

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

**August 17-19, 2016  
University of New Mexico Science and Technology Park Rotunda  
801 University Blvd.  
Albuquerque**

The second meeting of the Courts, Corrections and Justice Committee (CCJ) for the 2016 interim was called to order at 9:22 a.m. by Senator Richard C. Martinez, co-chair, on Wednesday, August 17, 2016, in the Rotunda Room at the University of New Mexico Science and Technology Park in Albuquerque.

**Present**

Sen. Richard C. Martinez, Co-Chair (8/17, 8/18)  
Rep. Eliseo Lee Alcon  
Rep. Gail Chasey (8/17, 8/18)  
Rep. Rick Little (8/17, 8/18)  
Sen. Linda M. Lopez  
Rep. Georgene Louis (8/17, 8/19)  
Rep. Antonio Maestas (8/17, 8/18)  
Sen. Cisco McSorley  
Rep. Andy Nunez (8/17, 8/18)  
Sen. Sander Rue

**Advisory Members**

Sen. Jacob R. Candelaria (8/17)  
Sen. Bill B. O'Neill (8/17, 8/18)  
Rep. Patricio Ruiloba  
Rep. Christine Trujillo  
Sen. Peter Wirth

**Absent**

Rep. Zachary J. Cook, Co-Chair  
Sen. Joseph Cervantes  
Rep. Jim Dines  
Rep. William "Bill" R. Rehm  
Sen. Lisa Torraceo

Sen. Craig W. Brandt  
Rep. Brian Egolf  
Rep. Doreen Y. Gallegos  
Sen. Daniel A. Ivey-Soto  
Rep. Paul A. Pacheco  
Sen. William H. Payne  
Sen. John Pinto  
Rep. Patricia Roybal Caballero  
Sen. Michael S. Sanchez  
Sen. Mimi Stewart

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

**Staff**

Monica Ewing, Staff Attorney, Legislative Council Service (LCS)

Celia Ludi, Staff Attorney, LCS

Diego Jimenez, Research Assistant, LCS

Peter Kovnat, Staff Attorney, LCS

**Guests**

The guest list is in the meeting file.

**Handouts**

Handouts and other written testimony are in the meeting file.

**Wednesday, August 17****Welcoming Remarks — University of New Mexico School of Law (UNMSOL)**

Alfred D. Mathewson, dean of the UNMSOL, explained that he and Sergio Pareja had just completed a successful first year of service as co-deans of the law school. Mr. Mathewson described some of the law school's programs, including the formation of an experiential learning committee that will focus on training law students for professions in the law and will prepare students for work in the UNMSOL's legal clinic programs, which are among the top clinical programs in the country.

Mr. Mathewson said that the law school recently received a grant from the W.K. Kellogg Foundation that will be used to support the UNMSOL's Corinne Wolfe Center for Child and Family Justice (center), which will prepare students for practice in family and children's law. In the fall of 2017, the first class of students studying in the center will begin, along with the UNMSOL's first class of students in the newly established master of studies in law degree program. In closing, Mr. Mathewson noted that former Dean Kevin Washburn has returned to the law school and that the law school has hired two professors and is conducting faculty searches to fill an additional three positions.

In response to a committee member's question about the UNMSOL's reduced budget, Mr. Mathewson explained that the school has adjusted and is preparing for additional budget cuts, which seem likely. Another member asked about recent graduates' employment. Mr. Mathewson said that many 2015 graduates are currently employed in the public sector. He added that with the implementation of the uniform bar exam, bar passage rates dropped significantly at many schools; however, the rate at the UNMSOL was only slightly reduced. The school has implemented incentive programs to encourage students' full participation in bar preparation programs.

In response to another question, Mr. Mathewson said that yearly tuition at the UNMSOL is approximately \$16,000 and that, on average, a UNMSOL student graduates with \$60,000 in student-loan debt. A committee member commented on the significant number of legislators

who attended the UNMSOL, and another member emphasized how the UNMSOL, which is the only law school in the state, would be harmed if its budget were to be further reduced.

Following Mr. Mathewson's presentation, the committee members introduced themselves and approved the minutes from the committee's first meeting without objection.

### **Drug Decriminalization**

Emily Kaltenbach, the state director for the Drug Policy Alliance New Mexico and the senior director for the National Criminal Justice Reform Strategy, explained that there is growing bipartisan support for widespread criminal justice reform in connection with drug-related crime. She said that drug decriminalization efforts are already under way in approximately two dozen countries throughout the world and in many cities throughout the United States. Sixteen states and the District of Columbia categorize possession of small amounts of drugs as misdemeanor crimes; in New Mexico, minor possession of drugs is categorized as a felony.

Ms. Kaltenbach said that "drug decriminalization" means the removal of criminal penalties for drug possession and for personal use of drugs, along with investment in substance abuse treatment and harm-reduction services. She explained that decriminalization is not legalization of drugs or drug use, and it does not include the removal of penalties for the sale, manufacture or distribution of drugs. She said that jurisdictions that have undertaken drug decriminalization have not seen increased rates of drug use or trafficking, and some have seen reductions in certain drug-related concerns, including drug overdose deaths. Drug decriminalization can also improve public safety and health through reduced rates of incarceration, which can also reduce the cost of administering a criminal justice system and can allow more resources to be dedicated to health programs and policing of more violent crimes.

Ms. Kaltenbach recalled that in 2001, lawmakers in Portugal enacted comprehensive reforms that included reclassification of minor drug possession and consumption crimes to administrative violations. Along with those decriminalization efforts, Portugal significantly expanded its substance abuse treatment and harm-reduction services, including improving access to sterile syringes and methadone maintenance therapy. She also noted that Maryland recently introduced legislation to decriminalize all drugs and has provided for civil penalties for the possession of small amounts of marijuana, cocaine and other drugs.

Ms. Kaltenbach highlighted positive policy changes in New Mexico, including the passage of the nation's first 911 Good Samaritan law, which exempts overdose witnesses from prosecution for certain drug- and alcohol-related crimes, and the implementation of the Law Enforcement Assisted Diversion (LEAD) program in Santa Fe. She presented suggestions for future policy changes, including reducing certain drug use and possession crimes to misdemeanors, decriminalizing possession of drug paraphernalia and marijuana and providing funding to establish additional LEAD programs and to support treatment for opiate addiction.

In response to a member's question, Ms. Kaltenbach clarified that her organization's work is not focused exclusively on marijuana and that it supports treating drug abuse as a public health issue. She emphasized that the goal of her presentation is to inform the committee of drug and criminal justice reforms taking place across the country and around the world. She noted that the model implemented by Santa Fe's LEAD program is an example of a drug decriminalization model that offers certain offenders an alternative to incarceration, including treatment options. She added that the resources saved through reduced corrections costs could be used to pay for treatment programs.

In response to a question about incarceration rates for drug-related offenses, Ms. Kaltenbach said that it is difficult to obtain accurate data; however, she reported that in 2012, there were approximately 7,800 charges brought against adult offenders for drug possession, and of those charges, approximately 3,000 to 4,000 were for possession of marijuana.

A member asked about the reclassification of marijuana by the federal Drug Enforcement Administration. Ms. Kaltenbach responded that the reclassification of marijuana as a Schedule II drug could help improve marijuana-related research opportunities. Another member noted that nine states will be voting on legalizing marijuana in November 2016, and she suggested that the legislature should take responsible steps toward addressing the issue.

A member emphasized the importance of hearing input on drug decriminalization from the law enforcement community.

### **Reducing Recidivism and Improving Outcomes for Youth in New Mexico's Juvenile Justice System**

Nancy Arrigona, research manager for the Council of State Governments Justice Center (Justice Center), explained that New Mexico is a member of the Council of State Governments, which provides nonpartisan policy support to legislative, executive and judicial state leaders. The Justice Center is currently working on a juvenile justice improvement initiative that aims to reduce incarceration rates. She said that between 1997 and 2013, incarceration rates for juvenile facilities fell by 49% in New Mexico and 55% nationwide. The Justice Center hosted a 50-state forum in 2015 to provide states with an opportunity to hear from national juvenile justice experts on evidence-based and best practices. The forum was attended by four-person teams from each state. Attending on behalf of New Mexico were Representative Chasey; Nick Costales, deputy director of field services for the Children, Youth and Families Department (CYFD); Kelly Jo Parker, chief juvenile probation officer for the CYFD; and Judge Marie Ward from the Second Judicial District Court.

At the forum, the Justice Center presented research on juvenile justice reforms in Texas that have contributed to a reduction in confinement rates. She noted that a study revealed that outcomes for juveniles confined to secure facilities were worse than for juvenile offenders who were not confined. In 2007, the Texas legislature passed legislation to allow incarceration only for juveniles who committed felonies. In 2009, the Texas legislature focused on providing

funding for programs and services for juveniles not confined to secure facilities. With a shift toward fewer incarcerations in secure facilities, there was a significant increase in the need for community-based services.

The Justice Center studied the 2007 reforms in Texas and found that Texas reduced the number of incarcerated youth without compromising public safety; youth supervised outside of facilities had lower rates of subsequent arrests; significant investments in community-based supervision and services were critical; and recidivism rates did not improve significantly after the reforms.

The Justice Center's analysis of the CYFD's annual reports showed that New Mexico reduced its juvenile commitment rate by 33% between 2006 and 2015 and that juvenile referrals were reduced even more. Of the juveniles referred to the CYFD in 2015, 99% of them stayed in their communities and less than 20% were placed on supervision.

Ms. Arrigona said that the Justice Center published a white paper detailing best practices in juvenile justice that have the most significant outcomes for youth. In preparing the white paper, the Justice Center surveyed states and found that 39 states perform recidivism analysis of juveniles that are released from secure facilities. New Mexico analyzes recidivism-tracking readjudication and recommitment with respect to juveniles who are confined and does some analysis with respect to those who receive services in their communities. The Justice Center also found that 13 states use risk-assessment methods to identify juvenile offenders who are at higher risk of re-offending.

In 2014, the National Reentry Resource Center published a study that identified core principles for reducing recidivism and improving other outcomes for youth in the juvenile justice system. The study identified four core principles for reducing recidivism. The first principle, "use validated risk and needs assessments", provides that a validated tool should be used to assess juvenile offenders, which can enable a justice system to allocate the most resources for the juveniles who are at the highest risk of re-offending. With respect to New Mexico, Ms. Arrigona noted that New Mexico does use the risk assessment instrument, but because of a lack of community-based services or diversion programs, juveniles are often being detained for several months at a time. She also noted that the state uses a structured decision-making tool for risk and needs assessment, but it is important that assessments be performed in a timely fashion and that the results are used to inform the disposition of a case. She also suggested that assessment tools could be used to inform decisions regarding the appropriate length of stay for juveniles who are confined.

The second principle, "implement programs and services proven to reduce recidivism", addresses the importance of youth services that promote positive development and, therefore, reduce recidivism. She highlighted cognitive behavioral therapy and family- and community-centered programs as examples of services that promote positive development. She added that studies have shown that programs such as boot camps and the Scared Straight and

D.A.R.E. (Drug Abuse Resistance Education) programs are not effective. With respect to New Mexico, Ms. Arrigona said that the state could consider how to increase programs and services for juveniles in all of the state's communities and how to ensure that those programs are using evidence-based practices.

The third principle, "collaborate across systems to address youths' needs", emphasizes the importance of collaboration among systems and services for juveniles. She said that collaboration is particularly important because 60% to 70% of confined juveniles have a mental illness; 25% to 50% of confined juveniles have a substance use disorder; 65% of youth in supervision have past or current involvement with the child welfare system; and more than 50% of confined youth have below-grade reading and math skills, have repeated a grade in school and have been suspended or expelled from school. With respect to New Mexico's service providers, Ms. Arrigona suggested that the state examine the CYFD's internal collaboration among child welfare and juvenile justice services and the collaboration with the education and behavioral health systems to aid transitions for juveniles who are released from confinement.

The fourth principle, "tailor supervision/services to youths' developmental needs", emphasizes the differences between juveniles and adults and identifies key components of developmentally appropriate approaches. With respect to New Mexico, Ms. Arrigona noted that implementation of the state's Cambiar juvenile justice model might not have been ideal and that the state's laws might need revision to align with Cambiar.

Nina Salomon, senior policy analyst with the Justice Center, said that the Statewide Juvenile Justice Improvement Initiative (SJJII) helps states to answer questions about the alignment of state resources, policies and practices with research; about how well state leaders are collaborating on juvenile justice; and about tracking of state data on recidivism and juvenile justice system outcomes. Following the 2015 forum, 18 states applied for assistance from the Justice Center and the SJJII. The Justice Center met with stakeholders in New Mexico in March 2016 to learn about the challenges and barriers the state faces with its juvenile justice system. The Justice Center met with CYFD leadership and staff, judges, probation officials, district attorneys, public defenders and law enforcement officials.

The Justice Center chose to work with Nevada because all three branches of that state's government were in support of work with the Justice Center on juvenile justice improvements.

Ms. Arrigona said that the SJJII works through three phases to improve juvenile justice policies and practices. The SJJII uses comprehensive, quantitative data analysis to identify areas in need of improvement, has conversations with stakeholders and then presents findings and recommendations to a state and works with that state to develop policy ideas. She said that the Justice Center's and the SJJII's work with states is led by the state and requires the support of a bipartisan, interbranch task force to guide the work. She noted that New Mexico and one other state are being considered by the SJJII as possible sites for future juvenile justice improvement work.

In response to a member's question, Ms. Arrigona noted that the statistics she presented on reduced incarceration of juveniles in New Mexico are drawn from the CYFD's annual reports, but she said that the definition of "commitment" varies in the annual reports. The member agreed that incarcerating juveniles leads to worse outcomes and added that it has been difficult to get recidivism rate data from the CYFD.

A member asked Ms. Salomon which state laws are in need of revision. She responded that if the Justice Center chooses New Mexico as a partner for future work, the work would include analysis of statutes that could be misaligned with the Cambiar model. She added that stakeholders informed her that some statutes are in need of revision.

In response to a committee member's comment, Ms. Salomon said that it is important that all of the state's leaders support a potential collaboration between the Justice Center and New Mexico.

### **Public Comment**

Margarita Sanchez told the committee that it is difficult for policy changes to be implemented in the state. She also expressed frustration about police shootings, corporate tax incentives, the lack of funding for basic health and social services, solitary confinement and the cost of private prisons.

Denicia Cadena commented on the increasing number of young women in the juvenile justice system. She noted that many of them are survivors of trauma, yet services for survivors are very limited.

Paula Cure and Jamie Sullivan discussed efforts to improve conditions for family members' visits to corrections facilities.

### **Update from the APD Forward Campaign**

Steve Allen, director of public policy for the American Civil Liberties Union-New Mexico, said that the APD Forward campaign was organized in 2014, following the Albuquerque Police Department's (APD's) shooting of James Boyd in Albuquerque. An investigation by the United States Department of Justice (DOJ) found that the APD had a practice of unconstitutional use of force and a culture of aggression. The DOJ's investigation led to a settlement agreement with the City of Albuquerque and mandated reforms. The campaign's partners include 18 organizations and some shooting victims' family members.

Mr. Allen said that APD Forward's objectives are to finalize the settlement agreement; ensure that reforms take place; identify a monitor to oversee mandated reforms of the APD; ensure that the city adequately fund the reform process; and ensure that reforms are sustained.

APD Forward recommended that Dr. James Ginger serve as the DOJ monitor to oversee APD reforms, and Dr. Ginger was jointly appointed by the city and the DOJ. APD Forward

publishes summaries of Dr. Ginger's reports and will continue to host roundtable discussions with affected groups, including youth, Native Americans, homeless persons and members of the lesbian, gay, bisexual and transgender community.

Alice Liu Cook, staff attorney with Disability Rights New Mexico (DRNM), attended the July 28, 2016 status hearing on APD reforms. She noted that Dr. Ginger's report was critical of the reform process, but that critique was not discussed in the status hearing. At the hearing, the city reported significant progress toward reforms; however, Ms. Cook said that very little progress has been made and the city has achieved just 5% operational compliance with the settlement agreement.

Mr. Allen agreed that Dr. Ginger's third report was very critical and noted the dysfunction in the APD's systems to track and respond to officers' use of force. Dr. Ginger's previous reports also noted dysfunction in the APD's policymaking, but he commended the department's use of special units. Dr. Ginger observed an improvement in the APD's policies, and APD Forward has made recommendations on revisions to those policies.

APD Forward is concerned that, after Dr. Ginger's last report was published, the APD sent a memorandum to its supervisors stating that officers are underusing force due to the "Ferguson effect". Mr. Allen said that the data and the monitor's findings do not support that statement.

Mr. Allen said that the four-year reform implementation deadline established in the settlement agreement is not realistic, and Ms. Cook added that the reform process should not be rushed. She said that if reforms are implemented correctly the first time, money and time will ultimately be saved. Ms. Cook said that *The Guardian*, a British publication, appears to have the most reliable data on the number of people killed by police in the United States, and it recently reported that New Mexico ranks first in the country per capita for police-involved shooting deaths.

Ms. Cook said that DRNM is particularly interested in APD reforms because DRNM's clients, along with young Native American and Hispanic men, are part of a population disproportionately affected by the APD's practices. Of the 17 police-shooting deaths in New Mexico during 2016, 16 victims were men and 70% of the victims were Hispanic. Five of those shootings were in Albuquerque. She noted that it cannot be determined whether the shootings were justified without accurate data collection and reporting by law enforcement agencies.

Ms. Cook said that since 2010, the city has paid \$46.5 million in settlements related to the APD's use of force. The settlements paid by the city between 2012 and 2014 amount to approximately \$11,000 per year for each officer in the department.

In response to a member's question, Mr. Allen confirmed that the DOJ's and Dr. Ginger's reports and the APD Forward's summaries of the reports are available on APD Forward's



website, under "Resources". Regarding settlement agreement deadlines, Mr. Allen said that the agreement includes short-term deadlines and a goal of the APD's substantial compliance with the agreement by December 2016, which is not likely to happen. The only penalty for the city's noncompliance with deadlines is continued payments to Dr. Ginger for his services as a monitor. He added that the greatest expense related to the agreement is Dr. Ginger's contract. He said that, once APD compliance is reached, it will have to be maintained for two years before the agreement is dissolved.

A member expressed appreciation for APD Forward's work and frustration that the city does not seem receptive to the DOJ's involvement in reforms. Another member said that the APD's recent operation involving arrests at a mobile clean-needle-exchange location is counter productive and discourages drug users from employing safer practices.

Regarding APD staffing, Mr. Allen said that there is a limit to the number of officers that can be recruited and trained. Ms. Cook added that it is difficult to recruit officers when relationships between police and the community are strained. The settlement agreement provides for community police councils to help improve those relationships. A member noted that recruiting officers with a connection to their communities could be more important than requiring certain education levels. Another member expressed concern over recent police officer deaths. Finally, a member asked which police officers participate in APD Forward's roundtable discussions. Mr. Allen said that Chief Gordon Eden invites field officers, public relations staff and other APD staff to the meetings.

### **Life Sentences, Parole Eligibility and Parole Board Hearings**

Senator O'Neill presented a draft bill that would revise the Parole Board's hearing process for inmates who have served 30 or more years of a life sentence. The Parole Board would be required to grant parole to those inmates unless the board makes a specific finding that an inmate is unwilling or unable to abide by laws upon release. The bill would also prohibit the denial of parole based solely on the fact that an inmate took another person's life. Senator O'Neill said that it appears that inmates with certain criminal profiles are not even considered for parole, and he added that the Parole Board's decision of whether to grant parole should be based primarily on the likelihood of an inmate re-offending. He added that older inmates and those who were incarcerated for a crime of passion, such as murder, are generally less likely to re-offend.

Sheila Lewis, a former public defender, told the committee that a former client's wife contacted Ms. Lewis because, despite the fact that her husband had served at least 30 years and maintained a perfect conduct record in prison, he was denied parole. Ms. Lewis looked into the situation and found that 87 parole hearings for inmates serving life sentences have taken place in the past seven years, but parole was granted after just five of those hearings. She explained that inmates serving life sentences, in contrast with "life without parole" sentences, do not qualify for sentence reductions, but after serving at least 30 years, they can request a hearing before the Parole Board. At those hearings, an inmate is not allowed to have an attorney or witnesses attend

and is not given access to the information provided to the board members about the inmate. The family of a victim is permitted to attend and speak at parole hearings.

In 2012, Sandra Dietz, the Parole Board chair, publicly said that she believes a life sentence should mean incarceration for an inmate's natural life, and not just for 30 years. Ms. Lewis emphasized that the legislature has set sentencing guidelines, and the Parole Board is not a policymaking entity. She added that inmates convicted of first degree murder and sentenced to life recidivate at a rate of just 1.3%.

Senator O'Neill and Ms. Lewis both suggested that inmates should be allowed legal representation for parole hearings.

In response to a question about the parole hearing process, Ms. Lewis said that the process is guided by statutes and regulations. A hearing is required only if requested by an eligible inmate, and hearings are conducted throughout the state before panels of three Parole Board members. Generally, the board members who reside closest to the facility where a hearing is to be held will represent the Parole Board at the hearing; however, Ms. Dietz has assigned herself to sit on 87% of recent parole hearings, regardless of where the hearings are held. Ms. Lewis added that minutes for hearings are taken, but they are not publicly available, and an inmate can challenge a decision of the Parole Board only through a habeus corpus petition. She noted that even if a discretionary habeus petition is heard by the court, an inmate has no access to evidence from the parole hearing to present to the court.

A member suggested that the committee support the bill and noted that Ms. Dietz was formerly a district attorney's office victim's advocate. He added that the possibility of release on parole is one of the only incentives to encourage good behavior of an inmate sentenced to life. The member said that after many years of practicing criminal defense, he still knows nothing about parole hearings because there is no public record created in the hearings. Ms. Lewis informed the member that, currently, 84 inmates are eligible for a parole hearing, and the member noted the great expense associated with housing those inmates.

### **Sale of Recycled Metals Act and Metal Theft Prevention**

Carlos Lucero, manager of government affairs for Public Service Company of New Mexico (PNM), said that PNM — the only New York Stock Exchange-traded company headquartered in New Mexico — focuses on reliability, affordability and environmental responsibility. The company employs 1,500 people and serves over half a million customers in 40 communities. PNM provides \$137 million in taxable wages, and in 2015, the company paid \$24.5 million in property taxes and \$61.6 million in gross receipts taxes in the state.

Mr. Lucero said that PNM contributes to local nonprofit organizations, and he highlighted the fact that, each year, PNM awards approximately 100 grants worth \$5,000 each to nonprofit organizations. In 2015, the company assisted 3,554 low-income families with more than \$248,000 through the PNM Good Neighbor Fund.

Ray Vigil, manager of electric distribution standards for PNM, explained that increased copper prices and the recent economic recession caused an increase in metal theft from homes, businesses, scrap sites and utilities. The price of copper as of April 2, 2015 was \$2.72 per pound. He showed a photograph of copper cable used by PNM, which costs between \$23.00 and \$24.00 per foot, and he said that the cable is sought by thieves, who strip the cable to remove identifying materials and then sell it to metal recyclers.

The theft of copper wire and cable exposes the public, utility employees and thieves to the risk of death or serious injury. Other impacts include costs to customers, expensive substation repairs, damage to critical infrastructure and key resources and the creation of hazards due to exposure of electrical equipment and inoperable streetlights. Over three years, PNM has spent over \$5 million replacing substation grounding wires alone.

Mr. Vigil said that PNM has addressed metal theft through collaboration internally and externally. Internal efforts include repairing damaged equipment and wire, monitoring field trials and evaluating new equipment designs to prevent theft. Externally, PNM has worked with the APD, with the Regulation and Licensing Department (RLD) and with other utilities to improve responses to theft and to promote helpful legislative changes.

Mr. Vigil said that the Sale of Recycled Metals Act requires dealers to report the purchase of regulated metals by the end of the second day after the purchase; however, a dealer is only required to hold the purchased material for 24 hours, which could allow dealers to evade law enforcement.

Mr. Vigil said that PNM's business customers lose revenue and production and experience increased insurance premiums due to metal theft; as a result, many business customers have installed theft deterrents.

A member asked whether PNM and law enforcement have set up sting operations to catch thieves. Mr. Vigil said that a few successful sting operations have been done. A member suggested the use of cameras to catch thieves.

A representative from the RLD said that the department has not decided whether to pursue legislation in 2017 to address metal theft, and she agreed that holding times and notification times provided in the current statute could probably be revised.

## **Thursday, August 18**

### **Report from the Sex Offender Management Board (SOMB)**

Tony Ortiz, acting chair of the SOMB, said that the SOMB is a statutory entity under the authority of the New Mexico Sentencing Commission (NMSC). In October 2012, Representatives Maestas and Yvette Herrell, several cabinet secretaries, Parole Board members and others met in Albuquerque to discuss requirements pursuant to the federal Adam Walsh

Child Protection and Safety Act of 2006 (Adam Walsh Act) and the changes made to state law in 2012. In 2013, the DOJ published "Substantial Implementation Review for New Mexico" following an audit of New Mexico's compliance with the Adam Walsh Act. The audit showed that the state was in compliance in 13 of 15 categories. The DOJ noted that the state could improve compliance by providing additional information on state websites and by taking additional steps to register juvenile offenders.

Mr. Ortiz said that many of the Indian pueblos, tribes and nations in the state, including the Jicarilla Apache Nation, Ohkay Owingeh, the Pueblo of San Ildefonso, the Pueblo of Acoma, the Pueblo of Isleta, the Pueblo of Laguna, the Pueblo of Santa Ana and the Pueblo of Zuni, are also in compliance with the Adam Walsh Act. The Pueblo of Cochiti is close to achieving compliance. The federal Office of Sex Offender Sentencing, Monitoring, Apprehending, Registering, and Tracking is a useful resource for information about sex offender laws throughout the country and information on effective sex offender treatment approaches.

The SOMB has published two New Mexico-specific sex offender recidivism analyses, which are available on the NMSC's website. The SOMB is working to assess the quality of treatment for sex offenders in rural parts of the state due to concern about the adequacy of the credentials of professionals delivering treatment to sex offenders. The SOMB surveyed neighboring states' approaches to treatment professionals and developed a set of professional standards for those who treat sex offenders. The Corrections Department (NMCD) has agreed to incrementally include the recommended professional standards into the department's contracts for the treatment of sex offenders.

Mr. Ortiz recalled the committee's visit in 2015 to the sex offender management unit at the Otero County Prison Facility and said that the facility's treatment program, operated by Tala Ibrahim, uses a curriculum developed by the Medlin Training Institute. The curriculum is evidence-based, and almost all sex offenders in the state who are within five years of release will be housed in the Otero County facility and will receive treatment using that curriculum to prepare for reintegration into society upon release.

Mr. Ortiz recalled House Bill (HB) 65 (2016), which revised statutes related to sexual exploitation of children. The bill increased penalties for distribution, possession and manufacture of child pornography and included an exemption from prosecution for certain young people who might otherwise violate the law by exchanging explicit electronic messages, or "sexting". He said that the Office of the Attorney General (OAG) and the CYFD reported that the category of young people exempted in the bill are not the types of offenders that would have been prosecuted before the bill was signed into law. Both the OAG and the CYFD objected to the exemption. The OAG is particularly concerned that the state could lose approximately \$200,000 in annual federal funding because of the sexting exemption. That funding is distributed to local law enforcement agencies to address internet child exploitation crimes. The SOMB has discussed the importance of educating young people about sexting rather than prosecuting them for child sexual exploitation violations.

Kim Chavez Cook, assistant appellate defender for the Public Defender Department, said she understands that the federal funding that could be lost due to the sexting exemption might be lost due to a decrease in reports of sexting. If those reports are less frequent, the state will also lose opportunities to educate young people about sexting. She added that Senate Judiciary Committee Substitute for Senate Bill 320 (2016) included provisions that would address sexting through education. She recommended that the committee consider removing the criminal justice system entirely from sexting between young people and, instead, address the situation only through education.

A member expressed disappointment about the legislative process in connection with HB 65, which he said lacked cooperation between affected agencies and the legislature.

Upon a member's request, Mr. Ortiz explained a 2014 study that examined recidivism rates for 351 sex offenders who were incarcerated and 109 sex offenders who were placed on probation. The probationers were sentenced between 2004 and 2006, and they were tracked through October 2013 to determine if they re-offended. Of the 104 tracked, 29% were ultimately returned to the corrections system for probation or parole violations or new crimes. Most of the new crimes committed were not sex offenses; rather, they were violent offenses, drug offenses and burglary. The incarcerated offenders were also tracked through October 2013, and of those who re-offended, 110 offenders committed a parole violation, 75 offenders committed new crimes and 40 committed probation violations. Of the total 455 offenders tracked in the study, just 16 offenders were convicted of another sex offense; however, he noted, sex crimes are one of the most underreported crimes because victims are often family members of offenders.

A member said that the OAG should be included in discussions of possible future sexting legislation, and he opined that sexting should be included in public school curricula. Mr. Ortiz added that the SOMB will prepare a proposal on the issue for the NMSC's consideration.

### **Report on the DNA Identification System Oversight Committee**

John Krebsbach, laboratory director of the Scientific Evidence Division of the APD, introduced William Watson, Ph.D., the newly selected administrator of the New Mexico DNA Identification System Administrative Center (DNA Center). Mr. Krebsbach said that the DNA Center currently does not have a backlog of work, partly due to legislative appropriations and federal grants that fund the DNA Center's operations.

Mr. Krebsbach noted that many states have begun using private DNA databases that are not compatible with the federal Combined DNA Index System (CODIS). The CODIS supports the majority of criminal justice DNA databases and related software throughout the country. Some states have passed laws to prohibit the use of non-CODIS-compatible DNA laboratories. It is concerning that privately run laboratories have no government oversight and often produce reports that are not compatible with entering DNA information into the CODIS because of incompatible systems and software.

Mr. Krebsbach said that "rapid DNA" is a process that allows for near-real-time analysis of DNA samples. Jail personnel are able, with rapid DNA, to analyze samples and upload results into the CODIS. While rapid DNA is permissible and has been approved by the United States Senate for use with federal offenders, no state has implemented the program. The cost of a rapid DNA analysis of a sample is approximately \$300, compared to \$28.00 per sample for standard analysis methods. While rapid DNA is an effective tool for the military, which has used it effectively to identify suicide bombers, it is not an ideal method for a domestic criminal justice system.

Dr. Watson reviewed data from the DNA Center's work for the previous six years. He said that as a result of the expansion of the federal Katie Sepich Enhanced DNA Collection Act of 2012 (Katie's Law), which provides for DNA collection processes for felony arrests, the DNA Center's entry of searchable samples into the database increased significantly. The number of criminal cases or investigations that were assisted through use of the DNA database has continually increased since 2013, which he believes is attributable to an increase in personnel in the state crime laboratory and an increased law enforcement focus on property crimes.

Dr. Watson said that convicted offenders and persons on probation or parole pay a fee of \$100 for DNA testing. Since 2012, the amount of fees collected by the DNA Center has continually declined. He suggested that the decline could be attributed to courts improperly waiving the fees or a need for training of probation and parole offices.

The DNA Center is implementing paperless operations and converting the center's records to an electronic format. Using a federal grant, the DNA Center upgraded its computer systems to be CODIS-compatible. Using additional funds, the DNA Center is updating a tracking system that meets federal standards, which require the use of more than 20 genetic markers. Using a greater number of genetic markers helps reduce false-positive DNA matches. The DNA Center's previous tracking system used 13 genetic markers. Dr. Watson suggested revisions to the rules, including a change to redefine the levels of training for on-site DNA sample collectors.

A member said that the legislature should increase appropriations to the DNA Center and not rely on fees paid by offenders to cover the cost of DNA sample testing. That change could also reduce the administrative costs of probation and parole offices.

In response to a member's question, Mr. Krebsbach said that the DNA Center's operation budget has remained flat for over a decade, but the turnaround time for DNA analyses has improved from one month to less than two weeks. The process of DNA analysis in the laboratory begins when a sample arrives in the office, after which, staff determines whether the sample meets testing criteria. That determination includes a review of court records to determine whether probable cause for the offender's arrest on a felony charge exists. Samples are then tested, and test results are entered into the CODIS database to identify any existing DNA matches

in the system. With technological improvements, the cost of analyzing samples has decreased and accuracy has improved.

In response to a question about samples analyzed at the APD laboratory, Mr. Krebsbach said that more than 50% of samples tested by that laboratory are from the Bernalillo County Metropolitan Detention Center.

In response to a member's question about staffing, Mr. Krebsbach said that the DNA Center has three full-time personnel: Dr. Watson, an administrative assistant and a DNA tester. Another member thanked the DNA Center for its dedication to accurate DNA analysis and the simultaneous preservation of civil liberties.

In response to a question, Dr. Watson explained that the laboratory is able to test a sample that contains as few as 30 cells, and a single speck of blood can contain thousands of cells, although not all cells carry DNA.

Mr. Krebsbach said that upon an offender's acquittal, samples and related test results and DNA profiles are destroyed and deleted from the database.

#### **Report on Processing of Backlogged Sexual Assault Examination Kits (SAEKs)**

Connie Monahan, the statewide sexual assault nurse examiner coordinator and co-chair of the task force that studied the backlog of untested SAEKs, said that sometimes a kit will be deemed to have been tested even if only some of the swabs in the kit are tested. She said that community input on how testing decisions are made is critical.

Mr. Krebsbach said that more than 3,000 untested SAEKs are being held in Albuquerque's evidence warehouse. Two new analysts will start at the laboratory in September 2016, and Mayor Richard J. Berry has provided for three retired investigators to work part time to analyze SAEK records to determine testing priority. Sixty SAEKs have already been sent to the Federal Bureau of Investigation for processing.

Scott Weaver, secretary-designate of public safety, said that the Department of Public Safety (DPS) is very concerned with the backlog of untested SAEKs and is committed to resolving the backlog. He said the DPS received a \$1.2 million appropriation to assist with testing SAEKs. The department has applied for additional grants to process untested kits. Currently, the DPS has tested 74 to 90 kits and will fill positions with personnel to assist with the backlog.

Secretary Weaver said that the DPS receives evidence for testing from 142 law enforcement agencies in the state, and the department currently holds 1,025 untested kits. He said that law enforcement agencies are asked to assist with the prioritization of kits to be tested.

State Auditor Timothy Keller said that his office became aware of the backlog of untested kits about a year ago after working with the former secretary of public safety and sexual assault prevention advocates. Auditor Keller commended the DPS for its work on the backlog, which he said will require significant resources. The Office of the State Auditor has made several site visits of law enforcement agencies and organized working groups, from which he learned of the wide variation in agency policies governing evidence and the storage and testing of SAEKs. There is uncertainty in the law and variation in guidance on what information is required to be entered into the CODIS and how DNA samples are stored. There are also concerns with disposal of evidence and kits, and he understands that agencies seek standard policies governing evidence disposal.

Auditor Keller noted the competing goals at issue, and he said that testing of SAEKs should be completed while simultaneously addressing sexual assault victims' needs through services and support, which are generally provided by nonprofit organizations' experts.

Secretary Weaver said that law enforcement agencies should identify why any untested kit has not been tested and should indicate those reasons when a kit is sent for testing or upon inquiry.

In response to a member's question, Mr. Krebsbach said that his department has hired contract investigators to review original case reports to identify why untested kits were not tested. In some instances, a case may have already been adjudicated or an offender may already be in the database, so related kits could go untested. The investigators want to identify any kits for which testing is unnecessary.

In response to another question, Mr. Krebsbach said that there are very few workers who are qualified to work in the laboratory. He said that a qualified applicant would need experience in biology or chemistry and ideally have some laboratory work experience. It takes about six months to a year to train an analyst, even if that person has prior experience.

Auditor Keller noted that some law enforcement officers drive kits to Santa Fe for testing from all across the state, and he said that there could be an evidence delivery process that could save money and law enforcement officer hours. He acknowledged that there could be evidentiary chain of custody concerns with consolidating evidence delivery procedures.

In response to a question about whether the previous \$1.2 million appropriation for testing SAEKs was recurring, Secretary Weaver confirmed that it was a one-time appropriation. He added that the DPS hopes the appropriations will be extended, and he said that approximately 900 kits can be tested with \$1.2 million. Ms. Monahan noted that, each year, approximately 1,000 additional kits are submitted by sexual assault examination nurses for testing.



Julianna Koob, a legislative advocate with the New Mexico Coalition of Sexual Assault Programs (NMCSAP), reminded the committee that during the 2016 session, a bipartisan effort provided for the appropriation to test SAEKs, but additional funding is needed for the APD's laboratory, and an additional \$800,000 is needed for services for sexual assault victims whose SAEKs are tested, sometimes after many years. She said that advocates and the DPS will request \$400,000 for services and continued funding for laboratories to continue work on reducing the backlog.

A member requested that the committee consider endorsing an appropriation of \$1.2 million to the DPS at the committee's final meeting in November.

### **Prison Rape Elimination**

Jillian Shane, federal Prison Rape Elimination Act of 2003 (PREA) coordinator for the NMCD, briefly explained that the PREA was passed by Congress in 2003, and standards related to the law were established by the DOJ in 2012. There are 43 standards with which states are required to comply, and compliance is assessed via audits. All 11 adult prisons in the state have met PREA standards, and many have exceeded those standards with respect to inmate and staff education. The NMCD has entered into agreements with six rape crisis centers and has established incident reporting procedures, including a private phone line that allows an inmate to place free, unmonitored calls to report sexual assault to a rape crisis center. The NMCD is also working with Ms. Monahan to enter into another agreement to enable sexual assault examination nurses to work with the NMCD.

Ms. Shane said that rape crisis center staff members work in corrections facilities on a daily basis, and they and NMCD staff members have collaborated and trained each other. Juvenile facilities have been included in these actions. Rape crisis center staff members have been afforded various levels of clearance to enable them to inspect showers, phone call areas and other locations within facilities.

A significant aspect of the PREA is inmate screening. The NMCD is working on a PREA screening process, which will include screening for sexual history, sexual orientation and whether an inmate has committed or been a victim of a sexual assault or related crime. The NMCD will work to track inmates who have been victims or perpetrators of sexual assault if they move between facilities. The NMCD expects an increase in PREA reports because of increased opportunities for inmates to safely make reports.

Greg Nelson, chief of the Performance/Policy Bureau of the Juvenile Justice Division of the CYFD, said that the CYFD performed a mock-PREA audit at the J. Paul Taylor Juvenile Detention Center and found that while the PREA standards appear simple in concept, they are challenging to implement. In April 2015, the CYFD began to rewrite policies to integrate PREA policies and to encourage a cultural change to encourage discussion around sexual assault. Grants are being used to train staff and educate juveniles on the PREA. In the last two years,

there have been no substantiated cases of staff member assaults of clients, and there have been very few instances of client-on-client assaults.

Mr. Nelson noted that his bureau has developed vulnerability assessments, which consider that many of the youth in the juvenile justice system — 68% of females and 48% of males — experienced sexual assault prior to their incarceration. The bureau is also collaborating with the NMCSAP to train youth on available resources. Some facilities have also placed mirrors and windows in certain areas to improve visibility.

Micaela Cadena of Cadena Strategies said that there are key staff members in each of the 11 adult corrections facilities who work on PREA issues. She reiterated that many people in criminal justice systems are survivors of trauma and sexual assault. She said that Jerry Roark, director of the Adult Prison Division of the NMCD, has expressed his intention to implement trauma-informed processes in facilities, and she added that the majority of corrections security and support staff members are considerate and thoughtful in their work. The successful completion of 11 audits demonstrates a changing culture in corrections.

Ms. Cadena said that the NMCD can address housing assignments for potential predators and victims through the use of screening tools and PREA assessments. She recommended that the NMCD invest in a risk and needs assessment tool called Compass. Assessment tools are important in managing and running a prison, but she said that the use of various tools should be integrated to fully assess inmates. She noted the state's behavioral health crisis and said that the same situation exists in prisons, but some facilities do not have a mental health care provider on staff. It has been particularly difficult for the NMCD to hire mental health care providers in rural areas.

Ms. Cadena made two recommendations for investment in infrastructure:

(1) integrated tools for screening and assessing inmates. Researchers at UNM's Institute for Social Research are working on the development of an integrated screening tool; and

(2) support for an improved information technology system for the NMCD. Currently, there is no way to capture real-time data for NMCD populations or to track whether and why individual return to the NMCD's custody.

Karen Herman, director of sexual assault services for the NMCSAP, listed several potential outcomes of untreated sexual violence, including mental and physical health problems, substance addiction and an increased risk of future sexual violence. A majority of women and likely similar numbers of men experience sexual violence prior to incarceration. Rape crisis centers provide free and confidential services 24 hours per day and include legal, counseling and other services related to sexually transmitted infections.

Ms. Herman said that the NMCSAP and other service organizations continually pursue funding sources. Ongoing training for rape crisis center and corrections facility staff and sexual assault examination nurses is important to work toward eliminating sexual assault. Training is particularly important because the service model used by a rape crisis center, which provides confidentiality and always believes the victim, and the operations model used in a corrections facility, which often cannot guarantee confidentiality or unconditional support for a person who reports an incident, highlight the importance of ongoing training and the need for associated funding.

In response to a question, Ms. Shane said that the NMCD receives some funding from the DOJ and other grants support her work. She added that a \$500,000 grant was secured for work in juvenile facilities. Mr. Nelson said that the CYFD employs a PREA coordinator, an administrative staff person and a management analyst, who all work on PREA issues.

A member asked how the culture of silence around sexual assault is addressed in corrections facilities. Ms. Shane said that the NMCD posts information on the PREA throughout its facilities and has collaborated with the Transgender Resource Center of New Mexico to assist with training. The NMCD is training staff members that sexual assault is not an accepted part of prison culture and provides case managers, rather than security staff, to conduct initial inmate screenings.

A member asked about the process after a PREA complaint is filed. Ms. Shane said that victims are not punished for reporting, and every effort is made to avoid segregating a victim. None of the victims in the last 170 cases investigated was placed in segregation. The presenters acknowledged that, in some cases, a false report is filed in hopes that a certain inmate will be removed.

### **What Works with Sex Offenders — Preventing Sexual Assault**

Kim Alaburda, executive director of the NMCSAP, and Leona Woelk, an associate scientist with the Prevention Research Center at UNM, presented statistics on sexual offenders in New Mexico: 61% sexually violate children; 81% are known to the victim (often a family member, friend or acquaintance); 19% are strangers; and 19% are 18 years old or younger. She said that comprehensive prevention efforts are important and should include direct services to victims; outreach and education; specific funding and technical assistance for persons who are Asian or Spanish-speaking immigrants, Native American or transgender or who have a disability; and trauma-informed training for criminal justice professionals.

Ms. Alaburda noted the importance of training for therapists to work with youth who exhibit activities or other signs indicating that a youth could sexually assault another person. So far, 120 New Mexico therapists and 120 law enforcement officers have been trained to work with those youth. She added that a primary prevention approach aims to stop violence and sexual violence before it occurs. Current research shows that primary prevention happens at the individual, relationship, community and society levels. She highlighted various primary

prevention strategies outlined in her presentation materials. Formal evaluations show that primary prevention efforts in schools and within organizations have been effective, and policy revisions have resulted. To decrease sexual violence in New Mexico, Ms. Alaburda recommends ongoing funding for the UNM Prevention Research Center.

Ms. Woelk said that she has worked with youth to develop messaging to use in a sexual assault prevention social marketing campaign. In collaboration with the Department of Health, she is working to change social tolerance around sexual assault. She suggested that schools could implement policies to require staff training, education on healthy relationships and policies supportive of transgender persons. She meets with various organizations to work on prevention programs, and those organizations have expressed appreciation for being included in a cohesive network of professionals working to end sexual violence.

In response to a member's question, Ms. Woelk said that her organization's 2015 strategic plan reveals that the ultimate cost of sexual assault to the state is close to \$1 billion, which includes time off work and the cost of services for victims and perpetrators of sexual violence.

### **Friday, August 19**

#### **Tour of Ultra Health Medical Cannabis Grow Facility**

Members of the CCJ toured the Ultra Health Medical Cannabis Grow Facility and received a presentation from representatives of Ultra Health concerning medical cannabis in New Mexico.

#### **Adjournment**

There being no further business before the committee, the second meeting of the CCJ for the 2016 interim adjourned at 11:20 a.m.