

**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.