



New Mexico State Legislature
Courts, Corrections and Justice Committee

2014
INTERIM REPORT

Legislative Council Service
411 State Capitol
Santa Fe, NM

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Courts, Corrections and Justice Committee Summary of 2014 Interim

The legislative interim Courts, Corrections and Justice Committee (CCJ) held six meetings during the 2014 interim. Three meetings were held at the State Capitol in Santa Fe. The remainder of the meetings were held in communities around the state in conjunction with visits to various state detention facilities. The committee had the opportunity to visit the New Mexico Behavioral Health Institute at Las Vegas and the Doña Ana County Detention Center. At each of these facilities, the committee had informative and enlightening discussions with facility administrators and staff and, most significantly, were able to interact with incarcerated individuals to hear first-hand of their experiences. The committee also visited the Old Main Facility, site of the Penitentiary of New Mexico prison riot in 1980, and now a project of the Corrections Department (NMCD) aimed at preserving the memory of the riot.

The committee, as is its norm, tackled a number of issues during the interim. Issues receiving particular focus were initiatives surrounding county jails; behavioral health and incarceration; and juvenile justice. The New Mexico Association of Counties (NMAC) gave the committee an overview of the county jails and presented an overview of the work the association is doing with the state's jails to improve their operations. The NMAC and the NMCD discussed the use of special management in the state's detention facilities.

The CCJ held a joint meeting with the Legislative Health and Human Services Committee to focus on issues surrounding behavioral health in New Mexico, with a focus on the intersection of behavioral health and the state's criminal justice system. The two committees had a long and enlightening discussion concerning proposals for assisted outpatient treatment and heard presentations on the challenges posed by the need for supportive housing and substance abuse treatment. The committees also heard from Bernalillo County Commissioner Maggie Hart Stebbins on the comprehensive criminal justice reform efforts being undertaken in the county and heard presentations on the challenges posed in providing adequate health care for inmates, particularly the challenges surrounding the provision of Medicaid to incarcerated individuals.

The committee spent an entire meeting examining various aspects of the juvenile justice system in the state. The Juvenile Justice Advisory Committee and the Joint Education Task Force both presented their work to the committee. The committee heard presentations on ending the school-to-prison pipeline and on alternatives to detention of juveniles, as well as proposals to change amenability hearings and consider legislation to end hazing in New Mexico's schools. The committee also heard from Dr. Leslie Strickler of the University of New Mexico (UNM) Center of Excellence in Child Maltreatment and Abuse about the significant challenges confronting those who treat victims of child abuse in the state.

In addition, the CCJ heard about issues surrounding storefront lending in the state and the excessive interest charged on some small loans; the processing of rape kits by law enforcement; problems with the workers' compensation system; and a proposal for a child protection registry. The Human Trafficking Task Force gave a presentation to the committee, and the committee heard a presentation from Dean David Herring of the UNM School of Law. The committee also

heard a presentation from the APD Forward Campaign about the settlement agreement between the U.S. Department of Justice and the Albuquerque Police Department.

The committee had an update from the Public Defender Commission and heard a proposal from the chief public defender to make the Indigent Defense Act and the Public Defender Act congruent. The committee also received its annual updates from the NMCD and the Children, Youth and Families Department and heard a presentation from the New Mexico Sentencing Commission regarding the latest *New Mexico Prison Population Forecast: FY 2015 - FY 2024* report. The New Mexico Sentencing Commission also presented the *New Mexico Motor Transportation Police Division Safety Staffing Study*. Chief Justice Barbara Vigil of the New Mexico Supreme Court and Arthur W. Pepin, director of the Administrative Office of the Courts, presented the judiciary's unified budget and proposed legislation for the coming year.

In addition, the work of the Criminal Justice Reform Subcommittee of the CCJ continued throughout the 2014 interim period.

The subcommittee held eight meetings during the 2014 interim. Five meetings were held in Santa Fe. The remainder of the meetings were held in Albuquerque, including one meeting at the Second Judicial District Court, where the subcommittee received testimony from members of the judiciary.

At its first meeting of the 2014 interim, the subcommittee received an overview of the budgetary impact of the criminal justice system from staff at the Legislative Finance Committee (LFC). The presentation highlighted cost-saving opportunities that could be realized through targeted criminal justice reforms. These cost-saving opportunities became an important theme of the subcommittee's work throughout the 2014 interim. The subcommittee also heard presentations at the April meeting concerning a proposed expansion to the New Mexico Women's Correctional Facility in Grants, the use of in-house parole in New Mexico's prisons and the Sequential Intercept Model.

At its May meeting, the subcommittee received a presentation from representatives of the Pew-MacArthur Results First Initiative of The Pew Charitable Trusts. The presentation highlighted criminal justice reform efforts in other states and introduced the subcommittee to the Results First Initiative. The Results First approach helps states to identify and replace ineffective programs with the aid of a tool that draws on national data to calculate the long-term costs and benefits of programs. The Results First approach also encourages states to define and adopt evidence-based, research-based and promising programs. To that end, the subcommittee developed proposals to require the use of evidence-based programming for inmates incarcerated in New Mexico's prison system and for inmates participating in community corrections and intensive supervision programs. This legislation was endorsed at the subcommittee's November meeting. Other topics examined by the subcommittee during its May meeting included:

- ▶ human trafficking;
- ▶ the use of mandatory minimum sentences;

- ▶ the intersection of behavioral health and the criminal justice system;
- ▶ competency proceedings;
- ▶ issues surrounding the use of DNA evidence; and
- ▶ proposed changes to the serious youthful offender statute.

At its June meeting, the subcommittee delved deeper into issues surrounding the use of mandatory minimum sentencing. The subcommittee received presentations from the Public Defender Department, the New Mexico Criminal Defense Lawyers Association, the Administrative Office of the District Attorneys and the district attorney from the First Judicial District on this topic.

At its July meeting, the subcommittee examined the use of "problem-solving courts", including:

- ▶ felony drug court;
- ▶ DWI drug court;
- ▶ family dependency drug court;
- ▶ juvenile drug court; and
- ▶ mental health court.

The subcommittee received testimony concerning the effectiveness of the Law Enforcement Assisted Diversion, or "LEAD", program, which has been implemented in Santa Fe County as a three-year pilot program. The LEAD program offers participation in substance abuse treatment and counseling programs in lieu of prosecution. The subcommittee also received presentations concerning:

- ▶ sentencing enhancement zones;
- ▶ differences between the state and the federal sentencing structure for drug crimes;
- ▶ the use of confidential informants in controlled substance investigations and prosecutions; and
- ▶ the effect of drug addiction on the brain.

At the subcommittee's August meeting, UNM law professor Leo Romero discussed past efforts to revise the Criminal Code and provided suggestions for future reforms. Representatives from the Public Defender Department discussed the collateral consequences of conviction and a legislative proposal to create the crime of "high misdemeanor" in the Criminal Code. The subcommittee also received a presentation focused on the unique challenges and experiences of women in the criminal justice system. The director of the Parole Board discussed the role of the Parole Board; the acting director of the Adult Probation and Parole Division of the NMCD discussed issues relating to probation and parole; and the secretary of corrections presented information concerning transitional living facilities and the information technology needs of the department.

At its September meeting, the subcommittee received testimony from parties representing the perspective of crime victims. The subcommittee also considered a package of proposals for

cost-effective criminal justice reform from the LFC and received a report from the Bernalillo County Criminal Justice Review Commission. The subcommittee received an overview of the history of bail bonds and jail overcrowding. The chief public defender provided the subcommittee with a packet of legislative proposals for consideration.

The subcommittee met in October to finalize the list of proposals that the subcommittee would consider for endorsement at its final meeting of the 2014 interim. After consideration of the testimony and public input received during the interim, the subcommittee unanimously agreed on a list of 20 specific proposals to put forth for endorsement.

The subcommittee's work culminated in a package of endorsed legislation, including the following bills:

- ▶ a bill concerning month-to-month "good time" on probation, which would allow a person who has had 30 days of supervised probation without incident to have 30 days removed from the length of the person's probation sentence;
- ▶ a bill that would create the crime of aggravated battery with permanent injury;
- ▶ a bill that would require the NMCD to operate, or contract with a third party to operate, halfway houses or transitional residential facilities;
- ▶ a bill concerning eyewitness identification procedures;
- ▶ a bill creating the crime of "high misdemeanor";
- ▶ a bill that would expand the mandate that the NMCD make high school equivalency credential classes available to inmates;
- ▶ a bill to require the use of a validated risk and needs assessment for all inmates and to require evidence-based prison programming;
- ▶ a bill requiring the NMCD to evaluate inmates who may become eligible for medical and geriatric parole and to submit the list of eligible inmates to the Parole Board;
- ▶ a bill to require evidence-based behavioral health treatment programs to be incorporated into community corrections and intensive supervision programs; and
- ▶ a bill requiring that a person placed on intensive supervision shall also be enrolled in a behavioral health program.

The CCJ endorsed the following bills for the 2014 legislative session.

1. Relating to probation: allowing for someone on probation to have the time required for probation to be decreased for good behavior.
2. Relating to corrections: enacting the Halfway House and Transitional Residential Facility Act; requiring the Corrections Department to operate or contract with a third party to operate a minimum of one halfway house or transitional residential facility for men and one halfway house or transitional residential facility for women in each probation and parole region.

3. Relating to criminal procedure: providing for procedures to enhance the accuracy of eyewitness identifications.
4. Relating to corrections: expanding the availability to earn a high school equivalency credential for incarcerated individuals.
5. Relating to public assistance: requiring the Human Services Department to provide for continued Medicaid enrollment for eligible incarcerated individuals who were enrolled in Medicaid upon incarceration and new enrollment in Medicaid for individuals released from incarceration.
6. Relating to corrections: requiring the Corrections Department to use a validated risk and needs assessment for all inmates; requiring the use of evidence-based prison programming.
7. Relating to parole: requiring the Corrections Department to submit a list of inmates eligible or who may become eligible for medical or geriatric parole to the Parole Board each quarter; requiring the Parole Board to determine whether inmates listed on quarterly reports are eligible for parole.
8. Relating to corrections: requiring that evidence-based behavioral health treatment programs be incorporated into community corrections and intensive supervision programs.
9. Relating to corrections: requiring that a person assigned to an intensive supervision program also be enrolled in a behavioral health program.
10. Relating to lending: enacting new sections of the New Mexico Bank Installment Loan Act of 1959 and the New Mexico Small Loan Act of 1955; imposing a cap on interest rates; repealing a section of the New Mexico Small Loan Act of 1955.
11. Relating to criminal sentencing: making technical corrections to the Criminal Sentencing Act.
12. Relating to employment of ex-convicts: extending the provisions of the Criminal Offender Employment Act to include private employers.
13. Relating to criminal law: providing for the alteration of a basic sentence when a crime is motivated by hate against a homeless person; amending the Hate Crimes Act.
14. Relating to the Department of Public Safety: reorganizing the Department of Public Safety; placing the Special Investigations Division and the Motor

Transportation Division under the New Mexico State Police Division; changing the name of the Training and Recruiting Division to the New Mexico Law Enforcement Academy Division.

15. Relating to indigent defense: amending the Indigent Defense Act and the Public Defender Act to make the requirements of those acts congruent; requiring the Public Defender Department to make determinations of indigency; allowing for a hearing to contest a determination of non-indigency; providing for reimbursements for services under the Public Defender Act to be paid to the Public Defender Client Reimbursement Fund.
16. Relating to health care: enacting the Assisted Outpatient Treatment Act; providing for assisted outpatient treatment proceedings; requiring public health surveillance and oversight; providing for sequestration and confidentiality of records; providing for penalties; amending the Mental Health and Developmental Disabilities Code to require data collection for certain proceedings; making appropriations.
17. Relating to public health: amending the Medicaid Provider Act; defining "credible allegation of fraud" and "overpayment"; establishing rights and remedies of Medicaid providers and subcontractors for alleged overpayments or credible allegation of fraud based on audit findings and sampling; prohibiting extrapolation; providing for judicial review, injunctive relief, attorney fees and witness fees; amending the Medicaid Fraud Act to clarify that mere errors found during the course of an audit, billing errors that are attributable to human error, inadvertent billing and processing errors and failure to comply with a regulatory standard that is not a condition of payment do not constitute Medicaid fraud; providing for investigation and limitations.
18. Relating to sex offender parole: revising the terms and conditions of parole for sex offenders.
19. A joint memorial requesting the New Mexico Association of Counties to study housing and clinical service options for individuals with serious mental illness who are in custody awaiting trial.
20. Relating to criminal sentencing: providing that someone sentenced solely for misdemeanor or petty misdemeanor offenses shall be sentenced to county jail.
21. Relating to property interests: enacting the Uniform Powers of Appointment Act; making technical and conforming changes to the Uniform Probate Code and the Uniform Trust Code; amending provisions of the Uniform Probate Code

pertaining to notice, time for presentation of claims, penalty clauses and closing an estate.

22. Relating to business: repealing the Limited Liability Company Act; and enacting the Revised Uniform Limited Liability Company Act.
23. Relating to electronic records: enacting the Uniform Fiduciary Access to Digital Assets Act.
24. Relating to commerce: making changes to the Uniform Commercial Code as enacted in New Mexico to make it uniform; amending sections of the Uniform Fraudulent Transfer Act; changing the name of the Uniform Fraudulent Transfer Act to the Uniform Voidable Transactions Act.
25. Relating to children: creating the Internet Crimes Against Children Fund; establishing a fee for initial registration by a sex offender and providing that the fee shall be credited to the Internet Crimes Against Children Fund; making an appropriation.
26. Relating to law enforcement: requiring investigation or prosecution by the attorney general of any action against a law enforcement officer suspected of a violent felony, assault against a household member, abuse of a child or any crime for which registration under the Sex Offender Registration and Notification Act is required.
27. Relating to courts: creating additional judgeships in the second and third judicial districts; making appropriations.
28. Relating to courts: providing that a municipality may appeal to the Court of Appeals from any decision of a district court relating to the violation of an ordinance.
29. Relating to magistrate court civil judgments: removing the reference to courts not of record from the statute providing for limitations on actions based on certain private written instruments.
30. Relating to court administration: creating a language access fund to provide for language access services in the courts.
31. Relating to the Administrative Office of the Courts: allowing the director to receive funds to carry out the duties of the office.

32. Relating to district courts: allowing district courts to require parties to pay costs for an alternative dispute resolution program on a sliding-fee scale.

**2014 APPROVED
WORK PLAN AND MEETING SCHEDULE
for the
COURTS, CORRECTIONS AND JUSTICE COMMITTEE**

Members

Rep. Gail Chasey, Co-Chair
Sen. Richard C. Martinez, Co-Chair
Rep. Eliseo Lee Alcon
Sen. Joseph Cervantes
Rep. Zachary J. Cook
Rep. Yvette Herrell
Rep. Emily Kane
Sen. Linda M. Lopez

Rep. Georgene Louis
Sen. Cisco McSorley
Rep. Jane E. Powdrell-Culbert
Rep. William "Bill" R. Rehm
Sen. Sander Rue
Rep. Mimi Stewart
Sen. Lisa A. Torracco

Advisory Members

Rep. Phillip M. Archuleta
Sen. Craig W. Brandt
Rep. Cathrynn N. Brown
Sen. Jacob R. Candelaria
Rep. Brian F. Egolf, Jr.
Rep. Kelly K. Fajardo
Rep. Miguel P. Garcia
Sen. Daniel A. Ivey-Soto

Rep. Antonio "Moe" Maestas
Sen. Bill B. O'Neill
Rep. Paul A. Pacheco
Sen. William H. Payne
Sen. John Pinto
Rep. Patricia Roybal Caballero
Sen. Michael S. Sanchez
Rep. Sheryl Williams Stapleton

Work Plan

The Courts, Corrections and Justice Committee was created by the New Mexico Legislative Council on May 5, 2014. During the 2014 interim, and as time permits, the committee proposes to address the following and recommend appropriate legislation:

1. continuing oversight of the work of the Criminal Justice Reform Subcommittee;
2. an examination of the intersection of criminal justice and behavioral health — including a joint session with the Legislative Health and Human Services Committee (LHHS);
3. a presentation from the Office of the Attorney General;
4. an update from the Public Defender Department and Public Defender Commission on their transition to an independent agency;
5. an update from the New Mexico District Attorney's Association;
6. reorganization and training at the Department of Public Safety;
7. an update from the Children, Youth and Families Department (CYFD);

8. an update from the Corrections Department, including an examination of issues surrounding the New Mexico Women's Correctional Facility and the revision of the policy concerning family visits;
9. an update from the judiciary and the Administrative Office of the Courts, including discussion of the unified budget and the schedule of the judicial nominating process;
10. an update from the staff of the Legislative Finance Committee on the progress of the Results First program in criminal justice and child welfare;
11. juvenile justice reform, including the use of restorative and reparative justice, and the establishment of a working group examining the school-to-prison pipeline;
12. prostitution and human trafficking, including an update on the work on the recently formed human trafficking task force;
13. Medicaid eligibility and enrollment for inmates ready to be released;
14. the federal Department of Justice report on the Albuquerque Police Department — what legislative response might be required, including an examination of entrance and training requirements, civil rights violations and the Tort Claims Act;
15. issues surrounding child support and child custody;
16. the court system in New Mexico, including problems with court processes, the use of contract attorneys, court budgets and the use of specialty courts in New Mexico, including veterans' courts, homeless courts, mental health courts and drug courts;
17. election matters, including state compliance with the federal National Voter Registration Act of 1993 (Motor Voter Act) and the reporting of election returns;
18. examination of the state's driving while intoxicated statutes;
19. use of solitary confinement in New Mexico prisons and jails;
20. examination of possible legislative responses to bullying in schools and in the workplace;
21. federal Prison Rape Elimination Act compliance in New Mexico;
22. an examination of laws and issues surrounding sexual assault, including a review of the processing of rape kits;

23. issues surrounding consumer protection;
24. a presentation from the University of New Mexico School of Law, including from the Utton Transboundary Resources Center and the Southwest Indian Law Clinic;
25. an examination of the abuse and neglect system, including what legislative response might be required, whether additional or targeted funding is needed for the CYFD and how retention rates might be improved;
26. a presentation and discussion of the current science of DNA as evidence in criminal prosecutions;
27. a presentation and discussion on the reliability of eyewitness identification as evidence in criminal prosecutions; and
28. an examination of recent changes made to the regulation of medical marijuana in New Mexico.

Courts, Corrections and Justice Committee

2014 Approved Meeting Schedule

<u>Date</u>	<u>Location</u>
June 19	State Capitol, Santa Fe
July 24-25	State Capitol, Santa Fe
August 6-7	Albuquerque (joint meeting with the LHHS)
September 25-26	Las Vegas
October 16-17	Las Cruces
December 4-5	State Capitol, Santa Fe

Criminal Justice Reform Subcommittee

2014 Approved Meeting Schedule

<u>Date</u>	<u>Location</u>
April 23	State Capitol, Santa Fe
May 28	State Capitol, Santa Fe
CJRS (Option 1)	
June 25	State Capitol, Santa Fe
July 30	Albuquerque
August 27	Las Cruces
September 24	Albuquerque
October 15	State Capitol, Santa Fe
November 12	State Capitol, Santa Fe

CJRS (Option 2)

June 25	State Capitol, Santa Fe
July 30	Albuquerque
August 27	Las Cruces
September 24	Las Cruces
October 15	State Capitol, Santa Fe
November 12	State Capitol, Santa Fe

AGENDAS

Revised: July 18, 2014

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

**July 24-25, 2014
Room 307, State Capitol**

Thursday, July 24

- 9:00 a.m. **Call to Order/Introductions**
- 9:15 a.m. (1) **Overview of the New Mexico Prison System**
—Joe W. Booker, Jr., Deputy Secretary of Operations, Corrections
Department (NMCD)
—Jerry Roark, Director of Adult Prisons, NMCD
- 10:00 a.m. (2) **Overview of the New Mexico County Jails**
—Sharon Stover, Los Alamos County Clerk, President-elect, New Mexico
Association of Counties (NMAC)
—Grace Philips, General Counsel, NMAC
- 11:00 a.m. (3) **NMAC Support of County Detention**
—Grace Philips, General Counsel, NMAC
—Matthew Elwell, Director, Luna County Detention Center; Chair,
Detention Administrators Affiliate, NMAC
—Joe Chaves, Warden, Valencia County Detention Center; Past Chair,
Detention Administrators Affiliate, NMAC
—Art Murphy, Detention Specialist, NMAC
- 12:00 noon **Lunch**
- Approval of Minutes from June 2014 Meeting***
- 1:00 p.m. (4) **County Detention Initiatives**
—Mark Gallegos, Warden, Santa Fe County Adult Correctional Facility
—Captain Frank Maestas, Bernalillo County Metropolitan Detention
Center
—Grace Philips, General Counsel, NMAC
- 2:00 p.m. (5) **Special Management in Detention Facilities**
—Joe W. Booker, Jr., Deputy Secretary of Operations, NMCD
—Jerry Roark, Director of Adult Prisons, NMCD

—Matthew Elwell, Director, Luna County Detention Center; Chair,
Detention Administrators Affiliate, NMAC
—Joe Chaves, Warden, Valencia County Detention Center; Past Chair,
Detention Administrators Affiliate, NMAC
—Grace Philips, General Counsel, NMAC
—Steven Robert Allen, Director of Public Policy, American Civil
Liberties Union of New Mexico
—Matthew Coyte, Attorney

3:00 p.m. (6) [Changes to the Public Defender Act and the Indigent Defense Act](#)
—Jorge Alvarado, Chief Public Defender

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

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

Friday, July 25

9:00 a.m. **Tour of the Old Main Facility, Santa Fe**

12:00 noon **Adjourn**

Revised: August 4, 2014

**TENTATIVE AGENDA
for the
JOINT MEETING
of the
COURTS, CORRECTIONS AND JUSTICE COMMITTEE
and the
LEGISLATIVE HEALTH AND HUMAN SERVICES COMMITTEE**

**August 6-7, 2014
University of New Mexico School of Law, Lobby
1117 Stanford Dr. NE, Albuquerque**

Wednesday, August 6

- 9:00 a.m. **Welcome and Introductions**
—Representative James Roger Madalena, Chair, Legislative Health and Human Services Committee (LHHS)
—Representative Gail Chasey, Co-Chair, Courts, Corrections and Justice Committee (CCJ)
—Senator Richard C. Martinez, Co-Chair, CCJ
- 9:30 a.m. (1) **Assisted Outpatient Treatment Panel**
—Brian Stettin, Policy Director, Treatment Advocacy Center
—Nancy Koenigsberg, Legal Director, Disability Rights New Mexico
- 10:30 a.m. (2) **Court-Supervised Outpatient Treatment**
—Oscar Kazen, Associate Judge, Bexar County Probate Court
- 11:30 a.m. (3) **Behavioral Health Panel**
—Nils A. Rosenbaum, M.D.
—Mauricio Tohen, M.D., Dr PH., M.B.A., Chair and Professor, Department of Psychiatry, University of New Mexico
- 12:30 p.m. (4) **Working Lunch: Review of Assisted Outpatient Treatment Legislation**
—Shawn Mathis, Staff Attorney, Legislative Council Service
- 1:30 p.m. (5) **Supportive Housing Panel**
—Dennis Plummer, Chief Executive Officer, Heading Home
—Jodie Jepson, Deputy Director, Heading Home
—Paula Harper, Executive Director, Supportive Housing Coalition of New Mexico
—John Ames, Director of Community Housing, Supportive Housing Coalition of New Mexico
—K.C. Quirk, Executive Director, Crossroads for Women
—Elizabeth Simpson, Bernalillo County

- 3:30 p.m. (6) [Substance Abuse Treatment and Rehabilitation Panel](#)
—Miriam Komaromy, M.D., Associate Director, Project ECHO, Associate Professor of Internal Medicine, University of New Mexico Health Sciences Center
—John J. Romero, Presiding Judge, Children's Court, Division VII, Juvenile Justice Center
—Jolene Schneider, Executive Director, Four Winds Recovery Center
—Jennifer Miller, Administrator, San Juan County Alternative Sentencing Division

4:30 p.m. (7) [Public Comment](#)

5:30 p.m. **Recess**

Thursday, August 7

9:00 a.m. **Welcome and Introductions**

- Senator Richard C. Martinez, Co-Chair, CCJ
- Representative Gail Chasey, Co-Chair, CCJ
- Representative James Roger Madalena, Chair, LHHS

9:15 a.m. (8) [Health Care for Inmates](#)

- Paul Wright, Director, Human Rights Defense Center
- Gabriel Eber, J.D., M.P.H., Staff Counsel, American Civil Liberties Union (ACLU)
- Joe W. Booker, Jr., Deputy Secretary of Operations, New Mexico Corrections Department (NMCD)

11:00 a.m. (9) [Remarks to the Joint Meeting](#)

- Maggie Hart Stebbins, Bernalillo County Commissioner, District 3

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

12:30 p.m. (10) [Criminal Justice and Behavioral Health: The Sequential Intercept Model](#)

- Dave Webster, M.A., L.I.S.W., L.C.S.W., Co-Clinical Director, St. Martin's Hospitality Center

1:30 p.m. (11) [Prison Rape Elimination Act — The Status of New Mexico's Compliance](#)

- Joe W. Booker, Jr., Deputy Secretary of Operations, NMCD
- Robert Mitchell, Deputy Director for Facilities, Juvenile Justice Services, Children, Youth and Families Department
- Art Murphy, Detention Specialist, New Mexico Association of Counties (NMAC)
- Manuel Romero, Detention Specialist, NMAC

- Steven Robert Allen, Director of Public Policy, ACLU of New Mexico
- Donna Richmond, Executive Director, La Piñon Sexual Assault Recovery Services of Southern New Mexico
- May Sagbakken, Rape Crisis Center of Central New Mexico

2:30 p.m. (12) **Medicaid and Inmates**

- Matthew Elwell, Director, Luna County Detention Center; Chair, Detention Administrators Affiliate, NMAC
- Harris Silver, M.D., Behavioral Health Services Advocate
- Joe W. Booker, Jr., Deputy Secretary of Operations, NMCD
- Julie Weinberg, Director, Medical Assistance Division, Human Services Department

4:00 p.m. (13) **Public Comment**

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

Revised: September 23, 2014

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

**September 25-26, 2014
New Mexico Highlands University
Student Union Building Ballroom
Las Vegas, New Mexico**

Thursday, September 25

- 9:00 a.m. **Call to Order/Introductions**
- 9:05 a.m. (1) **Welcoming Remarks**
—James Fries, President, New Mexico Highlands University
- 9:15 a.m. (2) **Juvenile Justice Advisory Committee (JJAC)**
—Sharon Stover, JJAC Chair
—Angie Schneider-Cook, District Judge, JJAC Vice Chair and Continuum
 Chair in Otero County
—Amber Parker, Continuum Coordinator in Las Cruces, Representing the
 Urban Perspective
—Jack Ortega, Continuum Coordinator in Rio Arriba County, Representing
 the Rural Perspective
—Tina Maes, Student Client in Intensive Community Monitoring
—Tamera Marcantel, Children, Youth and Families Department (CYFD)
- 10:00 a.m. (3) **Joint Education Task Force Report and Recommendations**
—Senior Justice Petra Jimenez Maes, New Mexico Supreme Court
- 10:30 a.m. (4) **Lowering Caseloads for Parents Attorneys**
—Brett Ballew, Managing Attorney, Washington State Office of Public
 Defense, Parents Representation Program
- 11:00 a.m. (5) **Juvenile Detention Alternatives Initiatives**
—Chief Judge Louis P. McDonald, Thirteenth Judicial District
—Nick Costales, Deputy Director of Field Services, CYFD Juvenile Justice
 Services
—Craig Sparks, Director, Bernalillo County Youth Services Center
- 12:00 noon (6) **Ending the School-to-Prison Pipeline**
—Senator Bill B. O'Neill

12:15 p.m.

Lunch

Approval of Minutes from July and August 2014 Meetings

1:00 p.m.

(7) [University of New Mexico \(UNM\) Center of Excellence in Child Maltreatment and Abuse](#)

—Leslie Strickler, M.D., Associate Professor of Pediatrics, Medical Director, Child Abuse Response Team, UNM Health Sciences Center

2:00 p.m.

(8) [Serious Youthful Offender Amenability Hearings](#)

—Representative Dennis J. Roch

—Timothy Lee Rose, Tenth Judicial District Attorney

2:30 p.m.

(9) [Hazing](#)

—Representative Emily Kane

3:00 p.m.

(10) [Update from the CYFD](#)

—Nick Costales, Deputy Director of Field Services, CYFD

—Robert Mitchell, Deputy Director for Facilities, CYFD

4:30 p.m.

Public Comment

5:00 p.m.

Recess

Friday, September 26

9:00 a.m.

Tour of the Behavioral Health Institute, Las Vegas

12:00 noon

Adjourn

- 2:00 p.m. (5) [**New Mexico Sentencing Commission Motor Transportation Report**](#)
—Tony Ortiz, Executive Director, New Mexico Sentencing Commission (NMSC)
—Paul Guerin, Ph.D., Institute for Social Research, University of New Mexico (UNM)
—Dan Cathey, Senior Researcher, Institute for Social Research, UNM
—Major Bryan Credeur, Motor Transportation Division, Department of Public Safety
- 3:00 p.m. (6) [**New Mexico Sentencing Commission Prison Population Forecast**](#)
—Tony Ortiz, Executive Director, NMSC
- 4:00 p.m. (7) [**Child Protection Registry**](#)
—Eric Langheinrich, Chief Executive Officer, Unspam Technologies, Inc.
- 4:30 p.m. (8) [**The State's Workers' Compensation System Challenges**](#)
—Darin A. Childers, Director, Workers' Compensation Administration
—Kevin McGinley, Chair, Advisory Council on Workers' Compensation and Occupational Disease Disablement
—James Magoffe, Vice Chair, Advisory Council on Workers' Compensation and Occupational Disease Disablement
- 5:00 p.m. **Public Comment**
- 5:30 p.m. **Recess**

Friday, October 17

- 9:00 a.m. **Tour of the Doña Ana County Detention Center**
- 12:00 noon **Adjourn**

Revised: December 3, 2014

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

**December 4-5, 2014
Room 322, State Capitol
Santa Fe**

Thursday, December 4

- 9:00 a.m. **Call to Order/Introductions**
- 9:15 a.m. (1) **Human Trafficking**
 —Susan Loubet, Executive Director, New Mexico Women's Agenda
- 10:00 a.m. (2) **Consideration of Legislation — A Bill to Cap the APR on Loans at 36%**
 —Representative Gail Chasey
- 10:30 a.m. (3) **Consideration of Legislation — A Bill That Makes a Technical Fix to the Criminal Sentencing Act Regarding Criminal Sexual Penetration**
 —Senator Jacob R. Candelaria
- 10:45 a.m. (4) **Consideration of Legislation — Children Abandoned in Cars**
 —Representative David M. Gallegos
- 11:15 a.m. (5) **Consideration of Legislation — Expanding Ban the Box to Private Employers**
 —Senator Bill B. O'Neill
- 11:35 a.m. (6) **Consideration of Legislation — Including the Homeless in the Hate Crimes Act**
 —Senator Bill B. O'Neill

Working Lunch

Approval of Minutes from October 2014 Meeting

- 12:00 noon (7) **Consideration of Legislation — Bills Proposed by the Administrative Office of the Courts (AOC)**
 —Patrick Simpson, Deputy Director, AOC
 —Celina Jones, Acting General Counsel, AOC

- 1:00 p.m. (8) [Consideration of Legislation — A Bill to Place the Special Investigations Division and the Motor Transportation Division Under the New Mexico State Police Division](#)
—Secretary Gregory J. Fouratt, Department of Public Safety
—Chief Pete Kassetas, New Mexico State Police
- 2:00 p.m. (9) [Consideration of Legislation — A Bill to Make the Indigent Defense Act and the Public Defender Act Congruent](#)
—Jorge Alvarado, Chief Public Defender
- 3:00 p.m. (10) [Consideration of Legislation — A Bill to Provide for Supervised Assistant Outpatient Treatment](#)
—Senate President Pro Tempore Mary Kay Papen
—Shawn Mathis, Staff Attorney, Legislative Council Service (LCS)
- 4:00 p.m. (11) [Consideration of Legislation — A Bill to Provide for Due Process for Medicaid Providers](#)
—Senate President Pro Tempore Mary Kay Papen
—Shawn Mathis, Staff Attorney, LCS
- 4:30 p.m. (12) [Consideration of Legislation — A Bill Proposing Revisions to Procedures and Criteria for Sex Offender Parole Hearings](#)
—Tony Ortiz, Director, New Mexico Sentencing Commission
—Kim Chavez-Cook, Public Defender Department
—Sarah Gallegos, Public Defender Department
—Sandra Dietz, Chair, Adult Parole Board
—Sherry Stephens, Executive Director, Adult Parole Board
—Therese Duran, M.A., L.P.C.C., L.A.D.A.C., Forensic Examiner
- 5:00 p.m. (13) [Consideration of Legislation — A Memorial Requesting a Study of Clinical Service Options for Individuals with Serious Mental Illness Who Are in Custody Awaiting Trial](#)
—Grace Philips, General Counsel, New Mexico Association of Counties

5:30 p.m. **Public Comment**

6:00 p.m. **Recess**

Friday, December 5

9:00 a.m. **Call to Order**

- 9:15 a.m. (14) [University of New Mexico School of Law — Update on Developments](#)
—David J. Herring, Dean, University of New Mexico School of Law

10:00 a.m. (15) **Consideration of Legislation — Bills Proposed by the Criminal Justice Reform Subcommittee (CJRS)**

Included in This Presentation Will be Senator Gerald Ortiz y Pino's Bill Concerning Medicaid for Incarcerated Individuals

—Senator Lisa A. Torraco, Co-Chair, CJRS

—Representative Antonio "Moe" Maestas, Co-Chair, CJRS

Working Lunch

11:40 a.m. (16) **Consideration of Legislation — A Bill Requiring Those Convicted Solely of Misdemeanor or Petty Misdemeanor Offenses to Always be Sentenced to County Jail**

—Senator Lisa A. Torraco

12:00 noon (17) **Consideration of Legislation — Uniform Law Bills**

The Uniform Laws to be Discussed Include:

(a) Uniform Power of Appointments, with Cleanup Amendments to the Uniform Probate Code and Uniform Trust Code

(b) Revised Uniform Limited Liability Company Act

(c) Uniform Fiduciary Access to Digital Assets Act

(d) Uniform Voidable Transactions Act Amendments and Uniform Commercial Code Cleanup

—Jack Burton, Uniform Law Commission

1:00 p.m. (18) **Consideration of Legislation — A Bill to Set the Unit of Prosecution for Child Pornography Cases**

—R. David Pederson, General Counsel, Office of the Attorney General (OAG)

1:30 p.m. (19) **Consideration of Legislation — A Bill to Create the Internet Crimes Against Children Fund**

—R. David Pederson, General Counsel, OAG

—Anthony Maez, Special Agent in Charge, OAG

—Paul Jagosh, National Association to Protect Children

2:00 p.m. (20) **Consideration of Legislation — A Bill to Require the Attorney General to Prosecute Serious Crimes Committed by Law Enforcement Officers**

—Representative Gail Chasey

2:30 p.m. (21) **Settlement Agreement Between the Albuquerque Police Department (APD) and the Department of Justice**

—Kathleen Love, APD Forward Campaign

—Steven Robert Allen, APD Forward Campaign

5:00 p.m. **Public Comment**

5:30 p.m. **Adjourn**

MINUTES

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

**June 19, 2014
Room 307, State Capitol
Santa Fe**

The first meeting of the Courts, Corrections and Justice Committee (CCJ) was called to order by Representative Gail Chasey, co-chair, on June 19, 2014 at 9:27 a.m. in Room 307 of the State Capitol in Santa Fe.

Present

Rep. Gail Chasey, Co-Chair
Sen. Richard C. Martinez, Co-Chair
Rep. Eliseo Lee Alcon
Rep. Zachary J. Cook
Sen. Linda M. Lopez
Rep. Georgene Louis
Sen. Cisco McSorley
Rep. Jane E. Powdrell-Culbert
Sen. Sander Rue
Rep. Mimi Stewart

Advisory Members

Rep. Kelly K. Fajardo
Rep. Miguel P. Garcia
Sen. Bill B. O'Neill
Rep. Patricia Roybal Caballero

Absent

Sen. Joseph Cervantes
Rep. Yvette Herrell
Rep. Emily Kane
Rep. William "Bill" R. Rehm
Sen. Lisa A. Torracco

Rep. Phillip M. Archuleta
Sen. Craig W. Brandt
Rep. Cathrynn N. Brown
Sen. Jacob R. Candelaria
Rep. Brian F. Egolf, Jr.
Sen. Daniel A. Ivey-Soto
Rep. Antonio "Moe" Maestas
Rep. Paul A. Pacheco
Sen. William H. Payne
Sen. John Pinto
Sen. Michael S. Sanchez
Rep. Sheryl Williams Stapleton

Staff

Douglas Carver, Staff Attorney, Legislative Council Service (LCS)
Caela Baker, Staff Attorney, LCS
Monica Ewing, Staff Attorney, LCS

Guests

The guest list is in the meeting file.

Handouts

Handouts and other written testimony are in the meeting file.

Thursday, June 19

Welcome and Introductions

Representative Chasey welcomed the committee and members of the audience, and committee members, staff and members of the audience introduced themselves.

Update on the Progress of the Criminal Justice Reform Subcommittee (CJRS)

Mr. Carver reviewed the work of the CJRS at its November and December 2013 and April and May 2014 meetings. He noted that the subcommittee's next meeting, on June 25, 2014, will focus on mandatory minimum sentences. The CJRS will likely address one topic or theme at each of its 2014 interim meetings. The subcommittee has discussed meeting outside of Santa Fe on a few occasions during the interim but has not determined those meeting locations yet.

Several committee members commented on the work of the CJRS. One member emphasized the CJRS's focus on fact- and evidence-based changes to the state's criminal justice system. South Dakota and Texas have both implemented changes to their criminal justice systems that have resulted in reductions in costs — tens of millions of dollars in South Dakota — and crime. While other states' approaches may not work in New Mexico, the CJRS plans to examine whether expanded probation, parole and community corrections programs could help reduce recidivism rates in New Mexico.

Another member noted that the CJRS is co-chaired by a Democrat and a Republican and its membership includes equal membership from both houses and both parties. The question of whether the state should be working to prevent crime or to punish people was raised by another member.

The committee discussed the role of socioeconomic and cultural factors in addressing criminal justice reforms. A member noted that New Mexico could become the model for how those factors can be incorporated into criminal justice reforms. A member suggested that the CJRS hear about successful prisoner education and job training programs that were implemented in the federal La Tuna prison in the 1970s and 1980s.

2014 Interim Work Plan and Meeting Schedule Development

Mr. Carver noted that because of scheduling conflicts, the locations for the July and October meetings would be exchanged. The committee will likely plan a visit to the former Santa Fe Penitentiary. Finally, he reviewed the CJRS meeting schedule.

The committee then considered the items on the proposed work plan and discussed the addition of several topics, including medical marijuana, community corrections programs and DNA evidence, all of which were added to the work plan. Mr. Carver reviewed each item listed on the proposed work plan, and the committee discussed the following items specifically:

1. **juvenile justice reform** (item #10) — a member noted that the committee would like to work cooperatively with the Children, Youth and Families Department (CYFD) and with a foundation that is helping states with juvenile justice reform in the coming legislative session. With reference to Senate Memorial 69 (2014), the committee discussed a possible study on the education of youth within the juvenile justice system. A member noted that the Albuquerque public school system is already working with educating and testing students who have been suspended or are being held in correctional facilities;

2. **federal Department of Justice report on the Albuquerque Police Department** (item #13) — several committee members commented that they are interested in learning what role the committee might have in improving law enforcement issues throughout the state and specifically in the Albuquerque Police Department. A member highlighted that the legislature plays a role in setting certain statutory law enforcement training requirements. Another member noted that it is critical for the CCJ to be involved in issues that involve constitutional and civil rights. The topic of community policing programs was raised by another member. Finally, a member informed the committee of a pending lawsuit in Washington that involves the propriety of certain criminal justice reforms in that state and stated that the outcome in that case could provide guidance to New Mexico;

3. **issues surrounding child support and child custody** (item #14) — several committee members discussed the importance of examining child welfare and child abuse and neglect in addition to item #14. A member opined that there is an unequal access to justice for families involved in the child welfare system who are unable to pay for an attorney. In response to this discussion, the committee decided to add a new item — an examination of the abuse and neglect system, including what legislative response might be required, whether additional or targeted funding is needed for the CYFD and how retention rates might be improved — to the work plan;

4. **election legislation** (item #16) — members requested presentations from the Secretary of State's Office on Motor Vehicle Division voter registration and about the accuracy of vote counts and from the county clerk's association. This item was amended to include those presentations;

5. **examination of possible legislative responses to bullying** (item #19) — members of the committee expressed interest in hearing from a variety of affected parties, including representatives from schools and the workplace. One member recommended a presentation from an advocate working on bullying and a possible electronic or telephonic resource for people experiencing bullying; and

6. **theft of pallets from businesses** (item #22) — members of the committee discussed whether the issue would be more appropriately addressed by the CJRS because it could involve revising a penalty. Another member stated that the issue is a cultural and social justice issue because pallets are often taken for use in heating homes or building structures.

Before the committee voted to adopt the revised work plan, members of the public were invited to provide comments.

Tony Ortiz, director of the New Mexico Sentencing Commission (NMSC), advised the committee of a report prepared by the NMSC that contains information that might be useful to the committee. He also updated the committee on some of the NMSC's current work.

Susan Loubet, a representative of the New Mexico Women's Agenda, asked the committee to keep Crossroads for Women, a transition program for homeless women, in mind throughout its interim work.

Following public comments, the committee adopted the amended work plan without objection.

Adjournment

There being no further business before the committee, the first meeting of the CCJ for the 2014 interim the second meeting of the IAC for the 2010 interim adjourned at 4:30 p.m. 11:54 a.m.

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

**July 24-25, 2014
Room 307, State Capitol
Santa Fe**

The second meeting of the Courts, Corrections and Justice Committee (CCJ) was called to order by Representative Gail Chasey, co-chair, on July 24, 2014 at 9:31 a.m. in Room 307 of the State Capitol in Santa Fe.

Present

Rep. Gail Chasey, Co-Chair
Sen. Richard C. Martinez, Co-Chair
Rep. Eliseo Lee Alcon
Rep. Zachary J. Cook (7/24)
Rep. Emily Kane (7/24)
Sen. Linda M. Lopez (7/24)
Rep. Jane E. Powdrell-Culbert
Rep. William "Bill" R. Rehm (7/24)
Sen. Sander Rue (7/25)
Rep. Mimi Stewart

Advisory Members

Rep. Kelly K. Fajardo (7/24)
Rep. Miguel P. Garcia (7/24)
Sen. Daniel A. Ivey-Soto (7/24)
Rep. Antonio "Moe" Maestas (7/24)
Rep. Patricia Roybal Caballero (7/24)

Absent

Sen. Joseph Cervantes
Rep. Yvette Herrell
Rep. Georgene Louis
Sen. Cisco McSorley
Sen. Lisa A. Torracco

Rep. Phillip M. Archuleta
Sen. Craig W. Brandt
Rep. Cathrynn N. Brown
Sen. Jacob R. Candelaria
Rep. Brian F. Egolf, Jr.
Sen. Bill B. O'Neill
Rep. Paul A. Pacheco
Sen. William H. Payne
Sen. John Pinto
Sen. Michael S. Sanchez
Rep. Sheryl Williams Stapleton

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

Staff

Douglas Carver, Staff Attorney, Legislative Council Service (LCS)

Caela Baker, Staff Attorney, LCS

Monica Ewing, Staff Attorney, LCS

Julio Garcia, Legislative Intern, LCS

Guests

The guest list is in the meeting file.

Handouts

Handouts and other written testimony are in the meeting file.

Thursday, July 24**Welcome and Introductions**

Representative Chasey welcomed the committee and members of the audience, and committee members introduced themselves.

Overview of the New Mexico Prison System

Jerry Roark, director of adult prisons, Corrections Department (NMCD), gave an overview of correctional facilities in New Mexico. Mr. Roark explained that there are 11 correctional facilities that house approximately 6,800 inmates, which is 92 percent of the capacity of the facilities.

Mr. Roark provided the following information on privately operated prisons:

- ▶ Guadalupe County Correctional Facility in Santa Rosa has about 590 inmates and is a level 3 facility;
- ▶ Lea County Correctional Facility in Hobbs has about 1,198 inmates and is a level 3 facility;
- ▶ Northeast New Mexico Detention Facility in Clayton has about 568 inmates and is a level 3 facility;
- ▶ Otero County Prison Facility in Chaparral has about 317 inmates, has level 2 and level 3 facilities and primarily houses sex offenders and former law enforcement officers convicted of crimes; and
- ▶ New Mexico Women's Correctional Facility in Grants has about 697 female inmates and has minimum, medium and maximum security facilities.

Mr. Roark described some of the programs offered to inmates at these facilities, including a print shop, rug-making, a residential drug abuse program (RDAP), DWI treatment, "restoration to population" programs, family reunification programs and various entrepreneurial programs.

Mr. Roark provided the following information on prisons operated by the NMCD:

- ▶ Penitentiary of New Mexico (PNM) in Santa Fe has about 809 inmates and has level 2, 4, 5 and 6 facilities;
- ▶ Southern New Mexico Correctional Facility in Las Cruces has about 673 inmates and has level 2, 3 and 4 facilities;

- ▶ Western New Mexico Correctional Facility in Grants has about 295 inmates and has level 2 and 3 facilities;
- ▶ Roswell Correctional Center has about 308 inmates and is a level 2 facility;
- ▶ Springer Correctional Facility has about 264 inmates and is a level 2 facility; and
- ▶ Central New Mexico Correctional Facility in Los Lunas has about 1,444 inmates, houses inmates of all security levels and includes the reception and diagnostic medical facility.

Programs offered at the NMCD-operated prisons include Joni and Friends; Wheels for the World Program; work camps; RDAP; DWI treatment; a wood shop; a volunteer fire department; building trades; a bakery; heating, ventilation and air conditioning; and electronics.

Members of the CCJ discussed how inmates are separated within the prison. Joe W. Booker, Jr., deputy secretary of operations, NMCD, told the committee that inmates who are gang-affiliated are separated from the general population. Mr. Booker further indicated that predatory gang members — those who have been involved in violent acts — are housed in level 6 facilities.

A member of the CCJ asked whether there are community-based housing programs for sex offenders. Mr. Booker indicated that the NMCD would provide this information to the committee members at a later date. The member also stated that the NMCD should help inmates involved in the abuse and neglect system to participate in the process, including helping them to attend telephonic court hearings. Additionally, the member suggested that parenting classes may be beneficial for these inmates.

Another member of the committee asked: 1) what the recidivism rate is for NMCD-operated versus privately operated prisons; and 2) whether there is a way to track recidivism rates by a sentencing judge. Mr. Booker informed the committee that the recidivism rate overall is approximately 48 percent but that the NMCD does not have a system that allows the department to track recidivism by sentencing judge. Mr. Booker also informed the CCJ that the current system is not up to date with technology. A member of the committee asked whether the NMCD has money in the budget to upgrade the system. Mr. Booker indicated that the NMCD does not have money in the current budget, but the NMCD will be presenting a proposal to upgrade the system. Mr. Booker did not specify how much funding would be required to update the system, but he indicated that a copy of the proposal would be provided to the committee.

Overview of New Mexico County Jails

Sharon Stover, Los Alamos County clerk and president-elect of the New Mexico Association of Counties (NMAC), informed the CCJ that the NMAC is a nonprofit organization and has a 33-member board of officials. She explained the mission and objectives of the NMAC.

Grace Philips, general counsel, NMAC, stated that there are more people in county detention centers in New Mexico than there are in prison. Not every county in New Mexico has a detention center. There are 29 county detention centers and 12 juvenile detention centers. These figures exclude any municipal or tribal detention facilities. Lincoln County contracts with a private company to operate its detention facility, but all other county detention facilities are run

directly by the respective counties. Ms. Philips provided the committee with a booklet that includes information on the number of beds in each county detention facility. There are two ways in which counties determine detention-center capacity. "Design capacity" is the number of beds the facility was designed to hold. "Operational capacity" is the number of beds that a facility should actually have while still operating in a proper manner. Ms. Philips confirmed that when a county has exceeded its operational capacity, it usually sends inmates to another county facility. Ms. Philips highlighted Bernalillo County as an example. The Metropolitan Detention Center (MDC) in Bernalillo County has a design capacity of 2,236 but an operational capacity of 1,843. The current "cap" for this facility is 1,953.

A member of the committee inquired about Rio Arriba County. Ms. Philips stated that the detention center in Rio Arriba County has a design capacity of 140 inmates, but the average daily population is 159 inmates, so the county is having to send some inmates to a neighboring jurisdiction on a regular basis.

Ms. Philips referred to a 2003 study by the New Mexico Sentencing Commission that was based on seven counties. The study examines such data as length of stay, reasons for incarceration, mental health diagnosis effects and competence effects. From 2003 to 2010, the median length of stay increased 31 percent for inmates who spent their entire stay in an "unsentenced" status. Eighty days was the median length of stay for misdemeanor arrestees, 70 days was the median length of unsentenced stay for probation violators and 114 days was the median length of unsentenced stay for those booked on warrants. According to the data, 62 percent are incarcerated on a new charge, including 20.1 percent for DWI and 16.2 percent for property crimes. Thirty-six percent are incarcerated for "failure to comply", including 18.1 percent for probation violations, 17.1 percent for warrants and 0.8 percent for parole. Receiving mental health services increases an inmate's length of stay by 36 days on average, and a psychotic diagnosis increases an inmate's length of stay by 121 days on average. Ms. Philips stated that the average length of stay for an inmate undergoing the competency process is 278 percent longer than the average length of stay for defendants who are competent to stand trial. For those inmates ultimately found to be competent, the median length of stay is 332 days. For those inmates ultimately found to be incompetent, the median length of stay is 537 days.

Ms. Philips raised a concern with the provisions of Section 31-9-1.1 NMSA 1978, which has a time limit within which the court must hold a hearing on competency after the competency evaluation is completed but does not have a time requirement for when the competency assessment must be performed.

Ms. Philips mentioned that cost is a concern and that the annual cost to counties to hold probation violators is \$22.9 million. Ms. Philips noted that there is a reimbursement fund, but in recent years, the fund has been cut from \$5.8 million to \$3.3 million. A member of the committee expressed concern that there is only \$3.3 million in a fund that is intended to cover a state obligation in excess of \$20 million.

Ms. Philips further mentioned that, overall, 28 percent of county general fund money goes toward the operation of detention facilities.

Members of the committee discussed different ways to reduce recidivism and lower the cost for operating county jails. Pretrial services were discussed by the members of the committee. A member of the committee stated that pretrial service programs do not give credit for time served and inquired as to how many people are remanded because of a pretrial violation. Linda Freeman of the New Mexico Sentencing Commission indicated that the commission has a report that may address this question.

A member of the committee expressed support for strengthening the judiciary in order to expedite court processes and cut detention costs. A member of the committee expressed disapproval of continued attempts to increase criminal penalties and stated that increasing penalties only increases costs.

A member of the committee stated an intention to introduce legislation that would require sentenced felons to be transferred to prison rather than remaining in county detention facilities.

Another member of the committee asked whether federal felons are ever held in county detention facilities. Ms. Philips responded in the affirmative and explained that the federal government pays per diem for federal inmates housed in county facilities and reimburses counties for transportation and medical costs. Matthew Elwell, director, Luna County Detention Center (LCDC), explained that all of the federal inmates held in LCDC are being held pre-adjudication.

A portion of a training video concerning detention facilities was played for the committee.

NMAC Support of County Detention

Mr. Elwell, who is also the chair of the Detention Administrators Affiliate of the NMAC, discussed the standardization of policies and procedures in county detention facilities. Joe Chavez, warden, Valencia County Detention Center, stressed the importance of dealing with issues in detention facilities that can turn into liabilities. Art Murphy, detention specialist, NMAC, discussed ways to meet the needs of detention officers and facilities and suggested that there needs to be ongoing training, and he also discussed the idea of standardizing policies and procedures in juvenile facilities. There was discussion concerning the detention officer basic training curriculum. Ms. Philips also discussed federal Prison Rape Elimination Act of 2003 (PREA) standards for juvenile facilities and introduced the PREA "ToolKit", which meets the PREA standards for juvenile facilities.

County Detention Initiatives

Ms. Philips introduced the NMAC standards for detention facilities, which are known as the Adult Detention Professional Standards Program. Mark Gallegos, warden, Santa Fe County Adult Correctional Facility, discussed some of the standards and stressed the importance of accreditation through the program. Currently, only six county detention facilities in New Mexico have achieved accreditation. The accredited facilities are:

- ▶ Chaves County Adult Detention Center;
- ▶ Lea County Detention Center;
- ▶ San Juan County Adult Detention Center;
- ▶ San Miguel County Adult Detention Center;
- ▶ Santa Fe County Adult Correctional Facility; and

- ▶ Dona Ana County Detention Center.

Mr. Gallegos explained that accreditation will promote uniform policies and procedures and a safer and more secure environment at detention facilities. Frank Maestas, captain, MDC, explained the audit process for NMAC accreditation and explained that if a facility is found noncompliant during the audit process, the facility must apply for reaccreditation. Ms. Philips added that detention facilities that are not in compliance are referred back to the Adult Detention Professional Standards Council, and a reasonable amount of time is given for reassessment. Ms. Philips informed the committee that counties need stable leadership in order to achieve accreditation. She further explained that NMAC accreditation is voluntary. A member of the committee asked whether there is any financial benefit derived from NMAC accreditation. Ms. Philips responded that NMAC-accredited facilities receive a five percent reduction in their multi-line insurance policies.

Members of the committee discussed the auditors and the possibility of getting every facility accredited. Captain Maestas informed the committee that there are three auditors. Ms. Philips discussed obstacles to accreditation, including lack of funding, the difficulty in meeting medical standards, the need for strong commitment and leadership at the detention facility and the benefit of a supportive county commission. Mr. Gallegos indicated that the Santa Fe Board of County Commissioners, for example, mandated that the Santa Fe County Adult Correctional Facility seek NMAC accreditation. Mr. Gallegos suggested mandating that facilities go through the NMAC accreditation process. A member of the committee expressed support for rewarding counties that seek and obtain NMAC accreditation.

A member of the committee asked Mr. Gallegos about the policy at the Santa Fe County Adult Correctional Facility concerning U.S. Immigration and Customs Enforcement (ICE) holds. The member explained that an ICE hold is when ICE requests that a person be held in detention, even if the request has not yet been heard by a judge. Mr. Gallegos responded that Santa Fe County has determined that it will not honor ICE holds for misdemeanor offenders, but a felony offender who is a public safety threat will be held and released to ICE upon request.

Approval of Minutes

Upon a motion made by Senator Martinez and seconded by Representative Stewart, the minutes of the June 2014 meeting of the committee were approved.

Special Management in Detention Facilities

Mr. Roark informed CCJ members that the NMCD's goal is to reduce the number of inmates in disciplinary housing and in restricted housing ("special management").

A member of the committee initiated the discussion about what is being done to limit the use of special management. Mr. Roark told the members of the committee that the NMCD is no longer using the term "solitary confinement" and is instead using the term "special management". The NMCD proposes to reduce the maximum time in special management placement to 30 days, from the current limit of 365 days. Mr. Roark added that the status of each inmate in special management will be reviewed by a panel regularly, and the panel will determine if there is still a threat that requires the use of special management. In addition, the NMCD will be creating

special level 6 units to house former gang members so that these inmates do not need to be placed in special management housing.

A member of the committee inquired as to whether inmates in segregation are gradually let back into the general inmate population. Mr. Booker stated that inmates either go through a hearing, or if they are in level 6, they will go through a "step-down" process. A member of the committee asked what process inmates go through when they are placed in special management for their own protection. Mr. Roark indicated that these inmates undergo an evaluation, and the NMCD attempts to find an appropriate population for each inmate.

Ms. Philips and Mr. Elwell presented a sample policy to reduce the use of special management. The policy contains guidelines for living conditions and requires an active look at each inmate individually to determine and provide the assistance needed. The policy also addresses staff requirements and restrictions and issues concerning the safety and well-being of inmates.

A member of the CCJ asked how the appropriate level of staffing is determined for county detention facilities. Mr. Chavez advised that facilities are staffed as far as the budget allows. The member suggested that greater staffing levels are needed at these facilities.

Steven Robert Allen, director of public policy, American Civil Liberties Union of New Mexico, detailed various cases of individuals who have been sanctioned and sent to solitary confinement as punishment. For example, a prisoner was being sanctioned because of family members posting a Facebook page in his name. Mr. Allen alleged it was problematic because the action does not pose a threat to other inmates, nor was it connected to predatory behavior.

Matthew Coyte, civil rights attorney, has represented many inmates in the criminal justice system and has been successful in suing governmental entities for abuses occurring in detention facilities. Mr. Coyte advised CCJ members that solitary confinement is toxic for the mentally ill. He added that 30 to 60 days in solitary confinement is too long, and international standards indicate that even 15 or more days in solitary confinement is considered torturous. Mr. Coyte asked the members of the CCJ to enact a law that exempts children and mentally ill individuals from solitary confinement. Additionally, Mr. Coyte stated that he would like to see detention facilities comply with international standards because segregation can and will be abused.

Members of the committee inquired as to how Mr. Coyte was able to win such cases against governmental entities and where the money came from for the settlements. Mr. Coyte informed the committee that he has to prove that the jail is being "deliberately indifferent" to an individual's well-being and that the conduct "shocks the conscience". Mr. Coyte stated that despite this extremely high legal standard, he has been successful in such lawsuits because of the abysmal conditions and treatment occurring in some detention facilities in New Mexico. Ms. Philips reported that settlements or judgments against counties ultimately come from taxpayer money, funds from a multi-line insurance pool and excess insurance policies.

Public Comment

Juliana Koob, representing the New Mexico Coalition of Sexual Assault Programs, expressed concern about the use of solitary confinement or "special management" for inmates who have been victims of sexual assault.

Melissa Hill, legislative chair, New Mexico Criminal Defense Lawyers Association, told members of the CCJ that a bill has been introduced in Colorado that would prohibit the use of solitary confinement for mentally ill inmates. Ms. Hill stated that the PNM lacks an alternative placement area, or "APA", for mental health and related services. She expressed concern that an inmate who was previously in an APA at Central New Mexico Correctional Facility due to mental health issues had recently been moved to the PNM, where there is no APA for mental health.

Changes to the Public Defender Act and the Indigent Defense Act

Jorge Alvarado, chief public defender, provided a history of the Public Defender Act and the Indigent Defense Act. Mr. Alvarado then presented a proposal to amend the Indigent Defense Act and the Public Defender Act to make the requirements of those acts congruent. The proposed legislation would require the Public Defender Department to make determinations of indigency and allow for a hearing to contest a determination of non-indigency. Additionally, under the proposal, reimbursement for services pursuant to the Public Defender Act would be paid to the Public Defender Automation Fund.

Members of the CCJ asked questions about the current rate of compensation for contract public defenders. Mr. Alvarado indicated that contract public defenders are paid a flat fee for each case. He gave the following examples of fees paid to contract public defenders based on case type:

- ▶ \$180 for a misdemeanor case;
- ▶ \$500 for a fourth degree felony case; and
- ▶ \$700 for a first degree felony case.

A member of the Criminal Justice Reform Subcommittee inquired about the old metro court building in Albuquerque and whether there are plans to use that building for the purposes of the Public Defender Department. Mr. Alvarado responded that it appears that the title for that property has been transferred to the General Services Department and that the building is currently being used for county offices.

Public Comment

Sheila Lewis, a former public defender, expressed support for the proposals outlined by Mr. Alvarado and further explained that in criminal cases, there is an absolute right to appeal. She indicated that the proposals outlined by Mr. Alvarado may help to reduce the backlog of criminal appeals.

Recess

The committee recessed at 4:47 p.m.

Friday, July 25

Tour of the Old Main Facility, Santa Fe

Members of the committee toured the old main prison facility.

Adjournment

There being no further business before the committee, the second meeting of the CCJ adjourned at 11:45 a.m.

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

**August 6-7, 2014
University of New Mexico School of Law
1117 Stanford Dr. NE
Albuquerque**

The third meeting of the Courts, Corrections and Justice Committee (CCJ), a joint meeting with the Legislative Health and Human Services Committee (LHHS), was called to order by Representative James Roger Madalena, chair, LHHS, on August 6, 2014 at 9:20 a.m. in the Forum of the University of New Mexico School of Law in Albuquerque.

Present

Rep. Gail Chasey, Co-Chair
Sen. Richard C. Martinez, Co-Chair
Rep. Eliseo Lee Alcon
Rep. Zachary J. Cook (8/6)
Rep. Yvette Herrell (8/6)
Rep. Emily Kane
Sen. Linda M. Lopez
Rep. Georgene Louis
Sen. Cisco McSorley
Sen. Sander Rue
Rep. Mimi Stewart (8/6)
Sen. Lisa A. Torracco

Advisory Members

Sen. Craig W. Brandt
Sen. Jacob R. Candelaria (8/7)
Rep. Kelly K. Fajardo
Rep. Miguel P. Garcia
Rep. Antonio "Moe" Maestas
Sen. Bill B. O'Neill
Rep. Patricia Roybal Caballero

Absent

Sen. Joseph Cervantes
Rep. Jane E. Powdrell-Culbert
Rep. William "Bill" R. Rehm

Rep. Phillip M. Archuleta
Rep. Cathrynn N. Brown
Rep. Brian F. Egolf, Jr.
Sen. Daniel A. Ivey-Soto
Rep. Paul A. Pacheco
Sen. William H. Payne
Sen. John Pinto
Sen. Michael S. Sanchez
Rep. Sheryl Williams Stapleton

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

Staff

Douglas Carver, Staff Attorney, Legislative Council Service (LCS)

Caela Baker, Staff Attorney, LCS
Monica Ewing, Staff Attorney, LCS
Rebecca Griego, Records Officer, LCS
Julio Garcia, Legislative Intern, LCS

Guests

The guest list is in the meeting file.

Handouts

Handouts and other written testimony are in the meeting file.

Wednesday, August 6

Call to Order and Introductions

Representative Madalena introduced Representative Chasey and Senator Martinez, co-chairs of the CCJ. Representative Madalena welcomed members and guests and asked legislators on both committees and LCS staff to introduce themselves.

Assisted Outpatient Treatment Panel

Brian Stettin, policy director for the Treatment Advocacy Center in Arlington, Virginia, was an assistant attorney general for New York in 1999 and drafted Kendra's Law, which provides for court-ordered assisted outpatient treatment (AOT) for certain individuals with a history of mental illness to receive a specific regime of outpatient treatment. Mr. Stettin noted that New Mexico is one of only five states that does not have AOT.

Non-adherence to treatment is the single reason for repeated incarceration and hospitalization of a very small subset of individuals who consume a large amount of scarce resources, Mr. Stettin said. New Mexico has three times as many mentally ill persons in jail as any other state. He described a condition common to this group of individuals called agnoscosia, which is a lack of insight into one's illness. It is not denial, he asserted, but rather a brain-based inability to recognize one's own illness, resulting in lack of adherence to medication and treatment. AOT is a proven, evidence-based approach that provides family members and the community a means to obtain a court order for a plan of treatment for these individuals.

Despite studies showing its success, AOT remains controversial, Mr. Stettin admitted, with advocates of self-direction asserting that it amounts to forced treatment. However, punishment plays no part in AOT, he said, nor does AOT allow for the restraint or forced medication of a patient. According to Mr. Stettin, court-ordered AOT works in the following ways: 1) it motivates the person who is mentally ill by indicating the seriousness of need (the "Black Robe" effect); 2) it provides for court oversight of providers of services; and 3) it allows for continuous monitoring of both patient and provider. AOT has been shown to improve outcomes for this small, highly vulnerable population, and it is long overdue in New Mexico, according to Mr. Stettin.

Nancy Koenigsberg, legal director of Disability Rights New Mexico (DRNM), said she agrees with many of Mr. Stettin's points and that AOT is working in New York, where the state provided funding of \$32 million to get the program off the ground (see handout). She noted that there are still small and rural parts of New York that do not use AOT due to lack of infrastructure and support. New Mexico no longer has a community-based behavioral health treatment system, Ms. Koenigsberg said, and thus has no infrastructure to implement AOT. Her organization is also very concerned with the lack of case management in New Mexico. The four managed care organizations (MCOs) that operate under Centennial Care are mandated by the federal Patient Protection and Affordable Care Act (ACA) to provide behavioral health services, but even with the highest level of need, she pointed out, care coordination consists of just one phone call a month.

Ms. Koenigsberg reviewed a copy of AOT legislation being proposed to the committees today for endorsement (see handout under #4) and said she had many concerns, including the amendments to the Mental Health and Developmental Disabilities Code that may undermine confidentiality and privacy, questions about how treatment guardians would be affected, inconsistent definitions and the ripple effect of these changes. The bill's \$3 million appropriation to the DOH for surveillance of the program is confusing, Ms. Koenigsberg said, especially since no funding is designated for services. With no connection to services, the bill is "an empty promise".

On questioning, Mr. Stettin, Ms. Koenigsberg and committee members addressed the following topics.

Legal representation for those brought before the court. Mr. Stettin said that every AOT program provides for this representation, even though the action is civil. In New York, it is part of the administrative cost of the program through the budget of the court.

Disappearance of behavioral health services in New Mexico. Ms. Koenigsberg noted that managed care has eroded the behavioral health system in that it has undergone multiple transitions resulting in very few intermediate services and supports left in the system. In July, it was reported in the newspaper that La Frontera, the new agency from Arizona, had laid off 87 staff in southern New Mexico. She pointed out that there is no intensive case management in Medicaid's behavioral health benefits package — a service that is a cornerstone of any AOT program, she said.

A committee member expressed frustration with the millions of dollars designated for behavioral health care delivery by New Mexico's Medicaid MCOs. These funds have gone into the pockets of the MCOs through the capitated rates, and the MCOs face no consequences for the lack of services, the member asserted. In the 1990s, there were several psychiatric facilities in Albuquerque. Now, many mentally ill individuals are in hospitals and in jail, with the expense borne by local governments.

Fate of legislation establishing community engagement teams (CETs). Governor Susana Martinez vetoed House Bill 588 in the 2013 regular session because she felt it was unconstitutional, Ms. Koenigsberg said, but she promised four pilot programs that have not yet materialized. A committee co-chair noted that a representative from the Office of the Governor was in the audience and asked that person to take these concerns back to the governor. Another committee member moved that a letter be drafted from both the LHHS and the CCJ to the governor asking what CET legislation she would support. The motion was seconded and passed unanimously.

Court-Supervised Outpatient Treatment

Oscar Kazen is a probate court judge in Bexar County, Texas, serving an area (including San Antonio) with a population of 1.8 million people. Texas is forty-ninth in the nation in mental health spending, according to Judge Kazen. He is a former criminal court judge and is also a trained drug court judge. He alone presides over the county's AOT program.

Judge Kazen, along with a behavioral health services provider, monitors between 60 to 80 individuals at any given time in his AOT program, meeting weekly to take stock of how things are going. The person is encouraged to participate and take medications and is told what to expect. These meetings also ensure that providers are actually providing the needed services, Judge Kazen said. The results indicate that hospitalizations among this group have been reduced by 50 percent to 75 percent. He reported that 100 randomly chosen participants were responsible for 67,000 lifetime hospital bed days before coming into his program. In just the year prior to participation in his AOT program, this cohort was responsible for 8,800 hospital bed days. In the year during the cohort's participation in the AOT program, hospitalizations decreased by 62 percent. After this cohort was no longer in the AOT program, "wellness became their pattern", according to Judge Kazen, with only 38 admissions for a total of 3,400 hospital bed days.

Judge Kazen emphasized that AOT is not punishment; instead, it is a jail and hospital diversion program. The treatment plan can involve the judge, patient, physician and family members, all in the same room, talking to each other. If there is a problem with a plan, it is caught early. Most of the persons in his AOT program are on Medicaid, and the MCOs are eager to work with the program, whose participants are already at level 3 for care management. Judge Kazen concluded by strongly urging committee members to consider AOT for New Mexico, noting that funding for AOT and funding for services are not mutually exclusive. He reported that his AOT program has saved \$3 million in hospital bed days.

On questioning, Judge Kazen and committee members addressed the following topics.

Financial burden on the court. The judge is already there, but there does have to be an attorney representing the respondent, Judge Kazen responded. The "potentially harmful to self or others" threshold has to be laid out in the affidavit, and while this broadens the group of people that can be covered by AOT, there is always the safety in appellate courts. Every 90 days, the order is reevaluated.

Could AOT be made available to Native Americans? Not in Texas and not on tribal lands, Judge Kazen said. But if there is already jurisdiction to have Native Americans in court, then one could proceed or try working with the tribes themselves, he advised. Perhaps this bill could be a springboard to start those discussions.

More data on results. A member asked Judge Kazen to send more data to the committees about the AOT treatment results and budget numbers for the program in Bexar County; he agreed to do so.

Where does the team physician come from? A local mental health authority has public clinics, and within these there are psychiatrists, Judge Kazen said. But when the program began, it was just one judge and one liaison officer following up with the patient, asking, "Did you go to your appointment today?", and "If not, you will have to see the judge". It can work by empowering a local judge, he said. Another member countered that Judge Kazen does not understand how New Mexico is utterly devoid of services. Judge Kazen responded that he still recommends passing empowering legislation. "There is a fire out there", he said. "Do not wait until everything is perfect before trying it."

Measuring the success of AOT. Success is having people graduate from the program, Judge Kazen explained, and success is when a person looks him in the eye and says, "Thank you". He had someone in the program who once could not even talk who now is attending college, and another who had two guns and was living in the back of his car and who is now a licensed counselor. "A day out of the hospital is a success", he concluded.

Behavioral Health Panel

Nils A. Rosenbaum, M.D., an Albuquerque psychiatrist who often works with police and social workers, is supportive of the proposed AOT-enabling legislation. He gave committee members several examples of patients who refused treatment and could have benefited from such a program. If this bill passes, Dr. Rosenbaum said, the program should grow organically based on what resources the community has and can deliver. He recommended including peers and increasing engagement as much as possible. In every community, he said, there are people who want to help.

Mauricio Tohen, M.D., chair and professor in the Department of Psychiatry at the UNM HSC, had a background in public health in Massachusetts and Texas before coming to New Mexico. The ACA has provided a window of opportunity, Dr. Tohen believes, because all insurance now must cover mental health services. While assessments indicate a need for more hospital beds, Dr. Tohen said what is needed is more services other than inpatient care. Mental health conditions are lifelong, and hospitalization represents an acute phase. In the past, New Mexico had more intermediate services, but these have disappeared. Dr. Tohen used to practice in Texas, has been in Judge Kazen's courtroom on several occasions and is supportive of AOT. It does not work all by itself, he noted. What is optimal is more AOT and specialized residential treatment.

Dr. Tohen explained that the main purpose of AOT for noncompliant patients is not about protecting the public, but rather about protecting the mentally ill from violence and from the inability to take care of themselves. They need to be protected with treatment, he continued, not just medication. Case management is one of the most effective interventions. In addition to AOT, the state needs to look at providing other intermediate level services and a triage center for first responders to take people to in crisis.

A committee member asked Dr. Tohen if he saw any improvement in New Mexico's behavioral health services. He responded by noting that New Mexico leads the nation in telemedicine. Another member noted that the MCOs use behavioral health dollars in a much stingier way than private insurers. Administrative burdens upon patients and providers have been increased by the MCOs to save money, the member continued, and financial decisions have been made to restrict services. The member noted that case management services should be reimbursable. Dr. Tohen agreed and added that profit can be made in ways that benefit the patient when profit is tied to outcomes.

Review of AOT Legislation

Senator Papen presented a discussion draft of a senate bill, 202.197295.1, enacting the AOT Act. The bill provides for AOT proceedings, requires public health surveillance and oversight, provides for sequestration and confidentiality of records, provides for penalties, amends the Mental Health and Developmental Disabilities Code to require data collection for certain proceedings and makes an appropriation (see handout).

Ms. Mathis, who drafted the bill for Senator Papen, told committee members that the AOT Act is based on New York's law. It is a civil proceeding that will affect fewer than 300 persons in the state who now, without AOT, must become very ill or violent before they are placed into treatment. The AOT Act does not allow for forcible treatment, includes treatment guardians and has many layers of due process, Ms. Mathis said, offering highlights of certain sections of the bill, copies of which had been distributed to committee members.

The AOT Act does not hinge on a determination of incompetency, Ms. Mathis emphasized, and is not meant to circumscribe any statewide standard treatment — this is left to the community providers and the judge. The bill is written very broadly to allow flexibility in fashioning an individualized treatment plan, but it requires services for any particular individual to be specified in the order for AOT.

After a short period of question-and-answer, committee members discussed whether parts of the bill should be reworked or whether to endorse the legislation as presented. Observing that the bill will be vetted continually as it moves forward, a member moved to endorse it. The motion was seconded and passed 4 to 1.

Supportive Housing Panel

Dennis Plummer, CEO of Heading Home in Albuquerque, described the success of this evidence-based model of permanent supportive housing for individuals and their families who are medically vulnerable and have been homeless for an average of 7.5 years (see handout). It is composed of a collaboration among many local and state organizations and has achieved a retention rate of 81 percent.

The program has reduced jail costs by 39 percent and emergency room visits by 36 percent among this group, and the program has been nationally recognized, Mr. Plummer said. Research of this model by a UNM study has shown that it is less expensive to provide housing with supportive services than it is for those same people to live on the streets. Heading Home would like to expand to other parts of the state, and Mr. Plummer urged legislators to consider housing appropriations and systemic change for which a model already exists.

Paula Harper, executive director of the Supportive Housing Coalition of New Mexico, described her organization's efforts to create and preserve permanent and affordable supportive housing through housing development and rental assistance programs since 1996. The group pioneered the use of a "Housing First" model of permanent supportive housing that has housed over 700 individuals and families (see handout). This is not only the most compassionate thing to do, it is also the most cost-effective, Ms. Harper said. The program has enlisted 112 landlords who have a standard lease. It costs \$40,000 to \$150,000 annually in emergency room services, incarceration, shelters and hospitalizations for someone to live on the streets, while a housing voucher is just \$6,600 per year. A shelter bed is \$8,000 per year. Estimates are that Heading Home has saved the City of Albuquerque \$3.2 million over the past three years, Ms. Harper said. The coalition plays many roles in the development of affordable housing by serving as developer, general partner, owner and manager through new construction and acquisition and rehabilitation. One new project will provide 60 units of housing in Albuquerque for Native Americans who have behavioral health issues. Housing is not a one-size-fits-all proposition, Ms. Harper said; there have to be different options.

KC Quirk is executive director of Crossroads for Women, which provides housing and intensive support services for homeless women with co-occurring mental and addictive disorders who are working toward self-sufficiency. The agency operates two programs: Crossroads, a permanent supportive housing program utilizing scattered-site housing throughout Albuquerque for women who are cycling between homelessness and incarceration, and their children, and Maya's Place, a highly structured 15-bed transitional housing program for homeless women who are exiting jail or prison, substance abuse treatment or a shelter or living on the streets. Ms. Quirk brought several women with her to illustrate the success of the programs. Tina, a former crack addict who was incarcerated more than 20 times, found help and support at Maya's Place and is now a student at Central New Mexico Community College (CNM). Gina spent 20 years incarcerated and one year at Crossroads and has now been clean for 16 months. Not once in those 20 years did anyone offer her any education, but now she is in business school. Rhonda was an addict and was homeless for many years with behavioral health problems and then became a client

at Crossroads. Now she is a student at CNM and will soon be graduating with a communications degree. Tracy, another Crossroads client, was an addict, had been arrested 40 times, has graduated from CNM and UNM and is now working on her master's degree; she also has become a staff member at Crossroads. There is much conversation about the lack of mental health services, Ms. Quirk said, but it is not enough to just pay for more services. It is also important to identify programs that work.

Elizabeth Simpson's task with Bernalillo County is to develop long-term initiatives for alternatives to incarceration. There is a strong correlation among mental illness, homelessness and incarceration. People end up in jail because they have nowhere else to go, and first responders have very few options (see handout). These problems have been studied by several task forces and the recommendations are the same: 1) crisis triage center as an alternative to jail to assess, stabilize and connect to services; 2) supportive housing; and 3) specialized services for those exiting jail and prison. Current Medicaid care coordination consists of just one phone call a month and one face-to-face meeting, Ms. Simpson pointed out. The intensity of services needs to be increased. There is potential to use Medicaid funding for these services, she said; right now rehabilitation services in New Mexico are limited to speech therapy. In Maine, Medicaid funding has been used to finance a statewide system of permanent housing. She described nine months of weekly planning with city and county officials and service providers culminating in a model for delivery of behavioral health and wraparound services. Funding of \$1.1 million has been allocated by the county, and a similar allocation is pending at the city. Her job is to look for significant cost savings to the system, but individual outcomes are what is really important.

There are so many categories of homelessness, one member commented after hearing the panel presentation. The public really needs to be educated about the costs of not providing services. Another member suggested the potential of additional collaborations for these various groups and urged a closer look at the benefits of sharing administrative costs and securing regional funding. This is a national trend, the member pointed out, and sources of funding look more favorably on those who are sharing under one roof.

Substance Abuse Treatment and Rehabilitation Panel

Miriam Komaromy, M.D., associate director of the Project ECHO Institute at the UNM HSC, spoke to the committees about substance use disorders and their high cost: \$500 billion a year in the United States (see handout). There are effective medications to help prevent relapse for opioid and alcohol use disorders, she said, but they are underutilized. Studies have shown that the impact of medication treatment for opioid addiction far outweighs the impact of counseling, yet drug courts, probation and parole do not consistently support medication-assisted treatment (MAT), perhaps over concern about diversion of these medications. For post-incarceration treatment, counseling and intense case management are crucial to prevent overdose deaths or recidivism, said Dr. Komaromy. She also runs a grant-funded initiative to treat mental health and addiction through Project ECHO telehealth. Many with mental health and addiction problems walk in the door of a primary care setting, she explained, so Project ECHO helps train and support nurse practitioners teamed with community health workers who get specialty support from UNM.

There are eight primary care sites where screening, diagnosis and treatment are being provided for hundreds of patients every month who would not otherwise get treatment. Dr. Komaromy also described another grant-funded pilot project to engage primary care physicians in providing MAT for opioid-addicted patients through the Project ECHO model and a proposed plan to incentivize statewide training with Medicaid funding, utilizing Project ECHO to enable low-cost treatment in home communities.

John J. Romero, presiding judge, Children's Court, Division VII, Juvenile Justice Center, is one of three judges in Bernalillo County who specialize in children's court with youth who are alleged to be delinquent, neglected or abused. Mental health issues in his court are alarming, he said, estimating that 70 percent of participants have at least one mental disorder. For those with substance abuse problems, mental issues and addiction both need to be treated, Judge Romero said. It is folly to treat youth without talking about families, and judges need to look at ways to engage and empower parents. In Bernalillo County, detox has to take place before treatment, which is funded by a grant. Supportive housing is needed for kids who cannot go home, he said, and treatment that is not connected to the living situation is difficult to get to for kids who do not drive. What is needed is a transitional living program with services inside. Heroin is a serious problem in Bernalillo County, he continued, and is cheaper to buy than a six-pack of beer. New Mexico is second in the nation in accidental death from heroin overdose, and New Mexico's kids are twice as likely to experiment with heroin than kids in any other state. Girls who have trauma in their backgrounds are prone to medication and substance abuse and have diagnosable rates of posttraumatic stress disorder higher than those of returning war veterans. Hogares used to have a treatment facility, Judge Romero lamented, but now the county has entered into a deal to buy the property, and Healing Addiction in Our Community will provide services there with private money. Kids are assessed and referred to a resource provider if they qualify for Medicaid; otherwise, most health insurance will not pay for a single day of substance abuse treatment for youth. There is a school-to-prison pipeline: kids who get in trouble at school are arrested, sent to detention and then released with no consequences. It is important to partner with schools, Judge Romero said, since they serve as the early warning system for youth who have behavioral health problems.

Jolene Schneider is executive director of Four Winds Recovery Center in Farmington, which offers residential detox, including protective custody detox, to residents from around the state. Ninety percent of its 39-bed population comes from court referrals, she said, and is 80 percent male and 90 percent Native American. None of Four Winds' services are covered by Medicaid, she said, and reimbursement has been through the County Indigent Hospital Claims Fund, which was cut last year with a change in the way hospitals are funded. Ms. Schneider said the cut of one-fourth of its operating budget — a loss of \$225,000 — in the intensive outpatient program is likely to close the clinic, with a loss of 17 full-time jobs and a likely increase in violence and deaths in the community.

Jennifer Miller, administrator of the San Juan County Alternative Sentencing Division, provided committee members with background on the San Juan 28-Day Jail-Based Treatment

Center, which was created as the result of extensive community input (see handout). Incorporating a mix of incarceration, treatment and aftercare, the program has served more than 11,000 convicted offenders since 1994 and was proven twice as successful as other programs in a study by UNM, Ms. Miller said. When indigent funds were redirected last year, it was assumed that the program could now bill Medicaid, but claims were denied because they were considered incarcerated treatment services not eligible for reimbursement. Now the program has had a significant cut — \$700,000 — and services have been curtailed.

Following the conclusion of the panel discussion, a committee member asked Dr. Komaromy why physicians are reluctant to do MAT. Providers in small communities do not want to deal with this population, she responded. There is a stigma of caring for the addicted population, but MAT needs to be made the norm for all primary care practices. Another member asked her how many beds are needed in Bernalillo County for detox. A 28-day program is needed for the sickest individuals, Dr. Komaromy said, but this number is small. Care plus detox can work, and for those who have housing, they can detox at home; for those without housing, there needs to be a place for medically managed withdrawal.

Public Comment

Dan Matthews, president of the New Mexico Psychological Association, said his organization has been looking at AOT for a number of years and is not opposed to it. His members are "bulldogs" when it comes to confidentiality, and they are concerned with changes to the Mental Health and Developmental Disabilities Code that will affect everyone.

Sherry Pabich said she was here nine years ago when AOT was introduced. She urged members to pass it in time for the budgeting process. AOT is like a hospital without walls, and hopefully, it will also bring housing along.

Estella Martinez told committee members her daughter died because she had diabetes and was mentally ill and lacked self-awareness. Ms. Martinez said if she had been able to petition for an AOT order, her daughter would not have died at age 23.

Felicia Barnum, a member of the National Alliance on Mental Illness, said that it is time for change. Ms. Barnum has a son who was hospitalized and jailed multiple times. She said she would have preferred AOT to seeing her son arrested and shackled. She is thankful for the mental health court; without it, her son would not be alive today.

Steve Bringe, president of the Depression and Bipolar Support Alliance, said he has no opinion or view on the bill discussed today. He thinks legislators would benefit from hearing testimony from informed groups of peers, who are available, he said.

Jim Jackson, executive director of DRNM, commented that if New Mexico had the same system as in San Antonio, maybe the state could be serving a lot of people and might not need AOT. Mr. Jackson said it is the mission of his organization to protect the rights of those who are

competent to make their own decisions who have not been accused of a crime or shown to be a danger to themselves or others. Look carefully at the specifics of the bill, he urged members. If a treatment guardian is already appointed to act for a person, why do we want to second-guess that person? This bill does not restrict a judge to services that are available in the community. Mr. Jackson said he objects to any characterization that his agency just "kills bills". DRNM helped promote the mental health parity bill and has supported CETs, and DRNM has consistently supported expansion of services. Mr. Jackson told committee members not to feel pushed into supporting the AOT bill; there are a lot of options.

Mr. Stettin commented that he was not hearing other ideas about this small group of people who do not believe they are ill. At the end of the day, there is a need, and treatment guardians cannot provide the kind of monitoring that is required.

Donald Hume is a consumer who has been in recovery for 21 years. He will not follow treatment plans given to him by others, but if he decides on it himself, he is far more likely to follow it. The medications he has taken have some serious side effects, Mr. Hume said, sometimes more severe than the symptoms themselves. He was always labeled noncompliant. He was shown by a peer that he could lead a different life and that recovery was possible. His life became so unmanageable that he was finally willing to do something about it. Mr. Hume said that this AOT bill could put him back in the hospital. For the few people it might help, others will be put at risk.

The joint meeting of the LHHS and CCJ recessed at 6:30 p.m.

Thursday, August 7

The committees reconvened for the final day of a joint meeting in the lobby of the UNM School of Law.

Call to Order and Introductions

Representative Chasey called the meeting to order at 9:15 a.m., welcoming members and guests and asking legislators on both committees and LCS staff to introduce themselves.

Health Care for Inmates

Gabriel Eber, staff counsel with the American Civil Liberties Union (ACLU) National Prison Project and adjunct professor at Georgetown University, provided committee members with a presentation on the right to health care in prison (see handout). Mr. Eber specializes in prison health care cases, most of which arise out of constitutional challenges and are usually class actions to ensure that prisoners receive adequate health care. There are three propositions to keep in mind, he said: 1) there are a lot of prisoners; 2) each needs health care; and 3) they cannot seek care elsewhere and have no control over chronic conditions. Mr. Eber said he cannot emphasize enough the importance of #3. A prisoner is forced to rely on others.

Denial of medical care is cruel and unusual punishment and an unnecessary and wanton infliction of pain, Mr. Eber said. The government has an obligation to provide medical care to those it is punishing. Prison health is public health. Mr. Eber described the graying (age 55 and over) of the prison population and the special needs that arise from functional and cognitive impairment and complex chronic medical conditions. The rate of hepatitis C infection is high in New Mexico prisons, he said, and there are now miracle drugs to treat it but they are extremely costly. Independent monitoring of correctional health care is essential to ensure access and proper health care treatment of inmates and to prevent litigation or federal Department of Justice (DOJ) action. The monitoring must be done on a regular basis, and reports need to be made public. This is especially important with private, for-profit companies that own prisons or provide health care services on contract and are beholden to hedge fund managers rather than the public.

Paul Wright, director of the Human Rights Defense Center in Lake Worth, Florida, is also editor of *Prison Legal News*, the longest running prisoner rights publication in U.S. history. He had co-authored three anthologies, and his articles have appeared in over 80 publications, including *CounterPunch* and *USA Today* (see handouts). He agreed with Mr. Eber's observation about being wary of the business practices of private, for-profit companies. These companies view the prison system, not the prisoner, as the customer. Prisoners cannot go to a different doctor if they are not receiving care, he noted; they cannot call 911 or go the emergency room. There is a lack of transparency with private companies and no oversight of what is actually going on. Audits have shown that many private companies are not providing what they are being paid for, and many refuse to provide information to the public. Many companies give bonuses on how little health care they provide, and scandals often follow them, Mr. Wright said (see copy of *Prison Legal News* and handout on Corizon lawsuits), and they often employ doctors with disciplinary issues who are uninsurable. The biggest need is to monitor them, and this is best done by the government. The state corrections chief is accountable to the public, but accountability is hard to come by with private companies claiming that their information is confidential and proprietary.

Secretary of Corrections Gregg Marcantel said he appreciates points made by the previous presenters. Since inmates are not able to vote, they can be marginalized, and this is not in the interest of public safety, he said. The state's contract with a private company provides for oversight, and if he, as secretary, is not willing to police the contract, then problems certainly can develop. Secretary Marcantel said he does not want to lead corrections as a closed institution, since 96 percent of inmates will return to their communities. Joe W. Booker, Jr., deputy secretary of operations for the Corrections Department (NMCD), who was seated next to the secretary, oversees the state's medical contract.

Upon questioning of Mr. Eber, Mr. Wright and Secretary Marcantel, committee members discussed the following topics.

History of New Mexico's contract with Corizon. Corizon, the state's contractor for medical services in 11 facilities serving approximately 7,000 inmates, is the largest private provider of

such services in the country, Secretary Marcantel said. Corizon is paid on a per-member-per-month basis and won a \$33 million renewal of its previous 2007 contract in a procurement bid process in 2012. Asked who held the contract before that date, Secretary Marcantel did not know — he is new to this position — but his deputy secretary, Paul Montoya, determined that it was Corizon, under a previous business name, at least since 2000. A member asked who was on the hook, the state or the contractor, for liability for malpractice or not providing care. Secretary Marcantel and Mr. Montoya were unsure and said they would get back to the committees with that information.

Private for-profit company versus nonprofit provider. A member strongly objected to the NMCD contracting with a Wall Street firm instead of a state nonprofit provider. Corizon won the bid, he was reminded. Another member noted that New Mexico has a top-notch medical school and a public health agency that are geared to complementing the public sector and state government, and there are job shortages in New Mexico. All of this should go into the bid equation, the member noted. Another member added that it seems the state is contracting away its public records obligation; something needs to be put in place to ensure transparency and accountability.

Experience with hepatitis C and costs of treatment in New Mexico prisons. Secretary Marcantel said he does not have data on costs with him today, but will provide this to the committees. Approximately 8,200 inmates have been screened for, and 1,908 diagnosed with, hepatitis C, he said. Those affected are treated with the most up-to-date drugs, Secretary Marcantel said, but there are guidelines (he will provide these to the committees, as well). Another member asked about a new drug that actually cures hepatitis C, which costs \$84,000 for a course of treatment. The combined purchasing power of the state and federal Medicaid funding should be able to affect this price, which many consider to be outrageous, the member noted, and Congress is planning hearings on this. A member asked about efforts to prevent the spread of hepatitis C and was informed that UNM's Project ECHO is training inmates to function as community health workers within the prisons.

What is being done to provide for the state's aging prison population? These folks are not very healthy when they come in, Secretary Marcantel noted, and studies show they age more quickly in prison than in the general population. He noted current programs for inmates with functional impairments, a hospice program and the use of compassionate release.

Remarks to the Joint Meeting

Maggie Hart Stebbins, Bernalillo County commissioner from District 3, reported that there has been progress with criminal justice reform in reducing the population from 3,000 to 2,100 at the Metropolitan Detention Center (MDC). Since one-fourth of detainees are waiting for a probation violation hearing, the county is paying for a judge to expedite these, with 65 percent of cases resolved at that time. There still are significant problems with alternatives for the mentally ill population at the MDC, Commissioner Stebbins said. She provided members with detailed consensus findings regarding this group and a proposal for funding of regional mental health crisis

triage and respite bed facilities throughout the state (see handout). The impact of incarcerating the mentally ill is profound on the system and the individual, Commissioner Stebbins said.

With the behavioral health system in crisis, the MDC has become the largest provider of behavioral health services in New Mexico, Commissioner Stebbins said. Rates paid to behavioral health providers lag behind the cost of services, criteria for access are too narrow, many services no longer exist and MCOs have been incentivized through capitated rates to limit care in order to maximize profits. The results of research and multiple task force findings are identical: what is needed most are regional triage centers and respite care facilities to provide alternatives to far more costly incarceration/hospitalization. Mobile crisis teams are needed to support first responders, who have only two choices for someone in crisis: hospital or jail. Commissioner Stebbins said she believes it is possible to help rebuild New Mexico's intermediate care services system by utilizing federal Medicaid dollars, as is being done in some other states. Bernalillo County has dedicated \$1.1 million to a supportive housing initiative and is seeking matching funds from the City of Albuquerque and the state, and the county also will be asking the legislature to fund a statewide CET program. Commissioner Stebbins said the county wants the state to partner in these efforts and to help with Medicaid enrollment of detainees upon release. The estimated budget for the project is \$2.9 million, she said, adding that there is political will for this now.

On questioning, Commissioner Stebbins and committee members addressed the following topics.

Medicaid funding to help rebuild community services. Commissioner Stebbins elaborated on the 1915(i) benefit that can help states fund the establishment of acute medical care services and long-term services like respite care, case management and employment services. It is a remarkable opportunity to fully utilize federal dollars, she said. A member agreed and asked Commissioner Stebbins if she could provide legislators with a list of projects that might be funded through this resource, including behavioral health services in the schools. The effort may require discussion with New Mexico's congressional delegation, the member said.

Savings from a new triage crisis center. A member recapped statistics proffered in earlier testimony about cost savings for persons with mental illness who are placed in jail and asked if there are any studies yet about how much will be saved with a triage center. New Mexico has been dealing with public health issues in a criminal setting, the member said. Another member thanked Commissioner Stebbins for bringing economic factors into the discussion, adding that a hospital is one of the most expensive places for treatment. Perhaps jail money could be redirected to expand these programs, offered another member.

Assistance for inmates to apply for Medicaid before release. It is prohibited by the state to put in the Medicaid application before release, Commissioner Stebbins said, and there is a six- to eight-week waiting period after the application is submitted. The most critical time for behavioral health patients is the first two to three weeks after release, and they are released with just three

days of medications. Commissioner Stebbins said that the county was able to train folks recently on presumptive Medicaid certification, but individuals still have to complete the regular enrollment and there is no follow-up to ensure that the enrollment goes through.

Issues with pretrial release. A committee member complained that pretrial release works well for the wealthy, but poor people do not have the ability to bond out. Commissioner Stebbins agreed that this is an important issue. Decisions about bond are made by the courts, she said, and there are objective tools available to measure risk that soon will be implemented in Bernalillo County.

Criminal Justice and Behavioral Health: The Sequential Intercept Model

Dave Webster, M.A., L.I.S.W., is co-clinical director of St. Martin's Hospitality Center in Albuquerque, which has provided programs and services for homeless individuals and families since 1985. People who work in mental health know that no matter where they are located, treatment is always less expensive than incarceration, Mr. Webster noted. He provided committee members with a presentation of a sequential intercept model he has developed that provides a conceptual framework for communities to organize target strategies for justice-involved individuals with behavioral health disorders. The model helps identify gaps in the system and what services are needed. It also can track the results over time (see handout). This model is being utilized by Bernalillo County and Albuquerque during weekly meetings, and results will be presented in September or October, Mr. Webster said. In Albuquerque, there are three ACT teams but no statewide mobile crisis unit for de-escalation of an incident prior to police intervention.

Everyone is identifying the same issues, Mr. Webster said. Diversion instead of jail is sorely needed but does not exist. All of the strategies identified in his model are in use in many places throughout the country, he said, and are known to be effective; they are not pie-in-the-sky ideas. There are many "frequent flyers" in the behavioral health and corrections systems, he said, and the use of AOT would go a long way toward solving some of these problems. The bottom line is that treatment is less expensive than incarceration — end of story, Mr. Webster concluded.

Prison Rape Elimination Act (PREA)

The federal PREA was signed into law in 2003, but it took many years for the government to establish guidelines and auditing criteria to grade a state's compliance. The NMCD had already taken steps to ensure compliance, according to Secretary Marcantel, including creating a required video that describes a prisoner's rights, how to ask for help and what the reporting process entails (see handout), posting sexual abuse hotline numbers and training staff to recognize and respond to PREA allegations. The department also trained PREA-certified auditors to assist with a circular audit process among 10 western states that ensures an audit of each facility at least once every three years.

Robert Mitchell, deputy director for facilities, Juvenile Justice Services, CYFD, works with the New Mexico Association of Counties (NMAC) to quantify compliance with performance-based standards. Most new employees are trained within a week. The PREA is

culture-changing, Mr. Mitchell said, and it also is improving safety. Manuel Romero, a detention specialist with the NMAC, assists counties with implementation and compliance. Mr. Romero also works with the U.S. Civil Rights Division in Washington, D.C., and the DOJ.

May Sagbakken, director of the Rape Crisis Center of Central New Mexico, explained to committee members that the PREA requires collaboration between correctional facilities and local rape crisis centers in order to provide inmates access to "outside confidential support services" (see handout). Audits are now hitting the counties, but there is no additional funding for compliance. Ms. Sagbakken said that her organization has been asked to provide services, and while it has a good relationship with the NMCD, it does not have enough funding to do this. The Rape Crisis Center of Central New Mexico has not been informed of any PREA hotlines and does not have the required confidential setting, she said. There is a high rate of women incarcerated in New Mexico. State funding is needed to create an infrastructure for these specialized services, Ms. Sagbakken said, and she is requesting an appropriation of \$750,000 to coordinate these efforts and determine training and best practices for rape crisis centers.

Donna Richmond, executive director of La Pinion Sexual Assault Recovery Services of Southern New Mexico, said she is one of those working the cases. Her organization serves children and adults, but she is concerned how trauma treatment would be delivered to someone inside a prison. That person would need specialized training, and if the center is being asked to serve a larger population, it would need more funding.

Steven Robert Allen, director of public policy for the ACLU of New Mexico, said sexual assault has been a big problem in detention centers and needs to be taken seriously. He also noted that persons just being released may need services. Other states are looking into state-based legislation, and the ACLU feels this is worth considering. Mr. Allen cautioned that audits need to be truly independent and should include the Adult Probation and Parole Division of the NMCD as well as detention centers.

Asked for more details on the \$750,000 request, Ms. Sagbakken said it would fund 1.5 to two FTE staff at 10 centers throughout the state. The Rape Crisis Center of Central New Mexico does have its own hotline — a local number that provides immediate assistance — but there is no official collaboration with the NMCD; the center is a check box on the audit list. Secretary Marcantel explained that the way the new federal requirements were rolled out put a lot of people in a bind. Asked what an audit looks like, committee members were told that it includes 52 standards with 200 subcategories. It involves a preview of the facility, then a tour, random interviews, a review of files and a post-audit, with a 30-day window to fix any problems.

Medicaid and Inmates

Matthew Elwell, director of the Luna County Detention Center, spoke of how Medicaid impacts a person upon release from a facility. Medicaid is terminated 60 days after incarceration, he said, and upon release, that person must reapply. A person leaves a facility with a minimal amount of medication, then decompensates and often re-offends. Medicaid needs to be put in

place prior to release, Mr. Elwell said. Jails are eager to put inmates safely back into the community and integrated into care. Jails are beginning to get training in applying for presumptive eligibility, he said, but entities doing this must complete the entire Medicaid application. Most prison inmates qualify for Medicaid, but inmates in jail may come from households that do not qualify.

Julie Weinberg, director of the Medical Assistance Division (MAD) of the Human Services Department (HSD), described Medicaid rules as relating to incarcerated individuals (see handout) and told members that the HSD has spent the last 18 months developing a process to allow for coverage of inpatient stays greater than 24 hours for incarcerated individuals. The process required numerous enhancements and changes to the YES-NM portal functionality, as well as to the Medicaid Management Information System (MMIS). The presumptive eligibility category is short term, is based on a shortened application and is good until full Medicaid eligibility is awarded or denied.

Harris Silver, M.D., is a consultant, health care and drug policy analyst and faculty member in the Department of Family and Community Medicine at UNM. With reform mandated by the ACA, approximately 90 percent to 95 percent of inmates are newly eligible for Medicaid, Dr. Silver said (see handout). Lack of access to health care and untreated substance abuse or mental disorders during and after incarceration are risk factors for poor outcomes. Federal Medicaid allows inmates to keep their coverage but will not pay for medical services during incarceration unless the inmate is hospitalized for more than 24 hours. Suspension allows for inmates to retain Medicaid and be discharged with full benefits. Inmates not on Medicaid can be signed up while incarcerated and then put in suspension status until discharge, Dr. Silver said.

Current Medicaid policies in New Mexico call for termination of Medicaid after 30 days in jail or prison despite the HSD's own 60-day policy, do not provide a category for suspension and do not allow applications from inmates before discharge. Prison employees are being trained to sign up inmates after discharge using presumptive eligibility, but those inmates will not be able to qualify for food stamps and temporary assistance at discharge. Dr. Silver described considerable savings that could be derived from treatment of substance abuse and mental health issues, since Medicaid pays 97 percent of the costs versus the state's three percent.

Committee members were provided with a copy of a letter Dr. Silver received from Cindy Mann, director of the Center for Medicaid and CHIP Services, stating in part that incarceration does not preclude an individual from being determined to be Medicaid-eligible. Inmates are permitted to file an application for Medicaid during the time of their incarceration. The letter goes on the state that the Centers for Medicare and Medicaid Services (CMS) has a long-standing policy that permits states to establish a process under which a Medicaid-eligible inmate is placed in a suspended eligibility status. "In fact, we have informed states that there is no legal basis for terminating the Medicaid eligibility of inmates...solely on the basis of their status as inmates. The suspension provides for a continuity of care...". Dr. Silver concluded that collection of information needed for a presumptive eligibility determination and a completed Medicaid

application should occur at jail intake and that there is no good reason why the MAD cannot accept applications from incarcerated individuals and create a suspension category of Medicaid eligibility.

A section of Ms. Weinberg's presentation, titled Barriers to Eligibility, states that applications cannot be submitted until the individual has been released from prison or jail. A committee member confronted Ms. Weinberg with the discrepancy in this statement, and she admitted that it was indeed false. Establishing a suspended category in the state's new MMIS is administratively burdensome, Ms. Weinberg explained. The MAD's information technology contractor has been working on it, but it has been low priority, she said. A member expressed outrage that the state cannot change its computer program in order to save hundreds of thousands of dollars in reimbursements and to improve the lives of many New Mexicans. Asked how soon this could be fixed, Ms. Weinberg stated that a month from now, the MAD should have good presumptive eligibility information, which is a workaround to suspension. Illinois has a grant to offer assistance on the entire inmate eligibility issue, another member informed the committee. Perhaps Illinois should be invited to advise New Mexico, the member suggested. Several members discussed the possibility of asking the LFC to look into the cost to the state and how many dollars have actually been lost from lapses or delays in Medicaid coverage for eligible persons post-release.

Public Comment

Doris Husted, policy director of The ARC of New Mexico, does volunteer work with persons who have been newly released from incarceration. When she asks about Medicaid, some have no idea what she is talking about. She urged that the NMCD and HSD collaborate on a fact sheet or provide other education to persons about to be released. They need to know the next steps, she said.

Denise Lang, Otero County Behavioral Health Council and Local Collaborative, said her husband was a Vietnam veteran, became addicted and got educated, but he committed suicide in 1998. Her son, who had a scholarship at the New Mexico Institute of Mining and Technology, started using drugs after his father's death and ended up in jail. He cleaned up and went to rehab, but he is now serving his second term in prison. The only Otero County facility offering mental health services closed after 40 years. She asked for better oversight by New Mexico agencies, which should start treating addiction like the public health issue it is.

Kathy Sutherland is director of Inside Out, which provides peer support in Española and Taos for substance abuse. She urged legislators to pass a law so that nurse practitioners can prescribe suboxone for treating the enormous problem of opiate addiction. Instead of incarceration, use a jail diversion program instead, she said. If a probation officer suggests that someone go to prison because they cannot stay clean, then you will have more grandparents raising kids. Addicts will relapse; it is part of addiction.

Dr. Silver said there are only 10 pharmacies that are currently prescribing Narcan. Española and state police will carry Narcan in squad cars. The federal Food and Drug Administration requires a prescription.

Alan Carreago spoke as a private citizen. He has been clean since 1985 and worked for many years in addiction treatment programs. He now works with Molina Healthcare, Inc. When he was strung out on heroin in 1985 and tried to gain admission to UNM Hospital, he could not because he was not suicidal. It is a public health issue and a public safety issue that New Mexico does not have the capacity it needs, he said. Turquoise Lodge wait time can be several weeks to several months.

Adjournment

There being no further business, the third meeting of the CCJ for the 2014 interim was adjourned at 5:40 p.m.

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

**September 25-26, 2014
New Mexico Highlands University
Las Vegas, New Mexico**

The fourth meeting of the Courts, Corrections and Justice Committee (CCJ) was called to order by Representative Gail Chasey, co-chair, on September 25, 2014 at 9:27 a.m. at the Student Union Building Ballroom at New Mexico Highlands University (NMHU) in Las Vegas.

Present

Rep. Gail Chasey, Co-Chair
Sen. Richard C. Martinez, Co-Chair
Rep. Eliseo Lee Alcon
Rep. Emily Kane (9/25)
Sen. Linda M. Lopez
Rep. Georgene Louis
Sen. Cisco McSorley
Rep. Jane E. Powdrell-Culbert
Rep. William "Bill" R. Rehm
Sen. Sander Rue (9/25)

Advisory Members

Sen. Jacob R. Candelaria (9/25)
Rep. Kelly K. Fajardo (9/25)
Sen. Bill B. O'Neill (9/25)
Rep. Patricia Roybal Caballero
Rep. Sheryl Williams Stapleton

Absent

Sen. Joseph Cervantes
Rep. Zachary J. Cook
Rep. Yvette Herrell
Rep. Mimi Stewart
Sen. Lisa A. Torracco

Rep. Phillip M. Archuleta
Sen. Craig W. Brandt
Rep. Cathrynn N. Brown
Rep. Brian F. Egolf, Jr.
Rep. Miguel P. Garcia
Sen. Daniel A. Ivey-Soto
Rep. Antonio "Moe" Maestas
Rep. Paul A. Pacheco
Sen. William H. Payne
Sen. John Pinto
Sen. Michael S. Sanchez

Guest Legislator

Rep. Dennis J. Roch (9/25)

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

Staff

Douglas Carver, Staff Attorney, Legislative Council Service (LCS)

Caela Baker, Staff Attorney, LCS

Monica Ewing, Staff Attorney, LCS

Julio Garcia, Legislative Intern, LCS

Guests

The guest list is in the meeting file.

Handouts

Handouts and other written testimony are in the meeting file.

Thursday, September 25**Welcoming Remarks**

Max Baca, director of information technology and government relations liaison, NMHU, welcomed the committee and noted recent changes to the university's academic programs and campus facilities.

Juvenile Justice Advisory Committee (JJAC)

Sharon Stover, chair, JJAC, informed the committee that the JJAC makes recommendations regarding juvenile delinquency prevention and juvenile detention alternatives to the secretary of children, youth and families. Twenty regional juvenile justice continuum boards made up of legislators, educators, social service professionals, youth and others work toward the JJAC's statewide goals. Five additional boards will be established in the future.

The 70 statewide JJAC programs receive federal and state funding; however, federal funding has been reduced significantly in recent years. In 2007, the JJAC received an appropriation from the legislature.

Judge Angie Schneider-Cook, vice chair, JJAC, and chair, Otero County Continuum Board, said that the board's 22 members include stakeholders from the community. The board is focused on identifying services that are needed or being duplicated and implementing preventative diversionary services to reduce the number of youths in the juvenile justice system. The board's primary challenge is a lack of funding.

Amber Parker, coordinator, Las Cruces Continuum Board, said that the diversion program in Las Cruces is the only one to be designated as a "best practices" program. Over the past five years, case processing time in the Las Cruces area has been reduced from 90 days to eight days, and diversion program completion rates are at 97%. Youths and juvenile probation officers work together to find solutions when youths fail to complete programs.

Ms. Parker said that there is significant need for adolescent substance abuse treatment programs, counseling and transportation. There is inequity in the availability of youth programs throughout the state, and geographically isolated communities do not have access to programs that exist in more urban areas.

Jack Ortega, coordinator, Rio Arriba County Continuum Board, said that there are several youth programs in operation in the county, including youth-at-risk programs and programs to assist youths between the times of arrest and adjudication. Poverty, domestic violence, substance abuse and inconsistency in education are some of the greatest challenges for youths and families that are served by the programs.

The Rio Arriba County Continuum Board collaborates with the county's DWI council and a county-funded health council with respect to community programs. The county aims to spend money that it saves from reduced detention to increase community services.

Tina Maes, a 17-year old student who participated in the intensive community monitoring program (ICM), discussed the circumstances — including an unstable family life and family members' substance abuse — that led to her involvement with the juvenile justice system. Ms. Maes reported that her experience in the ICM was positive; she learned that she can achieve her goals through hard work and has enrolled in a high school equivalency diploma program. Ms. Maes expressed her appreciation of her ICM mentor.

Tamera Marcantel, special programs manager, Children, Youth and Families Department (CYFD), informed the committee that state funding for programs is needed because of a 65% reduction in federal funding since 2011. The program managers understand the importance of conducting internal evaluation to ensure that resources are used effectively and efficiently to improve the state's juvenile justice system.

Questions

In response to a question about the ICM, Mr. Ortega said that the program, which has been in operation in Santa Fe and Rio Arriba counties since 2004, provides an adult mentor who communicates with and provides daily support to the program's participants.

A committee member noted that, with respect to the difference between rural and frontier areas of the state, population is a useful measure, but access to services should also be taken into consideration.

In response to a question about program funding, a presenter said that county and local governments are required to provide a 40% in-kind or cash funding match. Another member noted the importance of program evaluation and evidence-based programming, which he said is helpful to policymakers.

Joint Education Task Force (JETF) Report and Recommendations

Petra Jimenez Maes, senior justice, New Mexico Supreme Court, and co-chair, JETF, said that her interactions with two youths inspired her to start the JETF. One youth was in the foster system and encountered difficulty and delay in registering for school each time she was placed in a different foster home. The other was a senior in high school who, because of her time in the foster system and resulting lapses in education, had significant gaps in her knowledge of United States history. Justice Maes learned that students in the foster system are often denied school credits or are discouraged from enrolling in school in the middle of a school year.

Justice Maes said that the JETF was established by a joint order, is co-chaired by Governor Martinez and provides collaborative advice and recommendations about the needs of children and youths, with an emphasis on youths in the state's custody. The task force met to explore barriers to students' educational success and to identify possible solutions. The JETF identifies three areas of focus: 1) communication and data-sharing; 2) school changes and transfers; and 3) disciplinary policies. Work groups were formed to identify possible solutions to the issues presented in each focus area. The JETF and the New Mexico Supreme Court approved a list of recommendations in April 2014, and the full task force report is available electronically.

To facilitate early enrollment in schools, the JETF developed a letter from the CYFD to school principals. The letter identifies students in a principal's school who are in the state's custody and provides information about the students' guardians and social workers. The letter is intended to improve communication regarding students in the state's custody.

Questions

A committee member asked whether students who move between foster homes could continue attending a school where the student has established relationships. A presenter noted that there are no legal barriers to continued attendance but said that funding allocation and transportation for the student could present difficulties.

Lowering Caseloads for Parents' Attorneys

Brett Ballew, managing attorney, Washington State Office of Public Defense, Parents Representation Program, said that his office contracts with attorneys to provide representation for parents. The program began as a pilot after a legislative report revealed that parents were receiving inadequate representation due to their attorneys' large caseloads. The program is now operating in 85% of the state's jurisdictions.

The Parents Representation Program aims to increase resources, including social workers and expert witnesses, and provides for attorneys to allocate 33% of their time to parent communication and 20% to court appearances. The Washington Supreme Court assisted with developing program standards, and attorneys are required to certify that they are not exceeding those standards.

Regarding client communication, Mr. Ballew said that attorneys need to be available to their clients, many of whom may have mental health or addiction concerns. The program encourages attorneys to advocate for clients to receive services that will improve their parenting skills. The program encourages visits between parents and their children, with consideration given to a child's developmental stage. Given the high costs associated with foster care, the program pays for itself within three years through foster care system savings.

Questions

A committee member recalled a recent New Mexico court decision that related to contract public defenders' caseloads and resulting ineffective assistance of counsel. The member asked what it could cost New Mexico to implement a program like Washington's, in which attorneys are limited to 80 cases. Justice Maes said that the Second Judicial District implemented a caseload reduction causing a \$300,000 budget deficit. As a result, the court will request additional funding from the legislature.

A member said that data show that greater investment in the foster system can lead to a reduction in the length of time a child is in the system's custody — which can amount to a savings of \$100,000 per child per year. Mr. Ballew responded that his program pays its lawyers \$102,000 to \$120,000 per year, which is about \$77.00 per hour after the lawyers pay their costs. He added that insurance companies have asked that lawyers be required to carry reduced caseloads to reduce the chance of costly litigation associated with excessive caseloads.

A member suggested that a funding formula could help to reduce disparities among counties with respect to how court funding is allocated. Justice Maes said that the state's judiciary will continue working with Mr. Ballew to identify solutions for New Mexico.

Juvenile Detention Alternatives Initiatives (JDAI)

Craig Sparks, director, Bernalillo County Youth Services Center, reported that Bernalillo County became involved with the state's JDAI in the late 1990s after nationwide juvenile justice policies caused dramatic increases in detention center populations. The Annie E. Casey Foundation provided funding and technical assistance with developing detention alternatives, and by 2005, Bernalillo County had made significant improvements in detention levels.

The focus of JDAI is to detain only those persons who are a threat to the community and to provide intensive youth accountability programs for those who are not a threat.

Susan Alkema, special master, Second Judicial District, said that while Bernalillo County's program has reduced the detention population, there is still room for improvement. She noted that the most important strategy for improvement is data-driven collaboration. Bernalillo County's program serves many youths that do not live in the county. Juvenile probation officers report to state courts, but counties are responsible for detention centers. This creates a need for effective communication and collaboration.

Ms. Alkema said that a risk-assessment instrument is a detention-screening tool that is used to determine whether juveniles should be detained. She added that when youths are diverted from detention, court resources are preserved.

Louis P. McDonald, chief judge, Thirteenth Judicial District, reiterated the importance of the risk-assessment instrument and added that the courts have been able to reduce the length of time between an incident and disposition of a case in court. Punishment is more effective when it is imposed as close in time to the commission of the offense as possible.

Nick Costales, deputy director of field services, CYFD Juvenile Justice Services, said that the state is trying to speed up the determination of whether detention is appropriate. If detention is not appropriate, police correspond with a youth's family, and the youth is required to report to a probation office within three days. This process is intended to connect youths with necessary services and has a good success rate; Mr. Costales could recall only one youth who failed to show up to a probation office as required. Under the previous system, only one-half of youths would show up to their probation offices.

Judge McDonald said that it is important to consider that many youths "age out" of criminal activity and that if all youths are incarcerated, the system may do more harm than good for those who are engaging in behaviors that will likely cease within a few years.

Questions

A member asked how JDAI collaborates with the state's continuum boards. Mr. Sparks responded that often the JDAI steering committee includes the same representatives that serve on a continuum board. The continuum boards focus more on early intervention, while JDAI is focused on detention issues. Judge McDonald added that juvenile justice affects education, and it is important to consider the two systems together.

In response to a question about whether JDAI receives state funding, Mr. Sparks said that some funding is available through the CYFD and through the state's continuum funds.

Ending the School-to-Prison Pipeline

Senator O'Neill discussed Senate Memorial 69 (2014) that called for a task force to examine the school-to-prison pipeline. The memorial tasked the Public Education Department (PED) with developing a comprehensive strategy and budget to study school discipline policies, including zero-tolerance policies, which result in some youths becoming unnecessarily involved in the juvenile justice system.

Senator O'Neill recalled his experience as the executive director of the Juvenile Parole Board. Certain youths in the system had only school disciplinary actions and no criminal activity on their records. He added that an analysis of which schools have zero-tolerance policies could be important to gaining insights into the improper involvement of certain youths with the juvenile justice system.

Questions

A member recalled that the legislature passed a law that would require the PED to keep data on school discipline and expulsions, but the law was vetoed. Having that information would help to identify the scope of the problem.

Another committee member noted that the memorial notes a disproportionate impact on Native Americans. Judge McDonald responded that the New Mexico Center on Law and Poverty reported that zero-tolerance policies affect Native Americans, Hispanics and the poor disproportionately. Another member noted that the United States Office of Civil Rights reported that New Mexico has one of the highest rates of expulsion of Native American students in the nation.

Motion

The CCJ voted to send a letter to the Legislative Finance Committee to state the CCJ's support for the Corrections Department's request for funding for its information technology systems.

University of New Mexico (UNM) Center of Excellence in Child Maltreatment and Abuse

Dr. Leslie Strickler, associate professor of pediatrics, and medical director, Child Abuse Response Team, UNM Health Sciences Center, said that she is one of only two pediatricians in the state who is trained to evaluate children who are alleged to have suffered abuse or neglect. Medical evaluations are important because unfounded allegations of abuse can devastate families, while failing to recognize abuse puts children at significant risk for increased abuse and maltreatment. The evaluations can be lengthy and can involve time-consuming court proceedings.

UNM houses the only two board-certified child abuse pediatricians in the state. The UNM Child Abuse Response Team evaluates alleged victims of abuse or neglect, and three-fourths of the alleged victims are from the Albuquerque metropolitan area. Dr. Strickler reported that UNM is providing a good service given its limited resources, but across the state, more services are needed. Only one-third of the physical and sexual abuse investigations conducted by the CYFD involved alleged victims from the Albuquerque area.

In addition to evaluation and legal services, Dr. Strickler and her colleague provide education to UNM medical students and to non-medical professionals. She would like to expand the clinical and education services offered by the Child Abuse Response Team through telehealth models. The program will seek \$779,000 in funding for fiscal year 2016 to fund new staff positions and to increase the number of funded physician salaries to sustain local service and to implement statewide service.

Questions

A member asked how physical and emotional indicators of abuse are recognized during an evaluation. Dr. Strickler said that trained physicians interview children and screen for indicators of abuse. General practice providers are not as comfortable with those evaluations. She added

that her goal would be to provide real-time services and consultations to other physicians via telemedicine models. Telehealth can be used for education and treatment.

In response to a question about referrals from schools, Dr. Strickler said that many referrals are generated by schools, which is critical because of schools' close contact with students. Another member said that state law requires educators to receive child abuse recognition training and that the training is delivered by the CYFD, law enforcement and the district attorney's office in the member's district.

Another committee member asked about investigation procedures. Dr. Strickler said that only about one-half of the children that are evaluated in her office are diagnosed as having been abused. She emphasized the importance of recognizing the other factors that might play into an allegation of abuse.

Regarding her funding request, Dr. Strickler said that the funding for staffing is for staff at UNM.

In response to a question about her expert testimony work, Dr. Strickler said that cases that are medically straightforward can become very complicated in the courtroom, and she sometimes encounters skepticism about her objectivity. Investigations are private, and what emerges in media coverage of a case is not a complete reflection of the details of that case.

Another committee member said that policymakers need help from experts in the medical community to understand how to create policies that protect children. Dr. Strickler agreed that education and professional collaboration is important.

In response to a committee member's comment that abused children are without a voice, Dr. Strickler agreed that children are at a disadvantage, and research is starting to show how abuse and events in childhood are manifested later in life and affect adults' health.

Serious Youthful Offender Amenability Hearings

Representative Roch informed the committee that many states hold hearings regarding a youthful defendant's amenability to treatment before the case against the defendant is adjudicated. By contrast, New Mexico holds amenability hearings after adjudication and before sentencing.

Representative Roch highlighted a case from Tatum in which a district attorney and a public defender agreed that holding the amenability hearing before the adjudication would be beneficial, and they petitioned the court to allow it. The New Mexico Supreme Court ultimately decided to allow the hearing to take place before adjudication, and the defendant accepted a plea deal and proceeded to treatment pursuant to the Delinquency Act. Representative Roch proposed that the legislature could avoid procedural disputes like the one in the case he described if the legislature revised the relevant statute to provide for pretrial amenability hearings.

Timothy Lee Rose, district attorney, Tenth Judicial District, provided additional details about the Tucumcari case to support Representative Roch's proposal. The defendant was a 14-year-old boy who had a rough childhood and was accused of killing his family members. Mr. Rose emphasized that a long trial might be unnecessary in certain cases, and he said that the proposed legislation could prevent lawyers and parties from having to participate in a trial if a defendant is amenable to treatment.

Questions

A member emphasized the difference between serious youthful offenders and youthful offenders, for whom pretrial evaluations are already available. The member suggested that rather than revising the law, the decision to hold a pretrial amenability hearing could be left to the parties and the judge to decide. The member added that the circumstances and the outcome in the case in Tucumcari are the exception and not the rule.

A member asked for the legal rationale for the current statutory language requiring the hearing to be held after trial. Justice Maes said that previously, the hearings were held before trial, but that process raised concerns with delays in hearings. She expressed concern with making pretrial hearings mandatory because of issues that were encountered when that system was previously in place.

Hazing

Representative Kane informed the committee that New Mexico is one of six states that does not have statutory penalties for hazing. Hazing is addressed in rule as a form of bullying, but it is not included in statute. She proposed legislation that would define hazing more clearly, and she emphasized that the state has an interest in providing a safe environment in schools. The language in her proposed bill was modeled on an Illinois statute.

Questions

A member asked whether the proposed law provides for a person to recover from hazing after the person gave consent to the activity. Representative Kane agreed that if bodily harm resulted from an activity that was required in order for the person to become a member of a group, then the person who caused the harm could be charged with a misdemeanor.

Another member noted that it is important to consider the intent of a person who could be charged under the statute.

Update from the CYFD

Mr. Costales informed the committee of some of the CYFD's recent initiatives. He said that the department is taking a new approach to probation and is focusing on establishing relationships with the families of youths who are being monitored. As part of the new approach, the CYFD is initiating wraparound training on the services available to families in their communities.

Robert Mitchell, deputy director for facilities, CYFD, said that his work focuses on seamless transitions between field services and the CYFD's facilities. The department is looking into separating its data related to injuries in facilities so that client-client related injuries and client-staff related injuries are distinguishable. Regarding recidivism, Mr. Mitchell said that the department is looking to use a national standardized definition of recidivism. Using the current definition, the department is at 7.1%, which includes clients who are recommitted within two years of release.

Questions

A member recalled that the Children's Code was revised in 2009, and he requested a comparison of pre-2009 and post-2009 recidivism rates. The presenters noted that it is necessary to use an objective measure, such as a subsequent finding of guilt, to accurately track recidivism. Another member reiterated the legislature's need for recidivism data in order to make policy decisions. Mr. Mitchell agreed that data are important.

In response to a question about budget requests, Mr. Costales said that the CYFD seeks a net budget increase of \$1.8 million.

Minutes

The minutes for the committee's July and August meetings were approved without objection.

Adjournment

There being no further business before the committee, the fourth meeting of the CCJ for the 2014 interim adjourned at 4:08 p.m.

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

**October 16-17, 2014
Dona Ana Community College
East Campus Branch
Las Cruces**

The fifth meeting of the Courts, Corrections and Justice Committee (CCJ) was called to order by Senator Richard C. Martinez, co-chair, on October 16, 2014 at 9:40 a.m. at the Dona Ana Community College East Campus Branch in Las Cruces.

Present

Rep. Gail Chasey, Co-Chair (10/16)
Sen. Richard C. Martinez, Co-Chair
Rep. Eliseo Lee Alcon
Sen. Joseph Cervantes (10/16)
Rep. Yvette Herrell (10/16)
Sen. Linda M. Lopez (10/16)
Rep. Georgene Louis
Rep. Jane E. Powdrell-Culbert
Rep. Mimi Stewart

Advisory Members

Rep. Phillip M. Archuleta
Sen. Daniel A. Ivey-Soto (10/16)
Sen. John Pinto
Rep. Patricia Roybal Caballero

Absent

Rep. Zachary J. Cook
Rep. Emily Kane
Sen. Cisco McSorley
Rep. William "Bill" R. Rehm
Sen. Sander Rue
Sen. Lisa A. Torracco

Sen. Craig W. Brandt
Rep. Cathrynn N. Brown
Sen. Jacob R. Candelaria
Rep. Brian F. Egolf, Jr.
Rep. Kelly K. Fajardo
Rep. Miguel P. Garcia
Rep. Antonio "Moe" Maestas
Sen. Bill B. O'Neill
Rep. Paul A. Pacheco
Sen. William H. Payne
Sen. Michael S. Sanchez
Rep. Sheryl Williams Stapleton

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

Staff

Douglas Carver, Staff Attorney, Legislative Council Service (LCS)
Caela Baker, Staff Attorney, LCS

Guests

The guest list is in the meeting file.

Handouts

Handouts are in the meeting file and are posted at www.nmlegis.gov.

Thursday, October 16**Welcoming Remarks**

Monica Torres, Ph.D., interim vice president for academic affairs, Dona Ana Community College (DACC), welcomed members of the CCJ. Dr. Torres stated that DACC has the fifth-largest enrollment of any higher institution in New Mexico, with more than 9,000 students.

Dr. Torres stated that DACC has a different mission and focus than the main campus of New Mexico State University (NMSU). The mission statement of DACC is to be "a responsive and accessible learning-centered community college that provides educational opportunities to a diverse community of learners in support of workforce and economic development". Dr. Torres provided an overview of the DACC campuses and the specialties and programs offered at each campus. She indicated that DACC works closely with the public high schools to offer dual credit courses. DACC offers 41 associate degrees and 15 certificate programs.

Dr. Torres discussed criminal justice and law enforcement programs offered at DACC and indicated that there is interest in developing a law enforcement academy. She indicated that DACC is accredited by the Higher Learning Commission. This accreditation is based on the academic rigor of courses offered at DACC, the culture of assessment of student learning, strong student support services and sound policies and practices in financial operations.

Dr. Torres explained that DACC is trying to develop evidence-based recruitment programs; increase retention and graduation; and articulate a pathway from DACC to NMSU.

Members of the committee asked questions about:

- ▶ the emergency medical technician program offered at DACC;
- ▶ the proposed law enforcement academy; and
- ▶ the dual credit program offered at public high schools.

Introductions by Committee Members

Members of the committee introduced themselves.

Judiciary's Unified Budget and Proposed Legislation

Judiciary's Unified Budget

Barbara Vigil, chief justice of the New Mexico Supreme Court, and Arthur W. Pepin, director, Administrative Office of the Courts (AOC), introduced themselves. Mr. Pepin acknowledged Fernando Macias, chief judge of the Third Judicial District Court, and Joel Cano, magistrate judge, Dona Ana Magistrate Court, who were present in the audience.

Chief Justice Vigil stated that the judiciary is requesting an increase of \$14,656,300 for fiscal year (FY) 2016. Included in the request is a base budget increase for the courts of \$3,790,900 and a base budget increase of \$6,646,000 for the AOC.

Mr. Pepin presented the AOC's FY 2016 detailed budget request, which is available online at www.nmlegis.gov. Mr. Pepin identified the following seven funding priorities:

1. an increase of \$10,436,900 in the base budgets for the judiciary and AOC;
2. AOC statewide programs — magistrate courts; the Jury and Witness Fee Fund; language access; and funding for court-appointed attorneys;
3. court safety and security;
4. critical personnel additions;
5. problem-solving courts;
6. two new judgeships and related staff; and
7. salary increases for judges and staff that are consistent with any across-the-board increases for other state employees.

Regarding priority item number three, Chief Justice Vigil stressed the need for additional security in court facilities in rural areas. Mr. Pepin stated that priority item number four relates to the need for more information technology employees at the AOC to keep up with the increasing use of technology and electronic documents.

Judge Macias stated that judges throughout the state are carrying overwhelming caseloads, and budget increases are necessary to ensure efficient processing of cases. Judge Macias indicated that priority item number six includes a request for an additional judgeship for the Children's Court in the Third Judicial District.

Chief Justice Vigil stated that funding for priority item number seven would support an across-the-board compensation increase that is consistent with increases for other state employees. She indicated that the judiciary has formed a group to study pay equality and to ensure that judicial employees are being paid fairly. She further indicated that judicial compensation is at the lowest level in the country and that next year, the judiciary may approach the CCJ with a plan to ensure that judges receive regular salary increases; however, that plan is not being proposed this year.

In response to a question from a committee member, Mr. Pepin indicated that the AOC would like to increase the pay for some of the lowest-paid employees, such as court clerks.

Statewide, there are approximately 520 "Court Clerk II" employees, and the average pay for that position is a little over \$15.00 per hour.

A member of the committee inquired about pay for court interpreters and indicated that some interpreters were reporting delays in receiving payment. Mr. Pepin indicated that interpreters should now be receiving on-time payment. The member asked whether court interpreters are employees or independent contractors. Mr. Pepin responded that the majority of interpreters are contractors, but some are employees.

A member of the committee asked whether New Mexico should have specialized water courts. Chief Justice Vigil acknowledged that some people have expressed concern that the current water adjudication process is not working. She added, however, that a comprehensive study has changed the way water cases are being processed. Now, one judge — Judge James J. Wechsler — does all of the water adjudications, and this arrangement has worked well. Chief Justice Vigil indicated that the New Mexico Supreme Court is still considering whether additional changes need to be made.

AOC Proposed Legislation

Mr. Pepin presented seven proposed bills and one proposed memorial for consideration by the committee. The bills are posted online at www.nmlegis.gov and concern the following topics:

- ▶ judgeships in the second and third district courts;
- ▶ municipal appeals to the New Mexico Supreme Court;
- ▶ time limitations relating to executing civil judgments entered by magistrate courts;
- ▶ creating a Language Access Fund that is separate from the Jury and Witness Fee Fund;
- ▶ statutory duties of the AOC director;
- ▶ credits against fines and fees for time served in county jails; and
- ▶ authorizing the use of a sliding-fee scale for alternative dispute resolution programs.

The proposed memorial would explore the possibility of magistrate courts employing compliance personnel and operating compliance programs.

Senate Joint Memorial (SJM) 26

Mr. Pepin reported the findings of a study that was conducted pursuant to SJM 26, which was adopted during the 2014 regular session. SJM 26 requires the AOC to "study equity in awarding child support and how child support payments are calculated". Mr. Pepin stated that the result of the study was a finding that child support guidelines are being equitably applied.

Members of the committee discussed:

- ▶ policy reasons behind not linking child support to visitation; and
- ▶ how the amount of child support is determined and how it is collected.

A document containing the findings of the study is posted at www.nmlegis.gov.

Update from the Public Defender Commission (PDC)

Michael Stout, chair, PDC, introduced Lee Hood and PDC member Jess Lilley. He also acknowledged the presence of Barbara Mandel, president of the New Mexico Criminal Defense Lawyers Association. Mr. Stout stated that the 11 members on the PDC are volunteers and that there is no budget for the PDC.

Mr. Stout indicated that the PDC is charged with selecting a chief public defender and setting standards for representation. He explained that the current standards for representation are effective as of May 2, 2014 and that contract public defenders are required to follow these standards as well.

Mr. Stout stated that flat fees for contract attorneys are unethical and inappropriate and that a rate of \$85.00 per hour for contract public defenders is being proposed. Mr. Stout distributed a handout, which is posted at www.nmlegis.gov, containing a statement of the principles for representation.

Mr. Stout stated that the PDC recently submitted a \$96 million budget request to the Legislative Finance Committee. He explained that the budget request was formed not by looking at budget requests in years past, but by looking at what is required to enable public defenders to meet the standards required for representation and to provide competent representation. A member of the CCJ requested that the PDC forward an electronic copy of the budget documents to LCS staff so that staff can distribute the documents to all members of the CCJ.

Storefront Small Lending in New Mexico

Karen Meyers, Consumer Protection Division, Office of the Attorney General, and Bob Hearn, Tierra del Sol Housing Corporation, presented statistics on and examples of high-cost lending in New Mexico.

Ms. Meyers told the CCJ that in 2007, the United States Department of Defense (DOD) adopted a 36 percent interest rate cap for military personnel and families. She stated, however, that lenders have continued to use loopholes in the law to issue high-cost loans to military personnel and families by structuring loans that fall just outside of the DOD protections. Ms. Meyers told the CCJ that on September 26, 2014, the DOD proposed new regulations expanding the protections limiting interest rates at 36 percent in the extension of credit for small-dollar loans to the military.

Ms. Meyers stated that 80 percent of lenders are out-of-state companies. She discussed the various types of consumer loans that are used in New Mexico, including payday loans, installment loans, car title loans and refund anticipation loans. Ms. Meyers explained that lenders often encourage refinancing and increasing the amount borrowed, thus extending indebtedness. She explained that a consumer's need to borrow repeatedly and refinance loans are indicative of an inability to repay and lax underwriting standards. She further stated that the lack of meaningful

underwriting or consideration of ability to repay loans reveals that the focus is on the ability of the lender to continue collecting payments, and this pushes borrowers further into a debt cycle.

Ms. Meyers discussed a recent case in which the New Mexico Supreme Court said that the Unfair Practices Act prohibits economic exploitation and that the particular loans at issue in that case were unconscionable.

Ms. Meyers stated that based on a study by the University of New Mexico, 86 percent of the public supports an interest and fee cap of 36 percent. She added that 20 states already have interest and fee caps equal to or less than 36 percent.

A member of the CCJ asked whether there are alternative loan products for consumers who are confronted with emergency situations and need quick cash. Ms. Meyers stated that in states that have restricted interest rates on small loans, in some cases there has been expanded access to credit unions. Mr. Hearn added that special programs, such as Tierra Del Sol Housing Corporation, which is an affordable-housing company, and special credit unions can help people who may not otherwise be able to borrow money from a traditional financial institution. In addition, educational programs and awareness campaigns are needed so that people have a better understanding of predatory lending practices.

Processing of Rape Kits by New Mexico Law Enforcement

Connie Monahan, New Mexico Coalition of Sexual Assault Programs, John Krebsbach, director, Albuquerque Police Department Crime Laboratory and Scientific Evidence Division, and Donna Richmond, La Piñon Rape Crisis Center, introduced themselves.

Ms. Monahan explained that there is a backlog in processing sexual assault examination kits. She indicated that the backlog is due to the lack of any increase in funding or resources for processing these kits. At the same time, there has been an increase in the availability of programs for sexual assault victims and an increase in reporting by sexual assault victims.

Ms. Monahan presented statistics on the prevalence of sexual assault in New Mexico. These statistics are included on the handout that is posted at www.nmlegis.gov. She indicated that successful efforts in other states to reduce or eliminate the backlog in processing sexual assault examination kits have included increased funding, a multidisciplinary team effort to plan and implement changes, victim involvement and, in some cases, legislation mandating action.

Ms. Monahan identified a number of advantages to processing the backlog of sexual assault examination kits, but she indicated that potential impacts on the victim should also be considered. Some considerations might include the length of time that has passed since the crime occurred, the impact on the healing process that reopening the cases may cause and whether or not the victim is able to participate in the process.

Ms. Monahan presented a number of recommendations that should be included in any potential legislation. The recommendations are to:

- ▶ empower victims as the decision-makers for processing and prosecuting rape cases;
- ▶ link victims to resources;
- ▶ define what constitutes a "backlog";
- ▶ create a triage system for prioritizing the analysis of kits;
- ▶ provide for a multidisciplinary coordinated response; and
- ▶ increase funding for responders.

Ms. Richmond stressed that funding for processing kits, as well as funding for victim advocate programs, is needed.

Upon questioning from the CCJ, Mr. Krebsbach indicated that there is a backlog of approximately 3,300 kits in Bernalillo County. He explained that cases receiving first priority are homicide cases with unknown offenders, followed by cases that are going to trial. Mr. Krebsbach stated that a plan is being implemented to prioritize the backlog of "no-suspect" cases from the past 10 years.

Mr. Krebsbach indicated that hiring and retaining qualified forensic DNA analysts has been challenging, and that factor has contributed to the backlog. In some instances, cases have been sent to private vendors for processing, but then the district attorneys must pay the cost of bringing analysts to testify at trial.

Members of the CCJ expressed concern about the backlog for processing these kits and the lack of funding for laboratories to process the kits.

New Mexico Sentencing Commission (NMSC) Motor Transportation Report

The following people introduced themselves:

- ▶ Tony Ortiz, director, NMSC;
- ▶ Dan Cathey, senior researcher, Institute for Social Research, University of New Mexico;
- ▶ Gregory J. Fouratt, secretary of public safety; and
- ▶ Pete Kassetas, chief, New Mexico State Police.

Mr. Ortiz presented the "New Mexico Motor Transportation Division Safety Staffing Study: Report in Brief". He discussed the methodology and indicated that the study examined current staffing levels versus appropriate staffing levels for state police and motor transportation police.

Mr. Ortiz noted that, according to the study, the Motor Transportation Division (MTD) of the Department of Public Safety requires a staff of 243 persons; however, the MTD currently has a staff of only 98 persons. Additionally, only 1.3 percent of approximately six million commercial vehicles are inspected. Forty additional officers are needed to perform safety and

inspection tasks, and 41 additional officers are needed for taxation and revenue work. Mr. Ortiz indicated that according to a 2013 study by the Legislative Finance Committee, a large number of commercial vehicles are evading the weight distance tax by circumventing the state ports of entry.

Mr. Ortiz told the CCJ that between April 24, 2014 and May 8, 2014, the NMSC staff observed truck traffic for six hours at three sample locations. Of the 337 trucks observed, 175 (52 percent) were in the database maintained by the Taxation and Revenue Department (TRD), 162 (48 percent) were not in the TRD database and 48 could not be identified sufficiently to search in the TRD database.

Secretary Fouratt indicated that the DPS agrees with the findings of the report presented by Mr. Ortiz and stated that the report validates the existing understanding that the MTD is significantly understaffed. Secretary Fouratt indicated that insufficient staffing levels inhibit the ability of staff members to patrol properly and to conduct safety and inspection tasks. He further stated that southeastern New Mexico has been especially affected by low staffing levels. Finally, he indicated that due to the low staffing levels, highly qualified safety inspectors are spending nearly all of their time selling permits when they could be performing safety inspections.

Chief Kassetas discussed compensation levels for MTD and state police officers and echoed concerns about staffing levels.

NMSC Prison Population Forecast

Mr. Ortiz presented the "New Mexico Prison Population Forecast: FY 2015-FY 2024". He indicated that the primary theme of the report is the same this year as last year. The male prison population has been stable for about seven years, and male inmates constitute approximately 90 percent of the prison population in New Mexico.

On the other hand, the female prison population is climbing very fast. The sole facility for female inmates is in Grants, New Mexico, and has an operating capacity of 706 beds. Last month, the prison population at the Grants facility was 743 inmates, which is well beyond capacity. The increase in the female prison population is due to an increase in the number of violent crimes being committed by women and a shift in the area of drug offenses — women are now being convicted of trafficking more frequently than the less serious charge of possession.

Mr. Ortiz indicated that New Mexico has seen an increase in populations at juvenile detention facilities, county jails and prisons. He stated that New Mexico is among only a handful of other states where the adult jail population exceeds the state prison population.

Child Protection Registry

Eric Langheinrich, chief executive officer, Unspam Technologies, Inc., and Evelyn Everton, vice president of government affairs, Unspam Technologies, Inc., discussed legislation that has been introduced in other states to establish a child protection registry (CPR). Two states — Utah and Michigan — have enacted such laws. Under CPR laws, persons can register contact

points, including email addresses, mobile phone numbers, instant messaging and social networking identifications and fax numbers, to which children have access. The CPR laws are intended to protect children from receiving solicitations for alcohol, tobacco, pornography, gambling and other items or services that marketers are prohibited from selling or sending to children.

Mr. Langheinrich indicated that registering a contact point in the CPR is free, and marketers are required to pay a small fee to check each entry on their sending list against the registry. The fees collected are used to pay for the administration of the program. Contact points registered in the CPR are encrypted and stored as 32-character codes. A marketer's list is then converted to the code and compared against the encrypted list stored in the registry. Mr. Langheinrich indicated that this process protects the privacy of contact points registered in the CPR.

Mr. Langheinrich discussed some of the reasons that establishing a CPR would protect children in the state, and he presented statistics concerning marketing to children.

Members of the CCJ asked questions and discussed the funding mechanism for a CPR, penalties for noncompliance and measures that can be taken to ensure privacy and security of the data contained in the CPR.

State Workers' Compensation System Challenges

Darin A. Childers, director, Workers' Compensation Administration (WCA), Thomas Dow, deputy director, WCA, and Kevin McGinley, chair, Advisory Council on Workers' Compensation and Occupational Disease Disablement, introduced themselves.

Mr. Childers discussed the mission of the WCA, the role of the Advisory Council on Workers' Compensation and Occupational Disease Disablement and challenges faced by the WCA. He indicated that there is a lack of clarity in the law, and the system depends on clarity in the law so that claims can be paid predictably and consistently without WCA involvement. Additionally, he indicated that incentives that encourage return-to-work and discourage reliance on compensation benefits have been eroded.

Mr. Childers discussed several legislative opportunities, including clarifying:

- ▶ what happens in the event that drugs or alcohol cause an on-the-job injury;
- ▶ limitations on payment for temporary disability; and
- ▶ standards and outcomes when an employer offers an injured employee work.

Members encouraged the WCA to draft concrete legislative proposals for consideration by the legislature.

Recess

The committee recessed at 5:06 p.m.

Friday, October 17**Tour of the Dona Ana County Detention Center**

Members of the CCJ toured the Dona Ana County Detention Center.

Adjournment

There being no further business before the committee, the fifth meeting of the CCJ adjourned at 11:35 a.m.

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

**December 4-5, 2014
Room 322, State Capitol
Santa Fe**

The sixth meeting of the Courts, Corrections and Justice Committee (CCJ) was called to order by Representative Gail Chasey, co-chair, on December 4, 2014 at 9:44 a.m. in Room 322 of the State Capitol.

Present

Rep. Gail Chasey, Co-Chair
Sen. Richard C. Martinez, Co-Chair
Rep. Eliseo Lee Alcon
Rep. Zachary J. Cook
Rep. Emily Kane (12/5)
Sen. Linda M. Lopez (12/4)
Rep. Georgene Louis
Sen. Cisco McSorley
Rep. Jane E. Powdrell-Culbert
Rep. William "Bill" R. Rehm
Sen. Sander Rue
Sen. Lisa A. Torracco (12/5)

Absent

Sen. Joseph Cervantes
Rep. Yvette Herrell
Rep. Mimi Stewart

Advisory Members

Sen. Jacob R. Candelaria
Rep. Antonio "Moe" Maestas (12/4)
Sen. Bill B. O'Neill*
Sen. John Pinto
Rep. Sheryl Williams Stapleton

Rep. Phillip M. Archuleta
Sen. Craig W. Brandt
Rep. Cathrynn N. Brown
Rep. Brian F. Egolf, Jr.
Rep. Kelly K. Fajardo
Rep. Miguel P. Garcia
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.)

*Senator O'Neill was appointed to serve as a voting member on December 4 to constitute a quorum.

Staff

Douglas Carver, Staff Attorney, Legislative Council Service (LCS)
Caela Baker, Staff Attorney, LCS
Monica Ewing, Staff Attorney, LCS
Julio Garcia, Legislative Intern, LCS
Carolyn Ice, Legislative Intern, LCS

Minutes Approval

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

Guests

The guest list is in the meeting file.

Handouts

Handouts and other written testimony are in the meeting file.

Thursday, December 4

Representative Chasey welcomed the committee and audience members and expressed her excitement about the committee's progress during the 2014 interim. The committee met as a subcommittee at the start of the meeting, and Senator O'Neill was named a voting member of the committee for the day. The committee approved its minutes from the September and October meetings without objection.

Human Trafficking

Susan Loubet, executive director of New Mexico Women's Agenda, explained that the Human Trafficking Task Force was assembled in response to a memorial and it examined sexually exploited youth and how victims of trafficking access services if they are not charged with a crime.

A congressional report from 2010 showed that human trafficking may be increasing because the risks associated with criminal sexual exploitation are relatively low and, if victims of the crime are not stabilized and offered services, law enforcement cannot prosecute the crimes. The task force also determined that it would be beneficial to institute a mandatory formal training on human trafficking for law enforcement provided by criminal justice professionals. She added that adult and minor victims need to be treated differently and service providers have to be trained to recognize victims of trafficking.

Ms. Loubet said that safe harbor legislation can be complicated to draft because of the number of entities that are involved in a safe harbor plan. She said that the task force would like to continue its work for this reason.

A committee member suggested that, during the 2015 interim, the task force could explore the types of services that need funding to meet the needs of human trafficking victims. Another committee member said that it would be important to include district attorneys in training and education provided to law enforcement officers.

A member thanked the presenter for her recommendations and for discussing the various programs that are providing services to victims. He added that it can be difficult for policymakers to understand where funding is needed without a full understanding of the many programs providing services. He finally suggested that the membership of the task force may need to be expanded so that issues related to trauma and substance abuse could be included in the task force's work.

A member said that it is problematic to mandate additional training for law enforcement officers because the maximum number of training hours has already been mandated. Another member said that human trafficking training could be part of other mandated training hours.

Consideration of Legislation — A Bill to Cap the APR on Loans at 36%

Representative Chasey presented the bill to the committee. She said that the bill would align New Mexico with 20 other states, and federal law with respect to military personnel, and could help New Mexicans avoid debt. The New Mexico Fair Lending Coalition has worked throughout the state to increase awareness and raise support for this issue. She learned that poor New Mexicans are paying \$99 million every year into interest and fees associated with high-interest loans and that money is leaving the state's economy.

A member expressed support for the bill and said it is distressing to see so many high-interest lending businesses opening up in certain parts of Albuquerque. Another member agreed and said that Hispanics in Albuquerque are being targeted by high-interest lenders that often secure loans using car titles.

A member asked why banks are opposed to this kind of legislation. A member responded that it is possible that banks own an interest in the high-interest lending companies. Another member said that the high-interest lending companies have to borrow from banks in order to have funds for lending to consumers and that this could be the reason for banks' opposition to the legislation.

The committee voted to endorse the bill.

Consideration of Legislation — Children Abandoned in Cars

Mr. Carver presented the bill to the committee. A member expressed support with the bill's concept, and another member asked whether the bill is the same bill that was heard by the House Consumer and Public Affairs Committee. Mr. Carver said that it was the same bill, except that the penalty has been decreased.

A member said that it is difficult to find probable cause for this crime.

The committee did not endorse the bill.

Consideration of Legislation — Expanding Ban the Box to Private Employers

Senator O'Neill presented the bill to the committee. He explained that the impact of this bill would be at the time when a person is initially filling out an application for a job. The bill would allow an applicant's initial qualifications to be considered and then, when interviewed, the person could explain any crime-related circumstances to a potential employer in person. An employer would be free to eliminate a person from consideration, but it would help an applicant's qualifications to be considered without initial prejudice related to the applicant's criminal record.

Senator O'Neill stressed that people who are working to improve their lives after a period of incarceration or homelessness need to be given an opportunity to explain their past to an employer and that this bill would ensure that they have that opportunity. He added that it is difficult to expect formerly incarcerated persons to live productive lives and contribute to their communities if they are unable to secure even an interview for a job. The bill, he said, is similar to legislation in other states, but it is not as far-reaching.

A member noted that the unemployment rate for persons who have committed a felony is up to 70%. This bill could help to reduce recidivism and help reform criminal justice in the state. Another member agreed and said that securing employment and housing are the two most important things for formerly incarcerated persons who do not recidivate.

The committee voted to endorse the bill.

Consideration of Legislation — Including the Homeless in the Hate Crimes Act

Senator O'Neill presented the bill to the committee. He said that the bill would help protect homeless persons who are the victims of hate crimes. He recalled that many homeless persons would come to a shelter having been assaulted.

A member noted that there are categories of crimes that protect people who are defenseless or do not have a voice to defend themselves and that homeless persons often do not have a way to receive justice when they are victims of crime.

Senator O'Neill said that the bill will not solve the problem of crime against homeless persons, but it will send a clear message and increase awareness.

In response to a question, Ms. Baker said that the bill was drafted to capture actions that are motivated by hate and the law would apply to a crime committed by a homeless person against another homeless person if the crime was motivated by hate. She added that a hate-crime-related sentencing enhancement is discretionary for a first degree felony and one year for a misdemeanor, and she said that the enhancement cannot increase a misdemeanor conviction to a felony conviction.

Senator O'Neill informed the committee that the bill language is based on a statute in Washington.

The committee voted to endorse the bill.

Consideration of Legislation — A Bill That Makes a Technical Fix to the Criminal Sentencing Act Regarding Criminal Sexual Penetration

Senator Candelaria presented the bill to the committee. He said that the bill simply includes a technical revision to language to provide a sentence for first degree criminal sexual penetration where there currently is not a sentence provided. He added that in a previous legislative session, the first and second degree penalties were revised but one was erroneously omitted.

The committee voted to endorse the bill.

Consideration of Legislation — Bills Proposed by the Administrative Office of the Courts

Representatives from the Administrative Office of the Courts (AOC) presented several bills for the committee's consideration. After a brief discussion, the committee voted to endorse the bill marked AOC 1.

With respect to the bill marked AOC 2 — a bill that addresses appeals processes from municipal courts — a representative from the AOC said that the bill provides for a municipal court to appeal to the New Mexico Court of Appeals and then to the New Mexico Supreme Court. The committee voted to endorse the bill.

The bill marked AOC 3 clarifies Section 37-1-3 NMSA 1978 to establish the statute of limitations for action by a judgment creditor. The committee voted to endorse the bill.

The committee briefly discussed the bill marked AOC 4, which establishes a language access fund. After a brief discussion regarding the use of court interpreter certification, the committee voted to endorse the bill.

The bill marked AOC 5 allows for the director of the AOC to receive funds, grants and other revenues in the same manner as secretaries of departments. The committee voted to endorse the bill.

The bill marked AOC 6 relates to the option to allow people to serve time in jail in lieu of paying a fine. The bill aligns the calculation of time served in lieu of a fine with the minimum wage provisions. Grace Philips, the general counsel for the New Mexico Association of Counties, said that the counties are very concerned about the bill because the county jails are consistently overcrowded and the change to the law could be costly for counties. A member said that the provision allowing time served in lieu of payment of a fine was an effort to help people who could not afford a fine. A member asked the New Mexico Magistrate Court Judges Association and the New Mexico Association of Counties to work together to present a compromise to the committee. The committee did not endorse the bill.

The bill marked AOC 7 includes a slight revision to the alternative dispute resolution system to provide for litigants to pay for the service on a sliding-scale basis. A member asked about the current fees charged, and the presenter said that the total fee is \$15.00 now, but the bill would authorize the court to charge parties a sliding-scale fee in the event that the parties want to hire a mediator. The committee voted to endorse the bill.

Consideration of Legislation — A Memorial Requesting a Study of Clinical Service Options for Individuals with Serious Mental Illness Who Are in Custody Awaiting Trial

Ms. Philips presented a joint memorial to create a task force to address persons in jail populations who have a serious mental health concern. She said that a small percentage of persons in jails have diagnoses such as schizophrenia or psychosis but that those persons are hard to manage. Detention facilities are stressful for people who have mental health concerns, and those people often have the longest terms of incarceration. Few of the state's jail facilities have staff members who are trained to work with persons with mental illness, so the memorial would help to start work on identifying solutions to these concerns. The committee voted to endorse the legislation.

Consideration of Legislation — A Bill to Place the Special Investigations Division and the Motor Transportation Division Under the New Mexico State Police Division

Greg Fouratt, the secretary of the Department of Public Safety (DPS), informed the committee that the bill merges all of the commissioned officers into one division within the DPS. He said that the officers will all have New Mexico State Police commissions but their individual missions will remain unchanged and all of the officers will be categorized in the military-exempt system. The costs associated with the bill will be minimal and paid out of the DPS's current budget. Pete Kassetas, chief of the New Mexico State Police, said that the bill is important to help remedy what has been unequal treatment among the officers, and he added that the State Personnel Office is also supportive of the bill.

A member asked how the budgets will work for the three entities, once merged, and Secretary Fouratt said that the Legislative Finance Committee has informed the DPS that the Motor Transportation Division should remain separate from the programming budget. He added that he is hopeful that the DPS will earn the legislature's trust and that eventually all of the budgets can be combined.

A member asked why a board was being removed in the bill text, and Secretary Fouratt said that the board has not existed for 30 years and the bill is cleaning up outdated language.

Another member asked a question about law enforcement training, and a member clarified that the Albuquerque Police Academy is separate from the state academy. Secretary Fouratt added that all academies train to a basic level of instruction or they lose their accreditation.

A member asked that Secretary Fouratt inform the committee if the department is in need of additional funding for communications equipment.

The committee took public comment on the bill, and a member of the public suggested that the attorney general or a representative from that office should serve on the New Mexico Law Enforcement Academy (LEA) Board. The committee voted to endorse the bill.

Consideration of Legislation — A Bill to Make the Indigent Defense Act and the Public Defender Act Congruent

Jorge Alvarado, the chief public defender, presented the bill to the committee. In response to a member's question, Mr. Alvarado said that if a public defender was not available and the court assigns an attorney to an indigent party, the Indigent Defense Act would pay for that representation. After a short discussion, the committee voted to endorse the bill.

Consideration of Legislation — A Bill Proposing Revisions to Procedures and Criteria for Sex Offender Parole Hearings

Tony Ortiz, director of the New Mexico Sentencing Commission, presented the bill to the committee and said that some of the items in the bill were discussed with the Sex Offender Management Board and that Kim Chavez-Cook and Sarah Gallegos from the Public Defender Department incorporated feedback into the bill's text. He added that the provision for a risk-needs assessment for sex offenders, which was included in the 2013 version of the bill, is still included in the current bill.

Ms. Chavez-Cook said that the statute is sometimes, but not always, read to create a five-year parole presumption that extends to 20-years-to-life only if necessary. She said that additional minor changes were made to allow for polygraph examinations and to ensure that the examinations receive Fifth Amendment protections.

Sherry Stephens, executive director for the Adult Parole Board, said that the board reviewed the draft legislation and made recommendations.

A member asked a question about the protections afforded to polygraph tests, and Ms. Chavez-Cook said that the polygraph examinations are not given to establish a violation of parole but are given as part of a person's treatment program. Another member added that the policy is to encourage the person to tell the truth, so it is important that it is kept confidential.

The committee voted to endorse the bill.

Consideration of Legislation — A Bill to Provide for Supervised Assistant Outpatient Treatment

Senator Mary Kay Papen presented the bill to the committee with the assistance of Shawn Mathis from the LCS. Senator Papen said that the bill would provide for court-ordered outpatient treatment in a civil proceeding. She said that an analogous program in Texas usually has about 80 persons in the program at any one time. The treatment provided for in the program is humane and does not apply to persons with disabilities or brain injuries. It does not allow for forcible medication administration or sanctions against a person for refusing treatment, but the program could reduce arrests, hospitalizations and incarceration of persons with mental illness.

Ms. Mathis recalled that the committee had questions about the program during the last presentation about the bill. She said that Judge Oscar Kazen, who runs the program in Texas, has reported that the state has saved \$1 million to \$1.3 million through the participation of 10 clients. She added that if the Texas program's costs are divided by the average number of participants, the cost of the program is significantly less than the daily rate for a person to stay in mental health facilities in New Mexico.

Ms. Mathis said that the program incorporates approaches used in 45 states and the District of Columbia. It provides for many types of services, including medical services. Guardians and surrogate decision-makers are included in the process created in the bill, and a person's advance mental health directive is considered. The program is intended to prevent relapse and deterioration of a person with mental illness.

In response to a member's question, the presenters said that the program established in the bill begins with the filing of a petition by a caregiver, family member, mental health professional or professional in a hospital. The petition provides that the person meets the criteria for the program. A member asked who develops a patient's treatment plan, and the presenters said that the treating physician develops the plan typically because the patient was already hospitalized and the program is a part of the patient's release from treatment.

A member asked how patients in the program are monitored, and the presenters said that caseworkers can visit the patients during the week and the patient, judge and caseworkers meet every week. Family members are sometimes part of the process as well.

A member expressed apprehension about the services that would be needed pursuant to the bill because of the recent upset of the behavioral health system in the state and also because of overburdened courts in the state. A presenter said that the legislation is structured so that the program legislation can be implemented and a judge can build the actual program as services and resources allow.

Senator Papen said that four judges in four communities in the state are already interested in starting an assisted outpatient treatment program and will start looking for funding once the legislation is in place.

A member asked what kind of input has been received from the disability community. A public member of the audience said that Disability Rights New Mexico is concerned about the bill and believes that the legislature should try to address the state's behavioral health needs. He added that it is difficult to take this position because his organization has previously worked well with Senator Papen. He said that most states do not have a bill that looks like this one and that his organization is concerned about the number of people who are authorized to file a petition. He added that he believes that ordering this kind of treatment can be contrary to the wishes of people who already have treatment guardians and planned directives for health care. He is also concerned about the lack of funding to carry out the services provided for in the bill.

The presenters said that treatment guardians are considered in the process and that no other state has a bill like this bill because it was drafted for New Mexico. They added that input from the community has been sought and considered.

Another community member, Ellen Pinnes, said she agrees with the previous public comments and added that the National Alliance on Mental Illness was consulted but the Disability Coalition and Disability Rights New Mexico were not.

The presenters said that the program works to identify people who have been repeatedly dangerous to themselves or others.

Several members expressed confusion with the fact that the disability advocacy community is divided about the bill.

The committee voted to endorse the bill.

Consideration of Legislation — A Bill to Provide for Due Process for Medicaid Providers

Senator Papen presented the bill to the committee. She said that following the takeover of the behavioral health system, those providers who were not found to have committed fraud should be allowed to continue to operate.

After a short discussion, the committee voted to endorse the bill.

Public Comment

A member of the public expressed concerns related to the Law Enforcement Safe Pursuit Act. He said that he believes the state police do not comply with that act. A member said he would like to evaluate the person's comments and asked that committee staff write a letter to the New Mexico Law Enforcement Academy inquiring about its procedures related to that act. The committee voted to have the letter sent to the academy.

Friday, December 5

University of New Mexico School of Law — Update on Developments

David J. Herring, dean, University of New Mexico (UNM) School of Law, provided an update on developments at the UNM School of Law. He indicated that about 80% of graduates from the UNM School of Law find jobs requiring a Juris Doctor within the first nine months after graduation, which is better than the national average. In addition, 90% of graduates of the law school pass the bar exam on the first attempt.

Dean Herring stated that the Utton Transboundary Resources Center is working to become an objective policy analysis center specializing in the areas of water and energy; however, the budget for the center is tight and there is only enough funding for two staff attorneys. The budget for the center has shrunk from over \$600,000 to around \$300,000.

Additionally, the law school is committed to establishing an environmental law clinic that would engage in policy work and expanding the Southwest Indian Law Clinic (SILC). He stated that the SILC works in tribal communities and with tribal governments and that the law school would like to expand this outreach. Currently, the SILC is approximately 60% funded by state funds. The SILC currently has two faculty members, and the law school would like to add an additional faculty member to the SILC.

The law school is also pursuing funding from the W.K. Kellogg Foundation to plan a legal education program that would train students to serve in the child welfare arena. The law school has hired a new director for the Judicial Education Center, which provides training to judges. Finally, the law school is working to develop an accelerated "3/3" program that would allow students in the honors program at UNM to spend their fourth year of undergraduate education taking law classes; this would replace the first year of law school.

Dean Herring indicated that the biggest weakness at the law school is the lack of funding for student scholarships. He stated that Arizona State University and Texas Tech University offer financial aid packages that are much better than what the UNM School of Law can offer. As a result, the UNM School of Law is not able to attract some of the best students.

Consideration of Legislation — Criminal Justice Reform Subcommittee (CJRS) Endorsed Bills

Senator Torracco, co-chair, CJRS, presented the following legislation endorsed by the CJRS during the 2014 interim.

A Bill Concerning Month-to-Month Good Time While on Probation

This bill would provide that a person who has had 30 days of supervised probation without incident shall have 30 days removed from the length of the person's probation sentence. Upon a motion by Senator Martinez, seconded by Representative Kane, the CCJ voted unanimously to endorse the bill.

A Bill Creating the Crime of Aggravated Battery with Permanent Injury

This bill would create the crime of aggravated battery with permanent injury, carrying a sentence of zero to six years. After discussion by members of the CCJ and upon a motion duly made and seconded, the CCJ declined to endorse the legislation, with one vote in opposition to the motion.

A Bill Concerning Halfway Houses and Transitional Living Facilities

This bill would enact the Halfway House and Transitional Residential Facility Act, requiring the Corrections Department to operate halfway houses and transitional residential facilities in each probation and parole region. Upon a motion by Representative Alcon, seconded by Senator Martinez, the CCJ voted unanimously to endorse the bill.

A Bill Providing for Procedures to Enhance the Accuracy of Eyewitness Identifications

This bill would establish and require law enforcement agencies to adopt policies to enhance the accuracy of eyewitness identification procedures. Upon a motion by Representative Chasey, seconded by Representative Louis, the CCJ voted unanimously to endorse the bill.

A Bill to Create the Penalty of High Misdemeanor

This bill would create the penalty of high misdemeanor with a sentence of less than 15 months imprisonment. The bill would not assign the penalty to any existing crimes, but rather create the penalty so that specific crimes could be designated as high misdemeanors in the future. After discussion by members of the CCJ, and upon a motion duly made and seconded, the CCJ declined to endorse the bill.

A Bill Requiring the Corrections Department to Expand the Availability of High School Equivalency Credential Classes

This bill would require the Corrections Department to expand the availability of high school equivalency credential classes. Upon a motion by Senator Rue, seconded by Representative Powdrell-Culbert, the CCJ voted unanimously to endorse the bill.

A Bill Requiring the Corrections Department to Use a Validated Risk and Needs Assessment for All Inmates

This bill would require the Corrections Department to use a validated risk and needs assessment for each inmate to determine each inmate's need for prison programming. In addition, it would define "evidence-based program" and require the use of evidence-based programming to be phased in over time, with 50% of inmate program funding to be spent on evidence-based programs by January 1, 2019. Upon a motion by Senator Rue, seconded by Senator O'Neill, the CCJ voted unanimously to endorse the bill.

A Bill to Require the Corrections Department to Evaluate Inmates Eligible for Medical and Geriatric Parole

This bill would require the Corrections Department to evaluate and submit a list of inmates eligible or who may become eligible for medical or geriatric parole to the Adult Parole Board each quarter. The bill would further require the Adult Parole Board to determine whether

inmates listed on quarterly reports are eligible for parole. Upon a motion by Representative Rehm, seconded by Senator Martinez, the CCJ voted unanimously to endorse the bill.

A Bill to Require Evidence-Based Behavioral Health Treatment Programs to be Incorporated into Community Corrections and Intensive Supervision Programs

This bill would require the Corrections Department to incorporate evidence-based behavioral health treatment programs into community corrections and intensive supervision programs over the course of four years. Upon a motion by Senator Rue, seconded by Senator Martinez, the CCJ voted unanimously to endorse the bill.

A Bill to Require a Person Assigned to an Intensive Supervision Program to Also Be Enrolled in a Behavioral Health Program

This bill would require the use of a validated risk and needs assessment for each person assigned to an intensive supervision program and would require enrollment in an appropriate behavioral health program. Upon a motion by Representative Kane, seconded by Senator O'Neill, the CCJ voted unanimously to endorse the bill.

Consideration of Legislation

A Bill to Provide for the Continued Medicaid Enrollment for Incarcerated Individuals

Senator Gerald Ortiz y Pino presented a bill that would require the Human Services Department to provide for continued Medicaid enrollment for eligible incarcerated individuals who were enrolled in Medicaid upon incarceration and would further provide for new enrollment in Medicaid for individuals released from incarceration and eligible for Medicaid. A version of this bill was previously presented to the CJRS, which deferred action on the bill to the full CCJ. Upon a motion by Representative Alcon, seconded by Representative Louis, the CCJ voted unanimously to endorse the bill.

A Bill Requiring Those Convicted Solely of Misdemeanor or Petty Misdemeanor Offenses to Be Sentenced to County Jail

Senator Torraco presented a bill providing that if a person is sentenced for multiple offenses, and if the crimes for which the person is being sentenced are solely misdemeanor or petty misdemeanor offenses, or violations of probation for a misdemeanor or petty misdemeanor offense, the person shall serve the sentence in the county jail, regardless of whether the total time of commitment is over one year. Upon a motion by Representative Chasey, seconded by Senator Rue, with two votes in opposition, the CCJ voted to endorse the bill.

Uniform Law Bills

Jack Burton, Uniform Law Commission, presented four bills to the CCJ for endorsement:

- a bill enacting the Uniform Powers of Appointment Act and making technical and conforming changes to the Uniform Probate Code and Uniform Trust Code was endorsed unanimously upon a motion duly made and seconded;

- a bill to enact the Revised Uniform Limited Liability Company Act was endorsed unanimously upon a motion by Representative Alcon, seconded by Representative Chasey;
- a bill to enact the Uniform Fiduciary Access to Digital Assets Act was endorsed unanimously upon a motion by Representative Rehm, seconded by Representative Alcon; and
- a bill amending the Uniform Commercial Code and the Uniform Fraudulent Transfer Act was endorsed unanimously upon a motion by Representative Rehm, seconded by Representative Chasey.

A Bill to Set the Unit of Prosecution for Child Pornography Cases

R. David Pederson, general counsel, Office of the Attorney General (OAG), presented a bill that would make possession of each separate image of a child prosecutable as a separate criminal offense under the statute pertaining to sexual exploitation of children. After discussion by members of the CCJ and upon a motion by Senator McSorley, seconded by Representative Chasey, the CCJ declined to endorse the bill.

A Bill Creating a Fund for the Internet Crimes Against Children Unit

Mr. Pederson, Anthony Maez, special agent in charge, OAG, and Paul Jagosh, National Association to Protect Children, presented information concerning the Internet Crimes Against Children (ICAC) Unit of the OAG and its efforts to combat child exploitation. Mr. Pederson presented a bill that would create a fund for the ICAC Unit and impose an initial registration fee upon each person registering as a sex offender in New Mexico. The fee collected would be deposited in the ICAC Unit fund. Upon a motion by Senator Martinez, seconded by Representative Kane, the CCJ voted unanimously to endorse the bill.

A Bill Requiring the Attorney General to Prosecute Crimes Committed by Law Enforcement Officers

Representative Chasey presented a bill to require the attorney general to prosecute any law enforcement officer charged with a violent felony, assault against a household member, abuse of a child or any crime for which registration under the Sex Offender Registration and Notification Act is required. Upon a motion by Representative Chasey, seconded by Representative Powdrell-Culbert, the CCJ voted to endorse the bill, amended to provide that the attorney general shall not only prosecute, but also investigate, the crimes specified. There was one vote in opposition to the endorsement.

Settlement Agreement Between the Albuquerque Police Department (APD) and the Department of Justice

Kathleen Love and Steven Robert Allen of APD Forward discussed the efforts of the APD Forward campaign and provided legislative proposals. The legislative proposals are to:

- implement a statewide law requiring the use of body-worn cameras for all law enforcement officers;

- restrict the use of SWAT teams to scenarios in which there is a likelihood of an imminent threat of death to civilians or law enforcement officers;
- amend the Tort Claims Act to include a fee-award provision for tort claims based on injuries caused by law enforcement officers while acting within the scope of their duties; and
- remove the \$400,000 cap on recovery provided for in the Tort Claims Act.

Members of the CCJ discussed the proposals and asked questions.

Public Comment

Chris Mechels discussed the settlement agreement between the Department of Justice and APD and expressed his concern that other local police departments in the state suffer from many of the same problems as APD. He encouraged members of the CCJ to review the settlement agreement. Finally, he expressed concerns about the LEA. He requested that the CCJ send a letter to the LEA concerning compliance issues. Upon a motion by Senator McSorley, seconded by Representative Chasey, the CCJ voted to send a letter to the LEA.

Lisa Seepaul, Strong Families New Mexico, expressed support for the Medicaid bills endorsed by the CCJ, as well as the CCJ-endorsed bill that would require the establishment of halfway houses and transitional living facilities.

Adjournment

There being no further business before the committee, the sixth meeting of the CCJ adjourned at 4:25 p.m.

ENDORSED LEGISLATION

Given the large number of bills endorsed by the Courts, Corrections and Justice Committee in the 2015 interim, only the first page of each bill has been reproduced for this report.

Full copies of the bills endorsed by the committee can be found in the online version of this report, available through the legislative web site for the committee:

http://www.nmlegis.gov/lcs/committee_detail.aspx?CommitteeCode=CCJ

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BILL

52ND LEGISLATURE - STATE OF NEW MEXICO - FIRST SESSION, 2015

INTRODUCED BY

DISCUSSION DRAFT

FOR THE CRIMINAL JUSTICE REFORM SUBCOMMITTEE

AN ACT

RELATING TO PROBATION; ALLOWING FOR SOMEONE ON PROBATION TO
HAVE THE TIME REQUIRED FOR PROBATION TO BE DECREASED FOR GOOD
BEHAVIOR.

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

SECTION 1. Section 31-20-5 NMSA 1978 (being Laws 1963,
Chapter 303, Section 29-17, as amended) is amended to read:

"31-20-5. PLACING DEFENDANT ON PROBATION.--

A. When a person has been convicted of a crime for
which a sentence of imprisonment is authorized and when the
magistrate, metropolitan or district court has deferred or
suspended sentence, it shall order the defendant to be placed
on probation for all or some portion of the period of deferment
or suspension if the defendant is in need of supervision,
guidance or direction that is feasible for the corrections

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SENATE BILL

52ND LEGISLATURE - STATE OF NEW MEXICO - FIRST SESSION, 2015

INTRODUCED BY

FOR THE COURTS, CORRECTIONS AND JUSTICE COMMITTEE AND
THE CRIMINAL JUSTICE REFORM SUBCOMMITTEE

AN ACT

RELATING TO CORRECTIONS; ENACTING THE HALFWAY HOUSE AND
TRANSITIONAL RESIDENTIAL FACILITY ACT; REQUIRING THE
CORRECTIONS DEPARTMENT TO OPERATE OR CONTRACT WITH A THIRD
PARTY TO OPERATE A MINIMUM OF ONE HALFWAY HOUSE OR TRANSITIONAL
RESIDENTIAL FACILITY FOR MEN AND ONE HALFWAY HOUSE OR
TRANSITIONAL RESIDENTIAL FACILITY FOR WOMEN IN EACH PROBATION
AND PAROLE REGION.

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 "Halfway House and Transitional Residential
Facility Act".

SECTION 2. [NEW MATERIAL] DEFINITIONS.--As used in the
Halfway House and Transitional Residential Facility Act:

A. "department" means the corrections department;

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SENATE BILL

52ND LEGISLATURE - STATE OF NEW MEXICO - FIRST SESSION, 2015

INTRODUCED BY

FOR THE CRIMINAL JUSTICE REFORM SUBCOMMITTEE AND
THE COURTS, CORRECTIONS AND JUSTICE COMMITTEE

AN ACT

RELATING TO CRIMINAL PROCEDURE; PROVIDING FOR PROCEDURES TO
ENHANCE THE ACCURACY OF EYEWITNESS IDENTIFICATIONS.

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

SECTION 1. [NEW MATERIAL] DEFINITIONS.--As used in this
act:

- A. "administrator" means a person conducting a
photo lineup or live lineup;
- B. "blind" means the administrator does not know
the identity of the suspect;
- C. "blinded" means the administrator may know who
the suspect is but does not know which lineup member is being
viewed by the eyewitness;
- D. "eyewitness" means a person who observes another
person at or near the scene of an offense;

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BILL

52ND LEGISLATURE - STATE OF NEW MEXICO - FIRST SESSION, 2015

INTRODUCED BY

DISCUSSION DRAFT

FOR THE CRIMINAL JUSTICE REFORM SUBCOMMITTEE

AN ACT

RELATING TO CORRECTIONS; EXPANDING THE AVAILABILITY TO EARN A
HIGH SCHOOL EQUIVALENCY CREDENTIAL FOR INCARCERATED
INDIVIDUALS.

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

SECTION 1. Section 33-11-3 NMSA 1978 (being Laws 1988,
Chapter 78, Section 3) is amended to read:

"33-11-3. REGULATIONS.--

A. The corrections department, by July 1, 1988,
shall adopt regulations for all adult correctional institutions
operated by the department for the implementation of a
mandatory education program for all inmates to attain a minimum
education standard as set forth in this section.

~~[A.]~~ B. The regulations shall apply only to any
inmate who:

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SENATE BILL

52ND LEGISLATURE - STATE OF NEW MEXICO - FIRST SESSION, 2015

INTRODUCED BY

FOR THE LEGISLATIVE HEALTH AND HUMAN SERVICES COMMITTEE
AND THE COURTS, CORRECTIONS AND JUSTICE COMMITTEE

AN ACT

RELATING TO PUBLIC ASSISTANCE; REQUIRING THE HUMAN SERVICES
DEPARTMENT TO PROVIDE FOR CONTINUED MEDICAID ENROLLMENT FOR
ELIGIBLE INCARCERATED INDIVIDUALS WHO WERE ENROLLED IN MEDICAID
UPON INCARCERATION AND NEW ENROLLMENT IN MEDICAID FOR
INDIVIDUALS RELEASED FROM INCARCERATION.

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

SECTION 1. [NEW MATERIAL] INCARCERATED INDIVIDUALS--
MEDICAID ENROLLMENT--ENROLLMENT ASSISTANCE.--

A. The secretary of human services shall adopt and
promulgate rules to provide that an incarcerated individual who
was enrolled in medicaid until the date of incarceration shall
remain enrolled in medicaid and shall not be terminated from
enrollment in medicaid upon incarceration and that:

(1) during the time the incarcerated

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BILL

52ND LEGISLATURE - STATE OF NEW MEXICO - FIRST SESSION, 2015

INTRODUCED BY

DISCUSSION DRAFT

FOR THE CRIMINAL JUSTICE REFORM SUBCOMMITTEE

AN ACT

RELATING TO CORRECTIONS; REQUIRING THE CORRECTIONS DEPARTMENT TO USE A VALIDATED RISK AND NEEDS ASSESSMENT FOR ALL INMATES; REQUIRING THE USE OF EVIDENCE-BASED PRISON PROGRAMMING.

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

SECTION 1. A new section of Chapter 33, Article 2 NMSA 1978 is enacted to read:

"[NEW MATERIAL] VALIDATED RISK AND NEEDS ASSESSMENT AND EVIDENCE-BASED PROGRAMS.--

A. Inmates incarcerated in state correctional facilities shall have their needs for prison programming assessed through the use of validated risk and needs assessments. Inmates shall be assigned to programs based on the results of the validated risk and needs assessment. The corrections department shall promulgate rules and regulations

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BILL

52ND LEGISLATURE - STATE OF NEW MEXICO - FIRST SESSION, 2015

INTRODUCED BY

DISCUSSION DRAFT

FOR THE CRIMINAL JUSTICE REFORM SUBCOMMITTEE

AN ACT

RELATING TO PAROLE; REQUIRING THE CORRECTIONS DEPARTMENT TO
SUBMIT A LIST OF INMATES ELIGIBLE OR WHO MAY BECOME ELIGIBLE
FOR MEDICAL OR GERIATRIC PAROLE TO THE PAROLE BOARD EACH
QUARTER; REQUIRING THE PAROLE BOARD TO DETERMINE WHETHER
INMATES LISTED ON QUARTERLY REPORTS ARE ELIGIBLE FOR PAROLE.

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

SECTION 1. Section 31-21-17.1 NMSA 1978 (being Laws 1994,
Chapter 21, Section 2) is amended to read:

"31-21-17.1. MEDICAL AND GERIATRIC PAROLE--ADMINISTRATION
BY DEPARTMENT.--

A. The corrections department shall:

(1) identify geriatric, permanently
incapacitated and terminally ill inmates who are eligible or
who may become eligible for [~~geriatric or~~] medical or geriatric

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BILL

52ND LEGISLATURE - STATE OF NEW MEXICO - FIRST SESSION, 2015

INTRODUCED BY

52ND LEGISLATURE - STATE OF NEW MEXICO - FIRST SESSION, 2015

INTRODUCED BY

DISCUSSION DRAFT

FOR THE CRIMINAL JUSTICE REFORM SUBCOMMITTEE
DISCUSSION DRAFT

AN ACT
FOR THE CRIMINAL JUSTICE REFORM SUBCOMMITTEE

RELATING TO PROBATION; ALLOWING FOR SOMEONE ON PROBATION TO
HAVE THE TIME REQUIRED FOR PROBATION TO BE DECREASED FOR GOOD
AN ACT

BEHAVIOR. RELATING TO CORRECTIONS; REQUIRING THAT EVIDENCE-BASED

BEHAVIORAL HEALTH TREATMENT PROGRAMS BE INCORPORATED INTO

BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF NEW MEXICO:
COMMUNITY CORRECTIONS AND INTENSIVE SUPERVISION PROGRAMS.

SECTION 1. Section 31-20-5 NMSA 1978 (being Laws 1963,
Chapter 303, Section 29-17, as amended) is amended to read:
BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF NEW MEXICO:

"31-20-5. PLACING DEFENDANT ON PROBATION, --
SECTION 1. Section 31-21-13.1 NMSA 1978 (being Laws 1988,

Chapter 62, A, Section 3, as amended) is amended to read:
When a person has been convicted of a crime for

which a sentence of imprisonment is authorized and when the
"31-21-13.1. INTENSIVE SUPERVISION PROGRAMS.--

magistrate, metropolitan or district court has deferred or
A. As used in this section:

suspended sentence, it shall order the defendant to be placed
(1) "cost beneficial" means that the cost

on probation for all or some portion of the period of deferment
savings realized over a reasonable period of time are greater

or suspension if the defendant is in need of supervision,
than the costs of implementation;

guidance or direction that is feasible for the corrections
(2) "evidence-based program" means a

behavioral health treatment program that:

(a) incorporates methods demonstrated to

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BILL

52ND LEGISLATURE - STATE OF NEW MEXICO - FIRST SESSION, 2015

INTRODUCED BY

DISCUSSION DRAFT

FOR THE CRIMINAL JUSTICE REFORM SUBCOMMITTEE

AN ACT

RELATING TO CORRECTIONS; REQUIRING THAT A PERSON ASSIGNED TO AN INTENSIVE SUPERVISION PROGRAM ALSO BE ENROLLED IN A BEHAVIORAL HEALTH PROGRAM.

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

SECTION 1. Section 31-21-13.1 NMSA 1978 (being Laws 1988, Chapter 62, Section 3, as amended) is amended to read:

"31-21-13.1. INTENSIVE SUPERVISION PROGRAMS.--

A. As used in this section:

(1) "intensive supervision programs" means programs that provide highly structured and intense supervision, with stringent reporting requirements, of certain individuals who represent an excessively high assessment of risk of violation of probation or parole, emphasize meaningful rehabilitative activities and reasonable alternatives without

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HOUSE BILL

52ND LEGISLATURE - STATE OF NEW MEXICO - FIRST SESSION, 2015

INTRODUCED BY

FOR THE COURTS, CORRECTIONS AND JUSTICE COMMITTEE

AN ACT

RELATING TO LENDING; ENACTING NEW SECTIONS OF THE NEW MEXICO BANK INSTALLMENT LOAN ACT OF 1959 AND THE NEW MEXICO SMALL LOAN ACT OF 1955; IMPOSING A CAP ON INTEREST RATES; REPEALING A SECTION OF THE NEW MEXICO SMALL LOAN ACT OF 1955.

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

SECTION 1. Section 58-7-1 NMSA 1978 (being Laws 1959, Chapter 327, Section 1) is amended to read:

"58-7-1. SHORT TITLE.--~~[This act shall be known]~~ Chapter 58, Article 7 NMSA 1978 may be cited as the "New Mexico Bank Installment Loan Act of 1959".

SECTION 2. A new section of the New Mexico Bank Installment Loan Act of 1959 is enacted to read:

"[NEW MATERIAL] MAXIMUM INTEREST RATES--EXCEPTIONS.--

A. Except as provided for in this section, the

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SENATE BILL

52ND LEGISLATURE - STATE OF NEW MEXICO - FIRST SESSION, 2015

INTRODUCED BY

FOR THE COURTS, CORRECTIONS AND JUSTICE COMMITTEE

AN ACT

RELATING TO CRIMINAL SENTENCING; MAKING TECHNICAL CORRECTIONS
TO THE CRIMINAL SENTENCING ACT.

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

SECTION 1. Section 31-18-25 NMSA 1978 (being Laws 1996,
Chapter 79, Section 1, as amended) is amended to read:

"31-18-25. TWO VIOLENT SEXUAL OFFENSE CONVICTIONS--
MANDATORY LIFE IMPRISONMENT--EXCEPTION.--

A. When a defendant is convicted of a second
violent sexual offense, and each violent sexual offense
conviction is part of a separate transaction or occurrence, and
at least the second violent sexual offense conviction is in New
Mexico, the defendant shall, in addition to the punishment
imposed for the second violent sexual offense conviction, be
punished by a sentence of life imprisonment. The life

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SENATE BILL

52ND LEGISLATURE - STATE OF NEW MEXICO - FIRST SESSION, 2015

INTRODUCED BY

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
employer or the board or other department or agency having

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SENATE BILL

52ND LEGISLATURE - STATE OF NEW MEXICO - FIRST SESSION, 2015

INTRODUCED BY

FOR THE COURTS, CORRECTIONS AND JUSTICE COMMITTEE

AN ACT

RELATING TO CRIMINAL LAW; PROVIDING FOR THE ALTERATION OF A
BASIC SENTENCE WHEN A CRIME IS MOTIVATED BY HATE AGAINST A
HOMELESS PERSON; AMENDING THE HATE CRIMES ACT.

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

SECTION 1. Section 31-18B-1 NMSA 1978 (being Laws 2003,
Chapter 384, Section 1) is amended to read:

"31-18B-1. SHORT TITLE.--~~[This act]~~ Chapter 31, Article
18B NMSA 1978 may be cited as the "Hate Crimes Act"."

SECTION 2. Section 31-18B-2 NMSA 1978 (being Laws 2003,
Chapter 384, Section 2, as amended) is amended to read:

"31-18B-2. DEFINITIONS.--As used in the Hate Crimes Act:

A. "age" means sixty years of age or older;

B. "gender identity" means a person's self-
perception, or perception of that person by another, of the

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SENATE BILL

52ND LEGISLATURE - STATE OF NEW MEXICO - FIRST SESSION, 2015

INTRODUCED BY

ENDORSED BY THE COURTS, CORRECTIONS AND JUSTICE COMMITTEE

AN ACT

RELATING TO THE DEPARTMENT OF PUBLIC SAFETY; REORGANIZING THE DEPARTMENT OF PUBLIC SAFETY; PLACING THE SPECIAL INVESTIGATIONS DIVISION AND THE MOTOR TRANSPORTATION DIVISION UNDER THE NEW MEXICO STATE POLICE DIVISION; CHANGING THE NAME OF THE TRAINING AND RECRUITING DIVISION TO THE NEW MEXICO LAW ENFORCEMENT ACADEMY DIVISION.

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

SECTION 1. Section 9-19-4 NMSA 1978 (being Laws 1987, Chapter 254, Section 4, as amended) is amended to read:

"9-19-4. DEPARTMENT ESTABLISHED.--There is created in the executive branch the "department of public safety". The department shall be a cabinet department and shall consist of, but not be limited to, ~~[five program divisions, an administrative division and an information technology division~~

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SENATE BILL

52ND LEGISLATURE - STATE OF NEW MEXICO - FIRST SESSION, 2015

INTRODUCED BY

AN ACT

RELATING TO INDIGENT DEFENSE; AMENDING THE INDIGENT DEFENSE ACT
AND THE PUBLIC DEFENDER ACT TO MAKE THE REQUIREMENTS OF THOSE
ACTS CONGRUENT; REQUIRING THE PUBLIC DEFENDER DEPARTMENT TO
MAKE DETERMINATIONS OF INDIGENCY; ALLOWING FOR A HEARING TO
CONTEST A DETERMINATION OF NON-INDIGENCY; PROVIDING FOR
REIMBURSEMENTS FOR SERVICES UNDER THE PUBLIC DEFENDER ACT TO BE
PAID TO THE PUBLIC DEFENDER CLIENT REIMBURSEMENT FUND.

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

SECTION 1. Section 31-15-7 NMSA 1978 (being Laws 1973,
Chapter 156, Section 7, as amended) is amended to read:

"31-15-7. CHIEF PUBLIC DEFENDER--GENERAL DUTIES AND
POWERS.--

A. The chief is responsible to the commission for
the operation of the department. It is the chief's duty to

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SENATE BILL

52ND LEGISLATURE - STATE OF NEW MEXICO - FIRST SESSION, 2015

INTRODUCED BY

FOR THE LEGISLATIVE HEALTH AND HUMAN SERVICES COMMITTEE
AND THE COURTS, CORRECTIONS AND JUSTICE COMMITTEE

AN ACT

RELATING TO HEALTH CARE; ENACTING THE ASSISTED OUTPATIENT
TREATMENT ACT; PROVIDING FOR ASSISTED OUTPATIENT TREATMENT
PROCEEDINGS; REQUIRING PUBLIC HEALTH SURVEILLANCE AND
OVERSIGHT; PROVIDING FOR SEQUESTRATION AND CONFIDENTIALITY OF
RECORDS; PROVIDING FOR PENALTIES; AMENDING THE MENTAL HEALTH
AND DEVELOPMENTAL DISABILITIES CODE TO REQUIRE DATA COLLECTION
FOR CERTAIN PROCEEDINGS; MAKING APPROPRIATIONS.

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

SECTION 1. [NEW MATERIAL] SHORT TITLE.--Sections 1
through 17 of this act may be cited as the "Assisted Outpatient
Treatment Act".

SECTION 2. [NEW MATERIAL] DEFINITIONS.--As used in the
Assisted Outpatient Treatment Act:

A. "advance directive for mental health treatment"

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SENATE BILL

52ND LEGISLATURE - STATE OF NEW MEXICO - FIRST SESSION, 2015

INTRODUCED BY

FOR THE COURTS, CORRECTIONS AND JUSTICE COMMITTEE AND
THE LEGISLATIVE HEALTH AND HUMAN SERVICES COMMITTEE

AN ACT

RELATING TO PUBLIC HEALTH; AMENDING THE MEDICAID PROVIDER ACT;
DEFINING "CREDIBLE ALLEGATION OF FRAUD" AND "OVERPAYMENT";
ESTABLISHING RIGHTS AND REMEDIES OF MEDICAID PROVIDERS AND
SUBCONTRACTORS FOR ALLEGED OVERPAYMENTS OR CREDIBLE ALLEGATION
OF FRAUD BASED ON AUDIT FINDINGS AND SAMPLING; PROHIBITING
EXTRAPOLATION; PROVIDING FOR JUDICIAL REVIEW, INJUNCTIVE
RELIEF, ATTORNEY FEES AND WITNESS FEES; AMENDING THE MEDICAID
FRAUD ACT TO CLARIFY THAT MERE ERRORS FOUND DURING THE COURSE
OF AN AUDIT, BILLING ERRORS THAT ARE ATTRIBUTABLE TO HUMAN
ERROR, INADVERTENT BILLING AND PROCESSING ERRORS AND FAILURE TO
COMPLY WITH A REGULATORY STANDARD THAT IS NOT A CONDITION OF
PAYMENT DO NOT CONSTITUTE MEDICAID FRAUD AND TO PROVIDE FOR
INVESTIGATION AND LIMITATIONS.

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

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SENATE BILL

52ND LEGISLATURE - STATE OF NEW MEXICO - FIRST SESSION, 2015

INTRODUCED BY

FOR THE COURTS, CORRECTIONS AND JUSTICE COMMITTEE

AN ACT

RELATING TO SEX OFFENDER PAROLE; REVISING THE TERMS AND
CONDITIONS OF PAROLE FOR SEX OFFENDERS.

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

SECTION 1. Section 31-21-10.1 NMSA 1978 (being Laws 2003
(1st S.S.), Chapter 1, Section 9, as amended by Laws 2007,
Chapter 68, Section 4 and by Laws 2007, Chapter 69, Section 4)
is amended to read:

"31-21-10.1. SEX OFFENDERS--PERIOD OF PAROLE--TERMS AND
CONDITIONS OF PAROLE.--

A. If the district court sentences a sex offender
to a term of incarceration in a facility designated by the
corrections department, the district court shall include a
provision in the judgment and sentence that specifically
requires the sex offender to serve an indeterminate period of

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SENATE JOINT MEMORIAL

52ND LEGISLATURE - STATE OF NEW MEXICO - FIRST SESSION, 2015

INTRODUCED BY

FOR THE COURTS, CORRECTIONS AND JUSTICE COMMITTEE

A JOINT MEMORIAL

REQUESTING THE NEW MEXICO ASSOCIATION OF COUNTIES TO STUDY HOUSING AND CLINICAL SERVICE OPTIONS FOR INDIVIDUALS WITH SERIOUS MENTAL ILLNESS WHO ARE IN CUSTODY AWAITING TRIAL.

WHEREAS, the state's county detention facilities have become de facto mental health facilities; and

WHEREAS, according to a 2012 study conducted by the New Mexico sentencing commission, individuals receiving mental health services while in detention have a median length of stay that is twenty-five percent longer than the length of stay for all pretrial inmates; and

WHEREAS, individuals diagnosed with the most serious mental illness, such as psychotic disorders, have a median length of stay that is eighty-two percent longer than individuals of the same gender and age who have been charged

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SENATE BILL

52ND LEGISLATURE - STATE OF NEW MEXICO - FIRST SESSION, 2015

INTRODUCED BY

FOR THE COURTS, CORRECTIONS AND JUSTICE COMMITTEE

AN ACT

RELATING TO CRIMINAL SENTENCING; PROVIDING THAT SOMEONE
SENTENCED SOLELY FOR MISDEMEANOR OR PETTY MISDEMEANOR OFFENSES
SHALL BE SENTENCED TO COUNTY JAIL.

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

SECTION 1. Section 31-19-1 NMSA 1978 (being Laws 1963,
Chapter 303, Section 29-4, as amended) is amended to read:

"31-19-1. SENTENCING AUTHORITY--MISDEMEANORS--
IMPRISONMENT AND FINES--PROBATION.--

A. Where the defendant has been convicted of a
crime constituting a misdemeanor, the judge shall sentence the
person to be imprisoned in the county jail for a definite term
less than one year or to the payment of a fine of not more than
one thousand dollars (\$1,000) or to both such imprisonment and
fine in the discretion of the judge.

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SENATE BILL

52ND LEGISLATURE - STATE OF NEW MEXICO - FIRST SESSION, 2015

INTRODUCED BY

FOR THE COURTS, CORRECTIONS AND JUSTICE COMMITTEE

AN ACT

RELATING TO PROPERTY INTERESTS; ENACTING THE UNIFORM POWERS OF APPOINTMENT ACT; MAKING TECHNICAL AND CONFORMING CHANGES TO THE UNIFORM PROBATE CODE AND THE UNIFORM TRUST CODE; AMENDING PROVISIONS OF THE UNIFORM PROBATE CODE PERTAINING TO NOTICE, TIME FOR PRESENTATION OF CLAIMS, PENALTY CLAUSES AND CLOSING AN ESTATE.

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 603 of this act may be cited as the "Uniform Powers of Appointment Act".

SECTION 102. [NEW MATERIAL] DEFINITIONS.--As used in the Uniform Powers of Appointment Act:

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HOUSE BILL

52ND LEGISLATURE - STATE OF NEW MEXICO - FIRST SESSION, 2015

INTRODUCED BY

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.

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

ARTICLE 1

GENERAL PROVISIONS

SECTION 101. [NEW MATERIAL] SHORT TITLE.--This act may be cited as the "Revised Uniform Limited Liability Company Act".

SECTION 102. [NEW MATERIAL] DEFINITIONS.--As used in the Revised Uniform Limited Liability Company Act:

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;

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SENATE BILL

52ND LEGISLATURE - STATE OF NEW MEXICO - FIRST SESSION, 2015

INTRODUCED BY

FOR THE COURTS, CORRECTIONS AND JUSTICE COMMITTEE

AN ACT

RELATING TO ELECTRONIC RECORDS; ENACTING THE UNIFORM FIDUCIARY
ACCESS TO DIGITAL ASSETS 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 Fiduciary Access to Digital Assets Act".

SECTION 2. [NEW MATERIAL] DEFINITIONS.--As used in the
Uniform Fiduciary Access to Digital Assets Act:

A. "account holder" means a person that has entered
into a terms-of-service agreement with a custodian or a
fiduciary for the person;

B. "agent" means a person granted authority to act
for a principal under a power of attorney whether the person is
denominated an agent, attorney in fact or otherwise;

C. "carries" means engages in the transmission of

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HOUSE BILL

52ND LEGISLATURE - STATE OF NEW MEXICO - FIRST SESSION, 2015

INTRODUCED BY

FOR THE COURTS, CORRECTIONS AND JUSTICE COMMITTEE

AN ACT

RELATING TO COMMERCE; MAKING CHANGES TO THE UNIFORM COMMERCIAL
CODE AS ENACTED IN NEW MEXICO TO MAKE IT UNIFORM; AMENDING
SECTIONS OF THE UNIFORM FRAUDULENT TRANSFER ACT; CHANGING THE
NAME OF THE UNIFORM FRAUDULENT TRANSFER ACT TO THE UNIFORM
VOIDABLE TRANSACTIONS ACT.

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

SECTION 1. Section 55-2A-529 NMSA 1978 (being Laws 1992,
Chapter 114, Section 84) is amended to read:

"55-2A-529. LESSOR'S ACTION FOR THE RENT.--

(1) After default by the lessee under the lease
contract of the type described in Section 55-2A-523(1) or
55-2A-523(3)(a) NMSA 1978 or, if agreed, after other default by
the lessee, if the lessor complies with Subsection (2) of this
section, the lessor may recover from the lessee as damages:

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SENATE BILL

52ND LEGISLATURE - STATE OF NEW MEXICO - FIRST SESSION, 2015

INTRODUCED BY

ENDORSED BY THE COURTS, CORRECTIONS AND JUSTICE COMMITTEE

AN ACT

RELATING TO CHILDREN; CREATING THE INTERNET CRIMES AGAINST CHILDREN FUND; ESTABLISHING A FEE FOR INITIAL REGISTRATION BY A SEX OFFENDER AND PROVIDING THAT THE FEE SHALL BE CREDITED TO THE INTERNET CRIMES AGAINST CHILDREN FUND; MAKING AN APPROPRIATION.

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

SECTION 1. Section 29-11A-4 NMSA 1978 (being Laws 1995, Chapter 106, Section 4, as amended) is amended to read:

"29-11A-4. REGISTRATION OF SEX OFFENDERS--INFORMATION REQUIRED--VERIFICATION--FEES--CRIMINAL PENALTY FOR NONCOMPLIANCE.--

A. A sex offender residing in this state shall register with the county sheriff for the county in which the sex offender resides.

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SENATE BILL

52ND LEGISLATURE - STATE OF NEW MEXICO - FIRST SESSION, 2015

INTRODUCED BY

FOR THE COURTS, CORRECTIONS AND JUSTICE COMMITTEE

AN ACT

RELATING TO LAW ENFORCEMENT; REQUIRING INVESTIGATION OR PROSECUTION BY THE ATTORNEY GENERAL OF ANY ACTION AGAINST A LAW ENFORCEMENT OFFICER SUSPECTED OF A VIOLENT FELONY, ASSAULT AGAINST A HOUSEHOLD MEMBER, ABUSE OF A CHILD OR ANY CRIME FOR WHICH REGISTRATION UNDER THE SEX OFFENDER REGISTRATION AND NOTIFICATION ACT IS REQUIRED.

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

SECTION 1. Section 8-5-2 NMSA 1978 (being Laws 1933, Chapter 21, Section 2, as amended) is amended to read:

"8-5-2. DUTIES OF ATTORNEY GENERAL.--

A. Except as otherwise provided by law, the attorney general shall:

~~[A.]~~ (1) prosecute and defend all causes in the supreme court and court of appeals in which the state is a

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HOUSE BILL

52ND LEGISLATURE - STATE OF NEW MEXICO - FIRST SESSION, 2015

INTRODUCED BY

ENDORSED BY THE COURTS, CORRECTIONS AND JUSTICE COMMITTEE

AN ACT

RELATING TO COURTS; CREATING ADDITIONAL JUDGESHIPS IN THE
SECOND AND THIRD JUDICIAL DISTRICTS; MAKING APPROPRIATIONS.

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

SECTION 1. Section 34-6-5 NMSA 1978 (being Laws 1968,
Chapter 69, Section 8, as amended) is amended to read:

"34-6-5. JUDGES--SECOND JUDICIAL DISTRICT.--There shall
be [~~twenty-seven~~] twenty-eight district judges in the second
judicial district."

SECTION 2. Section 34-6-6 NMSA 1978 (being Laws 1968,
Chapter 69, Section 9, as amended) is amended to read:

"34-6-6. JUDGES--THIRD JUDICIAL DISTRICT.--There shall be
[~~eight~~] nine district judges in the third judicial district."

SECTION 3. TEMPORARY PROVISION--DISTRICT JUDGES--
APPOINTMENTS.--The additional district judgeships provided for

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SENATE BILL

52ND LEGISLATURE - STATE OF NEW MEXICO - FIRST SESSION, 2015

INTRODUCED BY

ENDORSED BY THE COURTS, CORRECTIONS AND JUSTICE COMMITTEE

AN ACT

RELATING TO COURTS; PROVIDING THAT A MUNICIPALITY MAY APPEAL TO THE COURT OF APPEALS FROM ANY DECISION OF THE DISTRICT COURT RELATING TO THE VIOLATION OF AN ORDINANCE.

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

SECTION 1. Section 35-15-11 NMSA 1978 (being Laws 1935, Chapter 28, Section 1, as amended) is amended to read:

"35-15-11. MUNICIPALITY MAY APPEAL.--~~[The]~~ A municipality ~~[shall have]~~ has the right to appeal to the district court from the municipal court and to the ~~[supreme]~~ court of appeals from any decision of the district court in every case brought for the violation of an ordinance of ~~[said]~~ the municipality. The municipality shall be allowed an appeal from the municipal court to the district court only when the municipal court has held an ordinance or section ~~[thereof]~~ of an ordinance invalid

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SENATE BILL

52ND LEGISLATURE - STATE OF NEW MEXICO - FIRST SESSION, 2015

INTRODUCED BY

ENDORSED BY THE COURTS, CORRECTIONS AND JUSTICE COMMITTEE

AN ACT

RELATING TO MAGISTRATE COURT CIVIL JUDGMENTS; REMOVING THE
REFERENCE TO COURTS NOT OF RECORD FROM THE STATUTE PROVIDING
FOR LIMITATIONS ON ACTIONS BASED ON CERTAIN PRIVATE WRITTEN
INSTRUMENTS.

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

SECTION 1. Section 37-1-3 NMSA 1978 (being Laws 1880,
Chapter 5, Section 3, as amended) is amended to read:

"37-1-3. NOTES--WRITTEN INSTRUMENTS--~~[JUDGMENTS OF COURTS
NOT OF RECORD]~~ PERIOD OF LIMITATION--COMPUTATION OF PERIOD.--

A. ~~[These]~~ Actions founded upon any bond,
promissory note, bill of exchange or other contract in writing
~~[or upon any judgment of any court not of record]~~ shall be
brought within six years.

If the payee of any bond, promissory note, bill of

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HOUSE BILL

52ND LEGISLATURE - STATE OF NEW MEXICO - FIRST SESSION, 2015

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.

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
the costs of:

- (1) court interpreters;

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SENATE BILL

52ND LEGISLATURE - STATE OF NEW MEXICO - FIRST SESSION, 2015

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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BILL

52ND LEGISLATURE - STATE OF NEW MEXICO - FIRST SESSION, 2015

INTRODUCED BY

DISCUSSION DRAFT

AN ACT

RELATING TO DISTRICT COURTS; ALLOWING DISTRICT COURTS TO
REQUIRE PARTIES TO PAY COSTS FOR AN ALTERNATIVE DISPUTE
RESOLUTION PROGRAM ON A SLIDING FEE SCALE.

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

SECTION 1. Section 34-6-45 NMSA 1978 (being Laws 1986,
Chapter 26, Section 2, as amended) is amended to read:

"34-6-45. DISTRICT COURTS--ALTERNATIVE DISPUTE
RESOLUTION--FEE.--In addition to fees collected pursuant to,
and subject to exceptions set forth in, Section 34-6-40 NMSA
1978 for docketing of civil cases, in any judicial district
that has established an alternative dispute resolution program
by judicial district court rule approved by the supreme court,
including but not limited to arbitration, mediation and
settlement facilitation programs, the district court clerk

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APPENDIX

**Agendas and Minutes for the
Criminal Justice Reform Subcommittee
of the
Courts, Corrections and Justice Committee**

AGENDAS

Revised: April 22, 2014

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

**April 23, 2014
Room 321, State Capitol
Santa Fe**

Wednesday, April 23

- 9:00 a.m. **Call to Order and Introductions**
—Senator Lisa A. Torracco and Representative Antonio "Moe" Maestas, Co-Chairs
- 9:15 a.m. (1) **[Overview of Budgetary Impact of the Criminal Justice System](#)**
—Charles Sallee, Deputy Director, Legislative Finance Committee (LFC)
—Eric Chenier, LFC
- 11:30 a.m. (2) **[Expansion to the New Mexico Women's Correctional Facility; Use of In-House Parole](#)**
—Bette Fleishman, Executive Director, New Mexico Women's Justice Project (WJP)
—Marcia Wilson, WJP
- Action Item: Approval of December 2013 Minutes*
- 12:30 p.m. **Lunch**
- 1:30 p.m. (3) **[Criminal Justice and Behavioral Health: The Sequential Intercept Model](#)**
—Dave Webster, M.A., L.I.S.W., L.C.S.W., Co-Clinical Director, St. Martin's Hospitality Center
- 2:30 p.m. (4) **[Next Steps — Focus Areas for Criminal Justice Reform](#)**
—Discussion Among Members of the Subcommittee
- 3:30 p.m. **Public Comment**
- 5:00 p.m. **Adjourn**

Revised: May 27, 2014

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

**May 28, 2014
State Capitol, Room 321
Santa Fe**

Wednesday, May 28

- 9:00 a.m. **Call to Order and Introductions**
—Senator Lisa A. Torracco and Representative Antonio "Moe" Maestas, Co-Chairs
- 9:15 a.m. (1) **[New Mexico Results First and Criminal Justice](#)**
—Ashleigh E. Holand, Manager-State Policy, Pew-MacArthur Results First Initiative, The Pew Charitable Trusts
—Sara Dube, Manager, Pew-MacArthur Results First Initiative, The Pew Charitable Trusts
—Charles Sallee, Deputy Director for Program Evaluation, Legislative Finance Committee
- 11:30 a.m. (2) **[Breastfeeding in the Criminal Justice System](#)**
—Stephanie Andrews, R.N., International Board Certified Lactation Consultant
—Esperanza Dodge, M.S.W., Young Women United
- 12:00 noon **Lunch**
- 1:00 p.m. (3) **[New Mexico's Criminal Justice System: A View from the Trenches](#)**
—Lee Hood, Criminal Defense Attorney
—Jennifer Romero, Prosecuting Attorney
—Carolina Ramos, Immigration Attorney
—Richard Abeyta, Criminal Investigator
- 2:00 p.m. (4) **[Behavioral Health Care and Criminal Justice](#)**
—Liane E. Kerr, Criminal Defense Attorney
—Dr. MaxAnn Schwartz, Forensic Psychologist
—Dr. Sharon Kernen, Forensic Psychologist
—Robert Work, Public Defender

3:00 p.m. (5) [Committee Discussion — Agenda for 2015 Legislative Session](#)

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

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

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

**June 25, 2014
Room 321, State Capitol
Santa Fe**

Wednesday, June 25

- 9:00 a.m. **Call to Order and Introductions**
—Senator Lisa A. Torraco and Representative Antonio "Moe" Maestas,
Co-Chairs
- 9:15 a.m. (1) **[Recapitulation of Proposals Brought Before the Subcommittee to Date and Future Meeting Topics](#)**
—Senator Lisa A. Torraco, Co-Chair
—Representative Antonio "Moe" Maestas, Co-Chair
—Douglas Carver, Legislative Council Service
- 9:45 a.m. (2) **[The Mechanism of Sentencing and Mandatory Minimum Sentencing in New Mexico and the Problems and Costs Entailed by Mandatory Minimum Sentencing](#)**
—Kim Chavez-Cook, Assistant Appellate Defender and Law Office of the
Public Defender Lobbyist
—Mark Donatelli, Criminal Defense Attorney and Special Prosecutor
—Jacquelyn Robins, Criminal Defense Attorney
- 11:45 a.m. (3) **[Programs in Other States That Address the Problems and Costs Inherent to Mandatory Minimum Sentencing](#)**
—Melissa Hill, Attorney, Legislative Chair, New Mexico Criminal Defense
Lawyers Association (NMCDLA)
- 12:30 p.m. **Lunch**
- 1:30 p.m. (4) **[Legislative Proposals Regarding Mandatory Minimum Sentencing in New Mexico](#)**
—Melissa Hill, Attorney, Legislative Chair, NMCDLA

2:30 p.m. (5) [Sentencing in New Mexico — the District Attorney Perspective](#)
—Robert P. Tedrow, President, New Mexico District Attorney's Association
—Henry Valdez, Director, Administrative Office of the District Attorneys

3:30 p.m. **Public Comment**

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

Revised: July 29, 2014

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

**July 30, 2014
Second Judicial District Court
Third Floor Conference Room
Albuquerque**

Wednesday, July 30

- 9:00 a.m. **Call to Order and Introductions**
—Senator Lisa A. Torracco and Representative Antonio "Moe" Maestas, Co-Chairs
- 9:15 a.m. (1) **Drug Courts in New Mexico**
—Judge M. Monica Zamora, New Mexico Court of Appeals
—Peter Bochert, Statewide Drug Court Coordinator, Administrative Office of the Courts
- 10:15 a.m. (2) **Santa Fe's Law Enforcement Assisted Diversion (LEAD) Program**
—Bennett J. Baur, Public Defender Department
—Emily Kaltenbach, State Director, Drug Policy Alliance-New Mexico
- 11:30 a.m. (3) **Sentencing Enhancement Zones**
—Thesia Naidoo, Drug Policy Alliance
—Lt. Diane Goldstein, Law Enforcement Against Prohibition
- 12:30 p.m. **Lunch**
- 1:30 p.m. (4) **Drug Crime Penalties**
—Elaine Ramirez, Assistant United States Attorney
—Representative Antonio "Moe" Maestas
- 2:30 p.m. (5) **The Use of Confidential Informants in Controlled Substance Investigations and Prosecutions**
—Eduardo Chavez, U.S. Drug Enforcement Administration

3:30 p.m. (6) [How Drug Addiction Affects the Brain](#)
—Kevin Mains, L.P.C.C., C.E.A.P., Counseling Services Professional
—Timothy P. Condon, Ph.D., Research Professor, Center on Alcoholism,
Substance Abuse and Addiction, University of New Mexico

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

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

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

**August 27, 2014
Rotunda of the University of New Mexico Science and Technology Park
801 University Blvd. SE
Albuquerque**

Wednesday, August 27

- 9:00 a.m. **Call to Order and Introductions**
—Senator Lisa A. Torracco and Representative Antonio "Moe" Maestas, Co-Chairs
- 9:15 a.m. (1) **Past Criminal Justice Reform Efforts in New Mexico**
—Professor Leo Romero, University of New Mexico School of Law
- 10:30 a.m. (2) **Collateral Consequences of Conviction**
—Sheila Lewis, Attorney
- 11:30 a.m. (3) **Creation of a High Misdemeanor in the New Mexico Criminal Code**
—Senator Daniel A. Ivey-Soto
- 12:30 p.m. **Lunch**
- 1:30 p.m. (4) **Bringing Gender into the Drug Reform Conversation: Sharing Expertise of Women in the New Mexico Criminal Justice System**
—Micaela Cadena, Policy Director, Young Women United
—KC Quirk, Executive Director, Crossroads for Women
- 2:30 p.m. (5) **Probation and Parole — An Overview and Discussion of Technical Violations of Probation and Parole**
—Sherry Stephens, Executive Director, Parole Board
—Rose Bobchak, Acting Director, Adult Probation and Parole Division, Corrections Department (NMCD)
—Tony Ortiz, Executive Director, New Mexico Sentencing Commission (NMSC)
—Linda Freeman, Deputy Director, NMSC

- 3:30 p.m. (6) [Transitional Living and Information Technology Needs for the NMCD](#)
—Gregg Marcantel, Secretary, NMCD
—Joe W. Booker, Jr., Deputy Secretary of Operations, NMCD
- 4:30 p.m. (7) [Discussion of September Meeting Agenda — Concrete Proposals](#)
—Subcommittee Members
- 5:00 p.m. **Public Comment**
- 5:30 p.m. **Adjourn**

Revised: September 24, 2014

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

**September 24, 2014
State Capitol, Room 321
Santa Fe**

Wednesday, September 24

- 9:00 a.m. **Call to Order and Introductions**
—Senator Lisa A. Torracco and Representative Antonio "Moe" Maestas,
Co-Chairs
- 9:15 a.m. (1) **Crime Victims' Perspectives on the Criminal Justice System**
—Lisa Weisenfeld, Policy Coordinator, New Mexico Coalition Against
Domestic Violence
—Joan Shirley, New Mexico Resource Center for Victims of Violent Death
—Camille Aragon, Domestic Violence Survivor
—Ben Lewinger, State Executive Director, Mothers Against Drunk Driving
—Christina Dominguez, Crossroads for Women
—Rachal Gonzales, Survivor of Sexual Assault
—Leona Woelk, M.A., Associate Scientist II, Prevention Research Center,
University of New Mexico
- 10:30 a.m. (2) **Criminal Justice Legislative Proposals — Legislative Finance
Committee**
—Charles Sallee, Deputy Director for Program Evaluation, Legislative
Finance Committee
- 12:30 p.m. **Lunch**
- 1:30 p.m. (3) **Report from the Bernalillo County Criminal Justice Review
Commission**
—Arthur W. Pepin, Director, Administrative Office of the Courts
- 3:00 p.m. (4) **History of Bail Bonds, Jail Overcrowding and Possible Legislation**
—Gerald Madrid, Bail Bondsman
—Jackie Sanchez, Bail Bondswoman
—John Madrid, Bail Bondsman

3:30 p.m. (5) [Criminal Justice Legislative Proposals — Office of the Public Defender](#)
—Jorge A. Alvarado, Chief Public Defender

5:00 p.m. **Public Comment**

5:30 p.m. **Adjourn**

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

**October 15, 2014
Technology Ventures Corporation Building
University of New Mexico
Albuquerque**

Wednesday, October 15

10:00 a.m. **Call to Order and Introductions**
—Senator Lisa A. Torracco and Representative Antonio "Moe" Maestas,
Co-Chairs

10:15 a.m. (1) **[Criminal Justice Reform — Legislative Plan for the 2015 Session](#)**
—Members of the Criminal Justice Reform Subcommittee

Working Lunch

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

2:00 p.m. **Adjourn**

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

**November 12, 2014
Room 321, State Capitol
Santa Fe**

Wednesday, November 12

9:00 a.m. **Call to Order and Introductions**
—Senator Lisa A. Torracco and Representative Antonio "Moe" Maestas,
Co-Chairs

9:15 a.m. **Criminal Justice Reform — Consideration of Legislation**
—Members of the Criminal Justice Reform Subcommittee (CJRS)

Bills to be discussed — this list was determined at the October CJRS meeting:

1. A bill concerning month-to-month good time while on probation, allowing someone who has had 30 days of supervised probation without incident to have 30 days removed from the length of his or her required probation.
2. A bill creating the crime of aggravated battery with permanent injury, with a zero-year to six-year sentence.
3. A bill to address the issue of geriatric parole (see also No. 17).
4. A bill addressing issues surrounding halfway houses and transitional living — the Halfway House and Transitional Living Act.
5. A bill reintroducing the Accuracy of Eyewitness Procedure Act (see SB 490, 2013).
6. A bill concerning revenge pornography, with the essential element of requiring permission to distribute by the subject of the photograph.
7. A bill to examine the eligibility for earned meritorious deductions.
8. A bill to create a gross misdemeanor/high misdemeanor in state statute.

9. A bill reclassifying certain crimes that are at present fourth degree felonies to high misdemeanors (see No. 8).
10. A bill mandating that the Corrections Department (NMCD) make high school equivalency credential classes available.
11. A bill requiring the Human Services Department to allow for the suspension of Medicaid for incarcerated individuals.

From the list of Legislative Finance Committee (LFC) recommendations:

12. Require the NMCD to implement a valid risk and needs assessment and use the information to place inmates in appropriate prison programming and community programming upon re-entry.
13. Require the NMCD to offer evidence-based (define) in-prison programming, including:
 - a. adult education;
 - b. vocational education;
 - c. substance abuse treatment;
 - d. corrections industries; and
 - e. cognitive behavioral therapy.
14. Require the NMCD to spend 50% of its prison programming budget on evidence-based programs and services.*
15. Tie good time awards to completion (rather than simply participation) of evidence-based programs and services.
16. Update statute to provide judges the ability to sentence inmates to NMCD prison facilities only if offenders are sentenced to one year or more after accounting for any period of the sentence being suspended or deferred and any credit for presentence confinement.
17. Amend the geriatric and medical parole statute to require the NMCD to evaluate inmates eligible for medical and geriatric parole and submit the list to the Parole Board for consideration.
18. Require the NMCD to spend 50% of its Adult Community Corrections Act services funding on evidence-based (define) programs and services within four years.*
19. Amend statutory intensive supervision requirements to require offenders to participate in community treatment services based on the results of the NMCD use of a valid risk and needs assessment.
20. Transfer drug court funding currently in the NMCD budget to the judicial branch to continue support for the Second and Eleventh judicial districts (General Appropriations Act change).

* Note that the initial LFC recommendation for Nos. 14 and 18 was 80%.

12:00 noon **Lunch**

Note that the subcommittee will take regular breaks throughout the meeting in order that legislators can consult with advocates and constituents.

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

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

MINUTES

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

**April 23, 2014
Room 321, State Capitol
Santa Fe**

The third meeting of the Criminal Justice Reform Subcommittee (CJRS) of the Courts, Corrections and Justice Committee was called to order by Senator Lisa A. Torracco, co-chair, on April 23, 2014 at 9:15 a.m. in Room 321 of the State Capitol.

Present

Rep. Antonio "Moe" Maestas, Co-Chair
Sen. Lisa A. Torracco, Co-Chair
Rep. Gail Chasey
Rep. Zachary J. Cook
Sen. Cisco McSorley
Sen. Bill B. O'Neill
Rep. Jane E. Powdrell-Culbert
Sen. Sander Rue

Absent

Guest Legislators

Sen. Jacob R. Candelaria
Sen. Daniel A. Ivey-Soto
Sen. Richard C. Martinez

Staff

Douglas Carver, Staff Attorney, Legislative Council Service (LCS)
Caela Baker, Staff Attorney, LCS
Monica Ewing, Staff Attorney, LCS

Guests

The guest list is in the meeting file.

Handouts

Handouts and other written testimony are in the meeting file.

Wednesday, April 23

Welcome and Introductions

Members of the subcommittee and staff introduced themselves.

Overview of Budgetary Impact of the Criminal Justice System

Charles Sallee, deputy director, Legislative Finance Committee (LFC), introduced Dr. Jon Courtney, program evaluator, LFC; Eric Chenier, fiscal analyst, LFC; and Connor Jorgensen, fiscal analyst, LFC.

Mr. Sallee told the CJRS that one out of every 44 New Mexican adults is involved with the criminal justice system in some manner and that crime has a significant economic impact. He indicated that the LFC will be issuing a report in May that examines the use of capital outlay funding for prison facilities.

The Cost of Incarceration and Recidivism

Mr. Sallee reported that in fiscal year (FY) 2015, criminal justice spending will account for about 10 percent of all spending from the general fund. Criminal justice spending from the general fund is broken down as follows: \$277.4 million for the Corrections Department (NMCD); \$262.6 million for the judiciary; and \$107 million for the Department of Public Safety (DPS) and public safety programs. Further, in FY 2015, general fund appropriations for criminal justice will increase by \$25.4 million, which represents a 4.1 percent increase. The specific increases are as follows:

- ▶ \$7.2 million, or 4.7 percent, for judicial agencies;
- ▶ \$2.5 million, or 4.2 percent, for district attorneys;
- ▶ \$6.8 million, or 2.5 percent, for the NMCD;
- ▶ \$7.2 million, or 7.4 percent, for the DPS; and
- ▶ \$8.8 million for criminal justice employee salary increases.

Mr. Sallee indicated that \$226 million, or 83 percent, of the NMCD's operating budget is allocated to prisons, with about 30 percent of that paid to private prison facilities. Additional appropriations of \$2.8 million were added for FY 2015 due to projected inmate population increases. Approximately five percent of the NMCD budget is allocated for recidivism reduction programs. Since FY 2004, the NMCD's budget has increased by 37 percent. General fund appropriations peaked in 2009 at \$294.6 million — a spike that was primarily due to the prison medical contract and changes to vendors. The NMCD has since been able to bring those costs down, and appropriations decreased by 12 percent between FY 2010 and FY 2012.

In terms of prison population, Mr. Sallee indicated that there is more "near-term bed-space pressure" with the female inmate population than there is with the male inmate population. Since 1980, the inmate population in general has more than quadrupled. Yet, despite these increases, the NMCD has excess bed capacity. Specifically, as of March 31, 2014, the total inmate count was 6,862. The NMCD has a bed capacity of 7,542, leaving an excess bed capacity of 680.

Although the inmate population has been increasing, felony case filings are down since 2008. The average cost per inmate per day continues to increase — in FY 2001, the average cost was \$29,333 per inmate, whereas in FY 2013, the average cost was \$35,631 per inmate. The average cost to house inmates differs between the public prison facilities and the privately run facilities. This is mainly due to the fact that the private prisons house mainly inexpensive, low-to-medium security inmates, whereas the public prisons house many high-security inmates, geriatric inmates and inmates with severe mental illness. Additionally, the private prison facilities tend to be more modern facilities that have lower operating costs because better security features and equipment allow the facilities to employ fewer security officers. Public prisons, on the other hand, require more intensive staffing because they frequently house inmates that are classified as being higher security risks. The Western New Mexico Correctional Facility and the Springer Correctional Facility in particular are more expensive to operate.

Mr. Sallee told the CJRS that recidivism also has substantial costs that arise from arresting, prosecuting, housing, rehabilitating and supervising offenders who return to the system, in some cases many times. The LFC estimates that based on a FY 2011 cohort of 3,440 inmates, at least 52 percent (1,720 inmates) will return to prison. Of the 1,720 inmates who return to prison:

- ▶ 41 percent (706 inmates) will return once;
- ▶ 28 percent (490 inmates) will return twice;
- ▶ 16 percent (275 inmates) will return three times; and
- ▶ 14 percent (249 inmates) will return four or more times.

Based on these data, the LFC estimates that the FY 2011 release cohort alone would cost the prison system \$360 million over the course of 15 years. Mr. Sallee indicated that the LFC takes a very conservative approach in estimating the rates of recidivism and reconviction.

Mr. Sallee indicated that recent legislation authorized the NMCD to double the caseloads for intensive supervision programs, but the legislation contained no requirement for a treatment component. He stated that larger caseloads — when they are not combined with a treatment requirement — will not reduce recidivism. Mr. Sallee further stated that the NMCD's in-prison drug treatment program was previously not being implemented as it was intended to be, but the NMCD has recently revamped the program. Mr. Sallee suggested that the CJRS might want to follow up with the monitoring team that oversees the program to see if it is being implemented appropriately.

Evidence-Based Programs

Mr. Sallee told members of the CJRS that some programs will produce a better result in terms of recidivism reduction than others. He directed the attention of subcommittee members to a chart produced by the LFC that compares the effectiveness and cost of various programs aimed at recidivism reduction. He selected one example and told members of the CJRS that intensive supervision costs a little more than \$4,000 per participant but has not been shown to reduce recidivism. On the other hand, intensive supervision with treatment costs a little more than \$5,000 per participant but is estimated to reduce recidivism by nearly nine percent. Mr. Sallee indicated that funding was appropriated for FY 2015 to expand some of the evidence-based

programs; however, some of that funding was line-item vetoed. Mr. Sallee indicated that the forthcoming NMCD budget will show how money appropriated for FY 2015 is going to be used and what portion may be allocated to evidence-based programs.

Mr. Sallee discussed the historical trends related to drug court funding, noting that the recession had an impact on such funding, specifically in the Second Judicial District. Mr. Sallee told the CJRS that drug court programs are highly effective at reducing recidivism.

Cost-Saving Opportunities

Mr. Sallee identified a cost-saving opportunity related to the current use of in-house parole. He said that about 290 inmates are currently placed on in-house parole, which is estimated to cost the state \$10.3 million in FY 2014. The average cost of using in-house parole is \$99.31 per parolee per day, whereas the cost of housing a parolee at a "halfway house" or residential treatment facility such as Dismas House New Mexico is about \$30.00 per parolee per day. Reasons for the frequent use of in-house parole are: "inmates not participating" in the parole process; administrative issues causing parole hearings to be canceled; lack of appropriate housing in the community; and lack of community-based resources.

Another cost-saving opportunity relates to savings from Medicaid expansion. Mr. Sallee stated that Medicaid will now pay for inmates inpatient hospital care after the first 24 hours of care. This is expected to save the state as much as \$15 million to \$30 million over the course of 10 years. Additionally, the expansion of Medicaid means that many behavioral health services that are currently funded by the state will be covered by Medicaid. This could save the state as much as \$2 million per year, although wrap-around behavioral health services such as inpatient rehabilitation will not be covered.

Mr. Sallee stated that when looking at savings from a reduction in inmate population, savings in some areas will be easier to capture in the budget than in others. For instance, reducing the inmate population by 10 percent will save marginal costs, but unless prisons or prison wings are closed, the state will not realize the full cost-per-day savings. The fact that New Mexico has a lot of private prisons affords a greater opportunity for cost savings. Mr. Sallee concluded by saying that the state is spending a significant amount of money on a very small subset of the population.

Member Questions and Comments

One member of the CJRS remarked that increasing the use of evidence-based programs should be a significant focus going forward. The member inquired as to whether the CJRS should examine the use of private versus state-run prisons. Mr. Sallee responded that the CJRS might want to look at how well the private prisons are performing, including whether they are providing the programs that the state contracted for, whether the security-level classification system is being applied appropriately, whether credit for time served is being calculated correctly and whether parole plans are being crafted appropriately.

Another CJRS member inquired about the \$4 million in fines assumed in the FY 2014 budget. Mr. Sallee responded that the LFC had identified millions of dollars in uncollected potential fines under the previous NMCD administration. The recent fines were mainly the

result of prisons not meeting their staffing requirements. Mr. Sallee stated that the current NMCD administration has begun collecting these fines. In the case of the Lea County Correctional Facility, contract requirements were changed.

One CJRS member commented that it appears that the private prisons have too much autonomy and that there should be additional oversight by the state. Mr. Sallee responded that the NMCD has on-site contract monitors in each of the private prisons and that the NMCD administration has established a "somewhat independent" inspector general. The inspector general is responsible for ensuring that the private prisons are complying with the terms of their contracts.

A legislator asked what the minimum permissible capacity is in the private prisons. Mr. Sallee responded that inmate populations at the private prisons can be reduced to 80 percent of bed-space capacity. The legislator responded that it would be preferable to pay for empty bed space than to incarcerate people for the sake of using up bed space. The legislator further commented that while the parole program mandates perfect compliance, mental health and drug courts work with people rather than throwing them back in prison for minor violations. The legislator indicated that electronic monitoring is a much cheaper alternative, that it should be used more often and that the state should pick up the cost rather than passing it on to the person being monitored.

CJRS members engaged in a discussion about the lack of a parole program at the federal level. One member commented that inmates released from federal prisons are released to federally operated halfway houses. Several members expressed support for a similar approach.

One member asked what percentage of the state inmate population is housed in private prisons. Mr. Chenier responded that about 49 percent of inmates are housed in private prisons. Another member inquired about the difference between the \$292.6 million budget for the NMCD in FY 2014 versus the \$277.4 million that was allocated by the state for the same fiscal year. Mr. Chenier indicated that the difference comes mostly from federal funds.

One member indicated that in the late 1990s and early 2000s, there were many halfway houses in New Mexico; however, problems such as drug dealing in the halfway houses were rampant. The member expressed concern that if additional halfway houses are created or funded, there should be oversight to ensure that specified standards are being met. The member further indicated that the lack of quality jobs for parolees and probationers is of significant concern and should be addressed.

Members received comment from Michael Stout, chair of the Public Defender Commission. Mr. Stout indicated that funding for public defenders is an important issue that the CJRS should address. Additionally, the subcommittee should review the amount that contract public defenders are paid. According to Mr. Stout, contract public defenders are paid a flat fee, regardless of whether the case goes to trial or the number of hours spent on the case. Mr. Stout

also indicated that substance abuse programs should be expanded to save the state money and that mandatory minimum sentences should be eliminated.

Several members responded that attention should be given to funding for public defenders, but that this is an issue that might be more appropriate for the full Courts, Corrections and Justice Committee.

One legislator commented that funding should be provided for intensive outpatient treatment for substance abuse and that there have been recent cuts to programs such as the Rio Arriba County DWI Prevention Program. The legislator further stated that probation and parole policies should be revamped because participants are "set up to fail" by a system that treats technical violations the same as serious infractions.

One CJRS member acknowledged the need not only to reduce prison populations but also to look at closing down prisons or prison wings, as Mr. Sallee had suggested. Mr. Sallee indicated that the state has seen success in the area of juvenile justice, with a 50 percent reduction in the population of juvenile offenders held in state facilities. Mr. Sallee indicated that the prison infrastructure in New Mexico is aging and there are significant maintenance needs. He indicated that the LFC would present information on this topic later in the interim.

Members engaged in a discussion about building and operating prisons as "an economic development initiative" and indicated that this is the wrong reason to be building or expanding prisons. One member asked how many contracts the state has with private prisons. Mr. Sallee clarified that the NMCD only has one direct contract with a private prison — the New Mexico Women's Correctional Facility in Grants ("women's prison"). The other privately operated prison facilities are run pursuant to intergovernmental agreements with counties, and the counties have contracts with private prison operators. Mr. Sallee indicated that this type of arrangement is exempt from the Procurement Code.

One member asked whether it is possible to implement an administrative rule change that would allow people to leave prison on parole, regardless of housing arrangements, if they agree to electronic monitoring. Sherry Stephens, acting executive director, New Mexico Parole Board, responded that the change must be made in statute because statute contains a housing requirement for parole plans. The change would need to create an exception for electronic monitoring in lieu of the housing requirement.

A member asked about the status of a Law Enforcement Assisted Diversion (LEAD) Program in Santa Fe County. David Schmidt, representing the Drug Policy Alliance, responded that funding for the LEAD Program was line-item vetoed by the governor. Several of the members asked if there was an explanation for the veto. Mr. Schmidt responded that there was no veto message. Santa Fe County is moving forward with the program with funding from the city, the county and the First Judicial District Attorney's Office. LEAD is a substance abuse program aimed at reducing the number of inmates in the county jail.

Next Steps — Focus Areas for Criminal Justice Reform, Part I

Members of the CJRS discussed their vision for the CJRS and the work that it should accomplish.

One member indicated that the reforms that were passed and implemented in South Dakota could serve as a model for reform in New Mexico, but that the CJRS should focus particular attention on ensuring that evidence-based programs are implemented. The member indicated that the efforts in South Dakota to allow Native American tribal members to complete parole on their own reservations should be emulated in New Mexico and that there also should be emphasis on reforming substance abuse and mental health programs as they relate to the criminal justice system.

Several members inquired as to whether The Pew Charitable Trusts would be involved in the reform efforts in New Mexico. Mr. Carver told members of the CJRS that the Pew-MacArthur Results First Initiative is already working with the LFC to analyze data, but that the Justice Reinvestment Initiative of The Pew Charitable Trusts had already committed to assist other states during 2014, though they were open to the possibility of working with New Mexico in 2015.

Members discussed whether the CJRS should address law enforcement training requirements. One member indicated that the CJRS was formed to address inconsistencies in the Criminal Code.

Public Comment

The CJRS accepted limited public comment from a member of the public who was unable to attend the afternoon portion of the meeting.

Valerie Romero told the CJRS that she had been incarcerated at the women's prison in Grants and had participated in the parole and probation programs. She appealed to members of the CJRS to be sensitive to the fact that they are dealing with individuals and that any reforms the subcommittee pursues will have an impact on individuals. She emphasized the need for behavioral health programs and oversight of the NMCD.

Expansion to the Women's Prison; Use of In-House Parole

Bette Fleishman, executive director, New Mexico Women's Justice Project (WJP), told the CJRS that the NMCD had recently published a new request for proposals (RFP) for additional bed space at the women's prison. She indicated that the WJP is concerned about the assumption that the women's prison population will continue to increase.

Ms. Fleishman told members of the CJRS that 25 percent of children who are in foster care have at least one parent incarcerated. Further, 27 percent of incarcerated women had at least one parent incarcerated. She indicated that 77 percent of inmates at the women's prison suffer from behavioral health issues, which is above the national average.

Ms. Fleishman asked the CJRS to consider that women are incarcerated for different reasons than men. In many cases, drug and property crimes are the main causes of women being incarcerated. Additionally, many incarcerated women have posttraumatic stress disorder or were victimized during childhood. In 2012, drug and property crimes accounted for 71.3 percent of prison admissions in New Mexico.

Ms. Fleishman requested that the CJRS examine the parole system and consider reforming it. Additionally, she suggested that in-house parole should be eliminated.

Marcia Wilson, a member of the WJP, told members that the New Mexico Sentencing Commission is projecting an increase in the women's prison population and that about one-half of new admissions are the result of parole violations. She further stated that in FY 2012, 23 percent of cases sent to the New Mexico Parole Board were not ready to be heard because the files were missing documentation or were not ready for hearing for other reasons; in FY 2013, the number increased to 33 percent.

K.C. Quirk, executive director of Crossroads for Women, told members of the CJRS that there is a lack of services and housing for people who are leaving prison. Crossroads for Women operates 30 apartment units for women and their children throughout Albuquerque; however, there is a waiting list for housing. Meanwhile, funding for Crossroads for Women has been cut. She stated that safe housing for women being released from prison is particularly hard to find because many potential housing options exclude persons with felony convictions. Ms. Quirk further stated that women do not have access to the same type of educational programs that men have in prison. She cited heating, ventilation and air conditioning and automotive classes as examples.

Approval of Minutes

Members of the CJRS voted unanimously to approve the minutes of the subcommittee's December 2013 meeting.

Criminal Justice and Behavioral Health: The Sequential Intercept Model

Dave Webster, co-clinical director, St. Martin's Hospitality Center, told the CJRS that the Sequential Intercept Model could provide a framework for the subcommittee's work plan, particularly if the CJRS is interested in looking at the intersection of the criminal justice system and behavioral health. He explained that the model allows for five "intercept points" in the criminal justice continuum. The intercept points are:

- ▶ law enforcement (Intercept 1);
- ▶ initial detention/initial court hearing (Intercept 2);
- ▶ jails/courts (Intercept 3);
- ▶ reentry (Intercept 4); and
- ▶ community corrections (Intercept 5).

Mr. Webster indicated that areas of New Mexico, such as Albuquerque, already have in place some of the items in Intercept 3. For instance, New Mexico has some specialty courts; these specialty courts, however, are limited by a lack of funding and an increasing volume of cases.

A CJRS member asked what type of programs would be included in Intercept 2. Mr. Webster explained that Intercept 2 may involve a pretrial diversion program that would divert eligible offenders into a specialty court. He indicated that in some cases, funding from the federal Substance Abuse and Mental Health Services Administration may be available for establishing these types of programs.

Mr. Webster told the CJRS that the criminal justice system was not designed to be a treatment system for people with severe mental health or substance abuse issues. He explained that people with substance abuse or mental health issues often come into contact with law enforcement repeatedly and that lawmakers should be looking at how to keep these people from entering the system to begin with. Mr. Webster told the CJRS that a jail sentence is not a deterrent for people with mental health issues because they do not possess the intent to commit a crime — they commit crimes because they are mentally ill. Similarly, a jail sentence is often not a deterrent for substance abusers because substance abusers commit crimes in order to satisfy their drug addiction and do not contemplate the consequences.

Barri Roberts, executive director of the Bernalillo County Forensic Intervention Consortium, told the CJRS that the consortium could look at the Sequential Intercept Model in the context of Bernalillo County and tell the subcommittee what is already in place, what should be done and what it would cost.

A legislator commented that the Second Judicial District Court operates a "homeless court", which is a type of specialty court that is consistent with the Sequential Intercept Model. The court affords homeless individuals the opportunity to have charges for certain crimes dropped in exchange for agreeing to participate in certain services or treatment programs.

Next Steps — Focus Areas for Criminal Justice Reform, Part II

Members resumed their discussion about the topics that the subcommittee should focus on during the upcoming interim, including:

- ▶ earned meritorious deductions;
- ▶ treatment in lieu of incarceration;
- ▶ expungement;
- ▶ pre-arrest diversion programs;
- ▶ substance abuse treatment programs;
- ▶ an overhaul of the probation and parole system;
- ▶ adjusting the penalties for some crimes;
- ▶ sentencing reform;
- ▶ implementation of cost-effective and evidence-based programs;
- ▶ the intersection of criminal justice and behavioral health;
- ▶ housing;
- ▶ collateral consequences, such as the effect of a felony conviction on voting and Second Amendment rights; and
- ▶ creation of a higher level misdemeanor — such as a gross misdemeanor — to replace the penalty for some existing fourth degree felony crimes.

Public Comment

Melissa Hill, legislative chair, New Mexico Criminal Defense Lawyers Association (NMCDLA), stated that the NMCDLA strongly supports efforts to amend the Public Defender Act to prohibit flat-fee contracts in criminal cases and to require payment of reasonable hourly rates; eliminate the mandatory real time GPS monitoring for sex offender parolees; eliminate all mandatory sentencing laws; create treatment alternatives to incarceration; and require fiscal impact reports for any legislation that would create a new crime or expand an existing crime.

Margarita Sanchez urged the CJRS to address behavioral health and substance abuse issues by providing an alternative to calling 911 and by providing alternatives to incarceration. Additionally, she expressed concern about the proposed expansion of the women's prison; the lack of quality jobs for people released from prison; the unavailability of food stamps and Section 8 housing for felons; and the use of solitary confinement.

Bedajii Kunkowski, executive director, Make a Difference in New Mexico, told the CJRS that she is concerned that although the number of prison admissions in New Mexico is trending downward, there is an upward trend in the time to release inmates. Additionally, she expressed concern about the operation of private prisons and the proposed expansion of the women's prison.

Alan Wagman stated that the use of mandatory sentencing should be reviewed because it does not deter crime and it takes away discretion from judges who might choose to mandate treatment in lieu of incarceration or impose other alternative sentencing options.

Channah Israel stated that her husband is serving a life sentence, and she opposes the elimination of conjugal visits. She believes that elimination of conjugal visits will violate her

Fourteenth Amendment rights and will harm families and children of persons who are incarcerated.

Jim Jackson, Disability Rights New Mexico, expressed support for the expansion of specialty courts; recommended removing district attorneys from the civil commitment process; stated that the use of solitary confinement needs to be reviewed, particularly as it is applied to people with behavioral health issues; and explained that some crimes that carry particularly lengthy minimum sentences are disproportionately committed by people with behavioral health issues. He also suggested that the CJRS review statutes concerning incarceration of people who are not competent and who cannot be treated to competency.

Frances Madeson expressed concern about expansion of the women's prison and stated that the secretary of corrections should withdraw the RFP for the women's prison.

Steve Allen, director of public policy, American Civil Liberties Union of New Mexico, expressed concern that the federal Prison Rape Elimination Act does not apply to parole and indicated that the CJRS should consider similar legislation related to parole.

Juliana Koob told the CJRS that prisons and detention centers must be in compliance with the Prison Rape Elimination Act by August, which is when the first audit will take place. She indicated the need for data on how many inmates are able to safely report sexual assault, as well as whether rape kits are being processed.

Francine DiGiorgio told the CJRS that she is a victim of abuse and violence, has been in and out of the prison system and suffers from behavioral health issues. She indicated that behavioral health issues often start early and that services should be provided for school-age children. She further indicated that mental health problems and drug addiction often go hand in hand.

Lisa Weisenfeld, policy coordinator, New Mexico Coalition Against Domestic Violence, expressed support for the work of the CJRS.

Lynne Gentry-Wood, executive director, Domestic Violence Resource Center, asked the CJRS to examine domestic violence issues and crimes against children, which she indicated are often closely linked.

Upcoming Meetings

Members of the CJRS agreed to meet again on May 28, 2014 and June 25, 2014.

Adjournment

There being no further business before the subcommittee, the third meeting of the CJRS of the Courts, Corrections and Justice Committee adjourned at 5:05 p.m.

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

**May 28, 2014
State Capitol, Room 321
Santa Fe**

The fourth meeting of the Criminal Justice Reform Subcommittee (CJRS) of the Courts, Corrections and Justice Committee (CCJ) was called to order by Representative Antonio "Moe" Maestas, co-chair, on May 28, 2014 at 9:20 a.m. in Room 321 of the State Capitol.

Present

Rep. Antonio "Moe" Maestas, Co-Chair
Rep. Gail Chasey
Rep. Zachary J. Cook
Sen. Cisco McSorley
Sen. Bill B. O'Neill
Sen. Sander Rue

Absent

Sen. Lisa A. Torracco, Co-Chair
Rep. Jane E. Powdrell-Culbert

Guest Legislator

Sen. Richard C. Martinez

Staff

Douglas Carver, Staff Attorney, Legislative Council Service (LCS)
Caela Baker, Staff Attorney, LCS
Monica Ewing, Staff Attorney, LCS

Guests

The guest list is in the meeting file.

Handouts

Handouts and other written testimony are in the meeting file.

Wednesday, May 28

Welcome and Introductions

Members of the CJRS introduced themselves.

New Mexico Results First and Criminal Justice

Ashleigh Holand, manager, state policy, Pew-MacArthur Results First Initiative ("Results First"), told members of the CJRS that Results First, a project of The Pew Charitable Trusts, helps states implement a cost-benefit approach to identify which policies and programs will be effective. The Results First approach helps state leaders make strategic budget choices by identifying: 1) the programs that are currently funded; 2) the cost of each program; 3) the effectiveness of each program; and 4) how each program compares to alternatives.

Results First developed a tool that uses national data and research to predict state-specific results and calculate the long-term costs and benefits of programs. Ms. Holand indicated that the Corrections Department (NMCD) has already taken the first step, which is to create a catalog of programs that are currently funded. Although the NMCD has identified existing programs run by the NMCD, not a lot of data are available on which programs are provided in the community.

The next step is to look at program costs; however, Ms. Holand cautioned that it is important not only to look at costs, but also to evaluate what each investment will actually buy in the long term. If agencies are asked to evaluate programs, it is important to ensure that agencies have the tools and resources they need to properly conduct the evaluation. The goal is to move money away from programs that are ineffective and invest in programs with proven results.

When examining program costs and benefits, it is important to consider whether programs have been implemented with fidelity. Implementation fidelity is the degree to which programs are implemented as intended by the program developers. Implementation fidelity can have a significant impact on program results.

States' Success with Results First

Results First is involved in 18 states and helps each state to build its own state-specific model. Results First provides software, technical assistance and expertise during the process. New Mexico is one of nine states that has implemented a state-specific model. Three states — Connecticut, Massachusetts and Vermont — have enacted legislation incorporating the Results First approach into their policymaking process.

The State of Washington has been using the Results First approach to help steer budget decisions for nearly two decades and has developed a culture of evidence-based policymaking. One example of Washington's success is a significant reduction in juvenile crime rates due to the implementation of evidence-based juvenile justice programs. Specifically, Washington's implementation of "functional family therapy", an evidence-based program, has proven to be very cost-beneficial and effective in reducing recidivism among juvenile offenders. One member of the CJRS asked whether "functional family therapy" is used in New Mexico. Charles Sallee, deputy director of program evaluation, Legislative Finance Committee (LFC), indicated that the Children, Youth and Families Department (CYFD) used the program a number of years ago but discontinued it. He indicated that New Mexico has seen success in the area of juvenile justice, particularly because of detention-related reform in Albuquerque and the statewide use of

evidence-based juvenile justice services. These reforms resulted in the state's ability to close a number of juvenile detention centers.

Iowa used the Results First approach to identify and replace an ineffective domestic violence treatment program. Iowa found that its domestic violence treatment program was so ineffective that the state was losing \$3.00 for every \$1.00 that it invested in the program, and recidivism rates were actually increasing. After partnering with the University of Iowa to develop a new program, Iowa now realizes a long-term benefit of \$25.00 to \$35.00 for every \$1.00 invested in the new program. Mr. Sallee indicated that New Mexico currently operates a domestic violence treatment program that has been shown to be ineffective, although that program is not funded through the NMCD.

New York used its state-specific Results First model to develop the governor's public safety budget, targeting \$15 million to evidence-based programs.

Mississippi recently completed an initial analysis of its adult criminal justice programs and is currently conducting an inventory of juvenile justice programs. Mississippi passed three bills in the 2014 legislative session aimed at building a "data infrastructure". Collectively, the bills: 1) require data reporting by local courts and enforcement agencies; 2) authorize access to certain juvenile justice records for the purpose of data collection and reporting; 3) require comprehensive program inventories for four pilot agencies; and 4) define what constitutes "evidence-based", "research-based" and "promising" programs.

Ms. Holand clarified the difference between Results First and the Justice Reinvestment Initiative of The Pew Charitable Trusts. Results First informs the budgetary process and increases investment in evidence-based programs, but it is not designed to address sentencing policies or practices. The Justice Reinvestment Initiative, on the other hand, generates policy recommendations to: 1) promote systemwide reform in the criminal justice system; 2) manage growth in corrections costs; and 3) increase public safety. The two initiatives can operate separately or concurrently in any given state.

Results First received formal letters from the chair and vice chair of the LFC in 2011, requesting Results First to assist New Mexico. New Mexico is receiving the full scope of services offered by Results First. In addition, an informal partnership has been created among the LFC, the New Mexico Sentencing Commission (NMSC) and several executive agencies to implement the Results First approach. Those entities are currently in the process of developing a memorandum of understanding (MOU) to formalize the partnership. The MOU will set forth the responsibilities of each entity. The Justice Reinvestment Initiative is not involved in New Mexico.

Currently, the NMCD and the CYFD contribute data for use in the Results First model. These data have helped the LFC develop innovative reports such as *Evidence-Based Programs to Reduce Recidivism and Improve Public Safety in Adult Corrections*. Ms. Holand indicated

that the NMCD is partnering with the LFC to evaluate the programs that are offered to inmates. At present, less than one-fourth of the programs offered by the NMCD are evidence-based.

Sara Dube, manager, Results First, presented several options for further integrating the Results First approach into the policymaking process, including: 1) establishing a statutory framework aimed at implementing evidence-based programs and eliminating ineffective programs; 2) creating a statutory working group to oversee the Results First approach; and 3) requiring executive agencies to report data on programs and results.

Ms. Dube indicated that the State of Washington enacted a statute in 2012 defining what constitutes "evidence-based", "research-based" and "promising" programs. They are defined as follows:

- ▶ "evidence-based" means a program or practice that has had multiple-site random controlled trials across heterogeneous populations demonstrating that the program or practice is effective in reducing recidivism for the population;
- ▶ "research-based" means a program or practice that has some research demonstrating effectiveness but that does not yet meet the standard of evidence-based practices; and
- ▶ "promising practice" means a practice that presents, based on preliminary information, potential for becoming a research-based or consensus-based practice.

Mississippi passed legislation this year containing similar definitions. The Mississippi law further requires agencies to develop an inventory of programs and categorize each program as evidence-based, research-based, promising or as an "other program or activity with no evidence of effectiveness".

Connecticut, Massachusetts and Vermont have formed standing committees or formalized working groups with the goal of implementing evidence-based policymaking.

Mr. Sallee pointed out that the Accountability in Government Act might be a starting point in establishing a system aimed at evaluating the cost-effectiveness of government programs. He explained that agencies are given significant budget flexibility in exchange for results. In the case of the NMCD, the budget category of "inmate management and control" is a large block grant. He suggested that the CJRS might consider requiring the NMCD to provide more detail on the programs that are funded, rank the programs against an evidence-based set of criteria and report outcomes. He further indicated that the CJRS may want to consider whether it would be appropriate to restrict the NMCD's spending flexibility in certain areas. Mr. Sallee told the CJRS that the legislature recently authorized the NMCD to double caseloads for the intensive supervision program; however, evidence shows that intensive supervision is ineffective in reducing recidivism unless it is combined with treatment. He indicated that the legislature might want to reconsider the authorization to double caseloads and instead target funding for programs that have been proven effective.

Questions and Comments

One member of the CJRS asked whether the LFC plans to analyze the progress of the Missouri model since its implementation in 2005, including whether juvenile facilities, such as the J. Paul Taylor Juvenile Detention Center, conform with what the Missouri model requires.

Mr. Sallee indicated that the LFC will soon be examining results of the Missouri model in New Mexico; however, that report will likely not be completed until after the interim.

Another member of the CJRS asked for clarification regarding how the LFC calculates the long-term benefits of programs. Mr. Sallee responded that the LFC uses the model that Results First created and inputs New Mexico-specific data such as population, recidivism rate, offender type and length of sentence. The model uses national research to predict the outcome in New Mexico, based on the specific New Mexico data. Ms. Holand added that the monetized value is derived by analyzing how much the recidivism curve is reduced and how much the corresponding costs, such as the costs of arrest, prosecution, incarceration and probation or parole, are thereby reduced.

Members of the CJRS engaged in a discussion about barriers to information-sharing by executive agencies.

One member of the CJRS asked for clarification on the informal partnership among the LFC, the NMSC and executive agencies. Tony Ortiz, director, NMSC, told the CJRS that the NMSC was charged with convening a stakeholder group. The group is an informal partnership, but the stakeholders are formalizing the partnership by developing an MOU that sets forth the responsibilities of each entity. The result of the effort will be a report published by the LFC on issues related to the criminal justice system.

A member of the CJRS asked whether the Results First model would help agencies collect data. Ms. Holand responded that the Results First model is an econometric tool that would not help agencies with the actual data collection. The member expressed support for a shift to evidence-based policymaking but inquired as to how this could be accomplished. Ms. Dube responded that the first step might be to develop committees or working groups or implement a statutory framework that establishes the tenets of evidence-based policymaking.

One member of the CJRS requested a description of "cognitive behavioral therapy". Ms. Dube responded that cognitive behavioral therapy programs teach behavioral skills, such as thinking about the consequences of actions and changing thought patterns. These programs are typically "talk therapy" sessions that meet regularly and have around 12 participants and a facilitator. The programs are inexpensive and have proven effective for certain types of offenders. Mr. Sallee added that 95 percent of offenders will be released back to society and the goal of cognitive behavioral therapy is to change the behavior of those individuals.

Another member of the CJRS inquired as to whether the federal government is implementing evidence-based programs. Ms. Dube responded in the affirmative and indicated that many federal agencies are requiring grant proposals to include a cost-benefit analysis.

Ms. Dube informed members of the CJRS that Results First will be holding its Annual Convening of States in Santa Fe on August 6-7, 2014. The conference will include

representatives from the other states that have implemented the Results First approach and offer training sessions on common challenges faced by these states.

Approval of Minutes

Members of the CJRS voted unanimously to approve the minutes of the subcommittee's April 2014 meeting.

Breastfeeding in the Criminal Justice System

Stephanie Andrews, R.N., International Lactation Consultant Association, and Esperanza Dodge, M.S.W., Young Women United, introduced themselves. Ms. Dodge discussed the benefits of breastfeeding for infants and mothers. She explained that breastfeeding can be challenging, especially for women involved in the criminal justice system. Ms. Dodge presented a list of specific recommendations, including:

- ▶ requiring pregnancy and lactation status to be considered when determining conditions of release and bond;
- ▶ increasing the use of electronic monitoring in lieu of incarceration for women with documented pregnancy or lactation status;
- ▶ requiring detention facilities to develop a policy that is suited to their capacity and population needs and that allows inmates who are lactating to express milk for the purpose of maintaining a breast milk supply or to provide breast milk for their infants; and
- ▶ requiring the CYFD to develop a policy based on the American Academy of Pediatrics guidelines regarding breastfeeding for families involved in the CYFD's prevention, intervention, rehabilitation and aftercare services.

Micaela Cadena, policy director, Young Women United, presented works of art created by the "We Are More Than Addiction" project. She also presented a report that was prepared as a result of House Memorial 14, which was passed by the legislature in 2011. The report concerns access to substance abuse treatment and prenatal care for pregnant women with substance abuse issues.

Members of the CJRS expressed support for policy changes that would support women who wish to breast-feed or express breast milk when needed, including women who are involved with the criminal justice system.

New Mexico's Criminal Justice System: A View from the Trenches

Lee Hood, director of contract counsel legal services, Public Defender Department (PDD), told members of the CJRS that child abuse cases are complex medical cases that require an advanced level of specialization. She stated that since the legislature passed the statute concerning child abuse resulting in the death of a child — Section 30-6-1(H) NMSA 1978 — there has been a huge advancement in medical science. People who were around the child last are often automatically arrested, even though medical science cannot identify the time of trauma more precisely than within the preceding 24 hours. Ms. Hood suggested that the CJRS consider revising the law to require a showing of specific intent to kill as an element of intentional abuse of a child resulting in the death of the child. She added that the Second Judicial District Court is projecting an uptick in the number of cases screened for child abuse. Members of the CJRS requested that this issue be revisited in November.

Ms. Hood discussed the use of DNA evidence and explained that a so-called "perfect" DNA profile match means that there is a match on 13 core chromosomal loci. She indicated that a perfect match is exceedingly rare in DNA evidence. Ms. Hood explained that because of this, criminal defendants should have access to the state's DNA database for use in preparing a defense. Illinois is one of only a few states that have a statutory framework allowing a criminal defendant access to the state's DNA database if the information is material to the defense. Ms. Hood suggested that the CJRS should consider adopting the Illinois approach.

One member of the CJRS inquired as to whether criminal defense attorneys can make arguments in court concerning DNA evidence. Ms. Hood responded in the affirmative but explained that it is very expensive and clear guidelines would be preferable. Another member of the CJRS asked Ms. Hood to present these arguments to the DNA Identification System Oversight Committee.

Jennifer Romero, former assistant district attorney and former public defender, told members of the CJRS that mandatory minimum sentencing has created a system of one-size-fits-all sentencing. She further explained that criminal defendants are often unable to challenge cases against them on the merits because of the significant risk of incurring a lengthy sentence if they do not prevail. This has resulted in criminal defendants entering plea agreements, even where they may be able to prevail on the merits. Allowing judges some discretion in sentencing may improve fairness. In addition, amending the law concerning enhanced sentences for habitual offenders to allow more judicial discretion is an area that the CJRS might want to examine.

Several members of the CJRS expressed support for amending or eliminating mandatory minimum sentences and creating more judicial discretion. One member of the CJRS inquired as to whether there are any data suggesting that mandatory minimum sentencing reduces crime. Ms. Romero responded that she is unaware of whether any such data exist. The member asked whether mandatory minimum sentencing takes alternative sentencing off the table. Ms. Romero responded that when a person is subject to a mandatory minimum sentence, that person is

ineligible for alternatives such as drug court because statute requires the person to be sentenced to prison.

Another member of the CJRS asked about the relationship between mandatory minimum sentencing and sentencing for habitual offenders. Ms. Romero responded that sentencing enhancements for habitual offenders impose mandatory time because of the defendant's history, whereas mandatory minimum sentencing imposes a mandatory sentence because of the nature of the crime.

One member of the CJRS commented that the national trend is to eliminate enhanced sentencing for habitual offenders. The member indicated that pursuant to the New Mexico statutes on habitual offenders, enhanced sentences are imposed for a term of one year, four years or eight years, depending on the number of prior convictions.

Carolina Ramos, an immigration attorney, asked the CJRS to consider decriminalizing prostitution. She asked the CJRS to be mindful of the fact that human trafficking and prostitution are two different things. She indicated that criminalization of prostitution endangers sex workers, whereas decriminalization would promote safety. Ms. Ramos presented statistics that were informally compiled by the organization Safe Sex Work in Albuquerque. The statistics indicate that in Albuquerque:

- ▶ the average sex worker is 26 years old;
- ▶ 77 percent of sex workers have at least one child;
- ▶ 66 percent of sex workers are homeless;
- ▶ 75 percent of sex workers are Hispanic; and
- ▶ one-third of sex workers started in the sex work industry to pay for a drug habit.

Richard Abeyta, criminal investigator, PDD, asked the CJRS to consider changes to statutes pertaining to serious youthful offenders. Mr. Abeyta explained that a "serious youthful offender" is a child 15 to 18 years of age who is charged with first degree murder. The statute concerning serious youthful offenders allows the state to prosecute the child as an adult, without having to first establish that it is appropriate to prosecute the child as an adult. Following completion of the trial, an amenability hearing is held to determine if the child is amenable to treatment or rehabilitation. If the child is found to be amenable to treatment or rehabilitation, the child can be sentenced as a juvenile. If the court finds that the child is not amenable to treatment or rehabilitation, the court may sentence the child as an adult. Mr. Abeyta indicated that this determination should be made prior to trial. He further indicated that the prosecutor should be required to file a notice of intent to seek an adult sentence and list the factors that would justify an adult sentence.

Jorge Alvarado, chief public defender, expressed support for requiring the amenability hearing for serious youthful offenders to be held prior to trial.

Behavioral Health Care and Criminal Justice

Liane Kerr, a criminal defense attorney, told members of the CJRS that she has encountered issues in the criminal justice system concerning confidentiality of competency evaluations. She expressed concern that although competency evaluations used in criminal proceedings are required by law to be sealed, prosecutors have sought to use competency evaluations from unrelated cases for impeachment purposes. Ms. Kerr indicated that this practice violates the federal Health Insurance Portability and Accountability Act (HIPAA).

Dr. Sharon Kernan, a forensic psychologist, echoed Ms. Kerr's concerns about confidentiality of competency evaluations pursuant to HIPAA. She also stated that according to American Psychological Association guidelines, prosecutors should not have access to raw data underlying conclusions contained in competency evaluations unless the data are to be reviewed by a licensed psychologist. Finally, she expressed concern that the PDD is required to pay witnesses for the witnesses' time, but the district attorneys are not required to pay their witnesses for time.

Mia Chavez, Mental Health Division, PDD, told members of the CJRS that the statutes and the court rules concerning competency to stand trial are inconsistent. She indicated that in the Second Judicial District, prosecutors are requesting evidentiary hearings to determine competency based on a "reasonable doubt" standard (see Rule 5-602(B) NMRA). Ms. Chavez indicated that Section 31-9-2 NMSA 1978 does not mention "reasonable doubt". Ms. Chavez also indicated that communications with the court concerning competency should be held *ex parte*, with only the attorneys, but not the client, present. She indicated that in many cases, criminal defendants are upset when the issue of competency is raised, and *ex parte* communications regarding competency would be more appropriate.

Ms. Chavez told the CJRS that criminal defendants who are subject to competency proceedings experience a length of stay in detention facilities that is 278 percent longer than criminal defendants who are not involved in competency proceedings. She indicated that criminal defendants who are represented by public defenders have to wait much longer for competency evaluations, whereas criminal defendants who can afford private attorneys are able to pay for their own competency evaluations and expedite the process. Also, she indicated that although Section 31-9-1.1 NMSA 1978 requires a hearing on competency to be held no later than 30 days after completion of the evaluation, in practice it is taking much longer to complete these hearings. She stated that Section 31-9-1.1 NMSA 1978 does not prescribe any consequences for failure to hold the hearing within 30 days. She indicated that the problem could be fixed by requiring the court to dismiss the case if the hearing is not held within 30 days. Ms. Chavez told members of the CJRS that although competency and dangerousness hearings may be held contemporaneously, most judges are bifurcating these hearings, which further increases a defendant's length of stay in a detention facility.

Esperanza Lujan, Mental Health Division, PDD, gave an overview of how competency cases are handled. She stated that poor clients are often unable to post bond and that jails are being used as a substitute for mental health care. She asked the CJRS to consider changes to

statutes that would impose deadlines within which a finding of dangerousness must be made. She further indicated that the standard contained in Section 31-9-1.2 NMSA 1978 for determining whether a criminal defendant is dangerous is ambiguous. Pursuant to statute, a criminal defendant is dangerous if the defendant "presents a serious threat of inflicting great bodily harm". She indicated that the standard could be clarified by using a list of enumerated offenses, such as the list contained in Section 31-9-1.5 NMSA 1978.

Public Comment

Melissa Hill, representing the New Mexico Criminal Defense Lawyers Association, told members of the CJRS that a bill was passed in 1988 that would have returned sentencing discretion to judges; however, the bill was vetoed. She indicated that the CJRS may want to consider that legislation as part of reform efforts.

Frances Madeson stated that the secretary of corrections should withdraw the request for proposals (RFP) that was recently published seeking to add bed space beyond the current capacity of the New Mexico Women's Correctional Facility in Grants. She indicated that this RFP will lock the state into an eight-year contract. Additionally, she expressed concern about the use of solitary confinement in detention facilities and prisons in New Mexico.

K.C. Quirk, executive director of Crossroads for Women, expressed concern that when cost-benefit analysis is used to determine which programs to fund, policymakers should keep in mind that research on evidence-based programs might not be gender specific. She also indicated that women who were incarcerated often experience trauma and that rehabilitation programs should address this trauma if the programs are to be effective.

Amanda Hamilton told members of the CJRS that she is currently going through the system as a result of a conviction for possession and that she has been in and out of the system since 2009. She indicated that in 2013, she was referred to Maya's Place, which is a residential program of Crossroads for Women, and that Maya's Place offers "wraparound" services that are helping her to turn her life around.

Joseph Walsh asked the CJRS to address the lack of time limits pertaining to when competency is initially raised to when a competency evaluation must be completed. He added that time lines are particularly important for defendants who remain in custody pending trial.

Kim Chavez-Cook, PDD, indicated that she has submitted specific proposals to the co-chairs of the CJRS for statutory changes and that she will be supplementing that information in the future.

Jim Jackson, director, Disability Rights New Mexico, told members of the CJRS that the New Mexico Behavioral Health Institute (NMBHI) in Las Vegas, New Mexico, has only about 100 beds. He explained that the NMBHI serves three groups of people — serious violent offenders who are undergoing competency evaluations, people who are being treated to competency to stand trial pursuant to court order and people who have been committed to the facility.

Vicente Vargas, state director, Office of Government Relations, New Mexico State University (NMSU), expressed support for the work of the CJRS and indicated that NMSU could provide assistance and expertise to the CJRS in areas such as criminal justice, behavioral health, juvenile justice and children's issues.

Ellen Pinnes, representing The Disability Coalition, expressed concern about the lack of services available for people suffering from mental illness. She also indicated that county jails should be helping people to sign up for Medicaid. While the Santa Fe County Detention Center has been helping people sign up for Medicaid, this is not happening in most counties.

Adjournment

There being no further business before the subcommittee, the fourth meeting of the CJRS of the CCJ adjourned at 5:20 p.m.

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

**June 25, 2014
State Capitol, Room 321
Santa Fe**

The fifth meeting of the Criminal Justice Reform Subcommittee (CJRS) of the Courts, Corrections and Justice Committee (CCJ) was called to order by Representative Antonio "Moe" Maestas, co-chair, on June 25, 2014 at 9:27 a.m. in Room 321 of the State Capitol.

Present

Rep. Antonio "Moe" Maestas, Co-Chair
Sen. Lisa A. Torracco, Co-Chair
Rep. Gail Chasey
Rep. Zachary J. Cook
Sen. Cisco McSorley
Sen. Bill B. O'Neill
Rep. Jane E. Powdrell-Culbert
Sen. Sander Rue

Absent

Guest Legislators

Sen. Jacob R. Candelaria
Sen. Daniel A. Ivey-Soto
Rep. Mimi Stewart

Staff

Douglas Carver, Staff Attorney, Legislative Council Service (LCS)
Caela Baker, Staff Attorney, LCS
Monica Ewing, Staff Attorney, LCS

Guests

The guest list is in the meeting file.

Handouts

Handouts and other written testimony are in the meeting file.

Wednesday, June 25

Welcome and Introductions

Member of the CJRS introduced themselves.

Recapitulation of Proposals Brought Before the Subcommittee to Date and Future Meeting Topics

Representative Maestas explained that the CJRS is a subcommittee of the CCJ. He stated that the CJRS must consider proposed legislation at its November meeting so that legislation recommended for endorsement can be heard by the CCJ at its December meeting.

Representative Maestas further stated that, going forward, the CJRS plans to have thematic meetings, each of which will focus on a particular area of the criminal justice system.

The Mechanism of Sentencing and Mandatory Minimum Sentencing in New Mexico and the Problems and Costs Entailed by Mandatory Minimum Sentencing

Kim Chavez-Cook, assistant appellate defender and law office of the Public Defender lobbyist, provided the CJRS with an overview of the mechanics of sentencing. She explained that after a person is charged with a crime, the person is typically arraigned within 15 days. At that point, the defendant can plead guilty or not guilty; however, if the defendant intends to plead guilty, the court must ensure that the defendant understands the sentence he or she is facing. If the defendant chooses not to enter a plea, the defendant may not know what sentence he or she will face until much later in the process, when a sentencing document is created. Lesser included offenses may not be charged at the time the sentencing document is created and can be added later.

Ms. Chavez-Cook added that some sentences are subject to suspension or deferment, meaning that the defendant could get probation instead of prison time, while "mandatory minimum" sentences carry mandatory prison time. Every first degree felony carries a mandatory minimum sentence of 18 years; however, the sentencing judge can "mitigate" up to one-third of the sentence. In other words, the judge can reduce the sentence from 18 years to 12 years. Additionally, prosecutors can exercise discretion and offer the defendant a plea deal for a second degree felony, rather than a first degree felony, so that the defendant can avoid mandatory prison time.

Another sentencing variable relates to eligibility for earned meritorious deductions or "good time". Most criminal offenses are eligible for "day-for-day" good time, but some are not. Serious violent offenders are only eligible for four days per month of good time, and defendants charged with first degree murder are not eligible for any good time. Moreover, sentences served in county jail only count toward good time if the sentencing judge so orders.

Ms. Chavez-Cook indicated that in addition to first degree felonies, certain other offenses also carry a mandatory minimum sentence. For example, second degree criminal sexual penetration and second degree criminal sexual contact with a minor carry sentences of up to 15 years, three years of which cannot be suspended or deferred. Any conviction for driving while intoxicated (DWI) beyond the first conviction also carries a mandatory minimum sentence.

Another sentencing variable relates to sentencing enhancements. Sentencing enhancements must run consecutively, rather than concurrently, and cannot be suspended or deferred. The most frequently used sentencing enhancement is for habitual offenders. Ms. Chavez-Cook explained that if a defendant is charged with several felonies and has prior convictions, the habitual offender enhancement can be applied to each felony charge. A member of the CJRS asked whether sentence enhancements for habitual offenders can run concurrently. Ms. Chavez-Cook responded that such enhancements can run concurrently. Prosecutors have discretion in determining when to seek sentencing enhancements for habitual offenders. Other sentencing enhancements include increased sentences when:

- a firearm is used during the commission of a felony;
- the defendant is convicted of a third violent felony;
- the defendant is convicted of a second violent sexual offense; and
- the defendant is convicted of homicide by vehicle or great bodily harm by vehicle when the defendant is driving while intoxicated and where the defendant had a prior DWI within 10 years.

Mark Donatelli, criminal defense attorney and special prosecutor, explained that in reality, mandatory sentencing is rarely imposed because few cases ultimately go to trial and result in a first degree felony conviction. Mostly, mandatory minimum sentencing is used as a prosecutorial tool in the plea bargaining process. The concern over mandatory minimum sentencing is that prosecutors, rather than judges, have significant discretion.

Mr. Donatelli explained that before 1979, New Mexico had "indeterminate sentencing", under which a criminal defendant could engage in self-improvement programs and could be released early for good behavior. Mr. Donatelli stated that without such opportunities, inmates lose hope and motivation. He implored the CJRS to be mindful of the fact that over 90 percent of incarcerated individuals will be released back into the community and asked the CJRS to consider the effects of long sentences on those individuals. He explained that returning to indeterminate sentencing may reintroduce hope and motivation to inmates, encourage them to engage in self-improvement programs and prevent recidivism.

A member of the CJRS asked how many inmates eventually return to the community. Tony Ortiz, New Mexico Sentencing Commission, stated that 95 percent to 96 percent of inmates return to the community. The member commented that inmates should have incentives to change their behavior and that the CJRS needs to consider expanding alternative sentencing and wraparound services during incarceration and after release from prison. Several members agreed that more programming and mental health services must be offered during and after incarceration.

Several members of the CJRS questioned the propriety of removing or limiting prosecutorial discretion. One member stated that, frequently, the prosecutor has more knowledge about the case than the judge. Mr. Donatelli responded that the problem is that prosecutors and defense attorney are advocates for their respective sides. In theory, judicial temperament is supposed to "ameliorate the retributive urge".

A member of the CJRS stated that public safety, efficiency and cost-effectiveness must be the most important concerns underlying any reforms undertaken by the subcommittee. The member also expressed an interest in amending the statutes concerning earned meritorious deductions to give discretion back to the Corrections Department (NMCD).

Members of the CJRS engaged in a discussion regarding peremptory excusal of judges and whether the New Mexico Supreme Court is planning to eliminate peremptory excusal. One member of the CJRS asked whether the legislature could enact a statute pertaining to peremptory excusal. Ms. Chavez-Cook and Mr. Donatelli indicated that such legislation may be appropriate if peremptory excusal can be characterized as a substantive right, as opposed to a procedural rule.

A member of the CJRS inquired as to how many criminal cases actually go to trial. Mr. Ortiz responded that 99 percent of cases do not go to trial. The member asked whether mandatory minimum sentencing has had any effect on recidivism. Mr. Ortiz stated that he is not aware of any such statistics. Mr. Ortiz indicated that more than two-thirds of inmates in New Mexico are incarcerated as a result of a violent crime.

Another member of the CJRS asked about the role of drug courts and inquired as to who decides if a person is eligible for drug court. Ms. Chavez-Cook indicated that the prosecutor typically decides whether to offer drug court to a defendant. A member of the CJRS disagreed and stated that — at least in the Second Judicial District — a defendant can request drug court, a screening will be done to determine if the defendant meets the criteria, and the judge ultimately makes the decision. Another member of the CJRS clarified that before drug court can be imposed, a defendant must plead guilty. A member of the CJRS stated that the subcommittee should look at making drug court available prior to entering a plea and also indicated that serious consideration should be given to implementing the sequential intercept model.

A member of the CJRS asked whether judges can send people to treatment in lieu of incarceration. Ms. Chavez-Cook responded in the affirmative and added that judges can also sentence people to treatment in lieu of probation.

Members of the CJRS engaged in a discussion about "truth-in-sentencing" laws and federal incentives to incarcerate violent offenders for longer periods of time.

A member of the CJRS stated that there is emerging consensus that evidence-based programs should be implemented in the criminal justice system and that there should be a greater focus on community corrections. The member further indicated that "early release" should be reinstated and requested a short presentation on this topic.

Another member of the CJRS stated that drug rehabilitation programs are needed in the community, and not just for people who have already committed offenses.

A member of the CJRS inquired about the elements of the crime of negligent child abuse. Ms. Chavez-Cook responded that there are problems with this particular statute because "serious bodily harm" is ambiguous. Additionally, she noted that a recent court decision held that

"negligent" child abuse includes medical neglect without any "actual knowledge" on the part of the parent.

A member of the CJRS cautioned that mandatory minimum sentences are only imposed on persons who have already been convicted of a crime. The member expressed disapproval for reducing sentences for any violent crimes but indicated that the negligent child abuse statute should be reviewed. Additionally, the member expressed disapproval of efforts to increase programs and services for serious violent offenders.

Another member of the CJRS pointed out that Section 31-18-17 NMSA 1978 gives judges some discretion to alter sentences and inquired as to whether judges are exercising this discretion. Ms. Chavez-Cook responded that judges do exercise discretion pursuant to Section 31-18-15.1 NMSA 1978, which allows judges to alter a basic sentence; however, she indicated that judges use Section 31-18-17 NMSA 1978, which permits alteration of sentences for habitual offenders, with less frequency.

Programs in Other States That Address the Problems and Costs Inherent to Mandatory Minimum Sentencing

Melissa Hill, attorney and legislative chair, New Mexico Criminal Defense Lawyers Association, told the CJRS that the federal government has started to rethink mandatory minimum sentences due to disparity in enforcement and application. She indicated that partisan political elections, such as elections for judges and district attorneys, can play a role in how criminal laws are applied. Ms. Hill further stated that some district attorney offices have policies that require defendants to accept or reject plea offers before any victims have been interviewed and before either side has had an opportunity to investigate the case.

Ms. Hill posed the following questions. Are long sentences likely to have a deterrent effect? She indicated that some studies suggest that certainty of punishment is a stronger deterrent than is length of incarceration. Moreover, studies are inconclusive as to whether sentencing enhancements for gun crimes have a deterrent effect. Concerning the "three strikes" law in California, Ms. Hill indicated that the law has had a "negligible deterrent effect". She posited that the small deterrent effect may be outweighed by the significant cost of incarcerating individuals who are sentenced to a prison term of 25 years to life as a result of a "third strike".

Ms. Hill stated that the crime-reducing effect of incarceration declines as the length of sentences increase. She explained that modern theories of deterrence indicate that deterrence depends upon: 1) certainty of crime reporting, apprehension and prosecution; and 2) awareness of the consequences of criminal activity among potential offenders.

Legislative Proposals Regarding Mandatory Minimum Sentencing

Ms. Hill suggested that the CJRS consider narrowing the definition of "habitual offender" to eliminate misdemeanor offenses and amend the law to permit the imposition of only one sentencing enhancement. She indicated that some states — including North Dakota, Rhode Island, South Carolina, Delaware and Ohio — have repealed some laws imposing mandatory minimum sentences, although the repealed laws pertain mainly to nonviolent drug offenses. She stated that some states have gone back to awarding higher rates of good time for time served and

enacted or revised geriatric- or compassionate-release laws. Ms. Hill further explained that there is a national trend toward "softening" habitual offender time for drug crimes.

Ms. Hill suggested a change to Section 30-9-11(E) NMSA 1978, concerning the crime of criminal sexual penetration, to require a difference in age of at least four years between the alleged perpetrator and the alleged victim. She also suggested a change to Section 12-2A-16 NMSA 1978 to allow more lenient sentences to be applied retroactively when laws are amended to reduce sentences. Ms. Hill indicated support for legislation requiring a fiscal impact report any time a bill creates a new crime or increases penalties for an existing crime.

A member of the CJRS extended an invitation to Amy Orlando, general counsel, Department of Public Safety, to participate in the work of the subcommittee and stressed the importance of a bipartisan approach to criminal justice reform.

Members of the CJRS engaged in a discussion concerning geriatric release. One member stated that a problem facing the geriatric-release program is that there are no facilities in which geriatric-release inmates can be placed. Sherry Stevens, acting executive director, Parole Board, stated that many inmates who are eligible for geriatric release do not have a nursing home or a family member that is willing to accept them upon release. A member of the CJRS indicated that the New Mexico Mortgage Finance Authority should consider building a facility that could house these inmates.

A member of the CJRS asked how many geriatric offenders apply and qualify for geriatric release each year. Ms. Stevens responded that no more than four inmates apply each year and that most qualify. The member asked how the geriatric-release program could be expanded without compromising public safety. Ms. Stevens responded that she would address this issue with the members of the Parole Board. A member of the CJRS suggested that geriatric release could be expanded to include elderly inmates who do not pose a threat to the public, even if they are not necessarily ill or dying.

Members of the CJRS discussed prison medical costs and Medicaid enrollment for inmates. One member stated that pursuant to New Mexico statute, Medicaid is canceled, rather than suspended, once a person is incarcerated and that this law should be changed.

Sentencing in New Mexico — the District Attorney Perspective

Angela "Spence" Pacheco, district attorney, First Judicial District, told members of the CJRS that all district attorneys are different, but no district attorney enjoys sending a person to prison, regardless of political affiliation. She stated that while a criminal defense lawyer is an advocate, a prosecutor is charged with balancing the nature of the crime and the manner in which the crime was committed with the appropriate response in order to achieve justice. She explained that justice is different in every case.

Ms. Pacheco indicated that sentencing enhancements are important tools for district attorneys. She expressed support for closing prisons and spending more money on treatment and rehabilitation programs.

Henry Valdez, director, Administrative Office of the District Attorneys, reiterated that very few crimes have mandatory minimum sentencing. He indicated that mandatory minimum sentences exist for serious violent crimes and second or subsequent drug trafficking offenses. In addition, mandatory minimum sentences exist for DWI offenses. Mr. Valdez indicated that a benefit of mandatory minimum sentencing is that it equalizes the application of sentencing.

Mr. Valdez indicated that habitual offender enhancements are perhaps the most frequently used form of mandatory minimum sentencing. He stated that in 2003, changes were made to statute to allow judges some discretion concerning the first level of habitual offender enhancements. Additionally, he pointed out that when looking at the criminal history of a habitual offender, only convictions within the previous 10 years count for the purpose of habitual offender enhancements.

Mr. Valdez expressed support for alternative sentencing and halfway house options. He also indicated that the CJRS should consider receiving input from victims or victim advocacy groups. A member of the CJRS requested that victim advocacy groups be added to a future agenda for the CJRS.

A member of the CJRS stated that policymakers and the public need to move away from the mind set of "hurt them more, make it longer" with regard to criminal defendants and, instead, focus on making the punishment more effective. Several members of the CJRS agreed with this statement.

Members of the CJRS asked for input and collaboration from the district attorneys concerning any reforms undertaken by the subcommittee.

Public Comment

Kathy Swope told members of the CJRS that her daughter has been struggling for many years with methamphetamine addiction. Her daughter has been in and out of the criminal justice system for many years and is entering a drug rehabilitation program for the first time in July 2014. Ms. Swope expressed disappointment that drug treatment was not offered sooner and stated that the drug court program in the Second Judicial District was ineffective for her daughter. Ms. Swope expressed support for treatment as a sentencing option and stated that inpatient treatment should occur before probation starts.

Ben Baur, deputy chief public defender, Law Offices of the Public Defender, expressed support for input from district attorneys, particularly assistant district attorneys.

Lisa Wisenfeld, policy coordinator, New Mexico Coalition Against Domestic Violence, stated that she supports the work of the CJRS and asked that the CJRS consider input from crime victims.

Margarita Sanchez stated that issues concerning civil rights and behavioral health need to be examined. In addition, she suggested that time frames related to arraignment should be

addressed and that the criminal justice system needs to move toward promoting healing and rehabilitation.

Adjournment

There being no further business before the subcommittee, the fifth meeting of the CJRS of the CCJ adjourned at 4:32 p.m.

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

**July 30, 2014
Second Judicial District Court
Third Floor Conference Center
Albuquerque**

The sixth meeting of the Criminal Justice Reform Subcommittee (CJRS) of the Courts, Corrections and Justice Committee (CCJ) was called to order by Representative Antonio "Moe" Maestas, co-chair, on July 30, 2014 at 9:10 a.m. at the Second Judicial District Court in Albuquerque.

Present

Rep. Antonio "Moe" Maestas, Co-Chair
Sen. Lisa A. Torracco, Co-Chair
Rep. Gail Chasey
Sen. Cisco McSorley
Sen. Bill B. O'Neill
Rep. Jane E. Powdrell-Culbert
Sen. Sander Rue

Absent

Rep. Zachary J. Cook

Guest Legislator

Sen. Daniel A. Ivey-Soto

Staff

Douglas Carver, Staff Attorney, Legislative Council Service (LCS)
Caela Baker, Staff Attorney, LCS
Monica Ewing, Staff Attorney, LCS
Julio Garcia, Intern, LCS

Guests

The guest list is in the meeting file.

Handouts

Handouts and other written testimony are in the meeting file.

Wednesday, July 30

Welcome and Introductions

Members of the CJRS and staff introduced themselves.

Drug Courts in New Mexico

Judge M. Monica Zamora, New Mexico Court of Appeals, and Peter Bochert, statewide drug court coordinator, Administrative Office of the Courts, introduced themselves. Mr. Bochert discussed "problem-solving courts", which include:

- adult/felony drug court;
- DWI drug court;
- family dependency drug court;
- juvenile drug court; and
- mental health court.

Mr. Bochert described how drug courts function, explaining that the drug court program is a judicially monitored intensive treatment program that is organized into three or four phases. Drug courts turn the normally adversarial nature of a court system into a collaborative effort by focusing on sobriety and accountability of the drug court participant through teamwork. The drug court team includes the judge, prosecutor, defense attorney, treatment provider, probation or surveillance officer and a program coordinator. Mr. Bochert explained that, typically, the drug court team meets with the judge prior to a hearing, and members of the team inform the judge of the participant's activities, attitude, sobriety and compliance. In addition, members of the team make recommendations concerning whether the judge should sanction or reward a participant, allow a participant to advance in the program or maintain the status quo.

Mr. Bochert told members of the CJRS that at a typical drug court hearing, the judge will hear from each participant, one-on-one, in front of the drug court team, peers and family. For noncompliance, the judge will hand down a sanction, and for progress, the judge will give praise or reward the participant.

Eligible participants are identified early and are promptly placed in the drug court program. The target population for the drug court program is the "high-risk/high-needs" group, as the drug court program has proven to be most effective for this group. Data show that drug courts result in an 18 percent to 43 percent reduction in recidivism; however, this recidivism reduction can only be achieved if the model is implemented with fidelity.

Mr. Bochert explained that participants in the drug court program are expected to have 90 days "clean" before graduation and that abstinence is monitored by frequent alcohol testing and drug testing. Some drug court programs are starting to use hair-follicle testing because it will detect drug use within a 90-day window. Mr. Bochert added that ongoing judicial interaction with each drug court participant is essential and that the judge averages three minutes or more with each participant during the drug court hearing.

Mr. Bochert discussed a "quadrant model" for risk and need. The model can be found on page 4 of the handout entitled "New Mexico Problem-Solving Courts: District, Metropolitan, and Magistrate", which is posted on the web site. According to the quadrant model, individuals who are "low-risk/high-need" or "low-risk/low-need" should not be placed in a drug court program, as drug court programs have not proven to be effective for this group of people.

Mr. Bochert stated that there are 44 active drug courts in New Mexico, plus three pilot programs. He stated that the judiciary plans to request \$775,000 in additional appropriations from the general fund in fiscal year 2016. Members of the CJRS indicated that \$775,000 may not be enough funding and that the judiciary needs to ask for the funding it needs. Mr. Bochert concluded by recommending that members and staff of the CJRS attend drug court hearings to understand how the program works and to see it in action.

Judge Zamora told members of the CJRS that incarceration does not work for children. She explained that in children, the frontal lobe of the brain, which controls executive function, is not fully developed and incarceration will not change behavior. She stated that it is better policy to invest money at the front end for services than at the back end for incarceration.

Judge Zamora gave an overview of juvenile drug court and explained that the juvenile drug court program follows the same 10 key components of drug courts that adult drug courts follow. The 10 key components can be found on page 3 of the "New Mexico Problem-Solving Courts: District, Metropolitan, and Magistrate" handout.

Judge Christina Jaramillo, Bernalillo County Metropolitan Court, stated that she has been involved with the DWI drug court for 17 years. She expressed support for the use and expansion of drug court programs.

Judge Linda Rogers, Bernalillo County Metropolitan Court, stated that she is the presiding judge for the mental health court. She told members that in fiscal year 2013, the mental health court had 103 graduates. Of the 103 graduates, 17 participants entered the program with four or more arrests. One year after completion of the program, none of the 103 graduates had a subsequent arrest.

Members of the CJRS asked questions and discussed:

- the availability of drug courts in each county in New Mexico and the capacity of the programs;
- implementation of the Missouri model;
- the evaluation process and eligibility criteria for the specialty court programs;
- an adult mentorship program;
- the "cultural competence" component of specialty court programs in New Mexico;
- the effectiveness of specialty courts compared to traditional probation;
- the possibility of "pretrial" models for drug court; and
- the need for other community services, such as housing.

Santa Fe's Law Enforcement Assisted Diversion (LEAD) Program

Emily Kaltenbach, state director, Drug Policy Alliance-New Mexico, introduced Detective Casey Salazar and Captain Jerome Sanchez of the Santa Fe Police Department (SFPD) LEAD program. Ms. Kaltenbach told the CJRS that a presentation concerning the Santa Fe LEAD program was made to the CCJ approximately one year ago and that additional information is available now, following the implementation of the LEAD program in Santa Fe.

Ms. Kaltenbach explained that the LEAD model was developed in Seattle as a pre-booking diversion model. District attorneys retain full veto power concerning whether a person is eligible to participate in the LEAD program in lieu of prosecution.

Prior to implementation of the LEAD program in Santa Fe, stakeholders, including public defenders, district attorneys and representatives from the police department, met to discuss the use of LEAD. The participants agreed on a public-private partnership model for funding, with a goal of 50 percent public funding and 50 percent private sector funding. The LEAD program in Santa Fe is funded by the City of Santa Fe, Santa Fe County, private foundations and the "Just Woke Up Fund", which is managed by the Santa Fe Community Foundation.

The LEAD program in Santa Fe is a three-year pilot project, and the program is undergoing active evaluation. Ms. Kaltenbach indicated that an appropriation for the LEAD program was passed by the legislature last year, but it was vetoed.

Bennett J. Baur, public defender for Rio Arriba, Santa Fe and Los Alamos counties, discussed the process by which stakeholders met to examine Seattle's LEAD model, narrow it and adapt it for use in New Mexico. The stakeholders divided into work groups and secured funding. Mr. Baur clarified that LEAD is a local approach rather than a state model. Further, Santa Fe's population has different needs than Seattle's. For instance, Seattle requires significant funding for housing, but Santa Fe's need for housing is less prominent as Santa Fe's housing need is primarily needed for "situationally homeless" individuals. In many cases, individuals who are situationally homeless become homeless because their families are tired of the individual's drug use.

Detective Salazar explained that he is with the Property Crimes Unit at the SFPD, which was tasked with starting the LEAD pilot program. Currently, the program has five active participants meeting with case managers. One participant has nine prior arrests since 2008. Detective Salazar told members of the CJRS that most participants who enter the LEAD program are more afraid of opiate withdrawal than they are of prison. Suboxone, which is used to treat opiate addiction, is part of the treatment offered by the LEAD program.

Detective Salazar explained that the program only has three detectives now. There are many good candidates for the LEAD program, but the program has limited capacity. The goal is to expand the LEAD program to serve more potential participants.

Ms. Kaltenbach told members of the CJRS that the LEAD program is redefining treatment by incorporating traditional treatment, including housing support, job placement, employment counseling and specialized support for families with children, and partnering with community organizations such as Life Link. Ms. Kaltenbach explained that case managers help whole families; that case management is intensive; and that every two weeks, law enforcement officers and case managers meet with staff and discuss the cases. Essentially, the LEAD program is uniting two systems — law enforcement and social services — which were formerly separate.

A member of the CJRS expressed support for the local aspects of the program and the efforts that have been made to tailor it to the needs of Santa Fe. The member asked who conducts the evaluation of potential participants. Ms. Kaltenbach responded that members of the SFPD meet with individuals to see if they meet the criteria for the LEAD program. If the criteria are met, the SFPD transfers the case to a neutral case manager affiliated with Life Link and the case manager conducts a more intensive assessment.

A member of the CJRS asked whether the police department is taking on judicial duties. Ms. Kaltenbach responded that the ultimate authority to determine whether a person is prosecuted remains with the district attorney. Ms. Kaltenbach indicated that the LEAD program in Santa Fe is a three-year pilot project, and after three years, a robust evaluation will be conducted to determine its effectiveness, including an examination of recidivism rates and whether overdose incidents have been reduced. The Legislative Finance Committee is also evaluating the program.

A member of the CJRS asked what model would be used to conduct the evaluation. Ms. Kaltenbach responded that Seattle's LEAD program evaluation process would be adapted to evaluate Santa Fe's LEAD program. The Pew Charitable Trusts or the University of New Mexico may be consulted in order to develop the evaluation. Ms. Kaltenbach added that stakeholders are currently developing a list of evaluation criteria. The LEAD program in Santa Fe is not fully funded for the entire three-year term of the pilot, so it will have to seek additional funding. At present, the LEAD program has a capacity of 40 to 50 participants.

A member of the CJRS expressed support for funding the LEAD program but indicated that the program evaluator and evaluation process should be identified soon for the best chances of obtaining funding from the legislature.

Mr. Baur reiterated that the district attorney has the ultimate authority on whether an individual is prosecuted or enters the LEAD program. He stated that the District Attorney's Office receives a report for every individual who is sent to the LEAD program.

A member of the CJRS inquired about eligibility for the program. Captain Sanchez stated that to be eligible for the LEAD program, a person must:

- have been in possession of three grams of drugs or less and the drugs must not be packaged for distribution;
- be amenable to treatment;
- be 18 years of age or older;
- not be found to have been exploiting minors; and
- not have any convictions for violent crimes in the last 10 years.

A member of the CJRS expressed support for broadening the eligibility requirements after the pilot is complete. Another member of the CJRS asked how potential participants are admitted to the program in terms of procedure. Captain Sanchez responded that participants are not booked into jail but are instead taken to an interview room to discuss the history of their addiction, their family history and what drugs they are using. If it appears that a person may be eligible for the LEAD program, Life Link is contacted to follow up with the person and the District Attorney's Office is notified. Within 72 hours, the person must return to Life Link for a complete evaluation and full intake. If the person does not show up, charges are filed against the person. Wrap-around services are started at the first meeting with Life Link, and Life Link identifies whether there is a need for emergency shelter, food or other services.

Ms. Kaltenbach added that Life Link was chosen because it has a Suboxone doctor on site and because the program offers supportive housing. In addition, case managers have some discretion to use funds to provide food or clothing for participants if needed.

A member of the CJRS asked how many participants have failed to show up within the 72-hour window. Detective Salazar responded that there have not been any no-shows, that there are five people in the program currently and that the program was fully implemented in April of this year. Detective Salazar further indicated that there is a great need for the program in Santa Fe, that 99 percent of property crime offenders in Santa Fe could benefit from the program and that about 70 percent of those offenders would probably be amenable to the treatment. In addition, Life Link works to enroll participants in Medicaid.

A member of the CJRS asked how many officers would be needed to deal with the number of potential participants on the street. Detective Salazar responded that the LEAD program cannot overload the case managers at Life Link — there are only three case managers, and those managers could probably serve 30 participants.

Another member of the CJRS asked what kind of relationship exists between the SFPD officers and the case managers at Life Link. Detective Salazar responded that they meet once every other week and have a very strong relationship, which he said is important to the success of the program. The member asked whether there is a chance that participants could be given false hope by being referred to the program and then later yanked out by the district attorney if the district attorney decides to prosecute. Detective Salazar responded that this is not the case and that there is a memorandum of understanding signed by all parties under which they cannot deviate from the eligibility criteria.

A member of the CJRS stated that the state had previously invested approximately \$500,000 in a "second chance" program that lasted just three years. The member stressed the need for evidence to support the effectiveness of the program before providing funding.

Sentencing Enhancement Zones

Thesia Naidoo, Drug Policy Alliance, and Lieutenant Diane Goldstein, Law Enforcement Against Prohibition (LEAP), introduced themselves. Ms. Naidoo discussed "school enhancement zones", which trigger enhanced penalties for drug offenses occurring within the zones. Ms. Naidoo stated that school enhancement zones are problematic because the underlying offense often happens in a private residence that happens to be within the zone, so the policy of protecting children is not furthered. In addition, statistics show that 90 percent of enhancements are the result of sales between two adults in which no children are involved and that school enhancement zones do not have a deterrent effect. Ms. Naidoo added that communities of color are disproportionately affected because they are often situated in densely populated areas with a greater concentration of school enhancement zones. Finally, Ms. Naidoo stated, the lack of a "knowledge requirement" is problematic because some people may be unaware that they are in a school enhancement zone and may have no intention to engage with schoolchildren.

In terms of possible reforms, some states are reducing the size of school enhancement zones by setting the outer limit at 300 feet to 500 feet from a school, for example. New Mexico uses 1,000 feet as the outer limit of school enhancement zones, and Ms. Naidoo suggested decreasing this distance. Some states have laws that contain a knowledge requirement or restrict the enhancement to certain times of the day — during school hours, for example. Other states, such as North Dakota and South Carolina, exempt low-level marijuana offenses.

Lieutenant Goldstein told members of the CJRS that the war on drugs has been a complete failure. She explained that LEAP is a 501(c)(3) organization founded in 2002 by former law enforcement officers who believe that the war on drugs is a failed effort. Lieutenant Goldstein stated that some collateral effects associated with drug convictions should be eliminated and that murderers, rapists and pedophiles retain some rights that drug users do not.

Drug Crime Penalties

Representative Maestas gave an overview of the penalties of drug laws in New Mexico. He pointed out that drug penalties in New Mexico do not change based on quantity, while federal laws do take into account drug quantity. Elaine Ramirez, assistant United States attorney, reviewed a drug-quantity table that outlines the level of offense depending on the quantity of drugs. Ms. Ramirez explained that federal offenses are quantity-driven and are categorized either as a level A, B, C or D offense.

Representative Maestas explained that if an individual acquires a second drug trafficking conviction, that person faces an 18-year mandatory minimum sentence, as opposed to zero to 18 years under the federal scheme. Representative Maestas explained that a second drug trafficking conviction is the second most serious crime on the books, carrying a penalty greater than second

degree murder, which is zero to 15 years. Representative Maestas mentioned making a proposal to make possession of a small quantity of drugs a misdemeanor offense. Ms. Ramirez explained that second-time offenders of serious crimes face 20 years and third-time offenders face a possible life sentence. Representative Maestas commented that double jeopardy is not applicable when an individual is tried by the state and the federal government for the same offense.

Members of the CJRS asked when the current drug trafficking penalties in New Mexico were enacted and about reforms being undertaken by the federal government. Representative Maestas informed the members that from 1987 to 1992, most state governments set penalties that were "off the charts". Ms. Ramirez told the CJRS that Eric Holder, United States attorney general, issued a memorandum that outlines how penalties should be imposed and which cases should be prosecuted. She added that this initiative is aimed at lowering the prison population.

The Use of Confidential Informants in Controlled Substance Investigations and Prosecutions

Eduardo Chavez, U.S. Drug Enforcement Administration (DEA), explained the key roles that informants have in investigations, how potential informants are identified and selected and the steps that are taken to protect informants. Mr. Chavez informed the CJRS that many of the informants are either looking for a monetary award or just doing a civil duty. Mr. Chavez advised the CJRS that specific compensation is never discussed and that if informants are eventually paid, it is based on the particular circumstances. In any event, the arrangement must be of mutual benefit to both parties.

Members of the CJRS discussed relocation and identity-protection programs and the progress of drug enforcement efforts in Mexico. A member of the CJRS asked whether state and local authorities are also involved in federal drug cases. Mr. Chavez responded that the DEA does work with state and local law enforcement on a case-by-case basis. Members of the CJRS asked questions regarding investigative procedures used by the DEA. Mr. Chavez advised them that the procedures used in a particular case depend on the circumstances but that the DEA generally works "from the bottom up", seeking to go after drug kingpins and drug traffickers who are higher up on the ladder.

How Drug Addiction Affects the Brain

Kevin Mains, a licensed professional clinical counselor and national certified employee assistance professional, presented information about substance abuse and addiction. Mr. Mains specified that substance abuse and addiction are not behavioral issues. He explained how the brain responds to substance abuse. He informed the CJRS that when drugs are taken, they affect the pleasure center of the brain, which is central to brain function and the motivational system. He added that when the pleasure center of the brain is satisfied, it releases dopamine. Mr. Mains emphasized that punishment is insufficient and that treatment is the only way to help the individual.

Timothy P. Condon, Ph.D., research professor, Center on Alcoholism, Substance Abuse

and Addiction, University of New Mexico, presented a history on advancements in technology to analyze the neuroscience of drugs and the brain. Dr. Condon explained that drug abuse is a preventable behavior and drug addiction is a treatable disease. He informed the CJRS that many people either consume drugs to feel good or to feel normal. Dr. Condon advised the CJRS that a continuum-of-care model, not temporary treatment, is needed. He commented that incarcerating people and providing them with detox is not treatment. Mr. Mains added that one should think of a person with drug addictions as someone with a neurobiological disease. Treatment needs to be maintained to prevent a relapse.

Members questioned whether drugs have the same effects as alcohol. Dr. Condon advised the CJRS that every cell contains a receptor and responds to drug and alcohol, which is a problem because of the altering of the dopamine system. He also remarked that the majority of individuals do not get addicted; the ones who do are those who are using the drugs uncontrollably. A member of the CJRS asked if it would be more effective to use money for treatment instead of incarceration. Dr. Condon told the subcommittee that some individuals who are incarcerated belong there and some do not. He stated that increasing the availability of treatment programs may improve public safety and be more cost-efficient for the state.

Members of the CJRS turned to a discussion of prescription drugs and adolescents. Dr. Condon advised the subcommittee that prescription drugs are overprescribed. He added that the number-one prescribers for adolescents are dentists. A member of the subcommittee asked about adolescent brain development. Dr. Condon informed the subcommittee that inhibitory control is not fully developed in the adolescent brain. Members of the subcommittee asked about the scope of the addiction problem in New Mexico and possible solutions. Mr. Mains said that peer pressure is part of the problem, but parenting and community issues are also factors.

Members of the subcommittee discussed the expansion of drug courts and programs that match youth with healthy role models. Dr. Condon advised the subcommittee that parental modeling of bad behavior is a huge risk factor. A member of the subcommittee explained that pursuant to the Detoxification Reform Act, it is supposed to be the policy of the state that those with substance abuse problems should not be subjected to incarceration but rather are afforded protection and treatment. Dr. Condon informed the subcommittee that Texas took funds from its corrections department and placed those funds in public health, which resulted in two prison closures.

Dr. Condon said that many have recovered with treatment, rewired their brain to be normal again and have the motivation, attitude and focus to be responsible in life. Dr. Condon said the numbers show that if individuals remain sober for five years, they will overcome the addiction approximately 98 percent of the time.

A member of the subcommittee inquired about the difference between drug abuse and addiction. Dr. Condon informed the subcommittee that uncontrollable use is drug addiction, while drug abuse is when an individual can stop anytime. He added that people need treatment, especially when they have nothing to lose. For example, people who are completely addicted to

drugs do not care if they are sentenced to 100 years in prison.

Public Comment

Margarita Sanchez expressed concern about corporate criminal law reform for New Mexico.

Marisa Garrett, Crossroads for Women, commented on how her life was completely turned around because of treatment. She informed the subcommittee that she is proof that treatment does work. Ms. Garrett told the CJRS that she was never offered a treatment program while incarcerated, but she took the initiative to get treated. She told the members of the CJRS that they should implement and expand such programs for those in the criminal justice system.

Renee Chavez informed the CJRS that she was never offered a treatment program. She stated that after having been incarcerated many times, she finally received treatment and is living proof of the effectiveness of treatment. Ms. Chavez told the subcommittee that isolation is a "catastrophe".

Alan Wagman, criminal defense attorney, suggested implementation of preconviction drug court and stated that he was surprised that many existing programs are post-conviction programs. Mr. Wagman informed the subcommittee that many law enforcement agencies are arresting small-time drug users and receive federal funds based on the number of arrests.

KC Quirk, Crossroads for Women, said she supports more treatment because being incarcerated reinforces trauma. She added that a 30-day treatment is not long enough to have a positive effect.

Denicia Cadena, Young Women United, urged the CJRS to consider the voices of people who have been affected by the criminal justice system and be sensitive to cultural considerations when undertaking any reforms.

Adjournment

There being no further business before the subcommittee, the sixth meeting of the CJRS adjourned at 5:02 p.m.

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

August 27, 2014

**Rotunda of the University of New Mexico (UNM) Science and Technology Park
Albuquerque**

The seventh meeting of the Criminal Justice Reform Subcommittee (CJRS) of the Courts, Corrections and Justice Committee (CCJ) was called to order by Representative Antonio "Moe" Maestas, co-chair, on August 27, 2014 at 9:25 a.m. at the Rotunda of the UNM Science and Technology Park in Albuquerque.

Present

Rep. Antonio "Moe" Maestas, Co-Chair
Sen. Lisa A. Torracco, Co-Chair
Rep. Gail Chasey
Rep. Zachary J. Cook
Sen. Cisco McSorley
Sen. Bill B. O'Neill
Sen. Sander Rue

Absent

Rep. Jane E. Powdrell-Culbert

Guest Legislator

Sen. Daniel A. Ivey-Soto

Staff

Douglas Carver, Staff Attorney, Legislative Council Services (LCS)
Monica Ewing, Staff Attorney, LCS
Julio Garcia, Intern, LCS

Guests

The guest list is in the meeting file.

Handouts

Handouts and other written testimony are in the meeting file.

Wednesday, August 27

Welcome and Introductions

Representative Maestas welcomed members of the CJRS, staff and members of the public. Members of the CJRS, staff and presenters introduced themselves.

Past Criminal Reform Efforts in New Mexico

Professor Leo Romero of the UNM School of Law discussed the background of a revision of the Criminal Code that he undertook from 1984 to 1985, presenting it to the legislature in January 1986. The reform idea was initiated by an interim committee, and Professor Romero contracted with the LCS to undertake the reform.

Professor Romero was given the charge to:

- review the Criminal Code and case law;
- examine the Model Penal Code; and
- ensure consistency, such as more serious crimes having more serious penalties.

Professor Romero discussed the contents of his proposed Criminal Code reform, noting that his reform contains commentaries for every provision, including explanations, changes, additions and deletions to the various statutes.

Professor Romero stressed the importance of having *mens rea* requirements for crimes in statute. At present, statutes often focus on the crime and conduct instead of the mental state. The New Mexico Supreme Court has often determined a *mens rea* requirement for various criminal statutes. The *mens rea* requirements that Professor Romero proposes in his Criminal Code reform are:

1. intent — acts with a purpose of doing;
2. knowing — awareness of what you are doing and the consequences;
3. recklessness — awareness of risk and consciously disregarding it; and
4. negligence — being unaware of the risk.

Professor Romero advised the subcommittee that the proposed Criminal Code reform was not enacted. The revised code was opposed by the attorney general and district attorneys as well as the Public Defender Department. In the end, there was not a strong interest in advancing the code in the legislative session, and it may not even have been introduced.

Professor Romero advised the subcommittee that there has to be a willingness in the legislature to enact the Criminal Code reform. He advised the subcommittee that there should be a commission developed that would be responsible for drafting and enacting a revised code, and he added that Criminal Code reform has to be inclusive and have strong legislative sponsors to be successful. Incorporating the views of various interest groups is also important.

Members of the subcommittee asked Professor Romero various questions about the time it took to undertake his code reform and the feasibility of revising it. They asked questions concerning specific statutes that have been reformed and asked for additional background concerning the use of the Model Penal Code.

Collateral Consequences of Conviction and Creation of a High Misdemeanor in the Criminal Code

Sheila Lewis, an attorney who retired from the Public Defender Department, gave a presentation to the subcommittee concerning the collateral consequences of a conviction, focusing on the collateral consequences of a felony conviction. Ms. Lewis explained that collateral consequences are the negative effects of a conviction that persist after an individual has completed incarceration as well as a period of parole or probation. Fines, imprisonment, probation, parole and supervised release are not collateral consequences. Ms. Lewis presented some areas that can be subject to collateral consequences:

- employment;
- driving privileges;
- public benefits;
- housing;
- education;
- public office;
- immigration;
- voting rights;
- family rights; and
- firearms.

Ms. Lewis informed the subcommittee that one in four adults in the United States has an arrest or conviction record. A felony conviction reduces a job callback by 50 percent. Ms. Lewis explained that New Mexico has various laws that make it possible for felons to get a second life and avoid discrimination. She also discussed how people coming out of jail can be helped by providing them with identification free of charge. Ms. Lewis informed the subcommittee that policies and laws need to be changed to help reintegrate ex-offenders. Ms. Lewis explained that expungement should be allowed, notice of collateral effects should be given to defendants and the Uniform Collateral Consequences of Conviction Act should be enacted. Ms. Lewis informed the subcommittee of various initiatives, such as applying "ban the box" to private employers and housing; encouraging civil engagement; and redefining a deferred sentence, conditional discharge and low-level felonies.

Senator Ivey-Soto presented the reasons for creation of a high misdemeanor in the Criminal Code. He informed the subcommittee that there are 458 fourth degree felonies in New Mexico, creating an environment that constrains opportunity for citizens instead of maximizing opportunity. He informed the subcommittee that the state has created economic crimes, and he read some examples from the statutes. Senator Ivey-Soto explained that while such activities should be illegal, they should not carry the penalty stigma, which was intended for the most serious crimes.

Members of the subcommittee discussed past efforts to pass an expungement bill. Members of the subcommittee then discussed the felony and misdemeanor sentences and which courts hear each type of penalty. Many members commented on how it would be possible to

make some fourth degree felony crimes a misdemeanor, which would move them out of the felony realm. Members of the CJRS discussed recidivism rates among those who have identification when they leave prison and those who are registered to vote. Ms. Lewis added that collateral consequences should be negotiable like the rest of the plea.

Approval of Minutes

Upon a motion made by Senator McSorley and seconded by Representative Chasey, the minutes of the July 30, 2014 meeting of the subcommittee were approved.

Bringing Gender into the Drug Reform Conversation: Sharing Expertise of Women in the New Mexico Criminal Justice System

Micaela Cadena, policy director, Young Women United, introduced women who have been enmeshed in the New Mexico criminal justice system through experiences of drug abuse and addiction, domestic violence and crimes they committed. They stressed the importance of resources for gender-focused treatment and explained that the criminalization of addiction is not working. Many of these individuals stated that they could have avoided many of the problems they experienced in life if they had been given treatment or support in the early stages of their struggles. The women also informed the committee that most programs have not helped them to become functioning members of society; instead, the programs focus on the physical effects from drug use. The women also explained that females, especially mothers, need to be helped instead of punished for being addicts. One woman explained that most of the programs in the state do not have structure and that the housing and health components are missing. Ms. Cadena explained to the subcommittee that Crossroads for Women has been able to provide the treatment that these women are seeking. Members of the subcommittee discussed the parameters of treatment programs and asked the women questions about their individual experiences.

KC Quirk, executive director, Crossroads for Women, informed the subcommittee that the organization primarily serves as a housing program that is funded through the federal Department of Housing and Urban Development. Ms. Quirk explained that Crossroads brings in women who fit the definition of homelessness, and it also takes women with mental health disorders and addiction disorders. She added that Crossroads does outreach to jails and to other treatment programs. Ms. Quirk informed the subcommittee that although Crossroads is primarily a housing program, it focuses on addiction and recovery and tries to address all issues comprehensively. Ms. Quirk added that Crossroads has a waiting list of 50 or more women and operates at \$64.00 per day. Members of the subcommittee inquired about the recidivism rate for Crossroads. Ms. Quirk advised the subcommittee that Crossroads has a 10 percent recidivism rate for new clients. Ms. Quirk discussed other details of the Crossroads programs and noted that it is the only program that uses a gender-based model. Ms. Quirk informed the committee that 50 percent of the Crossroads budget comes from federal, state and local money, and the other 50 percent comes from foundations, corporate donations and individual donations. Ms. Quirk added she would like to expand statewide but expansion locally is where she would like to start.

Probation and Parole — An Overview and Discussion of Technical Violations of Probation and Parole

Sherry Stephens, executive director, Parole Board, outlined the composition and purpose of the Parole Board. Ms. Stephens informed the subcommittee that the Parole Board maintains about 20,00 files, including all state cases. Ms. Stephens added there are 15 board members. Ms. Stephens explained to the subcommittee that parole sets the criteria for inmates to follow upon release, noting that parole enhances public safety. Ms. Stephens explained to the subcommittee that a person on probation or parole works with a probation or parole officer on any issues. Ms. Stephens told the subcommittee that in fiscal year (FY) 2014, the board conducted more than 4,000 hearings, including 2,662 minimal sentence hearings and 1,150 ramification hearings.

Rose Bobchak, acting director, Adult Probation and Parole Division, Corrections Department (NMCD), informed the subcommittee that there are 19,000 offenders on probation or parole in New Mexico. Linda Freeman, deputy director, New Mexico Sentencing Commission (NMSC), explained to the subcommittee that most offenders have a probation term that is supervised. Fourteen percent are there because of a probation violation. Ms. Freeman advised the subcommittee that there are multiple reasons for violations. Ms. Freeman structured a hierarchy rank for violations:

1. new charge;
2. did not comply; and
3. violated conditions.

Ms. Freeman told the subcommittee that the NMSC usually gives individuals two opportunities to make a condition with the parole or probation officer to avoid being re-incarcerated.

Ms. Bobchak informed the CJRS that the NMSC has a "Steps Program" for violations. The program carries a penalty for each time someone violates probation or parole. The first violation, a technical violation, carries 10 hours of community service. The second violation carries 20 hours of community service. The third violation imposes a penalty of incarceration for seven days.

Members of the subcommittee had questions concerning some of the details of probation and parole. Members inquired why absconding was the highest statistic for violations in the data provided. Ms. Bobchak informed the committee that many probationers and parolees abscond because they start using drugs again and they do not want a positive test. Ms. Stephens told the subcommittee that board members receive per diem and establish a quorum with two members. Ms. Stephens added that parole should not be more than two years.

Transitional Living and Information Technology Needs for the NMCD

Gregg Marcantel, secretary, NMCD, and Ms. Bobchak presented a proposal for the NMCD to launch a transitional living facility in Los Lunas for inmates about to be released to the community. Secretary Marcantel explained to the subcommittee that the vision for transition

into communities is an excellent way to address the recidivism rate. Ms. Bobchak added that halfway houses and transitional living centers help reduce recidivism, encourage sobriety, provide referrals to programs and impose curfews. Ms. Bobchak explained that these transitional living programs would be more structured if they offered house case management, on-site substance abuse treatment and education. Secretary Marcantel said that budget deficits are an obstacle in trying to make better transitions. He added that the NMCD is trying to divert some money to help. Ms. Bobchak added that NMCD has researched what other departments are doing. She explained to the committee that agencies such as the Veterans' Services Department are using diversity programs, detention centers and diversion programs. Ms. Bobchak added that the NMCD has a vision to implement similar programs that focus on pre-release and post-release. Pre-release programs will use evidence-based assessments to see what the needs are, such as a job, family support, income support and substance abuse support. Post-release programs will provide structure for transition out of incarceration and will have treatment programs, case management and therapy and provide education on how to become a working member of society. The NMCD currently has these programs but not in one location.

Members of the subcommittee asked questions regarding the details of the proposed transitional living facility.

Secretary Marcantel and Timothy Oakeley, chief information officer, NMCD, gave a presentation to the subcommittee on the department's information technology needs, focusing on an off-the-shelf data management system that would help the department track the success of its programs. Secretary Marcantel informed the subcommittee that it would cost \$8.5 million the first year and \$1.7 million a year after that.

Senator McSorley made a motion, seconded by Representative Chasey, that the subcommittee send a letter to the CCJ seeking approval for the CJRS to write a letter to the Legislative Finance Committee and the Department of Information Technology in support of the NMCD request for \$8.5 million to purchase new technology and the required support training. The motion passed with no dissenting votes.

Discussion of September Meeting Agenda

Mr. Carver discussed the upcoming schedule for the subcommittee. There will be presentations of specific proposals at the subcommittee's September meeting. Initial bill drafts will be presented at the October meeting and then be revised for subcommittee recommendation for endorsement by the CCJ at the subcommittee's November meeting.

Senator McSorley made a motion, seconded by Representative Chasey, that the subcommittee send a letter to the New Mexico Legislative Council requesting that money be authorized to allow Professor Romero's Criminal Code revision to be brought up to date. The motion passed with no dissenting votes.

Public Comment

Don Johnson, who deals with former sex offenders, suggested that before convicted sex offenders leave prison, they should have a mentor to help them register in a program like La Posada. He added that he has not seen any options for sex offenders that allow them to avoid incarceration on their first violation of supervisory probation. He also told the subcommittee that the NMCD allows people to stay in an RV park in Tijeras, one person at a time.

Margarita Sanchez discussed voting rights and told the subcommittee that prisons could give inmates information on voting. She also addressed the NMCD eliminating family visits and expanding the women's prison.

Adjournment

There being no further business before the subcommittee, the seventh meeting of the CJRS adjourned at 5:44 p.m.

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

**September 24, 2014
State Capitol, Room 321
Santa Fe**

The eighth meeting of the Criminal Justice Reform Subcommittee (CJRS) of the Courts, Corrections and Justice Committee was called to order by Representative Jane E. Powdrell-Culbert on September 24, 2014 in Room 321 of the State Capitol.

Present

Rep. Antonio "Moe" Maestas, Co-Chair
Rep. Gail Chasey
Rep. Zachary J. Cook
Sen. Cisco McSorley
Sen. Bill B. O'Neill
Rep. Jane E. Powdrell-Culbert

Absent

Sen. Lisa A. Torracco, Co-Chair
Sen. Sander Rue

Staff

Douglas Carver, Staff Attorney, Legislative Council Service (LCS)
Caela Baker, Staff Attorney, LCS
Monica Ewing, Staff Attorney, LCS

Guests

The guest list is in the meeting file.

Handouts

Handouts are in the meeting file and are posted at www.nmlegis.gov.

Wednesday, September 24

Crime Victims' Perspectives on the Criminal Justice System

The following panelists introduced themselves:

- Lisa Weisenfeld, Policy Coordinator, New Mexico Coalition Against Domestic Violence;
- Joan Shirley, New Mexico Resource Center for Victims of Violent Death;
- Camille Aragon, Domestic Violence Survivor;
- Ben Lewinger, State Executive Director, Mothers Against Drunk Driving (MADD);

- Christina Dominguez, Crossroads for Women;
- Rachal Gonzales, Survivor of Sexual Assault; and
- Leona Woelk, M.A., Associate Scientist II, Prevention Research Center, University of New Mexico.

Ms. Shirley told members of the CJRS that her son was killed in 1999. She stated that she is concerned about crimes not being charged appropriately because of constraints on the criminal justice system, including time constraints; the pressure of large caseloads; and prison overcrowding. Ms. Shirley urged the CJRS to consider measures to ensure that cases are charged and prosecuted appropriately.

Ms. Aragon described the difficulty that she has had with the criminal justice system, particularly with regard to a domestic violence situation that she is experiencing. She told subcommittee members that she is in the process of seeking a divorce from her physically abusive husband. She said that her husband is a police officer in Santa Fe, and she has tried to report past instances of domestic violence committed by her husband to the Santa Fe Police Department, but she has had difficulty getting appropriate follow-up.

Mr. Lewinger told the CJRS that there have been 132 fatalities and more than 1,400 injuries due to substance-impaired drivers in New Mexico. Mr. Lewinger urged the CJRS to recognize driving while intoxicated (DWI) as a violent crime. He indicated that there is a lot of re-victimization because of the prevalence of DWI in New Mexico. Finally, he appealed to the CJRS to consider the victim and not lose sight of the victim's perspective when crafting or amending criminal law.

Ms. Dominguez discussed her experience with domestic violence, witnessing abuse when she was a child. She stated that she is grateful to Crossroads for Women for the support and positive influence that the organization has had on her life. Ms. Dominguez stressed to the CJRS that additional programs and services are needed for domestic violence survivors, and for persons who have committed domestic violence, to break the cycle of domestic violence.

Ms. Gonzales told the CJRS that she was raped as a child and that she was not notified by the court or the district attorney's office of a recent parole hearing for her rapist. She indicated that this type of notice is required by law. Ms. Gonzales told members of the CJRS that she would like the subcommittee to consider a bill that would make permanent protective orders available for victims of sexual assault. A member of the CJRS suggested that a system of automated calls to crime victims should be established to ensure that victims receive the notices required by law.

Ms. Woelk stated that, in 2012, 92 percent of victims who sought help at the Rape Crisis Center of Central New Mexico stated that they knew their abusers. She stated that sexual violence has complex root causes, including depression, poverty and gender inequality. Ms. Woelk stated that effective domestic violence prevention programs should take a comprehensive approach and should engage the entire community. In addition, she indicated that such programs

should engage men and encourage them to confront attitudes about sexual violence. Ms. Woelk stated that effective programs require evaluation, training and technical assistance to improve outcomes. Finally, Ms. Woelk indicated that home visitations provided in programs such as Nurse-Family Partnership have proven to be a strong protective factor against sexual violence.

A subcommittee member suggested that when a police officer is accused of a crime, perhaps the case should be prosecuted by an entity other than the local district attorney's office, such as the attorney general. Another member of the CJRS suggested that when a victim encounters difficulty with reporting or obtaining appropriate follow-up concerning alleged crimes involving a police officer, perhaps an alternative would be to contact another law enforcement agency, such as the county sheriff, rather than the city police department. Members of the CJRS expressed support for legislative proposals that would focus time and attention on the prevention of domestic violence and substance-impaired driving.

A member of the CJRS inquired whether there are other states that allow for a permanent protective order in sexual assault cases. Ms. Gonzales responded that North Carolina does and that the law has been in place for two years. Juliana Koob, representing the New Mexico Coalition of Sexual Assault Programs, stated that in many other states, a permanent protective order is provided for in those states' family violence protection acts.

A member of the CJRS asked Mr. Lewinger whether there are any specific changes that MADD would like to see in statute. Mr. Lewinger responded that one proposal is to close loopholes in the mandatory use of interlock devices. Additionally, Mr. Lewinger would like to see safeguards that prevent cases from being pleaded down to lower offenses. Mr. Lewinger indicated that MADD supports mandatory intensive treatment programs such as DWI courts and drug courts.

One member of the CJRS stated that victims' advocates are employees of the district attorney's office. The member suggested that maybe this should be changed. Another member of the CJRS mentioned the Crimes Against Household Members Act and suggested that there is a problem with penalty progression for the crime of battery. The member also questioned whether a permanent protective order is unconstitutional.

Criminal Justice Legislative Proposals — Legislative Finance Committee

Charles Sallee, deputy director for program evaluation, Legislative Finance Committee, presented 10 proposals to improve the cost-effectiveness of incarceration and increase public safety through community offender management. The specific proposals are listed on a handout distributed by Mr. Sallee, which can be viewed on the CJRS web page at www.nmlegis.gov.

One member of the CJRS inquired about a proposal to require presentencing diagnostic evaluations in county jails or communities where sentencing decisions will be made, rather than in prisons operated by the Corrections Department (NMCD). Specifically, the member wondered whether the expertise exists in the county jails to conduct these types of diagnostic

evaluations. Mr. Sallee indicated that there is already a team that travels to each county facility to conduct evaluations, and this team is funded by the Department of Health.

Members of the CJRS discussed:

- the possibility of a pilot program within the abuse and neglect system that would utilize parents who have successfully completed treatment programs in the abuse and neglect system to serve as mentors to other parents involved in the system;
- the limited availability of the Nurse-Family Partnership program;
- data suggesting that the domestic violence perpetrator program is ineffective;
- making inmates eligible for earned meritorious deductions during the time that they are incarcerated before conviction;
- whether reductions in the use of in-house parole could be achieved through an administrative rather than statutory change; and
- the need for more community corrections options.

One member of the CJRS asked whether there are plans to dedicate more funding to halfway houses. Mr. Sallee responded that the NMCD requested an additional \$800,000 for halfway houses in its most recent budget request. Mr. Sallee added that the NMCD ran a deficit last year and had to ask for supplemental funding. He added that the NMCD will likely be asking for more funding this year.

Tony Ortiz, director, New Mexico Sentencing Commission (NMSC), stated that, for the second year in a row, the NMSC is predicting rapid growth in the female prison population. On the other hand, the male prison population has been stable for the past six to seven years. A member of the CJRS asked for information on the use of in-house parole in the female prison population. Mr. Sallee indicated that, as to the general prison population, approximately 78 percent of inmates are released by their scheduled release date. He added that a significant portion of inmates on in-house parole have refused to participate in the parole process.

A subcommittee member asked about the funding mechanism for the New Mexico Women's Correctional Facility (women's prison). Mr. Sallee indicated that the NMCD pays a per day fee to private prisons, and the women's prison is one type of prison for which the NMCD is allowed to procure directly. The subcommittee member stated that the NMCD's budget should be reduced for each inmate on in-house parole who should have been released.

Report from the Bernalillo County Criminal Justice Review Commission

Arthur Pepin, director, Administrative Office of the Courts, provided a preliminary report from the Bernalillo County Criminal Justice Review Commission and a handout outlining the criminal justice and jail management initiatives that have been implemented or will be implemented in Bernalillo County. These handouts can be viewed on the CJRS web page at www.nmlegis.gov.

Mr. Pepin discussed new rules concerning speedy trials and indicated that these rules are necessary to reduce pretrial delays and minimize the time people spend incarcerated prior to trial. He further indicated that housing inmates out-of-county is a practice that needs to be eliminated. He stated that the grand jury process in Bernalillo County has contributed to significant delays and that preliminary hearings should be used more frequently. Mr. Pepin further stated that there is significant overlap between the mental health and criminal justice systems, and Bernalillo County has committed \$1.1 million for supportive housing for people with mental health issues who may otherwise end up in the Bernalillo County Metropolitan Detention Center (MDC). He indicated that a crisis triage center is also needed in the metropolitan area.

Mr. Pepin told members of the CJRS that more funding is needed for public defenders, district attorneys and courts. He stated that the use of pretrial services should be increased and reliance on the bail system should be minimized. Mr. Pepin indicated that the only two countries that use a bail system are the United States and the Philippines.

Approval of Minutes

Members of the CJRS voted unanimously to approve the minutes of the subcommittee's August meeting.

History of Bail Bonds, Jail Overcrowding and Possible Legislation

Gerald Madrid described the role of bail bondsmen in the criminal justice system. He indicated that there is a right to bail in the Constitution of New Mexico and the United States Constitution. He indicated that there is a conflict between the bail system and the government-run pretrial services program. Mr. Madrid indicated that the pretrial services program was started in the 1980s in an effort to address indigent defendants and reduce overcrowding. Mr. Madrid discussed the problems that he perceives with the pretrial services system.

John Madrid indicated that the bail bond system has resulted in a 99 percent appearance rate in court by criminal defendants. He echoed the concerns raised by Gerald Madrid about the pretrial services system.

Henry Martinez discussed the license that bail bondsmen are required to obtain and the continuing education requirements for licensure in the profession. He indicated that the bail bonds industry is regulated by the Office of Superintendent of Insurance.

Gerald Madrid discussed the difficulty that inmates have had with the phone system in the MDC. A member of the CJRS suggested mandating free-access phone calls for inmates in county jails. John Madrid added that bail bond amounts should be made consistent throughout the state.

A member of the CJRS stated that there needs to be an appropriate balance between the use of bail bonds and the use of pretrial services. The member stated that pretrial services are expensive and the bail system is a valuable tool.

Criminal Justice Legislative Proposals — Office of the Public Defender

Jorge Alvarado, chief public defender, provided the CJRS with a packet of specific legislative proposals. These proposals can be viewed on the CJRS web page at www.nmlegis.gov.

Mr. Alvarado stated that the legislative proposals have been sent to Henry Valdez, director, Administrative Office of the District Attorneys, and that representatives from the Public Defender Department are meeting with representatives from the Second Judicial District Attorney's Office to discuss the proposals and try to find common ground. A member of the CJRS indicated that the subcommittee may be particularly interested in proposals that the district attorneys can also support.

Several members of the CJRS noted that expungement was not included in the packet of proposals, and they expressed support for some form of expungement, noting that 45 states already have some provisions allowing for expungement. One member of the CJRS pointed out that allowing persons with criminal convictions to seek expungement may reduce recidivism.

Public Comment

Bennett Baur, deputy chief public defender, stated that he disagrees with statements made about the utility of bail bonds and the notion that inmates do not have adequate phone access to bail bond companies. Mr. Baur stated that cash bonds should be phased out and that pretrial services programs should be expanded.

Rikki-Lee Chavez, representing the New Mexico Criminal Defense Lawyers Association, expressed support for eliminating mandatory minimum sentences.

Margarita Sanchez expressed concerns about the lack of efforts to slow prison growth and the lack of programming provided in prisons and detention facilities.

Adjournment

There being no further business before the subcommittee, the eighth meeting of the CJRS adjourned at 4:52 p.m.

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

**October 15, 2014
Technology Ventures Corporation Building
University of New Mexico
Albuquerque**

The ninth meeting of the Criminal Justice Reform Subcommittee of the Courts, Corrections and Justice Committee (subcommittee) was called to order by Senator Lisa A. Torracco, co-chair, on October 15, 2014 at 10:05 a.m. at the Technology Ventures Corporation Building at the University of New Mexico in Albuquerque.

Present

Rep. Antonio "Moe" Maestas, Co-Chair
Sen. Lisa A. Torracco, Co-Chair
Rep. Gail Chasey
Rep. Zachary J. Cook
Sen. Cisco McSorley
Sen. Bill B. O'Neill
Rep. Jane E. Powdrell-Culbert
Sen. Sander Rue

Absent

Guest Legislators

Sen. Jacob R. Candelaria
Sen. Daniel A. Ivey-Soto
Rep. William "Bill" R. Rehm
Rep. Sheryl Williams Stapleton

Staff

Douglas Carver, Staff Attorney, Legislative Council Service (LCS)
Caela Baker, Staff Attorney, LCS
Monica Ewing, Staff Attorney, LCS
Julio Garcia, Legislative Intern, LCS

Guests

The guest list is in the meeting file.

Handouts

Handouts and other written testimony are in the meeting file.

Wednesday, October 15

Call to Order and Introductions

Senator Torraco welcomed everyone to the meeting, and the subcommittee members introduced themselves. Senator Torraco explained that the subcommittee would spend the day establishing its legislative agenda for the 2015 legislative session.

Criminal Justice Reform — Legislative Plan for the 2015 Session

The subcommittee members discussed continuing the subcommittee's work revising the Criminal Code beyond the 2014 interim. They also considered whether the subcommittee should propose an omnibus bill or individual bills during the 2015 legislative session. The members determined that they would include only items that receive unanimous support on the subcommittee's legislative agenda. One member suggested that in its future work, the subcommittee should look at the entire Criminal Code and perform a comprehensive revision of those statutes. Another member recalled that other major statutory revisions, such as that of the Public School Code, were performed over several years' time.

Ken Fladager, the chair of the Prosecutors' Section of the State Bar of New Mexico, informed the subcommittee that prosecutors are interested in revisions to statutes addressing technology and cybercrime. He added that current statutory language limits the way child pornography is prosecuted and recommended legislation to revise the out-of-date statutes.

A member expressed concern that the state's current law allows a greater punishment for someone who views child pornography than for someone who physically harms a child. He suggested that the emphasis should be on protecting victims who are in New Mexico and on prosecuting people who engage in commerce related to child pornography.

The subcommittee discussed reclassification of certain crimes as high misdemeanors and the collateral consequences to a felony conviction. Some states have three or four levels of misdemeanors, and New Mexico has just two. A member said that reclassification of certain crimes could reduce prison costs, and another member recognized that county jails would be affected by such a reclassification. Another member added that adding a high misdemeanor level of crime could help solve some of the problems that expungement legislation is aimed at resolving. Another member emphasized the goal of imprisoning only those people who pose a safety threat and not those who simply deserve to be punished.

Tony Ortiz, director for the New Mexico Sentencing Commission, stated that fourth degree felons are often initially sentenced to probation, and they are given some leniency when they violate probation before they will be sentenced to incarceration. A member echoed Mr. Ortiz's observations and stated that sentencing for residential burglary can depend on the jurisdiction in which the crime is committed — in some jurisdictions, a convict will serve prison

time after one conviction, while in other jurisdictions, a person will be incarcerated only after several convictions.

From all of the proposals put forth by the individual members, the subcommittee decided to identify several that had the members' unanimous support and to review bill drafts for those proposals at the subcommittee's November meeting. The members listed the following items for discussion:

- support for halfway houses and transitional living facilities;
- creation of a high misdemeanor crime category;
- reclassification of certain felonies as high misdemeanors;
- noncontact fourth degree felonies;
- geriatric and medical parole;
- restrict certain inquiries into a person's status as a felon;
- criminal record expungement;
- earned meritorious deductions;
- sentencing guidance for the judiciary;
- reckless driving resulting in vehicular homicide;
- availability of high school equivalency diplomas in Corrections Department (NMCD) facilities;
- probation and parole reform;
- community corrections programs;
- eyewitness procedures;
- revenge pornography;
- probation and parole in Indian country;
- suspension of Medicaid eligibility during incarceration;
- NMCD information technology needs;
- Medicare for inmates;
- month-to-month earned meritorious deductions during probation;
- remove judicial discretion regarding eligibility for earned meritorious deductions;
- adjust penalties for second degree murder;
- revise drug-related offenses, first degree trafficking, kidnapping, aggravated battery, drug enforcement zone and forfeiture statutes;
- add mens rea requirements to crimes;
- changes to pretrial services;
- court programming for reuniting families; and
- 10 recommendations made by the Legislative Finance Committee (LFC) staff during the subcommittee's September meeting.

Several members expressed support for the LFC's recommendations, and the subcommittee considered each of the recommendations separately. The members agreed to include nine of the 10 recommendations in the legislative agenda and to revise two of the recommendations that related to required NMCD expenditures.

Through discussion, the members determined that the following items had unanimous support among the members and would be included in the subcommittee's legislative agenda to be discussed at the next meeting.

1. A bill concerning month-to-month good time while on probation, allowing someone who has had 30 days of supervised probation without incident to have 30 days removed from the length of his or her required probation.
2. A bill creating the crime of aggravated battery with permanent injury, with a zero-year to six-year sentence.
3. A bill to address the issue of geriatric parole.
4. A bill addressing issues surrounding halfway houses and transitional living — the Halfway House and Transitional Living Act.
5. A bill reintroducing the Accuracy of Eyewitness Procedure Act (see SB 490, 2013).
6. A bill concerning revenge pornography, with the essential element of requiring permission to distribute by the subject of the photograph.
7. A bill to examine the eligibility for earned meritorious deductions.
8. A bill to create a gross misdemeanor/high misdemeanor in state statute.
9. A bill reclassifying certain crimes that are at present fourth degree felonies to gross/high misdemeanor (see no. 8).
10. A bill mandating that the NMCD make high school equivalency credential classes available.
11. A bill requiring the Human Services Department to allow for the suspension of Medicaid for incarcerated individuals.

From the list of LFC recommendations:

12. Require the NMCD to implement a valid risk and needs assessment and use the information to place inmates in appropriate prison programming and community programming upon reentry.
13. Require the NMCD to offer evidence-based (define) in-prison programming, including:
 - a. adult education;
 - b. vocational education;
 - c. substance abuse treatment;
 - d. corrections industries; and

- e. cognitive behavioral therapy.
14. Require the NMCD to spend 50 percent of its prison programming budget on evidence-based programs and services.
 15. Tie good time awards to completion (rather than simply participation) of evidence-based programs and services.
 16. Update statute to provide judges the ability to sentence inmates to NMCD prison facilities only if offenders are sentenced to one year or more after accounting for any period of the sentence being suspended or deferred and any credit for presentence confinement.
 17. Amend the geriatric and medical parole statute to require the NMCD to evaluate inmates eligible for medical and geriatric parole and submit the list to the Parole Board for consideration.
 18. Require the NMCD to spend 50 percent of its Adult Community Corrections Act services funding on evidence-based (define) programs and services within four years.
 19. Amend statutory intensive supervision requirements to require offenders to participate in community treatment services based on the results of the NMCD use of a valid risk and needs assessment.
 20. Transfer drug court funding currently in the NMCD budget to the judicial branch to continue support for the Second and Eleventh judicial districts (general appropriations act change).

Approval of Minutes

The subcommittee approved the minutes for the September meeting without objection.

Public Comment

Denise Cadena, a representative of Young Women United, asked the subcommittee to consider gender in all of its legislative efforts. She recalled that the New Mexico Women's Correctional Facility in Grants is experiencing concerns with its capacity.

Lisa Seepaul expressed the importance of transitions out of incarceration, particularly with respect to housing, public service and transportation needs.

Mr. Ortiz informed the subcommittee that, as of June 30, 2013, there were 119 inmates incarcerated in New Mexico that were 65 years old or older. Some of the inmates are still incarcerated because of the nature of the crimes they committed, but others had no family support or nursing home into which they could be released. He added that the NMCD has expressed a need for transitional housing. Currently, 212 inmates are eligible for release but are incarcerated because of the lack of transitional housing. A member added that management,

including case management, for transitional housing can be difficult, and there are very few agencies providing the services.

Mr. Fladager informed the subcommittee that the creation of a high misdemeanor could overwhelm the county jails in smaller communities. He also noted that the subcommittee should consider the impacts of a high misdemeanor on the Children's Code and juvenile proceedings.

Margarita Sanchez stated her support for revisions to the state's criminal laws. She emphasized the role of job creation on preventing crime.

Esperanza Dodge, a representative of Young Women United and a member of the New Mexico Breastfeeding Task Force, asked the subcommittee to consider gender and issues related to lactation in its legislative considerations. She reminded the subcommittee about several low-cost recommendations she made in her presentation in June that would help ensure that the criminal justice system collaborates with mothers who are breastfeeding their children.

Adjournment

There being no further business, the ninth meeting of the subcommittee for the 2014 interim was adjourned at 1:52 p.m.

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

**November 12, 2014
Room 321, State Capitol
Santa Fe**

The tenth meeting of the Criminal Justice Reform Subcommittee (CJRS) of the Courts, Corrections and Justice Committee (CCJ) was called to order by Senator Lisa A. Torraco, co-chair, on November 12, 2014 at 9:21 a.m. in Room 321 of the State Capitol.

Present

Rep. Antonio "Moe" Maestas, Co-Chair
Sen. Lisa A. Torraco, Co-Chair
Rep. Zachary J. Cook
Sen. Cisco McSorley
Sen. Bill B. O'Neill
Rep. Jane E. Powdrell-Culbert

Absent

Rep. Gail Chasey
Sen. Sander Rue*

*Senator Rue monitored the meeting remotely and participated in the discussion by telephone concerning several of the matters before the CJRS.

Guest Legislators

Sen. Daniel A. Ivey-Soto
Sen. Richard C. Martinez
Rep. William "Bill" R. Rehm
Rep. Mimi Stewart**

**Representative Stewart was appointed as a voting member.

Staff

Douglas Carver, Staff Attorney, Legislative Council Service (LCS)
Caela Baker, Staff Attorney, LCS
Julio Garcia, Intern, LCS

Guests

The guest list is in the meeting file.

Minutes Approval

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

Handouts

Handouts are in the meeting file and are posted online at www.nmlegis.gov.

Wednesday, November 12

Introductions

Members of the CJRS introduced themselves.

Criminal Justice Reform — Consideration of Legislation

Fourteen bills were presented to the CJRS for endorsement. The bills were numbered according to a list that was compiled at the October 15, 2014 meeting of the CJRS that is posted on the CJRS web page at www.nmlegis.gov. Mr. Carver explained to members that, in some cases, several of the concepts from the 20-item list had been combined into a single bill. The following bills were discussed by the CJRS:

CJRS 1 (endorsed)

This bill concerns month-to-month "good time" earned while on probation and would allow a person who has had 30 days of supervised probation without incident to have 30 days removed from the length of the person's probation sentence. Members of the CJRS discussed whether pretrial good time should be included in this bill and whether changes should be made to equalize the way good time is awarded in jails versus prisons. A comment was made that some additional issues related to the awarding of good time or earned meritorious deductions are addressed in CJRS 7. A member of the CJRS also asked for information on measures to ensure that good time is not being taken away without adequate safeguards. Upon a motion duly made and seconded, the CJRS voted unanimously to endorse CJRS 1.

CJRS 2 (endorsed)

This bill would create the crime of aggravated battery with permanent injury and would impose a sentence of zero to six years for that crime. Members of the CJRS discussed the fact that there is currently no six-year sentence provided for in the Criminal Sentencing Act, so this bill would be creating a special sentence. One member suggested that a six-year sentence and a 12-year sentence could be added to the Criminal Sentencing Act at a later date, but several other members expressed support for adding those sentences to the Criminal Sentencing Act in this bill. Another member suggested the possibility of creating a three-year sentencing enhancement. Upon a motion duly made and seconded, the CJRS voted unanimously to endorse CJRS 2.

CJRS 3

There was no bill drafted as this bill was duplicative of CJRS 17.

CJRS 4 (endorsed, with amendments)

This bill would enact the Halfway House and Transitional Residential Facility Act and require the Corrections Department (NMCD) to operate or contract with a third party to operate halfway houses or transitional residential facilities. The CJRS discussed removing language from the bill that would have required the NMCD to construct or lease these facilities. In addition, the CJRS discussed adding language specifying a minimum number of probation and parole regions that the NMCD should be required to establish by rule. The CJRS engaged in further discussion about whether residents of halfway houses or transitional residential facilities should be required to work or go to school and whether a separate fund should be used for the deposit of housing payments or whether the payments should be deposited in the general fund.

At the request of the CJRS, staff of the LCS met with stakeholders to identify proposed changes to the bill. The changes were presented to the CJRS for consideration. Dave Webster, co-clinical director, St. Martin's Hospitality Center, and KC Quirk, executive director, Crossroads for Women, expressed support for the bill.

Upon a motion duly made and seconded, the CJRS voted unanimously to endorse CJRS 4 with the following amendments:

- delete the requirement for work or school participation;
- require housing payments collected by the NMCD from residents at NMCD-operated facilities to be deposited in the general fund, rather than a specific fund that would have been used by the NMCD;
- require that one halfway house or transitional residential facility for men and one halfway house or transitional residential facility for women be established in each probation and parole region; and
- require a minimum of four probation and parole regions.

CJRS 5 (endorsed)

Senator McSorley and Amshula Jayaram, state policy advocate, Innocence Project, summarized the bill, which would provide for procedures to enhance the accuracy of eyewitness identifications. Ms. Jayaram indicated that 10 states have already enacted similar legislation. Mike Bowen of the New Mexico Association of Chiefs of Police expressed support for the bill. Upon a motion duly made and seconded, the CJRS voted unanimously to endorse CJRS 5.

CJRS 6 (not endorsed)

Senator McSorley provided a summary of the bill, which would prohibit the unauthorized distribution of "sensitive images". The bill is intended to address the issue of "revenge pornography". A similar bill was recently passed in California. Several members of the CJRS indicated that the bill is similar to a bill that was introduced in the 2014 legislative session and a discussion ensued concerning potential issues with the bill. One member of the CJRS suggested alternate language concerning the types of images that would be subject to the prohibition. A co-chair suggested that Senator McSorley should carry the bill individually and that if the bill does not pass, the CJRS should consider it during the 2015 interim as part of a potential reform package.

CJRS 7 (not endorsed)

This bill would allow inmates in state correctional facilities to earn meritorious deductions up to a maximum of 30 days per month and would allow inmates in state or county correctional facilities to earn credit for presentence confinement. Tony Ortiz, executive director, New Mexico Sentencing Commission, indicated that the bill would allow serious violent offenders to earn meritorious deductions at the same rate as other inmates. Members of the CJRS expressed disagreement with making any changes related to earned meritorious deductions for serious violent offenders.

CJRS 8 (endorsed, with amendments)

Senator Ivey-Soto provided a summary of the bill, which would create the sentence of a high misdemeanor. He indicated that in the future, some fourth degree felonies could be reclassified as high misdemeanors and that some misdemeanors may need to be increased to high misdemeanors. Up to four different levels of misdemeanors exist in some states, he said.

Members of the CJRS discussed whether specific crimes should be designated as high misdemeanors as part of the bill. One member expressed concern that adding specific crimes at this time could cause the bill to fail if legislators cannot agree on which crimes should be designated as high misdemeanors. Another member wondered if creating a high misdemeanor but not designating particular crimes as high misdemeanors would cause confusion among judges and law enforcement.

Dave Schmidt suggested that adding a future effective date may address some of these concerns.

Jorge Alvarado, chief public defender, indicated that there should be a requirement that misdemeanor offenders not be housed in NMCD corrections facilities, unless they are also serving time for felony offenses.

Mr. Ortiz indicated that Section 31-20-2 NMSA 1978 addresses place of commitment and suggested that the section may also need to be amended since the high misdemeanor bill would provide for a sentence of "less than fifteen months".

Rikki-Lee Chavez, New Mexico Criminal Defense Lawyers Association, stated that a crime for which the basic sentence is more than one year would be treated as a felony under 18 U.S.C. Section 3559.

Margarita Sanchez stated that the CJRS is capable of classifying specific offenses as high misdemeanors as part of this bill.

Upon a motion duly made and seconded, the CJRS voted unanimously to endorse CJRS 8, which was amended to add a delayed effective date of July 1, 2016.

CJRS 9

No bill was drafted for this item.

CJRS 10 (endorsed, with amendments)

This bill would expand the mandate that the NMCD make high school equivalency credential classes available to inmates. Members of the CJRS discussed potential changes to the bill, including adding language relating to programs for English language learners. Upon a motion duly made and seconded, the CJRS voted unanimously to endorse CJRS 10, which was amended to delete Subsection C of Section 33-11-3 NMSA 1978.

CJRS 11 (action deferred)

This bill would require the Human Services Department to provide pre-release Medicaid eligibility assessments and applications to incarcerated individuals. Abuko Estrada, staff attorney, New Mexico Center on Law and Poverty, presented a new proposed draft, based on a version that was passed by the legislature in 2013 but vetoed by the governor. Mr. Estrada indicated that the draft has been revised to address some issues that were raised in the veto message.

Grace Philips, general counsel, New Mexico Association of Counties, expressed support for the bill and further indicated support for adding a 30-day threshold.

The members of the CJRS deferred consideration of the bill and indicated that the new version of the bill should be considered by the CCJ at its next meeting.

CJRS 12-15 (endorsed, with amendments)

Charles Sallee, deputy director for program evaluation, Legislative Finance Committee, provided a summary of the bill, which would require the NMCD to use a validated risk and needs assessment for all inmates and use evidence-based prison programming; and would require inmates to complete programming before meritorious deductions are awarded. Upon a motion duly made and seconded, the CJRS voted unanimously to endorse CJRS 12-15, which was amended to remove Section 2, relating to the award of meritorious deductions.

CJRS 16 (not endorsed)

This bill would provide judges with the ability to sentence inmates to NMCD corrections facilities only if offenders are sentenced to one year or more, after accounting for any period of the sentence being suspended or deferred. Members of the CJRS discussed the impact that this legislation would have on counties and decided to reconsider the bill if the CJRS is renewed during the 2015 interim.

CJRS 17 (endorsed, with amendments)

This bill would amend the geriatric and medical parole statute to require the NMCD to evaluate inmates eligible for medical and geriatric parole and submit the list to the Parole Board for consideration. Members of the CJRS discussed whether language in the definition of

"permanently incapacitated" is problematic. Sherry Stephens, executive director, Parole Board, indicated that the language has not proven problematic, and the Parole Board supports CJRS 17. A member of the CJRS suggested adding language expanding the applicability of the legislation to inmates who "may become eligible" for medical or geriatric parole. Upon a motion duly made and seconded, the CJRS voted unanimously to endorse CJRS 17, which was amended to include language expanding the applicability of the legislation to inmates who "may become eligible" for medical or geriatric parole.

CJRS 18 (endorsed)

Mr. Sallee provided a summary of the bill, which would require that evidence-based behavioral health treatment programs be incorporated into community corrections and intensive supervision programs. Upon a motion duly made and seconded, the CJRS voted unanimously to endorse CJRS 18 with no changes.

CJRS 19 (endorsed, with amendments)

Mr. Sallee provided a summary of the bill, which would require a person assigned to an intensive supervision program to also be enrolled in a behavioral health program. Upon a motion duly made and seconded, the CJRS voted unanimously to endorse CJRS 19, which was amended to change the first sentence of Subsection D to read: "If an intensive supervision program is imposed for an individual, that individual shall be enrolled in an appropriate behavioral health program".

CJRS 20

No bill was drafted for this item.

Approval of Minutes

Members of the CJRS voted unanimously to approve the minutes of the subcommittee's October meeting.

Sequential Intercept Model and Summary of the Behavioral Health Task Force Recommendations

Mr. Webster and Andrew Vallejos presented:

- 1) a summary of the recommendations of the Behavioral Health Task Force;
- 2) information concerning the Sequential Intercept Model; and
- 3) an overview of recommended actions concerning mental health issues that have emerged from community-based dialogues that took place from July 2013 through August 2014 in Albuquerque.

Handouts provided by Mr. Webster and Mr. Vallejos are available on the CJRS web page at www.nmlegis.gov.

Adjournment

There being no further business before the subcommittee, the tenth meeting of the CJRS

of the CCJ adjourned at 5:35 p.m.