

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

**December 16, 2013  
Room 311, State Capitol  
Santa Fe**

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The second meeting of the Criminal Justice Reform Subcommittee (CJRS) of the Courts, Corrections and Justice Committee was called to order by Representative Antonio "Moe" Maestas, co-chair, on December 16, 2013 at 9:15 a.m. in Room 311 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  
Sen. Sander Rue

**Absent**

Rep. Gail Chasey  
Rep. Jane E. Powdrell-Culbert

**Guest Legislator**

Sen. Daniel A. Ivey-Soto

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**Staff**

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

**Guests**

The guest list is in the meeting file.

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**Handouts**

Handouts and other written testimony are in the meeting file.

**Monday, December 16**

**Welcome and Introductions**

Members of the subcommittee and staff introduced themselves.

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## **1999 Criminal Reform Effort, Current Parallel Reform Efforts and Overview of Drivers of the State Prison Population**

Tony Ortiz, executive director of the New Mexico Sentencing Commission (NMSC), told members of the CJRS that the NMSC consists of 24 members, representing all facets of the criminal justice system. The role of the NMSC is to collect and analyze data and provide evidence to legislators that can be used to make policy decisions.

### *Historical Overview of Efforts to Reform the Criminal Justice System in 1999*

Mr. Ortiz told members of the CJRS that three bills were introduced in the 1999 regular session that were the result of about two and one-half years of criminal justice reform efforts. The first bill, House Bill (HB) 225, would have enacted the Sentencing Standards Act and expressed the following purposes: 1) to "establish rational and consistent sentencing standards that reduce disparity in the imposition of sanctions by providing principles for judges to use in determining appropriate criminal sanctions"; 2) to "encourage the use of the severe sanction of imprisonment only when necessary to ensure public safety or provide an appropriate level of punishment"; and 3) to "make better use of the finite resources of the state". HB 225 would have created presumptive sentencing for many crimes. The bill was passed by both chambers along party lines but vetoed by the governor. One of the subcommittee members asked which party voted for the bill. Mr. Ortiz responded that most Democrats voted for the bill, while most Republicans voted against the bill. Another member asked whether the reforms contained in HB 225 were still pertinent today or whether the circumstances had changed. Mr. Ortiz responded that today there are different "drivers" of the prison system than there were in 1999. Additionally, Mr. Ortiz indicated that in 1999 there was a national trend toward using presumptive sentencing. Mr. Ortiz told members of the CJRS that the governor's veto message indicated that HB 225 would "do away with mandatory sentencing" and "replace it with a series of guidelines and presumptions". The veto message further stated that "citizens have a right to be assured that criminals who destroy their lives will receive due punishment in the form of incarceration".

The second bill, HB 226, would have enacted the Persistent Violent Offender Act and would have provided an indeterminate life sentence for persistent violent offenders who are not amenable to rehabilitation. HB 226 passed the House unanimously but died in the Senate Judiciary Committee.

The third bill, HB 227, concerned the earned meritorious deduction program for inmates. HB 227 passed both chambers and was signed into law. The provisions of HB 227 set forth a formula for calculating earned meritorious deductions based on the classification of the offender. Different formulas for calculating earned meritorious deductions apply, depending on whether the offender is considered nonviolent or violent. Serious violent offenders are required to serve at least 85% of their sentences. In addition, a distinction is made for offenders who have returned to prison because of a parole violation.

Mr. Ortiz told members of the CJRS that the takeaway from the 1999 effort is that the three bills were designed to be passed as a package, but they were not introduced as an omnibus bill. Ultimately, two of the bills failed and only one was signed into law. Mr. Ortiz asked members of the CJRS to keep this in mind as the subcommittee moves forward with criminal justice reform efforts.

One member of the subcommittee commented that the South Dakota effort was successful because it was packaged as an omnibus bill. Another member opined that sentencing overhaul would be a roadblock to passing an omnibus bill. One member indicated that reform efforts should include examination of misdemeanor crimes, while another indicated that there should be six to seven classes of felony offenses to minimize sentencing disparity.

*Parallel Efforts: County Jail Reform and Juvenile Justice Reform*

Mr. Ortiz told members of the CJRS that in August 2013 the Juvenile Justice Stakeholders Task Force was convened to study programs and services within the juvenile justice system. The goal of the task force is to develop a package of proposed policy changes. Additionally, the Bernalillo County Criminal Justice Review Commission (BCCJRC) was formed to look at how quickly cases within the criminal justice system are processed, including issues such as conveyance of arrest reports from law enforcement to the district attorneys and the timeliness of setting judicial proceedings. The purpose of the BCCJRC is to address the amount of time defendants spend incarcerated prior to trial. Mr. Ortiz explained that there is a large number of defendants in the Bernalillo County Metropolitan Detention Center who have not yet been convicted of a crime but remain in jail because they do not have the means to post bond. One member of the CJRS stated that New Mexico is among a minority of states that have greater inmate populations in county jails than in the prison system. Another member requested that a representative of the BCCJRC present findings to the CJRS during the next interim.

One member of the CJRS pointed out that there is disparity in terms of discretion and control over an offender depending on whether the offender is sentenced by a district court judge or a magistrate judge. If a district court sentences the offender, the Corrections Department (CD) has full control over the type of facility the offender is incarcerated in, as well as the programs that are made available to that offender. However, if a Bernalillo County Metropolitan Court judge or a magistrate judge sentences the offender, that judge retains control over administration of the sentence. The member pointed out that this creates an "imbalance" of power in the system by limiting the discretion of a judge of general jurisdiction while simultaneously giving judges of limited jurisdiction absolute control. The member opined that judges should have some level of discretion over administering sentences.

Another member of the CJRS commented that the state may have to start paying more to shift inmates into CD facilities rather than continuing to have counties pay to house inmates in county jails. The member stated that, unlike inmates in CD facilities, those held in county facilities do not have access to programs that reduce recidivism and are not eligible to start the earned meritorious deduction program.

Concerning the juvenile justice system, one member commended the Children, Youth and Families Department (CYFD) on its efforts in implementing the Missouri Model and acknowledged that the CYFD has not had access to the funding required to fully implement the changes required by the Missouri Model. The member pointed out that although such changes have up-front costs, they will result in long-term cost savings.

#### *Data Points*

Mr. Ortiz told members of the CJRS that there are two basic things to keep in mind when thinking about what causes prison populations to fluctuate — admissions and length of stay. Mr. Ortiz explained that in fiscal year (FY) 2012, there was a clear increase in admissions of serious violent offenders in the male prison population. Concerning male prison admission, the number of serious violent offenders admitted to CD facilities in FY 2011 was 211. In FY 2012, the number increased to 331.

Mr. Ortiz stated that an additional "driver" of the prison population is parole readmissions. He explained that roughly 30% of offenders are readmitted to prison each year because of parole violations.

Concerning the female prison population, Mr. Ortiz pointed out that admissions for violent crimes increased in FY 2012. Additionally, there has historically been a greater number of admissions for drug possession than for drug trafficking; however, those numbers have flipped in recent years, with the admissions for drug trafficking now outnumbering those for drug possession.

Several members of the CJRS acknowledged that drugs are a significant driver of corrections costs because, in addition to drug trafficking or possession, other types of crimes are frequently linked to drug use. Another member stated that Section 43-2-3 NMSA 1978 expresses a policy that "intoxicated and incapacitated persons may not be subjected to criminal prosecution, but rather should be afforded protection" and that "alcohol-impaired persons and drug-impaired persons should be afforded treatment in order that they may lead normal lives as productive members of society". The member stated that although the legislature expressed this policy, it has done little to back it up.

The members of the CJRS engaged in a discussion about the distinction between probation and parole. One member commented that the federal system does not have a parole program and questioned whether the parole program in New Mexico is necessary or beneficial, particularly when many offenders are serving their parole sentences in prison.

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### *Drivers of the State Prison Population*

Linda Freeman, deputy director of the NMSC, presented additional statistics to the CJRS. She stated that "drivers" of the prison population are not necessarily the same for the male population as they are for the female population. She explained, however, that admissions for both men and women have decreased over the past few years. From FY 2007 to FY 2013, there was a 4.5% decrease in admissions overall. With decreased admissions, length of stay becomes a more important consideration in efforts to reduce the prison population. Ms. Freeman told members of the CJRS that recent data indicate that the female inmate population is largely driven by length of stay rather than by new admissions.

**D** Ms. Freeman presented the following statistics concerning length of stay:

- nationally, the estimated percentage of male prisoners held in state prisons by crime type in 2011 was 54.3% violent, 17.7% property, 16.2% drug and 10.7% public order;
- in New Mexico, based on FY 2012 data, the percentage of male prisoners held in state prisons by crime type was 41.6% violent, 20.4% property, 21.6% drug and 16.4% public order;
- nationally, the estimated percentage of female prisoners held in state prisons by crime type in 2011 was 36.8% violent, 27.8% property, 25.2% drug and 8.7% public order; and
- in New Mexico, based on FY 2012 data, the percentage of female prisoners held in state prisons by crime type was 24.7% violent, 30.2% property, 32.3% drug and 12.9% public order.

One member of the CJRS asked which category includes DWI offenses. Ms. Freeman responded that DWI is included in the public order category.

Ms. Freeman referred to a recent study conducted by the Pew Charitable Trusts, "The Impact of Parole in New Jersey", which found that inmates released to parole supervision were less likely to be rearrested, reconvicted and reincarcerated for new crimes than inmates who served their full prison sentences and were released without supervision. The study found that the two groups returned to prison at nearly identical rates, however, because parolees were frequently sent back for technical violations.

Members of the CJRS engaged in a discussion concerning the parole system, including whether the parole system should be eliminated. One member asked whether other states have eliminated parole programs. Mr. Ortiz responded that Virginia had eliminated its parole program, but he is not certain what the result has been.

### **Drivers of Costs for the CD and the Corrections Budget; Entrepreneurial Prison Programs and Halfway Houses**

Gregg Marcantel, secretary of corrections, discussed factors that are driving costs within the CD. He stated that prison operating costs, including costs related to infrastructure and

maintenance, constitute a significant portion of the CD budget. Other factors impacting prison operating costs include: 1) an aging prison population; 2) disbursed prison facilities; 3) an increasing prison population; and 4) the cost of mental health treatment.

Secretary Marcantel told members of the CJRS that recidivism also drives costs. Factors affecting recidivism include: 1) the lack of evidence-based programming in prisons; 2) the lack of post-incarceration employment opportunities; and 3) the lack of community resources and halfway houses. Additionally, Secretary Marcantel suggested that programs that encourage family and community connections may help reduce recidivism.

Concerning prison costs, Secretary Marcantel told members of the CJRS that although the inmate population has continued to rise in recent years, the CD has experienced a decrease in funding and staffing.

Secretary Marcantel explained to members of the CJRS that the CD used to have a philosophy that focused on bed space, with little regard for the accountability of inmates or programs to reduce recidivism. The problem with that philosophy, however, was that recidivism reached 46%. More recently, the CD has implemented a cradle-to-grave logic that is focused on preparing inmates for returning to the community from the moment they walk in the door. Secretary Marcantel told members of the CJRS that the CD is implementing broader drug and alcohol treatment programs. In addition, the CD is working on a "one-stop" initiative that will allow inmates leaving prison to obtain a government identification card and apply for government benefits. The CD also offers educational and parenting programs and provides inmates leaving prison with business attire to attend interviews.

Secretary Marcantel described other programs being implemented by the CD, such as the Old Main Revitalization project, the Hobby Craft program and a project focusing on sustainability in the prisons. Finally, Secretary Marcantel discussed the CD efforts to implement a program called Motivating Offender Change, which will provide cognitive behavioral therapy to certain inmates.

One member of the CJRS suggested that if parole violations are a driver of the prison population, perhaps a legislative fix is needed to prevent inmates from returning to prison for technical violations. Secretary Marcantel explained that swift and certain sanctions could address this issue. For example, he suggested that in the case of certain technical violations, offenders might have "a quick run to jail" and be released before they lose their job. He stated that swift and certain sanctions are most effective when there are personal consequences to the offender.

Another member of the CJRS expressed support for the possibility of expungement for people who are trying to reform. The member also suggested that although the business attire program is a good idea, it would be more effective if coupled with job coaching. Secretary Marcantel responded that he agrees and added that the Hobby Craft program is intended to

address unemployment by teaching inmates business skills so that they might be able to eventually own and operate a business.

One member of the CJRS asked how many prison facilities currently exist in the state and what the capacity is of each. Aurora Sanchez, deputy secretary of administration, CD, responded that there are 11 prison facilities. The facilities are as follows:

- the Penitentiary of New Mexico, which has a capacity of 864;
- the Southern New Mexico Correctional Facility, which has a capacity of 764;
- the Western New Mexico Correctional Facility, which has a capacity of 368;
- the Central New Mexico Correctional Facility, which has a capacity of 1,300;
- the Roswell Correctional Center, which has a capacity of 340;
- the Springer Correctional Facility, which has a capacity of 296;
- the Guadalupe County Correctional Facility, which has a capacity of 601;
- the Lea County Correctional Facility, which has a capacity of 1,267;
- the Northeast New Mexico Detention Facility, which has a capacity of 626;
- the Otero County Prison Facility, which has a capacity of 342; and
- the New Mexico Women's Correctional Facility, which has a capacity of 654.

Ms. Sanchez told members of the CJRS that the New Mexico Women's Correctional Facility in Grants is currently over capacity at 657 inmates. One member of the CJRS noted that Texas has closed three prisons in recent years and inquired as to whether the CD can create a plan to help reduce the number of inmates in the prison system. Secretary Marcantel responded that the CD is currently working on such a plan and its goal is to reduce recidivism by 10%. Several members of the CJRS requested data concerning prison capacity, current prison population and inmate classification levels for each prison facility. Ms. Sanchez indicated that the CD would create a spreadsheet with this information for members of the CJRS.

One member of the CJRS commented that the large number of DWI offenses occurring in McKinley County is primarily driven by Native American populations. The member inquired as to whether the CD had considered a joint powers agreement to try to address this situation. Rose Bobchak, acting director of the Adult Probation and Parole Division of the CD, responded that the CD had previously attempted to negotiate joint powers agreements with the tribes, but only the Pueblo of Laguna was willing to consider a joint powers agreement. One member of the CJRS requested the CD to make contact with the tribes again concerning joint powers agreements and report the responses to the CJRS during the next interim period.

Members of the CJRS inquired about treatment and services for sex offenders. Secretary Marcantel responded that the Otero County Prison Facility has a separate wing that houses sex offenders. He indicated that offenders participate in evidence-based programs on a daily basis but that community services for sex offenders upon release are scarce. Further, most sex offenders complete their parole terms in prison because of the lack of social support programs and housing options. One member inquired about the roadblocks to finding and financing

housing for parolees. Secretary Marcantel stated that the CD is working on this and has considered utilizing existing state-owned properties. He indicated that the average cost of holding an offender in a prison facility is \$104 per day and that it makes financial sense for the state to consider investing in housing programs so that parolees do not have to serve their parole sentences in prison.

Another member asked whether the CD has encountered a "not in my backyard" attitude concerning housing and programs for sex offenders. Secretary Marcantel acknowledged that this has been a problem and that neighborhoods typically do not welcome halfway houses or probation and parole offices because of the sense that their presence makes neighborhoods less safe.

Members of the CJRS engaged in a discussion about "therapeutic communities". One member indicated that judges have been sentencing offenders to prison with the recommendation that they be placed in a therapeutic community. The member expressed a concern about whether therapeutic communities exist within CD facilities. Ms. Bobchak indicated that the Central New Mexico Correctional Facility in Los Lunas has a six-month inpatient drug treatment program. Several members of the CJRS indicated that this program should be expanded and implemented in other prison facilities.

#### **Approval of Minutes**

Members of the CJRS voted unanimously to approve the minutes of the subcommittee's November 2013 meeting.

#### **Discussion About the Future of the CJRS**

Members of the CJRS expressed support for requesting approval to continue the CJRS during the next interim period. Members discussed reconvening the subcommittee for a first meeting in April or May 2014.

#### **Public Comment**

Leila Hood, an attorney who practices criminal defense, expressed support for the work of the CJRS.

K.C. Quirk, executive director of Crossroads for Women, described the mission of Crossroads for Women. She explained that it is a housing program for former female inmates that also provides social and community-based services. She told members of the CJRS that more programs are needed to address issues such as abuse and trauma and basic life skills. She stated that some existing evidence-based programs do not take into account matters that are important to women and that it is important to remember that, in many cases, women do not enter the criminal justice system for the same reasons that men do.

Marisa Garrett, a resident of Crossroads for Women, recounted her experience as an inmate at the New Mexico Women's Correctional Facility in Grants. She told members of the

CJRS that although there were educational and vocational programs at the facility, most of them had extensive waiting lists. In other cases, programs were only available to inmates with longer sentences — 18 months or more, for example.

Shannon Good, a volunteer at Crossroads for Women, stated that she has a background in behavioral health. She stressed the importance of educational services in prison facilities, including educational programs, such as welding and computer programming, that have historically been offered only to men.

**D**A. Sarah Rahman, a volunteer prison chaplain, told members of the CJRS that inmates had asked her to request an increase in educational programs in the prisons, as well as programs for aging inmates.

Paul Mueller told members of the CJRS that the definition of "serious youthful offender" should be amended to include many more violent crimes and allow harsher sentences for juveniles convicted of serious crimes. Additionally, he stated that loitering laws would hold business owners accountable for crimes that occur on their premises.

**R**Mark Donatelli of Rothstein, Donatelli, Hughes, Dalstrom, Shoenburg & Bienvenu, LLP, asked members of the CJRS to review determinate sentencing, particularly relating to 30-year sentences. Additionally, he commented that many states have a "unified system" under which all jails and prisons are operated by the state. He suggested that the CJRS consider a unified system for New Mexico. Finally, he echoed the need for more community-based intervention programs.

### **Adjournment**

**A** There being no further business before the subcommittee, the second meeting of the CJRS of the Courts, Corrections and Justice Committee adjourned at 4:50 p.m.

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