

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

**July 16-17, 2015
Doña Ana Community College East Campus Branch
New Mexico State University
Las Cruces**

The second meeting of the Courts, Corrections and Justice Committee (CCJ) was called to order by Representative Zachary J. Cook, co-chair, on July 16, 2015 at 9:39 a.m. at the Doña Ana Community College East Campus Branch in Las Cruces.

Present

Rep. Zachary J. Cook, Co-Chair (7/16)
Sen. Richard C. Martinez, Co-Chair
Rep. Eliseo Lee Alcon
Sen. Joseph Cervantes
Rep. Gail Chasey (7/16)
Rep. Rick Little
Sen. Linda M. Lopez (7/16)
Rep. Antonio Maestas (7/16)
Sen. Cisco McSorley (7/16)
Rep. Andy Nunez
Rep. William "Bill" R. Rehm (7/16)

Advisory Members

Rep. W. Ken Martinez (7/16)
Rep. Patricia Roybal Caballero (7/16)
Sen. Mimi Stewart (7/16)
Sen. Peter Wirth

Absent

Rep. Jim Dines
Rep. Georgene Louis
Sen. Sander Rue
Sen. Lisa Torrace

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

Guest Legislator

Rep. Debbie A. Rodella

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

Staff

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

Monica Ewing, Staff Attorney, LCS

Caela Baker, Staff Attorney, LCS

Guests

The guest list is in the meeting file.

Handouts

Handouts and other written testimony are in the meeting file.

Thursday, July 16

Representative Cook welcomed the committee members and meeting attendees, and the committee members introduced themselves.

Welcoming Remarks

Dr. Renay Scott, president, Doña Ana Community College (DACC), welcomed members of the committee and provided an update on programs and an overview of new initiatives at DACC. She told members of the committee that DACC has been engaged in an effort to re-obtain accreditation for its nursing program. In addition, DACC has been working to improve its work force initiatives by partnering with local employers to develop specialized training programs.

Members of the committee asked questions about and discussed:

- ▶ enrollment and transfer numbers;
- ▶ programs offered by DACC;
- ▶ availability of financial aid;
- ▶ student debt load; and
- ▶ transferability of credits to universities.

Presentation of Children, Youth and Families Department (CYFD) Strategic Plan

Monique Jacobson, secretary, CYFD, presented the CYFD strategic plan. Secretary Jacobson told committee members that the CYFD mission statement is to "improve the quality of life for our children". She explained that developing operating principles for the agency is critical. The strategic plan outlines the following operating principles:

- ▶ be kind, respectful and responsive;
- ▶ be child- and youth-centric;
- ▶ create a culture of accountability and support;
- ▶ simplify by doing fewer, bigger things that produce results;
- ▶ ensure that behavioral health and program support are strategically enveloped in all programs;
- ▶ own mistakes and learn from them; and
- ▶ understand that "it's all about the quality of our workers".

In discussing the operating principles, Secretary Jacobson explained that most of the complaints received by the CYFD were not about what the agency did, but *how* the agency did it. She stated that she has been meeting regularly with children who were in the CYFD system to learn how they were affected and what the agency can do to improve.

The CYFD strategic plan also contains five "strategic planks", which are: (1) shore up the core functions of the agency by going "back to basics"; (2) focus on prevention; (3) improve communication and relationships with law enforcement; (4) implement financial controls; and (5) ensure community engagement.

The "back to basics" plank has four primary focus areas: (1) protective services; (2) juvenile justice; (3) early childhood services; and (4) behavioral health. Concerning protective services, Secretary Jacobson explained that the agency needs to focus on having inspirational leaders who are able to hold people accountable, developing a statewide staffing plan, improving compensation for and retention of CYFD employees, retaining current foster families and finding new ones and ensuring that biological parents have access to the services that they need. In terms of staffing, the CYFD has worked with the State Personnel Office to develop a "rapid hire" program that greatly reduces the time that it takes to hire new employees. The rapid hire program allows for job fairs, where every step of the hiring process can be completed in one day and employees can be hired on the spot, pending the outcome of background checks. The CYFD has held two of these job fairs. At the last one, the agency was able to hire 23 people.

Concerning juvenile justice, Secretary Jacobson stated that since all children in CYFD custody will leave by age 21 or earlier, there needs to be a focus on rehabilitation. Thus, the CYFD plans to continue to foster the success of the Cambiar model. Concerning early childhood services, the focus will be on expanding access to child care assistance as funding allows, revising the rate structure for child care providers and assisting communities to build the infrastructure necessary to expand home visiting and pre-kindergarten programs. Finally, concerning behavioral health, the CYFD plans to develop a needs assessment in every county and align services in those counties to ensure that New Mexico has a balanced array of services, grounded in evidence-based practices.

Secretary Jacobson discussed the "prevention" plank and indicated that the efforts in this area will be focused on ensuring that prevention initiatives are reaching at-risk families,

expanding the family support worker program and developing a comprehensive, trauma-informed approach to serving the "0-3 population". The third plank involves improving communication and relationships with law enforcement. This would entail co-locating child protective services with law enforcement, as well as a number of other initiatives. The fourth plank calls for the agency to focus on making sure that every dollar is spent in the most efficient and effective way possible. Finally, the fifth plank stresses the need to conduct outreach with foster parents, schools, law enforcement, providers, community leaders and the general public and engage communities to figure out what challenges are facing those communities.

Members of the committee asked questions about and discussed:

- ▶ the shift toward the Cambiar model;
- ▶ whether there has been any follow-up concerning Senate Joint Memorial 3 (2014), which called for the CYFD to prepare a report on issues related to foster care and child protective services;
- ▶ hiring efforts;
- ▶ raises for CYFD workers;
- ▶ whether compensation is addressed in the CYFD's staffing plan;
- ▶ whether any services or support is offered to kinship caregivers;
- ▶ CYFD program evaluation;
- ▶ issues concerning the Statewide Central Intake hotline; and
- ▶ whether CYFD funding levels and resources are adequate.

Members of the committee specifically requested that the CYFD provide data on the number of kinship caregivers in New Mexico, the services that are currently offered to those caregivers, the percentage of children who are currently involved with the CYFD in some manner and the average cost per case for children who are involved with the CYFD.

New Mexico Criminal Defense Lawyers Association (NMCDLA) Presentation on Drugged Driving Laws, Child Pornography Laws and Solitary Confinement

Margaret Strickland, a criminal defense lawyer, discussed some of the issues concerning "drugged driving" laws. She explained that, frequently, these law conflict with science — that the level of drugs in one's system does not necessarily correlate with driving ability or field performance. She indicated that the majority of states have not adopted these types of laws.

Bennett Baur, district defender, north-central New Mexico, Law Offices of the Public Defender (LOPD), expressed concerns that having per se levels may cause law enforcement to focus less on other investigation tools, such as field sobriety tests and drug recognition experts. Mr. Baur reiterated that having drugs in one's system does not necessarily mean impaired driving. He pointed out a recent study conducted by the National Highway Traffic Safety Administration (NHTSA), which found that the presence of drugs in one's system does not necessarily correlate with an increase in crash risk, whereas a clear correlation was found between blood alcohol concentration and crash risk.

Kim Chavez-Cook, assistant appellate defender, LOPD, discussed the case of *State v. Olsson/Ballard* (consolidated), 2014-NMSC-012, concerning the unit of prosecution for child pornography cases. She stated that the New Mexico Supreme Court found that statute does not clearly define how many crimes a person commits when the person possesses multiple images at once. In particular, changes in technology and digital file storage require changing the statute to bring it up to date. Ms. Chavez-Cook discussed the federal scheme for addressing this problem, which addresses the quantity issue at sentencing through a "points" system. Under the federal scheme, points are assigned based on factors such as the quantity of images and age of the victim, and these points affect the length of a sentence that a person is given, essentially functioning as a sentencing enhancement.

Members of the committee discussed various approaches to the unit of prosecution issue. Mr. Carver indicated that this issue would be revisited at the September meeting of the CCJ.

Matt Coyte, president of the NMCDLA, discussed the issue of solitary confinement. He explained that other terms used to describe solitary confinement include "administrative segregation", "disciplinary segregation", "protective custody" and "medical observation". He stated that solitary confinement is commonly defined as confining a person in a cell for 22 or more hours per day. Mr. Coyte indicated that the Corrections Department uses 23 hours as the benchmark, while in county detention facilities, 24 hours is common.

Mr. Coyte discussed a case pending against Sierra County and indicated that the Sierra County Detention Facility has been temporarily closed. He indicated that New Mexico currently has between 16 percent and 19 percent of inmates serving in solitary confinement at any given time. He indicated that the national average is only five percent.

Mr. Coyte stated that House Bill 376 (2015) would have prohibited the use of solitary confinement for inmates younger than 18 years of age and for inmates who have a serious mental illness. Additionally, the bill would have prohibited the use of solitary confinement for more than 15 consecutive days, or a total of 60 days, in a 12-month period. Finally, the bill contained certain reporting requirements, which would allow lawmakers and others to better track how solitary confinement is being used.

Mr. Coyte explained that the European Union has set 15 days as the limit on the use of solitary confinement. By contrast, he stated that New Mexico currently has approximately 1,500 inmates serving long-term solitary confinement. Mr. Coyte told members of the committee that the law should be changed because the use of solitary confinement results in releasing people in worse condition than before they went to jail or prison, and lawsuits concerning the use of solitary confinement are costing the state and counties money.

Public Comment

Diana Crowson told members of the committee that her son is incarcerated at the Southern New Mexico Correctional Facility (SNMCF) and that her son's unit at the SNMCF has

been on lockdown since March 7, 2014. She indicated that inmates in that unit are being subjected to solitary confinement for 22.5 hours per day and are allowed only three showers per week and four phone calls per month. She urged members of the committee to consider restrictions on the use of solitary confinement and also to implement measures that would improve training and rehabilitation for inmates.

Update on the New Mexico DNA Identification System

John Krebsbach, crime laboratory director, Scientific Evidence Division, Albuquerque Police Department, presented data concerning New Mexico's DNA identification system. He indicated that more than 100,000 persons have been required to provide DNA samples, 38 percent of whom were required to provide samples pursuant to "Katie's Law". He stated that in 3,119 cases, the DNA samples were used in furtherance of an investigation. Mr. Krebsbach explained that there has been an 87.5 percent increase in arrestees matched to a case due to offenses added by Katie's Law.

Members of the committee asked questions about and discussed:

- ▶ the effect of expungement on DNA samples;
- ▶ whether data are available to indicate the percentage of people who are arrested for offenses listed in Katie's Law and subsequently convicted; and
- ▶ what constitutes a DNA "match".

Proposed Drugged Driving Bill

Representative Rehm introduced David Mills, director, Scientific Laboratory Division (SLD), Department of Health, and James Dickens, prosecutor. Representative Rehm described legislation that would prohibit driving with certain amounts of controlled substances or metabolites in the blood.

Dr. Mills explained that alcohol is water soluble, so alcohol consumption and blood alcohol concentration are closely correlated. On the other hand, most drugs dissolve in fat and concentrate in the brain. Thus, the level in the blood does not necessarily correlate with the level in the brain. Nevertheless, Dr. Mills indicated that the levels included in the bill presented by Representative Rehm were chosen because they are the levels at which it can be determined that a person has recently used the listed drug. He added that the metabolites and substances listed in the bill are only those that have an impairing effect.

Dr. Mills stated that 19 states have laws that identify per se drug levels. Of those states, 15 states set zero as the allowable amount, while four states have levels higher than zero as the allowable limit. He further indicated that the SLD receives more than 1,800 subpoenas per year, and the bill proposed by Representative Rehm would lower the burden on the SLD.

Dr. Mills told the committee that when a blood sample comes in, the SLD first looks for an alcohol concentration of .08 or greater. If it finds an alcohol concentration of .08 or greater, it

does not proceed to test for any additional substances; however, if an alcohol concentration of less than .08 is found, the lab will proceed to test for other impairing substances. Dr. Mills indicated that of the samples tested by the SLD, 60 percent have an alcohol concentration of more than .08 and 40 percent have an alcohol concentration of less than .08. Dr. Mills indicated that when the lab proceeds to test the remaining 40 percent, 89 to 90 percent of those samples test positive for impairing drugs.

Members of the committee asked questions about and discussed:

- ▶ whether there is a correlation between crash risk and the presence of tetrahydrocannabinol (THC) in one's blood;
- ▶ the fact that many medical cannabis strains are high in therapeutic cannabidiol but not THC; and
- ▶ the results of a 2014 NHTSA study concerning crash risk.

Proposed Three Strikes Bill

Representative Rehm presented legislation that would add additional violent felonies to the Criminal Sentencing Act for the purposes of mandatory life imprisonment. Representative Rehm requested input on whether voluntary manslaughter should be added to the list of offenses. Members of the committee requested data on the projected number of offenders who would be subject to the legislation and an estimate of the increased cost to incarcerate those offenders. Representative Rehm indicated that the New Mexico Sentencing Commission was gathering those data and would be making a presentation to the committee in the future. There was a discussion regarding the vehicular homicide offenses that were included in the legislation.

Proposed Modification to the Statute of Limitations for Criminal Prosecutions

Representative Rehm explained that the proposed legislation would remove the statute of limitations for a first degree felony or murder in the second degree. In addition, the bill would extend the time limitation for prosecuting conspiracy and tampering with evidence.

Representative Rehm stated that there is very little difference in the intent requirement between first and second degree murder. Currently, first degree murder has no statute of limitations, while second degree murder is subject to a six-year statute of limitations. Mr. Dickens indicated that New Mexico is the only state that has a statute of limitations for second degree murder.

Public Comment

Elena Bost expressed concern about increasing sentences, particularly when increased sentences will result in an increased burden on the prison system and greater cost to the state.

Mr. Baur, responding to the proposed "three strikes" bill, stated that life without the possibility of parole will not be helpful for geriatric inmates, who generally do not pose a threat to society. Concerning the proposed "drugged driving" bill, Mr. Baur stated that if the intent is to

eliminate the requirement that someone from the SLD come to testify at trial, having per se levels will not solve the problem.

Margarita Sanchez asked the committee to address the following issues: rehabilitation of inmates; geriatric and medical release; eliminating the "school-to-prison pipeline"; mental health; and solitary confinement.

Recess

The committee recessed at 4:22 p.m.

Friday, July 17

Tour of Southern New Mexico Correctional Facility

Members of the CCJ toured the Southern New Mexico Correctional Facility.

Adjournment

There being no further business before the committee, the second meeting of the CCJ for the 2015 interim adjourned at 11:15 a.m.