

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

**May 30, 2018
State Capitol, Room 321
Santa Fe**

The first meeting of the Courts, Corrections and Justice Committee (CCJ) was called to order by Senator Richard C. Martinez, co-chair, on May 30, 2018 at 9:41 a.m. in Room 321 of the State Capitol in Santa Fe.

Present

Rep. Gail Chasey, Co-Chair
Sen. Richard C. Martinez, Co-Chair
Rep. Eliseo Lee Alcon
Sen. Gregory A. Baca
Sen. Jacob R. Candelaria
Rep. Zachary J. Cook
Rep. Jim Dines
Sen. Linda M. Lopez
Rep. Antonio Maestas
Rep. Sarah Maestas Barnes
Sen. Cisco McSorley
Rep. William "Bill" R. Rehm
Rep. Angelica Rubio
Sen. Sander Rue

Absent

Rep. Javier Martínez

Advisory Members

Sen. Bill B. O'Neill
Sen. John Pinto
Sen. Mimi Stewart
Rep. Christine Trujillo
Sen. Peter Wirth

Rep. Deborah A. Armstrong
Sen. William F. Burt
Rep. Brian Egolf
Rep. Doreen Y. Gallegos
Sen. Daniel A. Ivey-Soto
Sen. William H. Payne
Rep. Patricia Roybal Caballero

Guest Legislator

Sen. Nancy Rodriguez

Staff

Celia Ludi, Staff Attorney, Legislative Council Service (LCS)
Randall Cherry, Staff Attorney, LCS
Erin Bond, Research Assistant, LCS

Guests

The guest list is in the meeting file.

Handouts

Copies of all handouts are in the meeting file.

Wednesday, May 30**Call to Order**

Senator Martinez welcomed members of the committee, staff and guests to the meeting and asked the committee members and staff to introduce themselves.

Overview of 2018 House Joint Memorial (HJM) 16, Supreme Court's Criminal Justice and Public Safety Task Force

The Honorable Edward L. Chavez, justice (retired), New Mexico Supreme Court, and chair of the Criminal Justice and Public Safety Task Force, which was created pursuant to 2018 HJM 16, presented an overview of the current status of the task force and its plans to fulfill the tasks assigned it. HJM 16 requested that the task force identify issues of primary concern within the state's criminal justice and public safety system and develop a strategic plan to ameliorate those concerns, including measurable outcomes to help ensure that public investments in improvements to the system are as efficient and effective as possible.

Justice Chavez reported that the task force held its first meeting on March 29, 2018 and expects to complete its work on or before October 15, 2018 when its report is due. He noted that the task force receives no funding for support staff or offices, but Representative Daymon Ely has offered to provide administrative support as needed.

The task force is composed of representatives from each of the entities listed in HJM 16. Justice Chavez noted that neither the secretary of health nor the secretary of human services has attended a meeting, but he will continue to invite their participation. Additional members appointed by Justice Chavez are: Terri Cole, president and chief executive officer, Greater Albuquerque Chamber of Commerce; Robert L. Martinez, president, Albuquerque Lodge No. 01, Fraternal Order of Police; Nan G. Nash, chief judge, Second Judicial District Court; and Sandra Dietz, chair, Parole Board. The task force also includes Senators McSorley and Baca and Representative Ely. Representative Nate Gentry has also been invited to participate or name a designee, but he has not responded.

At the first task force meeting, Legislative Finance Committee (LFC) staff members Jon Courtney and Travis McIntyre reviewed the *Status Report of LFC Review of Criminal Justice System in Bernalillo County*, which was presented to the LFC on January 15, 2018. At its second meeting, the task force received reports regarding geographic dispersion and concentration of crime in the Albuquerque area.

Justice Chavez expressed confidence that gathering all of the key participants in the criminal justice system on the task force will generate positive results, as a major obstacle to progress in this area up to now has been the failure to gather all of the key participants in one forum to share information and coordinate goals, efforts and resources. To explain the importance of including all key participants in discussions, Justice Chavez used the example of setting a goal to complete criminal trials within 18 months. He noted that the goal would impact not only the courts, but also law enforcement, district attorneys, public defenders and the crime lab. Thus, the mission and resources of each of the participants must be considered and coordinated in order to achieve the goal.

Justice Chavez stated that he plans to meet individually with each of the task force members in the coming months to obtain their views on their needs and ideas for how to improve the criminal justice system and public safety in New Mexico. He also plans to form work groups to focus on release, pretrial, supervision, treatment programs, sentencing, the need for additional law enforcement and developing performance measures.

Justice Chavez noted that much of the work of the task force has already been done in other states. He hopes to use the lessons learned through their efforts, including the work of the Council of State Governments, to assist the task force. Finally, he noted that the federal government is currently considering legislation to address issues regarding criminal justice reform, including reentry of formerly incarcerated persons into civil society and the opioid problem.

The task force plans to have four or five meetings. The next meeting is on August 8, 2018 at the offices of the Greater Albuquerque Chamber of Commerce.

Senator Martinez invited Justice Chavez and all of the task force members to attend a public safety forum to be convened at the State Capitol on June 19, 2018 and moderated by a representative from the Council of State Governments. The forum will include several panels that will address criminal justice issues.

A committee member noted that he had discussed the need for coordination among criminal justice agencies with a number of individuals from various participating agencies, and the individuals stated that they did not discuss coordinating needs and resources. The committee member expressed hope that joining all of the relevant parties in the task force would facilitate those discussions.

A committee member requested a list of task force members and agendas. The member also expressed hope that the efforts of the task force would dovetail with the efforts of the Criminal Justice Reform Subcommittee (CJRS). The member noted that agencies in government often seem to work at cross-purposes and posed the example of incarcerated parents refusing to travel to child custody hearings, which might help reunify the family, because the travel days negatively impacted the prisoner's "good time" credit. Thus, the rules of the different agencies involved do not encourage an optimum outcome.

A committee member encouraged the task force to seek input from entities such as the Bernalillo County Criminal Justice Review Commission, composed of representatives from the various parties in the criminal justice system. The member also encouraged the task force to coordinate with the CJRS. Finally, the member suggested that the task force should include mid-level personnel in its discussions, as those individuals have valuable practical experience that can assist in evaluating proposals. The member provided the example of prohibiting the use of prisoner isolation under all circumstances, which some argue is a good long-term goal. Jail personnel have warned that to do so may create safety issues for staff and other prisoners when a prisoner is detoxing from a drug.

Trends in Arrests and Correctional Populations: A Look at Department of Public Safety (DPS) and Corrections Department Data

Linda Freeman, executive director, New Mexico Sentencing Commission, reviewed the commission's membership and its role as a criminal and juvenile justice policy resource. Referring to her report, "Trends in Arrests and Correctional Populations: A Look at New Mexico Department of Public Safety and New Mexico Corrections Department Data", she presented information on arrests, county and state prison populations and population growth projections.

Ms. Freeman explained that the commission has statutory authority to collect, analyze and disseminate data from state, county and municipal agencies that possess criminal and juvenile justice data. The commission also acts as a repository for the data it receives. She emphasized that the information the commission obtains and disseminates has a high level of protection because the data are not deemed to belong to the commission and thus are not subject to open records requests addressed to the commission. Further, to ensure accuracy, all reports published by the commission are reviewed by the agency providing the data before reports regarding those data are released to the public.

Ms. Freeman informed the committee that data provided by the commission are not "real-time" because the data provided to the commission by the various reporting agencies are generally provided on a quarterly basis. However, the commission can usually obtain data in real time if needed.

Ms. Freeman discussed trends in arrests from January 1, 2001 through March 31, 2018. Arrest data are reliable because they are based on fingerprints taken at the time of arrest. She noted that the arrest report does not include arrests based on warrants issued for failure to appear or failure to comply with court orders.

Referring to the slide titled "Analysis of Arrest Data January 1, 2001-March 31, 2018", Ms. Freeman noted that during that period, 1,961,315 criminal charges were filed. This resulted in 1,147,296 arrests of 409,006 individuals. Similarly, the slide titled "Analysis of Arrest Frequency" showed that of the total number of individuals arrested in New Mexico between January 1, 2001 and March 31, 2018, approximately 53 percent were arrested only once. Approximately 31 percent of those individuals were arrested two to four times, and approximately 16 percent were arrested five or more times. Finally, 21,909, or approximately

five percent, of the arrestees were arrested 10 or more times. That five percent of individuals reflected 30 percent of all charges and 28 percent of all arrests for the period. Ms. Freeman noted that 46 percent of the individuals included in the five percent were arrested in three or more counties. These data indicate that a relatively small number of people are responsible for the majority of crimes.

Ms. Freeman next reviewed incarceration data, discussing county jail populations as well as data provided by the Corrections Department for state prison populations. She explained that New Mexico is one of a few states in which local jail population numbers have historically been almost identical to state prison population numbers. However, Bernalillo County recently significantly reduced its jail population, so as of June 30, 2017, there were 6,119 persons incarcerated in local jails and 7,252 persons incarcerated in state prisons. She also noted that the local jail numbers do not include persons on federal hold or persons who are housed for other agencies.

The slide titled "Monthly High Total Male Prison Population" shows that the male prison population from January 1, 2001 through May 1, 2018 increased by 27 percent. The slide titled "Monthly High Total Female Prison Population" shows that the female prison population for the same time period increased by 47 percent. Ms. Freeman added that from 2010 to 2017, the number of female prisoners housed in local jails increased from 13 percent to 18 percent of the total jail population. The national average at the end of 2016 was 14.5 percent.

Referring to the slide titled "Factors Affecting Growth in Prison Population", Ms. Freeman commented that New Mexico houses more violent offenders than other states as a proportion of total prisoner population. This may be due primarily to two factors: (1) length of sentences; and (2) applicability of earned meritorious deductions (good time). Serious violent offenses usually carry longer sentences, and serious violent offenders earn good time of only four days per month of time served, whereas other offenders earn good time at a rate of 30 days for each month served. In response to a member's question, she explained that the term "serious violent offender" is defined in statute as a person who commits the most serious crimes, such as murder. There is also a group of less serious crimes for which the sentencing judge has the discretion to sentence the offender as a serious violent offender. She observed that although male admissions for violent crimes, including serious violent crimes, have been relatively steady since 2007, the number of serious violent offenders has increased in proportion to other offenders from approximately 20 percent to approximately 30 percent.

Referring to the slide titled "Admissions Trends Over the last 5 Years", Ms. Freeman noted that, comparing admissions of males and females, males commit more violent offenses and females commit more property and drug offenses. Public order offenses are committed by males and females at similar rates. She added that the basis for the highest number of female prisoners admitted tends to alternate yearly between property crimes and drug crimes, likely as a result of charging patterns; persons charged with drug offenses are often charged with property offenses as well, but they may be convicted and sentenced on only one type of offense.

Referring to the slide titled "Factors Affecting Growth in Prison Population", a member asked what "drug" includes and asked for a breakdown by race and ethnicity of incarceration for drug crimes. Ms. Freeman responded that "drug" includes both possession and trafficking. The commission will provide the committee a breakdown of the admissions for "possession" and "trafficking". She also noted that the commission is currently researching the reasons for the increase in female population based on drug offenses. With regard to race and ethnicity, the commission receives those data from the Corrections Department. The reliability of the data is questionable because it is unclear how the data are obtained. The commission will follow up on this issue.

A member observed that New Mexico law does not require that an offender have a minimum amount of a drug to be charged for trafficking and asked for more information regarding what portion of the increasing prison population is due to large-volume trafficking and what portion reflects persons who are trafficking simply to support their own addictions.

Referring to the slide titled "Factors Affecting Growth in Prison Population", a member asked what offenses are included in the term "Public Order"; what percentage of the public order offenses were down from "violent" offenses; and how many persons included in public order offenses were first-time offenders. Ms. Freeman responded that the public order offenses are all felonies and include resisting arrest, tampering with evidence and witness intimidation. She will provide a breakdown of the offenses to the committee and attempt to provide the other information requested.

Parole violation admissions from 2008 to 2018 accounted for 33 percent of all admissions of males; for females, the 10-year average was 31 percent.

Looking at all admissions, not including parole violations, for men released in 2017, the median length of stay was 546 days. For women, the median length of stay was 409 days. Ms. Freeman explained that the commission uses the median instead of the average because those prisoners with extremely long terms would render an average inaccurate.

Ms. Freeman mentioned that the annual prison population forecast will be finalized in early summer.

A member noted that the enabling statute for the commission includes making recommendations and asked whether and where the commission provides recommendations. Ms. Freeman answered that the commission sometimes provides recommendations in reports with regard to particular issues. More often, the commission provides recommendations informally in interactions with LFC staff and other agencies as they work through evaluations and other commission studies. The commission also provides recommendations through fiscal impact reports during legislative sessions. She noted as an example that the commission has provided a cost analysis to legislators regarding proposed "three strikes" legislation.

A member asked whether the commission analyzes and publishes information regarding the reasons for changes in prison population. Ms. Freeman responded that the commission has not provided formal reports regarding the reasons for prison population changes. However, the commission works informally with agencies regarding this issue. She noted that the commission often attempts to research the reasons for changes with regard to particular issues but also noted that relevant data are generally not readily available electronically. For example, the commission would like to compare data from different systems, such as Corrections Department and court data, but the personal identifiers used across agencies to identify a particular person vary. The DPS has a system of identifying each arrestee with a unique identification number that is based on fingerprints and derived from a federal database, but that number is not used by the courts, the Corrections Department or other agencies, which may assign their own identifying numbers. Thus, it is difficult to verify the identity of each person as that person transitions through the law enforcement, court and incarceration processes, making comparison of data across agencies difficult. The commission generally does not have the resources to accomplish this type of research because of the need to verify individuals across agencies.

A member noted that numerous agencies have testified before various committees regarding the problem of the inability to "interface" among the various agency data systems and asked whether the commission has a plan to address this. Ms. Freeman responded that commission staff informally advise on this issue as an interested party at committee meetings regarding data sharing among different agencies. She noted that many agencies are interested in data sharing, but one of the issues is that they often have different and very specific needs and uses for the data. The commission is currently working with the University of Cincinnati to develop a method to identify persons based on partial information. This methodology might be applicable to other agencies as well.

In response to a question about the comparison of New Mexico to other state prisons, Ms. Freeman explained that "other state prisons" refers to state prisons but not county jails. In other states, it does not include populations in federal prisons.

A member expressed frustration that in spite of the sophistication of information technologies, agencies continue to struggle with the sharing and accuracy of information. The member asked the commission to create a "wish list" of what it would need in order to obtain more and better information from other agencies.

A member observed that parole revocations seem consistently high over the last several years. The member stated that there seems to be an opportunity to reduce prison populations for both males and females if the state can better address the needs of persons coming out of prison, adding that Bernalillo County now has a facility and program that provides counseling and support to persons as they are released from prison.

A member asked how many Native Americans are currently in prison and which county jail has the highest number of Native American inmates. Ms. Freeman stated that she would

provide that information to the committee at a later time and remarked that the jail in San Juan County has the highest Native American population.

In response to a question, Ms. Freeman stated that the commission is located at the University of New Mexico Advisement Center; it has four full-time staff members and a number of contract employees, including university students. Staff includes a business manager, a research scientist and a half-time senior research scientist.

A member asked how the commission obtains data from courts and other agencies. Ms. Freeman responded that the commission has data-sharing agreements with the various agencies that have been developed over many years. For example, the commission obtains information from the courts through the Judicial Information Division of the Administrative Office of the Courts. If the commission requires certain information, it must request it through the Judicial Information Systems Council (JIFFY). JIFFY allows the commission to access the courts' "Odyssey" data system so that it can obtain more specific information and verify the accuracy of the information. As to other agencies, the commission generally coordinates with administrative and information technology staff.

A member asked what types of information the commission is charged with gathering. Ms. Freeman explained that its authority is very broad and includes arrests, juvenile information, court disposition data and probation data.

A member suggested that the commission compile information on probation violations with regard to drug use, pointing out that drug users tend to relapse as part of their recovery process, and information on incarceration as a result of relapses would be useful in crafting policy regarding this issue.

A member commented that it may not be good policy to treat inmates differently with respect to good time credit, noting that some crimes carry 50 percent good time credit and others carry 15 percent good time credit. This makes it very difficult for the Corrections Department to manage the good time credit. The member suggested that the credit process should be the same for all; the sentence could simply be increased for more serious crimes if the intent is to keep the person in prison longer.

A member said that private prisons in the past added days to women's sentences for in-house violations that, when committed by men, were not considered egregious enough to increase sentences. The member asked if the commission had done research to determine whether female and male prisoners are currently receiving equal treatment in this regard. Ms. Freeman stated that the commission has not studied this issue, but she believes that a researcher at the University of New Mexico has done so. She will obtain and provide the study.

Ms. Freeman remarked that a problem for female prisoner management is that women typically receive relatively short sentences. This creates a problem because the inmate is

required to receive certain programming in prison, and after credit for good time, it is often difficult to provide the mandatory programming within the limited time left.

A member asked for clarification on where female prisoners are housed. Ms. Freeman responded that women are all currently housed either in the Western New Mexico Correctional Facility in Grants or in the Springer Correctional Center, which are both state-run facilities.

A member noted that California has attempted to institute programs to provide rehabilitation to offenders before they are sent to prison. The member asked whether the commission has followed the progress of these programs, what their cost is and if they are working. Ms. Freeman stated that the commission will research the California programs and provide information to the committee.

A member asked if Ms. Freeman could confirm that the most common shared trait among persons sent to prison is drug use. Ms. Freeman stated that federal estimates are that 70 percent to 80 percent of persons in the criminal justice system have a substance abuse problem.

A member stated that the federal government recently announced a national program to address drug abuse. Despite having two counties with high rates of drug use, New Mexico is not receiving a significant share of that money. The allegation has been made that race was a factor in determining how the funds would be allocated. The member noted that the majority of the funds were directed to rural counties located in the midwest and northeast with low minority populations. The member requested that the commission research this issue and report to the committee and also suggested that this issue should be included in the committee's interim work plan. Another member commented that United States Senator Martin Heinrich indicated that there will be amendments to the federal program that will provide additional funds to needy counties.

A member asked whether, with regard to prison population forecasts, the commission has reviewed the forecasts of those states that are engaged in criminal justice reform to determine whether their innovations have had an impact on projected prison populations. Ms. Freeman responded that the commission will work with the Council of State Governments to obtain that information.

Overview of CJRS Work for the 2018 Interim

Senator Rue and Representative Maestas, co-chairs, CJRS, briefed the committee on the subcommittee's plans for the interim. They stated that the CJRS will build on the work the subcommittee did in 2013 and 2014. This will include efforts to educate the public on the benefits of criminal justice reform programs that have proven effective at reducing crime in other states. Representative Maestas observed that programs that include a compassionate approach to enforcement and ultimately increase public safety are often perceived by the public as being "soft on crime". He noted that it is important to obtain public understanding and support for these programs if they are to succeed.

Senator Rue noted that the CJRS is working with the Council of State Governments to convene a forum on June 19, 2018 at the State Capitol to explore and discuss criminal justice issues in New Mexico. The Council of State Governments has agreed to work with New Mexico to develop reform proposals if all of the branches of government will commit to join in the effort. He described the forum agenda and noted that the programs that will be discussed have proven successful in other states and, if appropriate, will be adjusted to suit the particular needs of New Mexico.

Senator Rue also noted that the LFC will complete and present a study this summer regarding the criminal justice system in Bernalillo County, including the reentry process for persons released from the Corrections Department.

Finally, he stated his hope that the work of the CJRS and the full committee will result in one or a number of bills coordinated to address various reform issues for introduction in the 2019 legislative session.

A member suggested that the CJRS focus on consensus issues that will garner broad public support and that it attempt to educate and seek public support on the concept and purpose of "criminal justice reform".

Review of 2018 Legislation Endorsed by the Committee in the 2017 Interim

Ms. Ludi provided a schedule showing the outcome of each of the nine bills endorsed by the committee during the 2017 interim. Four bills passed and were signed, and two died in committee. A member clarified that the first item on the schedule, entitled "Revised DWI Blood Test Requirements", was, in fact, introduced as House Bill 71 and Senate Bill 26, and both died in the Senate Judiciary Committee. A member also clarified that House Bill 53 died, but the appropriation was included in House Bill 2.

Review and Adoption of the 2018 Interim Work Plan and Meeting Schedule

Ms. Ludi presented the proposed work plan for the 2018 interim.

Members suggested adding the following topics:

- possible amendments to Chapter 57, Article 16 NMSA 1978, commonly referred to as the Motor Vehicle Dealers Franchising Act, with reference to Tesla, Inc.;
- enabling legislation regarding legislative ethics (a working group to be chaired by Senator Lopez and Representative Dines was appointed for this purpose);
- the problems regarding sharing data among state and other agencies;
- child abuse, including whether the applicable statutes require significant review and amendment; and
- the jurisdiction of the New Mexico Law Enforcement Academy and continuing training for law enforcement officers, including reserve officers.

The committee agreed that it will consider bills for endorsement at the final committee meeting of the interim so that a long presentation on a proposed bill during a regular committee meeting may be unnecessary.

A motion to accept the work plan and meeting schedule as presented and amended passed.

A member announced and invited members to a ceremony to be held on June 2, 2018 to display the original version of a treaty signed between Navajo leaders and the United States government in 1868.

Public Comment

There was no public comment.

Adjournment

There being no further business before the committee, the first meeting of the CCJ for the 2018 interim adjourned at 12:31 p.m.