writing; to prioritize workload; to work in a stressful environment; operate a computer; be persuasive, assertive and empathetic to people from various populations; and maintain confidentiality. Ability to communicate in a second language is desirable but not required.

Ability to establish and maintain effective working relationships with fellow employees and other agencies.

Counties shall ensure that CCOs meet the minimum qualifications, knowledge, skills, and abilities listed above. Any county choosing to hire someone who does not meet minimum qualifications should justify the hiring decision in writing in the CCO's personnel or contractual file.

9. FUNDING SOURCES

Section 31-20-5.1 NMSA 1978 authorizes judges to order a defendant to pay from \$15 to \$30 per month in fees to be used to operate a MCP. This fee shall be stated in the court order and shall be paid by the defendant directly to the county where the supervising MCP is located. All payments shall be in a form approved by the county treasurer's office.

The county shall be responsible for audit of the account.

10. FILES

A clerk of the court will supervise any files maintained by the court. A separate file on the individual defendants should be maintained by the CCO and any relevant documents (e.g., orders of probation, completion of probation, reports to court) shall be given to a court clerk for inclusion in the defendant's court file.

The CCO shall have access to the court files of those defendants assigned to the program in order to follow up on the defendant's personal information and other related court documents. The officer shall be allowed to copy relevant documents but may not remove any documents from the file.

Subject to the approval of the presiding judge and chief clerk and when resources allow, CCOs may be provided with a computer and may be given limited (data entry only) access to the court's case management system in order to assist courts in the entry of post-judgment data.

CCOs shall not handle any receipts or other financial-related matters of the court. This does not restrict the CCO from facilitating restitution or collecting program costs and fees.

11. SUPERVISION AND REPORTING

All CCOs shall be employees or contractors of the County.

The CCO shall report to the presiding judge, through appropriate chain-of-command, on all court-related issues.

An employee CCO shall report to the county manager, who shall serve as or designate a direct supervisor for the CCO.

The MCP shall operate subject to guidelines established by the AOC Magistrate Court Division. Additional specific probation conditions and guidelines may be developed collaboratively by local county officials, the presiding magistrate judge, and district court judge.

12. RADIOS

Counties may provide CCOs with police dispatch radios so that the CCO can contact the local law enforcement agency as necessary.

13. TRANSFERS OF DEFENDANTS TO OTHER JURISDICTIONS

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Where defendant resides outside the county where sentenced by the court, the judge may order that:

- a. The defendant shall be supervised by the sentencing county MCP. In this case, with the written approval of the supervising MCP, the defendant could participate in programs such as DWI school, community service, etc., outside the originating jurisdiction but would be required to report back to the MCP in the county in which the defendant was sentenced, or
- b. The defendant will be referred to the NM Adult Probation and Parole Division, or
- c. With the written consent of the MCP where the defendant resides, the defendant will be transferred to that MCP. In this instance, the monthly compliance program costs and fees would be payable to the county in which the defendant resides. This MCP would be required to report back to the MCP in the county in which the defendant was sentenced.

DWI defendants shall be screened and tracked in the county where sentenced. With the written approval of the MCP, the defendant may participate in programs such as DWI school, community service, etc. in defendant's county of residence.

14. CONFIDENTIALITY

Defendant files maintained by the MCP, and information contained within those files, shall remain confidential. Only those reports submitted to the court as a matter of court record will become public in accordance with the New Mexico Public Information Act.

15. CONTINUING EDUCATION

It is strongly recommended that all CCOs shall, during each twelve month period of employment or service, complete a minimum of sixteen hours of in-service training. It is further recommended that every six months, every CCO shall complete four hours of in-service training in defensive tactics, for a total of eight hours every year. The remaining eight hours recommended during the year may be elective in nature. Recommended CEU topics include:

- Legal and policy updates
- Motivational interviewing techniques
- Substance abuse issues
- Domestic violence awareness
- Basic first aid/CPR
- Universal precautions/blood borne pathogens

APPENDIX

These Misdemeanor Compliance Program guidelines have been established pursuant to Section 31-20-5.1 NMSA 1978.

31-20-5.1. Misdemeanor compliance programs; counties may establish; fees.

A. A county may create a "misdemeanor compliance program" to monitor defendants' compliance with the conditions of probation imposed by a district or magistrate court. The program shall be limited to participation by persons who have been convicted of a misdemeanor criminal offense specified in the Criminal Code, convicted of driving while under the influence of intoxicating liquor or drugs or convicted of driving while the person's driver's license is suspended or revoked pursuant to the Motor Vehicle Code. A county's program shall comply with guidelines established by the administrative office of the courts.

B. As a condition of probation, the district or magistrate court may require the defendant to pay a fee of not less than fifteen dollars (\$15.00) nor more than thirty dollars (\$30.00) per month to the county for the term of his probation. Money collected by the county pursuant to this subsection shall be used only to operate the misdemeanor compliance program.

History: Laws 2000, ch. 49, § 1.

1 st set of questions	Do you have a DWI Compliance Program?	Do you have a Misdemeanor Compliance Program?	Who refers defendants to the compliance programs?	Who is your program's fiscal agency?	Who employs your compliance staff?	Do you have any contracted compliance employees?	How many compliance officers are in your program?	What is their approx. case load?
<u>Chaves / Roswell</u>	YES	YES	Court/Judge	Chaves County	Chaves County	NO	4	600
<u>De Baca / Ft. Sumner</u>	YES	YES	Judge	City of Ft. Sumner	Contracted	YES	1	15-20
<u>Eddy / Carlsbad</u>	NO	NO	NA	NA	NA	NA	NA	NA
<u>Harding / Roy</u>	YES	NO	Judge	Harding County	County	I believe they are all contract	2 but neither are full time	2-5 cases per year
<u>Lincoln / Ruidoso</u>	YES	YES	Magistrate and District	Lincoln County	Self employed, Kenneth Vega	Yes, Kenneth Vega has a contract with Lincoln County	1	175
<u>Los Alamos</u>	YES	YES	Magistrate, Municipal and sometimes District	Los Alamos County, full time positions with DWI council funds for the Magistrate part		Not in the Magistrate Court	One	120
<u>McKinley / Gallup</u>	YES	YES	District Magistrate Municipal	McKinley County	McKinley County	NO	5 Officers and 1 Director	123
<u>Quay / Tucumcari</u>	YES	YES	Judges from the 10 th	Quay County	Quay County	NO	1	140



<u>Roosevelt / Portales</u>	YES	YES	Magistrate and District	City for DWI / County for Misdemeanor	City by DWI grant / County contract	Misdemeanor Compliance officer	1 for DWI, 1 for Misd.	Less than 10 for DWI / 100-150 for Misd.
<u>Valencia / Belen</u>	YES	YES	Magistrate Court (Los Lunas and Belen)	Village of Los Lunas (additional comments)	Village of Los Lunas	NO	2 Officers and 1 Supervisor	203

2 nd set of questions	Are probation fees collected?	How is your compliance program funded?	Does compliance monitor or track offenders?	Are field visits conducted?	Do you have any thoughts or comments about compliance under AOC?	Are there any conflicts between your court and the controlling agency for compliance?	Are you satisfied with the services and capabilities of your program?
<u>Chaves / Roswell</u>	YES	County and DWI funds	YES	NO	NO	Not as of yet	YES
<u>De Baca / Ft. Sumner</u>	YES	Fees and DWI grant	YES	Not without a deputy	I think compliance should be under the courts and not the counties	NO	YES
<u>Eddy / Carlsbad</u>	NA	NA	NA	NA	It is better run by local Eddy County Det Facility than the AOC.	Absolutely none	Do not have a compliance program with the court. It is managed by the Eddy County Det Facility and it is better that way.
<u>Harding / Roy</u>	YES	Primarily through DWI grant funding, also	Monitor- generally probationers must report	NO	Some have expressed concern over the	No	Monitoring is limited to DWI and alcohol

		probation fees and donations	to the office		appearance of impropriety that might be created when the judge is taking testimony from a court employee against a defendant		related offenses only. Ability to monitor other offenders would be helpful. Caseload is so low, doubtful a more robust program would be warranted, possible regional or district wide compliance might be a possibility	
<u>Lincoln / Ruidoso</u>	YES	County funded and offender funded	YES	YES	Yes. If MCCD is going to be under AOC, then AOC should provide some funding and training for MCCD. I believe that	NO	YES, but I do not believe further training is needed. It would be a good idea for AOC to provide adequate training for MCCD.	

					MCCD should be formally trained				
Los Alamos	Yes, paid through the Los Alamos Muni Court to the Los Alamos County	DWI council funds and Los Alamos County, Probation officer has benefits as they are a county employee	Office visits, GPS, Nor-Cam, telephone, some e-mail and home visits	Yes, the probation officer is escorted by the Los Alamos PD for home visits	I think this program will benefit the counties who need a steady program	NO	Yes. Does not want to change. Has been in effect for 18 years and serves our county well.		
McKinley / Gallup	YES	The local DWI program is billed for probationers and there is a contract with the City of Gallup for Municipal Court	Monitor	NO	Like it the way it is now. Better to have different entity that is not under the court. In the past there were problems when it was under the court. Managers have enough on their plate. Program	No problems at all.	Yes we are. Also a pretrial service that helps save money on the jail costs.		

					works for us and the County is willing and able to make changes if needed.		
<u>Quay / Tucumcari</u>	YES	FEES	YES	NO	We have no problems now	NO	YES
<u>Roosevelt / Portales</u>	YES	With fees collected	YES	YES	I would need to know more on the specifics of how AOC would monitor the program	NO	Some issues with DWI compliance, but very satisfied with Misdemeanor Compliance
<u>Valencia / Belen</u>	YES, \$40.00 per month	Distribution funds from DFA, Program Generated Fees, In Kind Funds from the Village of Las Lunas	YES	NO	Proximity the only issue. Wish they were housed in the court. Would protest if the County Commission wanted to run this program.	NO	Definitely. Very well run program.

					Does not feel county could ever run for many reasons			
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Otero / Alamogordo:

'Has anyone considered the potential conflict of having to constantly take testimony from court employees? If the compliance officer is an arm of the court, instead of a law enforcement arm, I would not be comfortable as a defendant that I would get a fair shake at a PVR hearing. It seems analogous to having the DA or PD as a court employee. Maybe I'm over thinking it. Conversely, it would add uniformity to the program to have one central organization running the show. Logistics of real estate and supply would be an issue as well. I'm also a proponent of local control as opposed to another or larger statewide bureaucracy. I'm interested to hear about the results of the study but am cautious at this point.'

McKinley / Gallup:

'We have a wonderful compliance program. I think if they are moved to the Court that could cause several problems. I know a lot of the courts don't have room at their court to house that many people. In the past there were some problems when they were under the AOC, I remember there were problems and it was discontinued. I think Farmington?? was one of those courts. Our Managers have enough problems without having to manage a compliance program. If that is the case the Court Managers should be reclassified to another range. I am in the process of answering the questionnaire.'