

**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.