

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

**August 24, 2018  
Albuquerque City Hall  
City Council Room 9081  
1 Civic Plaza NW  
Albuquerque**

The third meeting of the Criminal Justice Reform Subcommittee of the Courts, Corrections and Justice Committee was called to order by Senator Sander Rue, co-chair, on August 24, 2018 at 9:05 a.m. at Albuquerque City Hall.

**Present**

Rep. Antonio Maestas, Co-Chair  
Sen. Sander Rue, Co-Chair  
Sen. Gregory A. Baca  
Rep. Gail Chasey  
Rep. Richard C. Martinez  
Sen. Cisco McSorley

**Absent**

Rep. Zachary J. Cook  
Rep. Jim Dines

**Guest Legislators**

Sen. Jacob R. Candelaria  
Rep. Dennis J. Roch

**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**

Handouts and other written materials are in the meeting file.

**Friday, August 24**

**Call to Order and Introductions**

Senator Rue and Representative Maestas welcomed everyone to the meeting, and the subcommittee members, staff and public introduced themselves. Senator Rue noted that KUNM was livestreaming the event on its Facebook page.

**Review of the Bernalillo County Criminal Justice System**

Jon Courtney, Ph.D., program evaluation manager, Legislative Finance Committee (LFC), and Travis McIntyre, Ph.D., program evaluator, LFC, presented the LFC's review of the criminal justice system in Bernalillo County, which was completed on July 19, 2018 (Item 1). Dr. Courtney informed the subcommittee that crime is expensive and that the high incidence of crime in Bernalillo County, and the state as a whole, prompted the courts and criminal justice agencies to seek significant funding increases during the 2018 legislative session. Albuquerque has gone from experiencing the lowest crime rates in its history in 2010 to its highest historical crime rates in 2017. Crime in similar cities and nationwide decreased during that same time period. In response to a request from the Second Judicial District, the LFC launched a comprehensive evaluation of the Bernalillo County criminal justice system.

Dr. Courtney stated that Albuquerque reports the largest number of crimes of any city in the state; however, Belen, Taos, Gallup and Espanola have experienced higher total crime rates than Albuquerque. Dr. Courtney noted that reported crime is an underrepresentation of total crime because many crimes go unreported. Certain crimes, such as motor vehicle theft, are more likely to be reported, most likely for insurance purposes. Other crimes, such as rape or larceny, may go unreported, so Albuquerque's total crime rate is likely higher than reported crime data might imply.

Dr. Courtney noted that the Bernalillo County criminal justice system has not kept pace with increased crime, particularly in and after 2015. As crime began to increase in 2010 and continued to rise through 2017, indictments and convictions actually decreased. The system was further burdened by slow case processing times in the courts and a period of overcrowding at the jail.

More than 25 shootings, many fatal, and other high-profile uses of force by Albuquerque Police Department (APD) officers led the U.S. Department of Justice (DOJ) to begin an investigation of the APD in 2012. After a two-year investigation, the DOJ found that the APD had a pattern or practice of unconstitutional use of excessive force. The city and the DOJ signed a court-approved settlement agreement (CASA) in November 2014 that requires reforms in the APD, including instituting and following better internal controls and accountability, revising training regarding the use of force and using a community policing approach. While the APD has worked on meeting the terms of the agreement, it still lacks sufficient staffing to effectively implement some requirements. A 2015 study concluded that adequate staffing would require

1,000 sworn personnel. In 2017, the APD was 140 officers below the study's recommendations; working toward compliance with the CASA may require additional officers.

Improving staffing, Dr. Courtney continued, may also improve the APD's case clearance rate. In 2010, 90 percent of murders were cleared and the APD homicide caseload was five cases per detective. In 2017, 50 percent of murders were cleared and the APD homicide caseload was 14 cases per detective. More officers would allow for smaller caseloads and more time to be proactive using community policing methods.

Crime increased after the consent decree was signed in 2014, although the experience of other cities under DOJ consent decrees shows that such an increase is common in the first year or two after the consent decree is signed. Albuquerque matched the national trend by seeing a decrease in crime rates two years later. The reason for the increase after a consent decree is signed is not clear, but it may be due to staff learning new processes and systems or the public reporting more crimes.

Dr. Courtney explained that in addition to the APD reforms mandated by the CASA, the Bernalillo County criminal justice system as a whole has undergone a number of reforms and significant events since 2010. Most of these reforms occurred years after the rise in the crime rate began, and there is little evidence that these reforms increased the crime rate. Despite reformation efforts, problems still exist. Police are not implementing evidence-based practices, data-driven management or prevention efforts consistently. The legal system has not committed to the swift resolution of cases and has not fully used programs aimed at addressing root causes, such as drug court. Jails and prisons have not adequately prepared inmates for reentry into the community, which has increased recidivism rates. Overall, there has been little coordination across the criminal justice system. Dr. Courtney noted that the Bernalillo County Criminal Justice Coordinating Council (BCCJCC) has existed in various forms since 2013, but various members have not until recently consistently attended meetings.

Dr. Courtney explained that the combined criminal justice system in Bernalillo County consists of more than a dozen independent federal, state and local law enforcement, jurisprudence and incarceration agencies and 10 boards, councils, committees and consortiums that provide oversight and advice. Various components of the criminal justice system in Bernalillo County have received increased funding in recent years. In fiscal year 2018, local and state governments spent nearly \$500 million on criminal justice system agencies in Bernalillo County. Approximately 50 percent of the total funding went to law enforcement, 38 percent to incarceration and 12 percent to the judiciary, with local government providing 60 percent and state government providing 40 percent of the funding.

Determining the causality of crime is challenging, but deteriorating social conditions after the Great Recession in 2008 are likely contributors to the increase in Bernalillo County crime. While the poverty rate since 2010 for families has only risen a few percentage points for the entire county, some neighborhoods in Albuquerque have experienced enormous changes. The

highest crime area in the state, Census Tract 21 in Albuquerque, has seen the largest increase in families living in poverty. Poverty and working-poverty rates in Albuquerque are consistently higher than national averages. The rise in crime has coincided with increasing levels of unemployment, poverty, homelessness, income inequality, drug use and gun use.

However, Dr. Courtney expressed hope for the situation. Reported crime in Albuquerque peaked in August 2017 and is now trending downward. In June 2018, Albuquerque saw the lowest levels of crime since February 2016. Crime began to decrease in November 2017, around the time Albuquerque's unemployment rate dropped to 5.2 percent, which is considered "full employment" by the Federal Reserve System. Dr. Courtney cautioned that the potential for failure remains if reform efforts do not continue.

The LFC recommended four evidence-based crime reduction strategies for law enforcement. First, police should be proactive, and not reactive, in the prevention of crimes. Second, police should focus on places, not solely on people. Third, police actions should be tailored to identifiable problems. Fourth, police should facilitate civilian trust and confidence.

Dr. Courtney provided models that use these strategies, including Law Enforcement Assisted Diversion (LEAD) programs, community policing and hot-spot policing. LEAD diverts low-level offenders away from costly jail and prosecution into case management and treatment services. Community policing is the systemic use of partnerships to proactively address public safety issues through problem-solving techniques. Trust is built as officer downtime is used to strengthen relationships via community meetings and personal follow-up visits. Hot-spot policing focuses on small geographic areas and groups of people among which there is a high concentration of crime. These programs are not mutually exclusive, Dr. Courtney continued, but can be challenging to implement and are dependent on adequate staffing and training.

Dr. McIntyre discussed problems and possible improvements in the Bernalillo County legal system. Starting in 2009, felony prosecution outcomes in the Second Judicial District Court (SJDC) significantly lagged behind the rest of the state and national standards. The time to dispose of felony cases in the Second Judicial District was more than 11 months; the national standard is six months.

In February 2015, to align the SJDC more closely with national standards, the New Mexico Supreme Court adopted a case management order (CMO) with strict time requirements for each stage of legal proceedings after a case is filed in court. The CMO has reduced the time to dispose of felony cases to five months, but it may have also created new problems. Up to 438 dismissals in 2016 could be attributed to failure to comply with the CMO. The New Mexico Supreme Court has since revised the CMO to relax some deadlines.

Timeliness and overall efficiency could also be improved if more preliminary examinations were used instead of grand juries at the beginning of a case. The majority of cases can be disposed of by a plea at a preliminary examination instead of requiring several subsequent

court appearances after a grand jury indictment, thus saving the resources of the court, the prosecutor and the defense. However, because of the district attorney's preference to rely on grand jury proceedings instead of preliminary examinations, the transition could create challenging shifts in the district attorney's workload.

In addition to the improvements to timeliness of case dispositions, Dr. McIntyre reviewed other court system reforms that can have positive impacts on criminal justice and public safety in Bernalillo County. Specialty courts, such as drug court, can help address the root causes of problems and produce low recidivism rates, but participation has plummeted in recent years.

Reducing reliance on pretrial detention also reduces recidivism, as the likelihood of incurring a new felony arrest consistently increases for each day spent in jail, until it levels off after five days. Pretrial detention can also result in the loss of an individual's stability-providing structures, such as employment, housing and relationships, which can also increase the likelihood of an individual committing new crimes. Successful pretrial release, however, is dependent on evidence-based pretrial services that meet best-practices standards. A 2014 study by the New Mexico Sentencing Commission (NMSC) concluded that the SJDC's Pretrial Services Division did not employ best practices consistently. Since then, the court has made significant changes in accordance with NMSC recommendations.

Dr. McIntyre stated that relatively few individuals are responsible for the majority of felony arrests. Individuals with several arrests make up a small percentage of total individuals involved in the justice system but are responsible for a larger percentage of all arrests. The vast majority of multiple felony offenders are sent to prison, but it often takes several alleged offenses before an individual is fully prosecuted and convicted. When convictions do occur, a greater percentage of violent felons are indicted and convicted than nonviolent offenders.

An increase in felony indictments occurred when the APD and the second judicial district attorney hired paralegals to compile evidence substantiating the police reports for the district attorney's office. Improvements were also seen as the district attorney's office prioritized more cases. Dr. McIntyre noted that the changes were too recent to analyze differences in rates of conviction.

Dr. McIntyre stated that the Metropolitan Detention Center (MDC) and the Corrections Department have both seen a decrease in their inmate populations due to reforms, although their budgets and staffing have not decreased. Dr. McIntyre also stated, however, that the MDC often releases inmates during non-business hours and does not connect inmates with services in the community. Reasons for the release times include awaiting shift changes and associated lockdown times. Reforms have been instituted, including the Resource Reentry Center (RRC), which connects inmates to services and other resources.

Dr. Courtney reviewed the LFC's key recommendations.

- The legislature should consider legislation that minimizes the financial burden for specialty court participants; establishes basic requirements for pretrial services, including the use of best practices; and encourages sharing criminal justice data between agencies while still complying with federal law.
- Law enforcement agencies should direct officers to spend downtime to focus on people, hot spots and problems identified by the Real Time Crime Center (RTCC); study and improve staffing goals; and use the RTCC more consistently to map crime and identify hot spots.
- The courts should implement pretrial services and increase use of specialty courts.
- Incarceration agencies should implement reliable risk and needs assessments that are transmitted to the RRC for use upon release; increase the number of inmates released during business hours; and ensure that key RRC staff members are available around the clock.
- Bernalillo County and the City of Albuquerque should invest in the BCCJCC, which in turn should develop metrics to measure criminal justice system performance, foster the use of evidence-based practices and coordinate the use of resources between agencies.

In response to a question from the subcommittee, Dr. Courtney confirmed that stakeholders have been made aware of the study's findings and that the LFC has specifically met with the district attorney's office. He noted that agency responses from the APD, the second judicial district attorney, the SJDC and Bernalillo County are included as appendices to the report.

Members of the subcommittee recognized that the economic hardships following the Great Recession had a large impact on the increase of crime in Bernalillo County, both for residents and for agencies with reduced budgets. They acknowledged the need for both short-term and long-term goals to address the problem and expressed hope that standing committees in both chambers would examine criminal justice reform in the 2019 legislative session.

Responding to a member's question, Dr. McIntyre and Dr. Courtney explained that the use of data analytics in New Mexico for criminal justice purposes is still in the early stages. Dr. McIntyre commented that criminal justice data predating 1985 is often unavailable, but efforts to collect data from agencies involved in all aspects of the criminal justice system are under way to improve the basis for using data analytics programs. He added that the RTCC does use data from social media sites, such as Facebook, to supplement its data. Dr. Courtney observed that the RTCC has goals similar to the University of Cincinnati's data analytics program and that Bernalillo County is studying how to automate and analyze more data.

### **City of Albuquerque Updates**

Eric Garcia, deputy chief, APD, updated the subcommittee on the changes at the APD under Chief Mike Geier, including adjusting the staff organization to be less top heavy; realigning executive positions to use employee talents; creating the Compliance Bureau; and

increasing internal accountability. The top priorities of the new administration are crime prevention and reduction through recruitment and retention of well-trained staff, community policing and implementing the CASA. Challenges have included low morale, high crime rates, understaffing and poor relationships both within the department and with the community.

Deputy Chief Garcia stated that he leads the Compliance Bureau, which was established to bring the APD into compliance with the CASA. The independent monitor for the CASA, Dr. James D. Ginger, identified six areas in which the APD was in deliberate noncompliance with the CASA. In response, the Compliance Bureau created a compliance plan with a deadline of June 2018. The APD has met 88 of the 91 tasks. The remainder will be entered in a new compliance plan and identified as continued priorities.

Deputy Chief Garcia explained that one of the greatest changes was in the policy regarding the use of force. The previous policy procedures were difficult for officers and supervisors to understand. Training was inconsistent, and it varied among each class of cadets. The updated policy established three levels of use of force, which is more stringent than other nationwide policies. Level one force is simple use of force. It is not considered "force" in most parts of the country and includes actions such as physically pulling an individual's hands for handcuffing during an arrest. Level one force is reviewed and documented, but it will not typically be investigated. Level two force causes injury. Level three force results in serious injuries or fatalities. Use of both level two and level three force will be investigated by use-of-force investigation teams from the Compliance Bureau. Previously, use-of-force investigations were conducted by supervisors, requiring many hours of office work. Under the new investigation procedure, an independent bureau will investigate and supervisors will be out with their teams. They will be held accountable for officers' actions and for ensuring that their officers are appropriately trained.

Deputy Chief Garcia commented that changing the APD's culture is the most difficult challenge. Rank-and-file officers were included in the policy revision decision-making process, but they must understand and embrace the changes, rather than deny that problems exist. Clear expectations must be set so that officers feel secure in doing their jobs. Other efforts will include training officers and using data analytics to improve day-to-day policing.

Harold Medina, deputy chief, APD, further explained the APD's reform efforts. He observed that when the CASA was signed, Albuquerque was suffering from high crime rates. As of June, significant reductions have been made, especially in auto theft and residential theft. Despite other reductions in crime, however, homicides have not decreased. He emphasized the need to invest resources in the appropriate areas, especially the areas identified by the RTCC. By looking at data in new ways via the RTCC, it was discovered that individuals who are arrested for automobile theft often had other unrelated outstanding warrants. Another reform is centralizing all investigation units, which ensures that efforts are not duplicated. This has also improved relations with the courts, as one case file can be submitted by the APD rather than many files. The APD has also hired six paralegals to collect evidence supporting officers' reports

and to prepare discovery for cases. Officers often do not have the skills or time to fully build a court case. With increased communication and the use of paralegals, fewer felony cases have been dismissed and officers are able to return to the field. Another change is that rather than engage in high-speed chases with potentially dangerous individuals, the APD is now able to track stolen vehicles via air surveillance, and when a vehicle is abandoned, officers can pursue the suspect on foot. Additional progress can be made by focusing on reducing domestic violence and treating narcotic abuse and behavioral health issues without criminalizing them.

Deputy Chief Medina stated that recruitment and retention continue to be a top priority for the department. While the 2015 staffing study indicated that 1,000 officers would be required, current trends indicate that even more officers will be necessary. The budgeted hires should be filled by January 2019, but the APD will request funding to hire an additional 50 officers by July 2019. The APD would like to hire 100 new officers every year for the next four years. In addition, all of the public safety aide (PSA) positions are currently filled and 30 applicants are currently waitlisted at the APD academy. The APD is working with Central New Mexico Community College (CNM) to establish a satellite academy in an effort to move officer training to colleges. To help with retention, the APD has added career development paths and created three levels of street police officers.

Deputy Chief Medina explained that community policing, in contrast to simple public relations, requires long-term communication and relationship-building. The goal of community policing is to build healthy communities by identifying the needs of an area and tailoring police responses accordingly. As problems such as homelessness and lack of youth engagement are solved, crime will decrease and neighborhoods will be safer. One initial step in establishing the community policing approach is developing a program that assigns one officer to each city block so that residents will come to associate the assigned officer with the neighborhood and develop positive relationships with that officer. The APD has also expanded its social media presence to increase public awareness.

In response to questions from the subcommittee, Deputy Chief Medina explained that the APD currently has 850 officers, approximately 400 of whom are uniformed officers on the street. Other officers are assigned to the tactical section or as detectives, or they work in the Compliance Bureau. There are 35 cadets currently in the police academy and 29 recent lateral hires. Another lateral class will begin in November, and there has also been enough lateral interest to staff another class in the academy. There are typically two basic classes a year, but CNM's academy could increase the number of classes. The waitlisted PSA applicants have passed their background checks and are waiting for positions to open or be created. Deputy Chief Medina explained that PSAs are often 18 to 20 years old. They are interested in becoming officers but are also attending school. The position costs approximately one-half the cost of an officer and is often referred to as "an administrative aide on wheels".

Members of the subcommittee expressed concern that lateral hiring is taking officers from other communities around the state rather than bringing in new people. Deputy Chief



Medina recognized the concern and said that the APD encourages more local youth to consider law enforcement as a career.

In response to subcommittee members' questions, Deputy Chief Medina explained that the APD's use-of-force policy is not dissimilar to nationwide policies. However, the APD previously had difficulties in documentation and review. The new policy helps the department use force only when necessary and requires scrutiny of level 2 and 3 uses of force.

Deputy Chief Medina agreed with a subcommittee member that a front license plate could help in the identification of stolen vehicles. He commented that crime prevention does not have a single-item solution, and many small items can help.

Jeremy Schmehl, assistant city attorney, City of Albuquerque, acknowledged that there are systemic issues that must be addressed at every level, and he expressed hope that collaborative, thoughtful work could improve the criminal justice system.

Mr. Schmehl reviewed three stages of changes made in response to the CASA: (1) policy development; (2) training; and (3) operation. Dr. Ginger created the methodology and set compliance thresholds. The City of Albuquerque and the APD developed policies to meet those thresholds. In November 2017, however, at a public hearing before a judge, Dr. Ginger revealed areas of deliberate noncompliance by the APD, primarily in regard to training at the police academy and the use of force. Dr. Ginger also found that the APD has a problem with "invisible" use of force; that is, uses of force that are not reported and reviewed appropriately. Dr. Ginger devised "a way forward" compliance plan, and Albuquerque's efforts since then have been guided by that plan. The eighth reporting period under the CASA recently concluded, and Dr. Ginger's report will be published in November.

Mr. Schmehl explained that the use-of-force general policy was clarified and raises the bar for when an officer can use force, with the standard at every level being the minimal use of force necessary. Each incident of use of force will be reviewed to determine whether the use of force was objectively reasonable under the circumstances; necessary with no reasonable alternatives; and proportional to the totality of the circumstances. Officers are also being trained on how to de-escalate situations to decrease the use of force required.

Lindsay Van Meter, assistant city attorney, City of Albuquerque, reported that in March 2017, the City of Albuquerque had settled its portion of the *McClendon vs. City of Albuquerque* class action lawsuit filed in 1995, which primarily involved allegations of poor jail conditions, including overcrowding, as well as issues related to arrests and arrest procedures. As part of the settlement, the city agreed to continue to use jail diversion strategies for nonviolent misdemeanor offenses, especially for persons with psychiatric conditions, mental illnesses or developmental disabilities. Citations and summons are to be issued rather than arresting the individual. The city also agreed to reduce jail overcrowding and evaluate whether the APD detains and arrests individuals with mental illnesses or developmental disabilities for the sole purpose of sweeping

them from the streets. In accordance with the settlement, Albuquerque reviewed its efforts and issued a final report on July 30, 2018, which is available on the city's website.

In response to a member's question, Mr. Schmehl explained that the CASA will be concluded when the independent monitor states that the necessary standards have been met or if a petition from the city shows that the standards have been met. Ms. Van Meter stated that the *McClendon* settlement will be completed when the city submits a petition showing substantial compliance.

A member of the subcommittee recognized that the policy changes are difficult and that human nature often leads to rebellion rather than compliance. The member stated that officers have improved morale because their leadership and training have set clear expectations. Several members expressed hope that the city attorney would implement a program similar to the LEAD program in Santa Fe.

Ms. Van Meter clarified that the city no longer operates the jail. However, the city has agreed to certain terms to assist individuals suffering from mental health problems. She recognized that the situation is complicated, but the city has found that 54 percent of crisis intervention team (CIT)-related calls for service have resulted in minimal or no law enforcement action needed, and 42 percent of CIT-related calls for service have resulted in individuals being transported to hospitals. Approximately four percent of calls result in an arrest, citation or summons.

### **Approval of Minutes**

The subcommittee approved the minutes of its July 18, 2018 meeting with no amendments.

The subcommittee approved the minutes of its August 10, 2018 meeting with an amendment to add the following item to the bulleted list "Discussion of Possible Legislation": "The need for up to four additional subcommittee meeting days and one additional meeting day for the Courts, Corrections and Justice Committee to discuss a criminal justice reform legislative package".

### **Bernalillo County Behavioral Health Initiative**

Julie Morgas Baca, county manager, Bernalillo County, and Katrina Hotrum-Lopez, behavioral health director, Bernalillo County, updated the subcommittee on the Bernalillo County Behavioral Health Initiative (BHI). Ms. Morgas Baca commented that there is an intersection between the criminal justice system and the behavioral health system, and the jail is often considered the largest psychiatric facility in Albuquerque. On December 8, 2017, the MDC's psychiatric services unit had 623 individuals on its caseload, or 53.5 percent of the total jail population. The Bernalillo County Sheriff's Office (BCSO) and the APD receive more than 13,000 behavioral health calls per year. Ms. Morgas Baca believes that the public recognizes the

problem, and thus, 69 percent of voters in 2014 supported a tax to create a BHI. That tax generates between \$17 million and \$20 million per year.

Ms. Morgas Baca explained that the MDC's costs have remained stable while the inmate population has decreased because significant portions of the MDC's budget are contributed to court initiatives such as the Bernalillo County Metropolitan Court drug court; public defender paralegal services; and district attorneys. While these services are not part of the prison system, they directly affect the jail's services. However, Ms. Morgas Baca stated, the spending was not sustainable and Bernalillo County and New Mexico Counties will request the state's support in funding these services in the 2019 legislative session.

Ms. Morgas Baca stated that the University of New Mexico (UNM) hospitals and Bernalillo County are working together to establish a crisis triage center that will function as a place for law enforcement officers to take people suffering from a mental health breakdown instead of taking them to jail. The center will be housed in the UNM Psychiatric Center on Marble Avenue, and the county will provide the capital funding for the project.

Ms. Hotrum-Lopez said that the BHI is meant to act as a safety net for the community. Early in the planning of the BHI, it was decided that the money raised by the tax would not be used to fund existing services, even if those services are underfunded. Instead, the money would be used to develop a continuum of care not otherwise funded in New Mexico that will increase public safety and result in cost savings, decreases in unnecessary emergency room visits and reduced negative interactions between law enforcement and individuals living with mental illnesses. Tax revenue was not spent quickly, which drew criticism from those looking for immediate payouts, but the BHI wants to ensure that any programs developed would be long term, meaningful and have a positive impact on the community. Programs are vetted by subcommittees composed of people with firsthand experience in behavioral health, such as patients, experts or family members. The BHI also has a contract with UNM's Institute for Social Research to evaluate programs and compile deliverables to ensure that BHI proposals and programs are evidence-based.

Ms. Hotrum-Lopez stated that the BHI has created 14 projects and has earmarked more than 65 percent of its annual tax dollars. Ms. Hotrum-Lopez and Ms. Morgas Baca highlighted new initiatives, including:

- the Re-entry Resource Center, which provides the MDC a location to release individuals suffering from mental illnesses or substance abuse disorders. The center serves approximately 70 former inmates per day and connects them to a network of services;
- Community Connections Re-entry Supportive Housing, which provides high-quality intensive services, case management and housing subsidies to homeless or precariously housed individuals with mental illnesses and criminal justice system involvement;

- the Bernalillo County LEAD program, which will divert individuals with mental illnesses who commit low-level crimes from the criminal justice system to health and social services instead;
- inmates would also be provided with up to 90 days of prescriptions to last until a medical appointment;
- mobile crisis teams, which respond to individuals experiencing a nonviolent behavioral health crisis that necessitates an emergency call. Since its implementation in February 2018, more than 700 calls have been peacefully resolved; and
- youth transitional living, which provides transitional housing and services for clients who are not part of a third-party-funded program. It will also provide a housing bridge for youth who would otherwise be held in youth detention centers due to a lack of housing.

In response to questions from the subcommittee, Ms. Hotrum-Lopez stated that the BHI has approximately \$30 million in reserves but 65 percent is earmarked for programs. The BHI is also working with Pew Research Center and the LFC to analyze cost savings and program efficiency. Members of the subcommittee noted that the data will be necessary when requesting money from the state budget.

Ms. Morgas Baca and Ms. Hotrum-Lopez clarified program details. Ms. Morgas Baca explained that the county was committed to releasing inmates during daylight hours and connecting them to the re-entry center, which is expected to have case management staff available 24 hours a day in the future. She stated that the crisis triage center would act as a mental health emergency room. Ms. Hotrum-Lopez reported that the request for proposals on youth transitional living specifically requested details on LGBTQ+ youth served. She added that school-based health centers are allowed to submit proposals to add components for which centers are not currently reimbursed. Ms. Hotrum-Lopez stated that obtaining and analyzing medical data on clients can be difficult due to state and federal regulations, and she expressed hope that legislation may be passed allowing access to limited behavioral health data in accordance with federal law.

#### **Update from the Second Judicial District Attorney's Office**

Raúl Torrez, district attorney, Second Judicial District, noted that the most encouraging fact in the LFC's report was the drop in total crime that occurred in early fall 2017.

Mr. Torrez reviewed the uses of the additional funding his office received after the 2018 legislative session. The office hired 17 regular employees and three contract attorneys, some of whom will work on the backlog of cases. His office created a new crime strategies unit to work with the APD and BCSO to develop hot-spot policing to reduce gun crime and contracted with the New Mexico Institute of Mining and Technology to provide data analytics services for the new crime strategies unit.

Mr. Torrez expressed concern that the SJDC's decision to reduce its use of grand jury panels by 70 percent and increase the use of preliminary hearings would negatively impact the progress made thus far by reducing the number of indictments. He appreciated that implementation of the decision has been delayed from its original October 1 start date and will instead be phased in. However, due to understaffing at the APD and inexperienced attorneys at the Second Judicial District Attorney's Office, Mr. Torrez felt that such a change on the court's side would negatively affect the criminal justice system and the public.

Mr. Torrez explained that a district attorney's main crime-reduction strategy is deterrence. He stated that effective criminal deterrence has three primary components: (1) speed; (2) certainty; and (3) severity. The public — and, thus, the legislature — are often preoccupied with the severity of the consequence, as it is the easiest component to understand. Speed and certainty of apprehension, however, are more likely to affect criminal behavior. If an individual believes in the speed and certainty of apprehension by law enforcement, he or she is less likely to commit a crime. Correspondingly, if an individual believes that he or she will quickly face a court and receive a guilty verdict, he or she is also less likely to commit a crime. Mr. Torrez stated that the Second Judicial District Attorney's Office has aimed to improve the speed and certainty aspect of the courts.

Mr. Torrez stated that his office receives approximately 10,000 case referrals per year, but 30 percent to 40 percent are declined. While some of the declinations are appropriate, national declination rates tend to be much lower. Mr. Torrez noted that if an individual commits a crime and is investigated by the police but not charged or brought to court, the person may feel that he or she can get away with other crimes. The certainty component is not present. Mr. Torrez believes that simply filing a case and obtaining an indictment acts as a deterrent because the individual knows that he or she is under suspicion.

Mr. Torrez stated that the Bernalillo County Metropolitan Court uses preliminary hearings for low-end offenders, and he recognizes that there is a chance for an earlier resolution because the defendant is present at the proceedings and may choose to accept a plea deal. However, 64 percent of preliminary hearings fail upon the first attempt. He stated that approximately one-half of the failures result from a defendant who does not show up. Currently, New Mexico rules require that all parties must be present at a preliminary hearing. Mr. Torrez expressed concern that a victim must take time off work to wait in court, only to be told that the defendant failed to appear and must be apprehended before the process can resume. In other cases, if the appropriate law enforcement officer is unable to appear, the case is dismissed without prejudice due to the state's unreadiness.

In contrast, Mr. Torrez continued, the grand jury process has a failure rate of less than 10 percent because only the prosecutor is required to be present, although law enforcement officers or victims may also be present. As his office has used grand juries and nearly doubled the number of cases brought to court, the crime rate has dropped significantly. Mr. Torrez disputed

claims that cases using grand juries are not properly vetted. He said that only 3.4 percent of indictments ultimately fail due to lack of probable cause.

Mr. Torrez offered two alternate solutions to the grand jury versus preliminary hearing issue: (1) the state could invest more money in the criminal justice system to ensure adequate staffing and training at all levels and not just in the district attorney's office; or (2) the state could adopt the Federal Rules of Criminal Procedure for preliminary hearings, which allow for certain parties to be absent from preliminary hearings and may reduce the dismissal rate due to failure to appear. Mr. Torrez asserted that his office is open to change, but he wishes to have a comprehensive discussion on the impacts to the entire criminal justice system before those changes are put into place.

In response to a question, Mr. Torrez explained that a district attorney's office selects which cases will go to grand juries. Criteria include the violence of the crime, the complexity of charges and the danger of retraumatizing victims. Individuals who have seen cases dismissed but are charged with another crime are also eligible for grand juries.

A member of the subcommittee expressed concern that victim rights have not been considered in the discussion. The member stated that the legislature must be a part of the conversation, as legislators act as advocates for their constituents.

In response to a member's inquiry, Mr. Torrez explained that his office has not included in next year's budget the additional resources required by a shift from grand juries to preliminary hearings. He emphasized that the budget after that will include additional money to address the impact of increased preliminary hearings, and he recommended that other agencies also increase their budgets. Mr. Torrez speculated that increased law enforcement staffing and budgets would also be necessary because police officers will be in court for preliminary hearings rather than on patrol, and court attorneys and public defenders would also suffer from increased caseloads.

In response to a question on the benefits of preliminary hearings, Mr. Torrez explained that when all parties are present, preliminary hearings can result in a quick resolution when the defendant understands the case against him or her and the prosecutor has adequate leverage for a plea bargain. However, he cautioned that this can be difficult to achieve. Mr. Torrez also noted that prosecutors can identify unreliable witnesses. Despite some positive aspects, Mr. Torrez stated, a preliminary hearing structure is not compatible with Albuquerque's unique urban needs.

### **Update from SJDC Regarding the Elimination of Grand Jury in Favor of Preliminary Hearing**

Nan Nash, chief judge, SJDC, introduced Charles Brown, presiding criminal court judge, SJDC, and Judges Stan Whitaker, Alisa Hart and Brett Loveless, who were in the audience.

Judge Nash expressed concern that Mr. Torrez implied that only the front end of criminal cases matter, and she suggested that conviction rates are more important than indictment rates, since convictions actually get criminals off the streets and make communities safer.

Judge Nash informed the members that the SJDC had worked closely with the BCCJCC since its creation to develop reforms in the SJDC. The BCCJCC meets monthly, and many SJDC judges attend regularly, although not all BCCJCC members attended regularly until recently. The meetings are public, and legislators are welcome to attend. The reforms undertaken by the SJDC were favorably addressed by the LFC in its report, including a remodeling of pretrial services and supervision and risk assessment implementations like the Laura and John Arnold Foundation's public safety assessment tool in response to constitutional bail reform. Judge Nash noted that the foundation chose the SJDC to use one of the most validated and protected tools because of the SJDC's reformation work, which has been done with no additional resources from the state.

Judge Nash observed that the 2015 case management order, which required that the MDC's population be decreased and criminal case processing be completed more quickly, has done what it is supposed to. At the same time, the SJDC has also maintained its criminal caseload, worked on backlogged cases and run specialty courts. She emphasized that the LFC found that the court-initiated reforms follow best practices and have not caused the crime increase.

Addressing the issue of reducing the use of grand juries and increasing the use of preliminary hearings, Judge Nash explained that grand juries have fallen out of favor both nationally and statewide, and some judicial districts in New Mexico use grand juries very rarely, relying instead on preliminary hearings to manage cases most efficiently and cost effectively for all parties from the beginning. In addition, the National Center for State Courts' 2009, 2013 and 2015 evaluations of the SJDC strongly advised the SJDC to use more preliminary hearings and fewer grand juries. Other New Mexico district courts have not seen an increase in crime or decrease in cases brought to court since reducing the use of grand juries. The SJDC does not intend to cut out grand juries completely; judges recognize that some cases, such as domestic violence cases or cases with multiple witnesses, are more effectively initiated by a grand jury proceeding. The BCCJCC has discussed reducing grand juries many times prior to the court adopting its new policy. In 2016, Judge Nash remarked, Mr. Torrez was elected district attorney and agreed to use more preliminary hearings. The SJDC released its plan in a July 20, 2018 letter, which is available on the court's website. The SJDC specifically timed the change to occur after the Second Judicial District Attorney's Office received money to increase staffing. Judge Nash agreed with Mr. Torrez that, of the few strategies that deter crime, speed and certainty of apprehension and disposition are among the most effective. According to the LFC, preliminary hearings usually close a case within 60 days, she said.

Judge Nash acknowledged that the court's procedures affect other agencies in addition to the prosecutors. Accordingly, the SJDC reached out to the APD and the New Mexico State

Police to discuss staffing and training concerns vis-a-vis the shift from grand juries to preliminary hearings, and it adjusted the plan to address law enforcement's needs. The change will be phased in after the balloon fiesta to minimize the demands on a limited number of officers already required to work overtime. The SJDC will also schedule preliminary hearings around police schedules.

Judge Nash pointed out that grand juries are expensive, both directly and indirectly. The SJDC spends \$600 a day on grand juries. Direct expenses that are paid by the courts include grand jurors' per diem and parking. Indirect expenses for courts include staff time required to organize grand juries, as well as subsequent hearings. Other agencies also incur direct and indirect expenses both before and after indictment, such as discovery, witness interviews and law enforcement time.

Judge Nash appreciated the desire to allocate more resources to criminal justice but was skeptical that New Mexico would ever have adequate resources to meet all the needs of the state. Therefore, the SJDC must find ways to meet its obligations with available resources. She reminded the subcommittee that unlike the district attorneys, the courts do not unilaterally set their budgets; rather, each court's budget is included in the judiciary's unified budget, which is controlled by the supreme court.

Regarding Mr. Torrez's suggestion that the legislature adopt the Federal Rules of Criminal Procedure for the courts, Judge Nash reminded the subcommittee that the courts are a separate branch of government, and the rules for the judiciary are set by the New Mexico Supreme Court, not the legislature.

Judge Nash acknowledged that change is hard in a system that moves slowly, but it is the SJDC's responsibility to increase public safety, meet constitutional requirements and use the money allocated to it wisely.

In response to a member's questions, Judge Brown stated that defendants have a constitutional right to face their accusers, which is not afforded in a grand jury proceeding. That right is only exercised in a hearing. He added that grand juries can prove wasteful if victims do not wish to press charges, and preliminary hearings allow victims' voices to be heard in a public setting.

At the subcommittee's invitation, APD Detective Shaun Willoughby, president, Albuquerque Police Officers Association, expressed concern that the change from grand juries to preliminary hearings might negatively affect police officers and the city by requiring officers to spend more time in court than on the streets. He commented that grand juries are often more convenient for officers.



## **Public Comment**

Vidalia Chavez, judge, Bernalillo County Metropolitan Court, stated that the grand jury system has been critiqued by scholars, but an overnight change to preliminary hearings could negatively affect metropolitan court cases. She stated that she is drafting a letter to Judge Nash on possible problems.

Michelle Aldana, director of forensic services, All Faiths Children's Advocacy Center, stated that New Mexico has seen an increase in the number of child victims every year since 1996. She expressed concern that preliminary hearings would intimidate or retraumatize children.

Thomas J. Clear III, chair, Public Defender Commission, stated that the Law Offices of the Public Defender (LOPD) is prepared to transition to preliminary hearings. He stated that preliminary hearings provide public defenders more time to prepare cases with their clients. Mr. Clear noted that public defenders are already required to participate in preliminary hearings around the state. More public defenders would be preferable, but preliminary hearings will also provide earlier resolutions, which will ease workloads.

Terri Cole, president and chief executive officer, Greater Albuquerque Chamber of Commerce, stated that crime and community safety are the chamber's most pressing issue. She expressed concern that officers would not be present in communities if preliminary hearings were used more.

Andres Valdez, executive director, Vecinos Unidos Neighbors United, asserted the need for transparency in the criminal justice system and stated that public preliminary hearings would help meet that need.

Ben Baur, chief public defender, LOPD, stated that the speed of case resolution is more important than speed of indictment. He also felt that the BCCJCC was the best forum for further discussion of issues specific to Bernalillo County.

Deirdre Ewing, assistant public defender, LOPD, who practices in the Fifth Judicial District (Chaves, Lea and Eddy counties), stated that the Fifth Judicial District routinely only has preliminary hearings and that the crime rate has not increased because of it. She expressed a belief that preliminary hearings would allow for faster and more knowledgeable case resolutions. Ms. Ewing added that grand juries still exist for difficult cases with child victims or multiple witnesses.

Christopher Dodd, public defender, LOPD, stated that grand juries create more work for public defenders in interviews and arraignments, but preliminary hearings allow for early plea bargains and therefore reduce time to disposition.

April McClellan, crisis response advocate, Rape Crisis Center of Central New Mexico, stated that rape victims often prefer grand juries because of the smaller audience. She expressed concern that the transition to preliminary hearings would bottleneck the system.

Teresa D'Anza, executive director, Albuquerque Sexual Assault Nurse Examiners Collaborative, stated that preliminary hearings are difficult for rape victims because they must face their rapist again. She reiterated that grand juries have limited audiences, which can help protect the victims from re-traumatization.

Jonathan Ibarra, assistant public defender, LOPD, stated that one-half of the cases that are indicted by a grand jury are ultimately dismissed because the state cannot prove its case. He felt that grand juries are appropriate in cases of sexual assault. Mr. Ibarra noted that preliminary hearings cost approximately the same as grand juries.

### **Adjournment**

There being no further business before the subcommittee, the third meeting of the Criminal Justice Reform Subcommittee adjourned at 5:29 p.m.