

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

**October 17, 2018  
State Bar Center  
5121 Masthead NE  
Albuquerque**

The fifth meeting of the Criminal Justice Reform Subcommittee of the Courts, Corrections and Justice Committee was called to order by Representative Antonio Maestas, co-chair, on October 17, 2018 at 9:14 a.m. at the State Bar Center in Albuquerque.

**Present**

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

**Absent**

**Guest Legislators**

Sen. Jacob R. Candelaria  
Sen. Linda M. Lopez  
Sen. Bill B. O'Neill

**Staff**

Celia Ludi, Staff Attorney, Legislative Council Service (LCS)  
Randall Cherry, Staff Attorney, LCS  
Mark Peralta-Silva, 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.

**Wednesday, October 17**

**Call to Order and Introductions**

Representative Maestas welcomed everyone to the meeting, and subcommittee and staff members introduced themselves.

**Report and Recommendations of the House Joint Memorial (HJM) 16 (2018) Criminal Justice and Public Safety Task Force (CJPSTF)**

Retired Justice Edward Chavez and Representative Daymon Ely discussed the recommendations contained the handout, titled "HJM16 Criminal Justice and Public Safety Task Force, Report and Recommendations to the Legislature", dated October 15, 2018 (report). In his overview, Justice Chavez gave a brief history of the task force and its process in reaching its conclusions. He also noted the importance of discussions outside the formal meetings among various members, which helped the group work through some of the issues.

He noted that while the task force is not authorized to make funding recommendations, sufficient funding to support all of the recommendations and each of the stakeholders in the criminal justice system equitably is crucial to success. He suggested that it would be helpful if the various stakeholders would coordinate their budget requests to ensure equitable funding. Justice Chavez cited as an example the goal of ensuring speedy trials. He noted that achieving this goal would ultimately improve public safety, but it will require additional funds. To succeed, all of the agencies involved, including the crime laboratories, would need to coordinate their efforts, including coordinating efforts when requesting funding.

Justice Chavez specifically recommended that the legislature fund staffing for local justice coordinating councils, which would encourage the coordination of these efforts. He then summarized the seven task force recommendations, which are discussed in detail in the report. Referring to the topics discussed, he emphasized the need to create a uniform state identifier (SID) to ensure the quick and accurate identification of defendants. As an example, he said that the Bernalillo County Metropolitan Court must search seven different databases to establish a person's identity. He said that the consistent use of an SID would enhance the ability of the various stakeholders to share accurate data, which is another task force recommendation.

Justice Chavez discussed the importance of data sharing and noted that the task force discovered that the Administrative Office of the District Attorneys (AODA) already has a robust information system that works very well and contains much of the data that the component agencies of the criminal justice system are seeking. Thus, New Mexico is well-situated to solve the problem of collecting and sharing data, provided that the issues of governance and data use are resolved. The task force recommends that the data be housed with the New Mexico Sentencing Commission (NMSC) and that a board, similar to that governing the collection and use of DNA, be created and also housed with the NMSC to monitor data collection and use.

Another major concern raised by the task force is the need for additional behavioral health resources. He noted that the task force recommendations regarding the disposition of

persons in the criminal justice system require the availability of treatment programs. This is particularly problematic in rural areas. The task force made number of recommendations to address this, including school loan forgiveness.

In response to questions, Justice Chavez noted that fingerprinting is generally done in local jails, but not all jails are sufficiently equipped, and they may not use the equipment they have. Thus, while he supports leaving fingerprinting to the jails, obtaining consistent fingerprint records will require additional funding, training and support. He also noted that, to his knowledge, the actual fingerprinting process meets current scientific standards.

With regard to funding, Justice Chavez noted that the cost of a fingerprinting machine can vary from \$900 to \$12,000. It is not clear which is best, but New Mexico Counties is reviewing the matter.

With regard to data sharing, the presenters also discussed the topic of data-driven, evidenced-based policing. Justice Chavez noted that the University of Cincinnati did a presentation on this topic, which indicated verifiable success at increasing efficiencies in using law enforcement resources and increasing public safety. Members noted that the New Mexico Institute of Mining and Technology (NMIMT) has significant experience and expertise in the area of data analytics and that they support the NMIMT's involvement in developing this technology. There was general consensus that the data-sharing effort should move forward rapidly and that governance over the information is paramount to ensure accuracy and confidentiality.

In response to further questions, Justice Chavez noted that the district attorneys suggested expanding pretrial diversion programs to increase their flexibility to deal with their caseloads. He said that challenges to this effort include the lack of availability of behavioral health care and that the treatment costs that must be borne by the participant can be prohibitive. There was also discussion of where pretrial services should be housed, including whether pretrial services should be housed with the courts.

There was discussion of the need for experienced personnel among all of the stakeholders. Justice Chavez noted that numerous retired professionals from relevant fields are available to fill this need, but a number of issues would need to be addressed to allow this, including that their return to the workforce might impact the upward mobility of younger staffers. This would impact hiring and retention. Also, statutory limitations on employing retirees and the impact on Public Employees Retirement Association pension funds must be considered.

In response to a question about how to calculate the ideal number of law enforcement officers for a community, Justice Chavez noted that a range of one to 2.4 officers per 1,000 residents is a relatively arbitrary number and that an accurate estimate would require a complex workload evaluation.

## **Council of State Governments (CSG) Justice Reinvestment Initiative Update**

Carl Reynolds, senior legal and policy advisor, CSG Justice Center, and Michelle Rodriguez, policy analyst, State Initiatives, CSG Justice Center, updated the members on progress on the CSG's recommendations for criminal justice reform.

Mr. Reynolds discussed his slide presentation, titled "New Mexico Justice Reinvestment", and highlighted certain topics. CSG recommendations would focus on issues with statewide impact, including expanding law enforcement and other criminal justice authorities' ability to divert certain criminal offenders, such as those engaged in drug-related crimes or who have obvious mental health issues, into treatment or other programs. He noted that additional behavioral health resources would be necessary to implement this strategy.

Mr. Reynolds discussed a peculiarity with regard to crime victim compensation in reference to slide 12. He noted that despite the availability of federal and state funds, CSG research indicates that crime victim requests for compensation are often denied. Mr. Reynolds has not identified the cause, but he will research the issue. In response to a question, he elaborated that part of the problem may be that while a victim compensation fee is required by statute, the fee is not consistently imposed.

A member noted that when the death penalty was abolished in New Mexico, a portion of the projected savings was intended to go to victims, but those funds were redirected to other areas of government when the economy slowed after 2009. The funds and purpose were never reinstated. Another member suggested that the compensation system should be reviewed to determine whether or how well it is working.

Mr. Reynolds discussed data gathering, agreeing with Justice Chavez that obtaining accurate fingerprints and other data is crucial. He suggested that the state may need to establish a team of experts to travel to rural communities to provide training and support. He also noted the importance of reviewing data on a regular basis to ensure that the data are being obtained and that the data are accurate.

Mr. Reynolds also agreed with Justice Chavez that the availability of effective behavioral health care is crucial to improving the criminal justice system and outcomes in New Mexico. A member noted that Bernalillo County was granted authority to increase its gross receipts taxes, which has resulted in \$40 million in additional funds to address public safety issues, but there appears to be no coordinated use of those funds. A member added that the mental health system in New Mexico was largely dismantled statewide in 2011 and 2012.

Ms. Rodriguez noted that North Dakota, which shares many of New Mexico's geographic and demographic challenges, has implemented a grant program that rewards positive outcomes in rural treatment programs. The program is showing positive results, and the state hopes the program will attract additional treatment professionals to expand rural services.

As to whether there is a connection between the reduction in mental health services and crime rates in Bernalillo County, Mr. Reynolds noted that there appears to be a correlation. He also pointed out that there is no statistical evidence of a correlation between the increased crime rates and the amendments to Article 2, Section 13 of the Constitution of New Mexico regarding bail.

Mr. Reynolds observed that there is generally a strong correlation between trauma experiences and female and juvenile involvement in the criminal justice system. He also observed that New Mexico has done a very good job of increasing the proportion of violent offenders as compared to others in its prisons. He noted, however, that an unusually large number of parole-eligible prison inmates have not been released. Other inmates are being released with no support or supervision, which increases the risk of recidivism. It appears that a significant part of the problem is that those inmates simply have no place to go. In response to questions, a representative from the LCS elaborated on the prison population discussion, noting that, currently, 30 percent of inmates in New Mexico prisons are there because of parole violations and 80 percent of that 30 percent were originally convicted for drug violations.

Mr. Reynolds noted that research has shown that intensive outpatient treatment in the community has the highest success in deterring crime and that increasing penalties is not an effective deterrent. The members agreed and engaged in a discussion of how to educate the public to understand these facts and support criminal justice reform.

### **Justice Reform Across the Country and in New Mexico: Trends and Next Steps**

Jenna Moll, deputy director, Justice Action Network, discussed the work of the network. Ms. Moll noted that the network is three years old and is composed of a bipartisan group of private entities that support criminal justice reform across the nation. The network includes a diverse membership, including businesses, athletes and religious groups.

Ms. Moll stated that the network lobbies in 15 states and at the federal level, and it holds media events and provides media strategies to support reforms. The network's research indicates that voters are more supportive of reforms than legislators are — 85 percent to 90 percent support reforms, including no mandatory minimums.

The network supports evidence-based programs and changes. It combines research with the practical experience of professionals in the relevant fields and public opinion. Its focus is on genuine reform, not simply lowering sentences. It supports accountability, but Ms. Moll suggested that this can be achieved in different and more effective ways.

Ms. Moll summarized some of the relevant research. She noted that prisons do not reduce recidivism. In fact, being in prison tends to increase recidivism among nonviolent inmates. Research indicates that the best results come from behavioral changes driven by positive incentives as opposed to penalty-based incentives. Further, the offender's basic needs must be met, including housing, employment and substance abuse treatment, if warranted.

Ms. Moll noted that Texas has experienced great success since implementing its reform program, including closing seven prisons. This has resulted in approximately \$2 billion in savings, while reducing crime overall.

Ms. Moll noted that other states are engaged in reform efforts, and she offered examples of some of those reforms. Utah, for example, has reduced penalties for misdemeanors to make them noncriminal offenses. It also changed its penalties for drug possession from a felony to a misdemeanor to allow offenders to enter treatment. Also, Mississippi now bases its drug penalties on the weight of the drug to more effectively differentiate between simple users and distributors.

On an encouraging note, Ms. Moll pointed out that New Mexico leads the nation in providing criminal history information to its judges, particularly in the Second Judicial District. The network recommends that this program be monitored, supported and replicated in all of the districts. She also noted the success of the district in innovative efforts to avoid pretrial detention, pointing out that research indicates that recidivism rates rise, both pretrial and post-detention, in proportion to the time spent in pretrial detention.

Ms. Moll noted that technical violations of parole or probation should not result in a return to prison. They should be addressed immediately, but a range of sanctions should be available, not simply parole revocation. She also noted the increasing female prison population in New Mexico and recommended taking immediate steps to research causes and solutions to this problem. The network also recommends expanding specialty courts. Finally, the network supports sealing or expunging criminal records under certain conditions to provide incentives for offenders. She noted that many states have done so, and some have created liability shields for employers such that the offender and not the employer is liable if the offender recidivates while employed.

Subcommittee members engaged in discussion on a broad range of topics, including how to determine an ideal number of probation and parole officers. Ms. Moll said she is not aware of a formula, but best practices suggest that the number is dependent upon the nature of the offender. For example, a sex offender may require intense supervision, so the supervisor would require a small caseload. She also suggested specialized supervisors for specific offender types, including sex offenders.

Members discussed the risk and needs assessments used to determine the progress of offenders. Ms. Moll stated that this tool can be helpful and should be used regularly throughout the period of probation or parole.

In response to a question, Ms. Moll noted that the apparent largest single contributor to Texas' success was effective drug treatment. She recommended expanded treatment in New Mexico, but she cautioned that any programs should be constantly evaluated for success.

Asked whether parole and probation supervision should be part of the Corrections Department or housed with the courts, Ms. Moll responded that states have done it both ways successfully. The key is a cultural change from an attitude of "lock em' up" to one of supporting success, which generally requires a change in leadership.

In response to questions about juveniles, Ms. Moll noted that research indicates that placing juveniles in residential detention significantly increases recidivism. She also noted that early intervention and drug and alcohol treatment improve outcomes. As to the root causes arising from a dysfunctional home and family, she suggested that family therapy has shown success addressing the needs in the home and is cheaper than residential placement. There was discussion regarding the treatment and support of juveniles, generally, and a recognition that fundamental change takes a long time and requires flexibility. Ms. Moll pointed out that research has shown that it may take several attempts at drug treatment to achieve success and that incarceration should be a last resort.

### **Report and Recommendations of New Mexico SAFE**

Emily Kaltenbach, New Mexico state director, Drug Policy Alliance; Kim Chavez Cook, assistant appellate defender, Law Offices of the Public Defender; and Barron Jones, Smart Justice coordinator, American Civil Liberties Union of New Mexico, presented a report and recommendations to improve public safety in New Mexico.

Ms. Kaltenbach described the origin of the New Mexico SAFE coalition, noting that it was founded two years ago, when a number of leaders of entities within the criminal justice system came together to discuss problems and solutions. This included a review of how to institute rehabilitation of offenders with a focus on keeping families together but safe. The coalition now includes more than 30 organizations. Its approach is to focus on holistic solutions to address issues.

One of New Mexico SAFE's efforts is to issue "report cards" on proposed legislation. Ms. Kaltenbach explained that its grading system is based on the "SAFE" acronym, which she said represents the following.

- S: will the proposal make society safer?
- A: is the proposal apolitical?
- F: is the proposal financially responsible?
- E: is the proposal evidence-based?

Ms. Kaltenbach noted that the coalition will continue the report card program going forward.

Mr. Jones discussed the slide presentation, titled "Latino Decisions/New Mexico SAFE New Mexico Public Safety Poll". He noted that the poll was conducted on August 22 through 29, 2018 and included registered voters matching statewide demographics. He summarized the findings, noting that public safety is a high priority for the voters polled and that most believe

that crime has increased over recent years and that the criminal justice system is broken. He also noted that the majority of respondents agree that incarceration is not the solution but that, rather, offenders should receive rehabilitation and training, particularly those with substance abuse and mental health issues. His discussion coincided closely with the slides, and he concluded by noting that a strong take away from the poll is a sense of urgency on the part of the respondents.

Ms. Cook described a group of legislative proposals that New Mexico SAFE recommends to improve the criminal justice system. These include a process for expungement or sealing of criminal records. Polling indicates that 72 percent of respondents support improvements to the reentry process for convicted offenders. Respondents believe that the community is safer if offenders are allowed to obtain gainful employment, which expungement may support, and they support additional changes, including informing offenders of the collateral consequences of agreeing to plea bargains, such as loss of state licensure, including professional licenses and driver's licenses. On that point, they support exemptions from license revocation or ineligibility for offenders if the exemption is fair and does not involve risk to the community. They also support banning the requirement for disclosure of criminal history on job applications for both public and private employers.

Respondents also indicated that they support a number of reforms to the prison system, including banning the use of solitary confinement. Ms. Cook noted that research indicates that solitary confinement makes it more difficult for offenders to reintegrate into society upon release. Respondents support early release for offenders for geriatric and medical reasons. Finally, respondents support reversing the standard of evidence for parole hearings so that a parolee is presumed to be eligible for parole rather than the current presumption, which is that the offender must prove that he or she deserves to be granted parole.

Respondents indicated that they support drug and alcohol abuse treatment instead of incarceration. They support expanding the good Samaritan law to protect persons on probation and parole from criminal liability when they attempt to provide aid to a person who, for example, is suffering from a drug overdose. They also support reducing simple possession of any drug to a misdemeanor. Ms. Cook explained that many offenders end up in prison for long sentences because, although they have been arrested with very small amounts of drugs, they are addicts and may be arrested several times. Thus, they are subject to enhanced sentences even though they present no risk of violence.

Respondents also supported requiring consideration of the fiscal impact of every proposed criminal bill prior to passage. Ms. Cook noted that this has been done for the past two years, but it is not currently required. Finally, the respondents supported a broad review of all criminal statutes with a focus on reducing the penalty for low-level, nonviolent crimes to simple civil infractions.

There was general discussion regarding the topics. A member suggested that the question regarding expungement or sealing of records should be discussed in the context of whether a record should be withdrawn from public access. The member also asked whether the



victim assistance process needs to be simplified. Finally, he asked if the business community was consulted on the question of whether asking about someone's criminal history should be banned on job applications. The panel responded that New Mexico SAFE does not currently include members of the business community, but it will try to engage that group. A member suggested that the coalition should also include local government entities.

### **Public Comment**

Bill Cass recommended that juveniles should never be subject to criminal sanctions for substance abuse; they should be referred to treatment instead. He noted that Bernalillo County has implemented this approach, and he also noted that the Children, Youth and Families Department has likewise implemented a standard, statewide probation agreement that accomplishes the same end, thus preventing children from being incarcerated for technical violations.

William Zunkel proposed introduction of a memorial to study the feasibility of dedicating a prison facility to substance abuse treatment and to study programs that divert substance abusers.

### **Adjournment**

There being no further business before the subcommittee, the fifth meeting of the Criminal Justice Reform Subcommittee adjourned at 4:11 p.m.