

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

**May 27, 2016
State Capitol, Room 322
Santa Fe**

The first meeting of the Courts, Corrections and Justice Committee (CCJ) for the 2016 interim was called to order by Representative Zachary J. Cook, co-chair, on May 27, 2016 at 10:00 a.m. in Room 322 of the State Capitol in Santa Fe.

Present

Rep. Zachary J. Cook, Co-Chair
Rep. Eliseo Lee Alcon
Rep. Gail Chasey
Rep. Jim Dines
Sen. Linda M. Lopez
Rep. Georgene Louis
Sen. Cisco McSorley
Sen. Sander Rue

Advisory Members

Sen. Bill B. O'Neill
Sen. John Pinto
Rep. Patricia Roybal Caballero
Rep. Patricio Ruiloba

Absent

Sen. Richard C. Martinez, Co-Chair
Sen. Joseph Cervantes
Rep. Rick Little
Rep. Antonio Maestas
Rep. Andy Nunez
Rep. William "Bill" R. Rehm
Sen. Lisa Torracco

Sen. Craig W. Brandt
Sen. Jacob R. Candelaria
Rep. Brian Egolf
Rep. Doreen Y. Gallegos
Sen. Daniel A. Ivey-Soto
Rep. W. Ken Martinez
Rep. Paul A. Pacheco
Sen. William H. Payne
Sen. Michael S. Sanchez
Sen. Mimi Stewart
Rep. Christine Trujillo
Sen. Peter Wirth

Staff

Douglas Carver, Staff Attorney, Legislative Council Service (LCS)
Celia Ludi, Staff Attorney, LCS
Diego Jimenez, Research Assistant, LCS

Guests

The guest list is in the meeting file.

Handouts

Copies of all handouts are in the meeting file.

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Representative Cook welcomed members of the committee and the audience to the meeting, and committee members, staff and members of the audience introduced themselves.

Overview of the 2016 Legislative Session

Mr. Carver gave a brief overview of the ultimate fate of legislation that had been endorsed by the committee for the 2016 legislative session. He noted that most of the bills endorsed by the committee died at some point during the legislative process, a couple were never introduced and the only two bills that passed — both were bills initially proposed by the Administrative Office of the Courts — were both vetoed by the governor. A chart showing the endorsed legislation and the fate of each bill is included in the handouts for the meeting.

2016 Interim Work Plan and Meeting Schedule Development

Mr. Carver went through the items of the proposed work plan and meeting schedule for the committee. Members of the committee made occasional comments and suggestions concerning certain items. The proposed work plan items and schedule are available with the handouts for the meeting. The work plan and meeting schedule approved by the committee upon a motion by Senator Rue, seconded by Representative Dines, consist of the following:

1. a joint meeting with the Legislative Health and Human Services Committee (LHHS) to examine aspects of the intersection between health issues and the criminal justice system, including the growing problem of opioid addiction;
2. election law and open government issues;
3. proposal for an ethics commission;
4. House Special Investigatory Committee recommendations for impeachment processes;
5. changes to statutes concerned with domestic violence and other issues surrounding domestic violence, including a restriction on possession of firearms by those subject to an order of protection and an examination of the link between animal abuse and domestic violence;
6. human trafficking, including an examination of the intersection of runaway children and trafficking;
7. transfer of probation to the courts;
8. drug decriminalization and heroin-assisted treatment;
9. family law issues, including issues surrounding grandparents raising children and visitation rights;

10. solitary confinement/segregated housing;
11. Legislative Finance Committee evaluation of juvenile justice and a Results First project on children's mental health services;
12. expungement;
13. child pornography — an overview, including a discussion of House Bill 65 (2016) and the various statutes concerning sexually explicit images;
14. presentation from the Sex Offender Management Board;
15. examination of the use of fines and fees in the justice system and what burdens they may place on defendants;
16. veterans courts;
17. use of ankle bracelets as an alternative to incarceration;
18. discussion with the Taxation and Revenue Department, including the issue of driver's license revocation hearings;
19. preventive measures against metal theft on utility infrastructure;
20. protecting consumers from inappropriate and deceptive business practices;
21. update from the Albuquerque Police Department (APD) Forward campaign;
22. recusal of public regulation commissioners;
23. theft of artifacts from the pueblos and tribes and their sale at auctions;
24. reverse stings for street-level drug sales being conducted by the APD;
25. "ban the box" legislation;
26. release policies of the Adult Parole Board;
27. progress in data sharing across the criminal justice system;
28. review of federal legislation regarding the sale of hemp;
29. reports from the New Mexico Sentencing Commission — *New Mexico Prison Population Forecast* and *Adverse Childhood Experiences in the New Mexico Juvenile Justice Population*;
30. update from the New Mexico Association of Counties, including updates on the county jail system and the impact of behavioral health issues on jails;
31. update and bill requests from the Corrections Department, including an update on the new health care contract in the prisons, changes surrounding the population of incarcerated women and recruitment of corrections officers;
32. update from the Public Defender Department;
33. update on DNA and rape kit processing;
34. update from the Administrative Office of the Courts and a presentation of the courts' unified budget; and
35. proposed uniform law bills:
 - Revised Uniform Limited Liability Company Act;
 - Revised Uniform Fiduciary Access to Digital Assets Act;
 - Uniform Collateral Consequences of Conviction Act; and
 - Uniform Statutory Trust Entity Act.

Proposed Interim Schedule

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July 26-27	Santa Fe (visit to Penitentiary of New Mexico)
August 17-19	Albuquerque (visit to medical marijuana processing facility)
September 12-13	Clovis; Portales (visit/tour of DWI unit)
October 20-21	Santa Fe (joint meeting with LHHS — it was noted that these dates are likely to change)
November 16-18	Santa Fe (bill endorsements)

New Mexico's County Jails — An Overview

Grace Philips, general counsel, New Mexico Association of Counties, gave the committee an overview of the county jail system in New Mexico, working her way through a detailed handout presented to the committee. She noted that the map illustrating capacity for jails shows design capacity, as distinguished from operational capacity, which is a lower figure. She also noted that while classification of an incarcerated population is important, it is not possible with jails, as jails are required to house whomever comes through their doors. She noted that jails cost the counties a significant amount of money. One of every three dollars spent by a county, on average, goes to the jail. In some counties, the ratio is one of every two dollars.

Ms. Philips then went through a series of charts detailing arrest and booking rates, crime and jail rates and the number of unconvicted people in jail. The charts illustrate how even short increases in time spent in jail can lead to an increase in recidivism.

Ms. Philips then discussed trends in New Mexico county detention, basing her discussion on studies conducted by the New Mexico Sentencing Commission (NMSC) in 2007 and 2010. She added that the NMSC is beginning a new study in June 2016 that will allow for another set of comparative data. She noted that New Mexico is one of two states where there are more people in jail than in prison — most states, in fact, have prison populations twice as big as their jail populations. New Mexico is also distinctive for having twice as many women in jails as in the state prison system. She directed the committee's attention to the next pages of her report, which detail how length of stay in jails is increasing, the reasons for incarceration in jails, how jails in New Mexico are functioning as de facto mental health hospitals, the characteristics of inmates with serious mental illness, how a mental health diagnosis affects the length of stay in jail, how competency affects the length of stay in jail and how the bail system used in the state affects the length of stay in jail. Ms. Philips concluded by briefly discussing two memorials passed by the legislature that concerned issues surrounding jails, the incarceration of the mentally ill and the need for services — House Joint Memorial 17 (2011) and Senate Joint Memorial 4 (2015). The details of the recommendations of the task forces created by those memorials are provided in the handout.

Members of the committee asked questions concerning and discussed the economic impact of jails on the counties; the need for services, especially mental health services, in the counties; the bail bond industry and the possible impact of the constitutional amendment on bail that will be on the November ballot; design capacity of and overcapacity in the jails; the use of risks and needs assessments; the role the judicial branch has in the number of people incarcerated

in jails; and how the use of data could help legislators develop policies to reduce the number of people held in jails.

The Ongoing Need for Criminal Justice Reform

Steven Robert Allen, director of public policy, American Civil Liberties Union of New Mexico (ACLU-NM), and Hal Stratton, Rio Grande Foundation, discussed the continuing need for the state to focus on criminal justice reform. Mr. Allen noted that it was an odd pairing of the ACLU-NM and the Rio Grande Foundation, but that the pairing was indicative of the wide support for criminal justice reform across the state and throughout the country. He noted how New Mexico's high violent crime rates are connected to the state's poor socio-economic situation, quoting Aristotle that "poverty is the parent of crime", and that these factors are not often discussed together. He criticized the recent reverse drug stings being conducted by the APD among the homeless population and said that these stings are in effect a criminalization of poverty. He noted that the vast majority of bills concerning criminal justice that are introduced in the legislature are bills that increase criminal sentences, which demonstrates that the legislature has not been addressing the root causes of crime. Too many people in the state, he said, are incarcerated for too long and for the wrong reasons. Mr. Allen added that there have been discussions of these issues in the context of the debate over the bail reform constitutional amendment.

Mr. Allen stated that to move forward, the state needs to realize that the "tough on crime" policies of the past decades have failed and that the need now is to be smart on crime, which will take creativity, courage and leadership. Sentences need to be rationalized; diversion programs need to be implemented for substance abuse; ban-the-box legislation needs to pass; parole reform needs to be examined, especially in the context of making it easier for prisoners to reintegrate with society upon release; restorative justice models need to be used; prison conditions need to be addressed, especially the use of solitary confinement and the implementation of federal Prison Rape Elimination Act of 2003 reforms and other reforms surrounding sexual assault among the state's incarcerated population; and the NMSC needs to conduct fiscal analyses of sentencing bills. He concluded that, if people in the system can be helped on the front end, poverty can be reduced and public safety can be augmented.

Mr. Stratton began by thanking the legislature for its work on reforming civil asset forfeiture, legislation that has received nationwide praise. He noted that while he still feels it is necessary to be tough on violent crime, there are issues where groups like the Rio Grande Foundation and the ACLU-NM could work together. He noted that work needs to be done on the issue of *mens rea* reform in the state's criminal statutes and said that he is in full agreement that addressing the state's socio-economic situation is part of the package.

Members of the committee asked questions concerning and discussed *mens rea*, the efforts made by the Criminal Justice Reform Subcommittee in past years, including why the New Mexico Legislative Council allowed that subcommittee to end and the connections between poverty and crime.

Public Comment

Tony Ortiz, director of the NMSC, announced that he is being succeeded by Linda Freeman, though he will remain at the commission for a transition year.

Sheila Lewis requested that the committee, during the joint meeting with the LHHS, consider focusing on strangulation in domestic violence incidents as a health issue as well as a criminal justice issue. Ms. Lewis further suggested that the committee address issues surrounding violence prevention in a holistic manner by examining the causes of violence. She noted that the federal Centers for Disease Control and Prevention looked at violence as a health issue. Ms. Lewis also noted that the committee needs to focus on collateral consequences of conviction, and she informed the committee that she has a list of 11 simple things the committee can do to reduce the burden of these collateral consequences. Mr. Carver was instructed to transmit Ms. Lewis's list to the members of the committee.

Miranda Viscoli of New Mexicans to Prevent Gun Violence stated that she hoped the committee would discuss during the interim possible legislation to restrict gun possession by people who are involved in domestic violence incidents.

Kim Chavez-Cook of the Law Offices of the Public Defender commended the committee for its kickoff discussion and brought up three issues for the committee to consider during the interim. The first is an examination of the issues surrounding competency examinations and county jails, specifically what happens when statutory timelines are not followed. The second issue is that the committee consider the need for speedy trials as balanced against prioritizing pretrial release. The third is a request that, if the committee is to consider an examination of issues surrounding *mens rea* in New Mexico, it keep in mind the interplay between criminal statutes and New Mexico case law.

Erin Muffoletto Baca, lobbyist for the bail bonding industry, noted the success of the bail bonding industry in working with pretrial services and said that the decrease in the incarcerated population in Albuquerque has seen a corresponding increase in the number of warrants issued. She offered to serve as a resource for the committee if needed.

Adjournment

There being no further business before the committee, the first meeting of the CCJ for the 2016 interim adjourned at 1:21 p.m.