

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

**September 12-13, 2016
Room 322, State Capitol
Santa Fe**

The third meeting of the Courts, Corrections and Justice Committee (CCJ) was called to order by Representative Zachary J. Cook, co-chair, on September 12, 2016 at 9:15 a.m. in Room 322 of the State Capitol in Santa Fe.

Present

Rep. Zachary J. Cook, Co-Chair
Sen. Richard C. Martinez, Co-Chair
Rep. Eliseo Lee Alcon
Rep. Jim Dines
Rep. Rick Little (9/12)
Sen. Linda M. Lopez (9/13)
Rep. Antonio Maestas
Sen. Cisco McSorley
Rep. Andy Nunez (9/12)
Rep. William "Bill" R. Rehm

Advisory Members

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

Absent

Sen. Joseph Cervantes
Rep. Gail Chasey
Rep. Georgene Louis
Sen. Sander Rue
Sen. Lisa Torracco

Sen. Craig W. Brandt
Sen. Jacob R. Candelaria
Rep. Brian Egolf
Rep. Doreen Y. Gallegos
Sen. Daniel A. Ivey-Soto
Rep. Paul A. Pacheco
Sen. William H. Payne
Rep. Patricia Roybal Caballero
Sen. Michael S. Sanchez

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

Guest Legislator

Sen. John Arthur Smith

Staff

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

Celia Ludi, Staff Attorney, LCS

Peter Kovnat, 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.

Monday, September 12**Call to Order**

Representative Cook welcomed members of the committee, staff and guests to the meeting.

Effectiveness of Juvenile Justice Facilities and Community-Based Services

Brian Hoffmeister, program evaluator for the Legislative Finance Committee (LFC), reviewed the LFC's August 24, 2016 report, "Program Evaluation: Effectiveness of Juvenile Justice Facilities and Community-Based Services" at Item 1. Mr. Hoffmeister highlighted the recommendations on pages 5 and 6 of the report.

Tamera Marcantel, director, Juvenile Justice Division (JJD), Children, Youth and Families Department (CYFD), stressed that the CYFD's approach to juvenile justice is therapeutic, not punitive, and focuses on prevention and early intervention. Programming and services offered in juvenile facilities consider the ineffectiveness of traditional punitive practices. When a client enters a JJD facility, multidisciplinary teams prepare plans to maximize opportunities for successful transition to the community and to adulthood. The plans focus on reintegration and linking clients with community-based resources. The JJD's programming and services are based on research and best-practice models, and the division has established standards and quality assurance measures to monitor compliance and to help ensure that clients receive the highest quality services and care.

Ms. Marcantel said that fewer youth are entering JJD facilities because prevention and diversion efforts have been successful, and the youth that do enter are generally less likely to recidivate. The JJD facilities' one-year recidivism rates dropped significantly with respect to clients released in fiscal years (FY) 2005 and 2013. The LFC's analysis of the CYFD's data shows that 79 percent of youth released from JJD facilities in FY 2005 did not recidivate within three years, and that number fell to 70 percent for youth released in FY 2010. Eighty-two percent of youth released in FY 2013 did not recidivate within three years. These results compare favorably to a 2010 study of recidivism rates in Missouri, Ms. Marcantel said.

Ms. Marcantel commented that vacancy rates among youth care specialists at secure facilities have decreased, but the facilities remain understaffed.

Regarding juvenile probation programs, Ms. Marcantel said that one-year and three-year analyses show that clients placed on probation recidivate at significantly lower rates than clients who are committed to facilities. The number of clients who violated probation declined 22 percent between FY 2009 and FY 2015. In addition, zero to one percent of clients who went to reintegration centers recidivated, based on the one-year and three-year analyses.

Ms. Marcantel expressed appreciation that the LFC's report reflected the CYFD's success and progress, and she said that the LFC's recommendations are opportunities to demonstrate sustained commitment to improving the juvenile justice system. She noted that the CYFD's responses to the specific comments and recommendations are included in the report section titled "Agency Responses", beginning on page 59.

Regarding deadlines on LFC recommendations, Mr. Hoffmeister said that the LFC requested the CYFD to provide an implementation plan within 30 days after the report is issued. The LFC will then follow up on the implementation plan six to 12 months later.

A committee member asked why the CYFD does not publish recidivism data, which are essential for measuring performance. Nick Costales, deputy director, JJD, responded that the CYFD tracks outcomes in different ways, and recidivism can be assessed in many ways. Ms. Marcantel referred to the charts on page 16 of the report, which show that the three-year non-recidivism outcomes of New Mexico youth discharged from custody are approximately 20 percent higher than Missouri's outcome data; she said this is significant because New Mexico's program is modeled on Missouri's.

In response to a question, Ms. Marcantel said that the CYFD's overall employee vacancy rate is 16 percent, and the vacancy rate for youth care specialists at secure facilities is 11 percent.

In response to a committee member's question, Mr. Hoffmeister confirmed that the LFC recommends a \$1.2 million decrease in the CYFD's budget for juvenile justice services because of the decrease in the number of youth being served. The recommendation contemplates closing and consolidating some facilities. Ms. Marcantel said that the agency has worked with the LFC to address the department's budget, but the CYFD does not agree with the LFC's suggested budget cut, and the department will instead request a flat budget for the coming year, based on the state's economic situation.

A committee member commented that the Missouri model emphasizes keeping incarcerated children as close to home as possible because rehabilitation efforts are more successful when families are involved. For that reason, the committee member expressed support for keeping as many facilities as possible open, even if they are not cost-efficient.

Referring to the statement on page 52 of the report that "[b]etween FY13 and FY15, on average, 59 percent of commitments to juvenile facilities were related to probation violations", a committee member asked about the agency's plan for reducing that number. Ms. Marcantel responded that because diversion programs keep more children out of incarceration, the children who are in the system are older, on average 18 years of age, and they are incarcerated for more serious infractions and more often re-offend. The member asked if in the past five years there has been an increase in serious or violent offenses, and Mr. Costales said that the agency tracks that information and will provide it to the committee.

Referring to the number and type of juvenile facilities and the section of the report beginning on page 19, and the agency's response on page 60, a member noted that the CYFD's budget has remained flat while the number of clients housed in facilities has dropped. Mr. Costales alluded to Ms. Marcantel's comments about juveniles in facilities being older, more serious offenders and said that additional money in the department's budget has been used for services, including behavioral health services. The member expressed appreciation for the agency's progress.

A member asked about the term "absconding" in the Administrative Discharge column of the chart on page 83 of the report. Mr. Costales replied that clients who are in treatment, not corrections, participate in programs voluntarily outside secure facilities, and sometimes clients choose to leave treatment. Supervised release continues whether a client absconds from a treatment program or not.

In response to a member's question about services to support children upon release from secure facilities, Mr. Costales said that many older clients do not return to live with their families after release, and, therefore, services are focused more on life skills, including financial management, meal planning and preparation and employment.

A committee member asked why the rate of incidents in secure facilities has doubled since FY 2011, and Mr. Costales said that the statistic is related to the fact that older and sometimes more aggressive clients are held in secure facilities. Ms. Marcantel added that older offenders are often gang members, and friction between gangs can exist in spite of efforts to keep rival gang members separated. Mr. Costales commented that a few clients are often responsible for the majority of the reported incidents.

Regarding a question about the decreased number of clients attaining a general equivalency diploma (GED) or high school diploma (page 15, Chart 12), Ms. Marcantel said that that number has increased again, and in 2015-2016, clients earned 62 GEDs and 21 high school diplomas. Another member asked whether behavioral health services are provided in-house or by community-based providers. Mr. Costales replied that the CYFD works to ensure a continuum of care that includes both, but some communities do not have adequate or appropriate services. The CYFD works to ensure that community-based providers offer evidence-based services.

Ms. Marcantel said that the CYFD is working with the State Personnel Office to secure pay raises for certain employees who work with particularly difficult clients.

New Mexico Sentencing Commission Prison Population Forecast

Tony Ortiz, deputy director, New Mexico Sentencing Commission (NMSC), highlighted the most notable trend in the report "New Mexico Prison Population Forecast FY 2017-FY 2026", (handout at Item 2), which is the ongoing significant increase in the female inmate population. The increase in that population has resulted in greater housing needs for the female population, and there are many issues that arise in connection with the incarceration of mothers. Imminent issues include the lack of capacity for female inmates in the current prison system and the cascade of related events affecting children when mothers are incarcerated.

Mr. Ortiz referred to page 5 of his report and noted that at the end of FY 2016, on May 24, 2016, the operational capacity for female inmates in the New Mexico prison system was 794 beds. The projected high count of female inmates for FY 2017 is 786, and for FY 2018 is 810, which exceeds current capacity. In May 2016, the operational capacity for male inmates was 6,982 beds, and the projected high count for the male inmate population for FY 2017 is 6,775, and for FY 2018 it is 6,853. He added that correctional experts recommend that facilities maintain a five-percent bed vacancy rate to ensure safe operations.

Mr. Ortiz noted that from FY 2011 forward, most new male inmates have been admitted for violent offenses. During those same years, most new female inmate admissions were for property and drug offenses. He added that serious violent offenses are increasing among both males and females, which is significant because inmates are required to serve longer sentences when convicted of a serious violent offense. New admissions of both male and female inmates for driving under the influence of alcohol or drugs (DWI) have decreased, which is attributable to several factors, including the use of special DWI courts, the availability of ride-sharing services, educational campaigns against drinking and driving and the use of ignition interlocks.

Linda Freeman, executive director, NMSC, explained that the NMSC is researching the factors that are leading to the increase in the female inmate population. Referring to page 4 of the report, she said that one reason release-eligible inmates are remaining incarcerated is because a parole plan was not approved for those inmates due to a lack of transitional services or behavioral health services in the inmates' communities. Sherry Stephens, executive director, Adult Parole Board, added that some inmates are hard to place upon release because they cannot live with family and that some transitional programs have restrictions on the types of convicts who will be accepted.

Answering a committee member's question about the types of drugs included in felony drug court programs (second bullet on left, page 4 of the report), Mr. Ortiz said that there are no inmates in the state who are incarcerated for felony marijuana possession. At a member's request, Ms. Freeman said she would provide more detailed information on the new admissions of females for drug trafficking and drug possession.

In response to a question about lower DWI-related admissions, Mr. Ortiz responded that the reduced admissions are due in part to the closing of liquor stores' drive-up windows, the use of ignition interlock devices, the availability of ride-sharing services and widespread public education campaigns. Ms. Freeman added that convicted offenders are usually sentenced on their most serious offenses, so, for example, if a drunk driver causes a wreck with injuries, the charges, conviction and sentence would be more serious than a DWI offense and would, therefore, not be recorded as a DWI-related admission.

In response to a question about the increase in the female inmate population, Mr. Ortiz said that Ms. Freeman and Kristine Denman, the director for the New Mexico Statistical Analysis Center at the University of New Mexico, published research on the issue, an article titled "New Mexico's Female Prisoners: Exploring Recent Increases in the Inmate Population" and referenced on page 2 of the report. He added, referring to Figure 8 on page 9 and Table 3 on page 11 of the report, that increased drug trafficking and other drug offenses account for the majority of new female inmate admissions since FY 2011.

A committee member noted that the current and projected inmate population numbers do not allow for the recommended five-percent bed vacancy rate for corrections facilities. Another member asked how current recidivism rates compare to rates five years ago and to national rates. Mr. Ortiz noted that measuring recidivism is difficult and cautioned that every state calculates recidivism differently. Theresa Rogers, fiscal analyst, LFC, said that the recidivism rate in New Mexico prisons has been 46 percent to 47 percent for the past five years, and the target rate is 45 percent.

A committee member, referring to page 3 of the report, asked how the time served by female inmates is measured. Ms. Freeman responded that the total time served, which includes a sentence and any period of parole, has to be included, but there are currently insufficient data to accurately calculate the total time served. She said she expects to be able to provide more information soon. She added that for female inmates, admissions outpace releases, which is a significant difference between female and male inmates.

A committee member highlighted the important role of specialty courts in reducing prison time, especially since budget crises have often led to cutting funding for specialty courts.

Adult Visitation and Guardianship

Representative Conrad James reviewed House Bill (HB) 120 (2016) and explained that a House Judiciary Committee substitute for the bill had passed the house but died in the Senate Judiciary Committee during the session. He said that many states have passed legislation similar to HB 120 to allow adult children to secure information and visitation with an incapacitated adult whose guardian has prevented visitation or information sharing.

Troy Martin, attorney and director of Kasem Cares Foundation, provided a summary (at Item 3) of HB 120. Mr. Martin said that after the 2016 regular legislative session, House Bill

120 was revised to add a new Subsection D to Section 1 of the bill to provide that an alleged incapacitated person or protected person may refuse visitation. The proponents of the bill do not want the bill to be used to force visitation on a protected person. Another change to the bill adds language that comports with the Uniform Probate Code and a definition of "interested person". Mr. Martin said that the intention is to make the law more expansive and allow more people to visit with an alleged incapacitated or protected person to combat isolation that allows abuse to occur. He said that a person holding power of attorney or a spouse has the presumed right to control visitation, but that presumption is not codified.

Kathleen Wright-Brawn, a director of the Kasem Cares Foundation, related that her father was taken by a caregiver and friend without providing family members with any information about where her father was taken or how long he would be gone. The State of Washington, where her father lived, did not have a law allowing adult relatives to petition for visitation or notice of the whereabouts and health of an alleged incapacitated or protected person. Family members incurred substantial expense trying to find their father, and by the time they found him, all his financial arrangements had been changed. Ms. Wright-Brawn alleged that New Mexico does not have statistics on elder abuse, but the *Santa Fe Reporter* found 225 complaints of elder abuse that were made in Santa Fe County between January and June 2010.

A committee member said that the proposed bill is a non-uniform amendment to the Uniform Probate Code, noted that the Uniform Law Commission (ULC) is considering the issue and expressed a preference to delay action on the bill until the ULC has addressed the issue. Mr. Martin responded that the Uniform Probate Code currently only applies to people for whom a guardian has been appointed, and any amendment approved by the ULC that does not apply to a person under guardianship would necessitate a long and expensive process of having a guardian appointed.

Several members discussed presentation of the proposed bill to the ULC and to the Real Property Trust and Estate Section of the State Bar of New Mexico for comment and possible revision.

A committee member expressed concern about the definition of "interested person", and Mr. Martin replied that the definition requires a preexisting relationship with the alleged incapacitated or protected person to prevent exploitation by persons previously unknown. He noted that Texas was the second state to pass this legislation, which does not include a definition of "interested person".

Two members of the audience shared personal experiences with trying to attain visitation with a family member.

A committee member asked whether a judge currently has the authority to allow visitation by an interested person, and Mr. Martin confirmed that, under current law, a judge probably has such authority, but that authority is not explicit and might not be exercised by a judge.

A committee member expressed reluctance about the possibility that the bill would result in a flood of petitions for visitation. Ms. Wright-Brawn responded that elder abuse is often undertaken as "isolate - medicate - steal the estate", and the proposed bill would help prevent that abuse.

Domestic Violence, Orders of Protection and Possession of Firearms

Miranda Viscoli, co-president, New Mexicans to Prevent Gun Violence, spoke in support of proposed legislation (see Item 4) that would prohibit a person who is the subject of a domestic violence protective order from purchasing or possessing a firearm for the duration of the protective order. She explained that the photograph on the handout is of a mother and daughter, Cam Thi To and Nhi Nguyen, who were shot and killed by the mother's husband, Trinh Tran Van, who then killed himself, on August 28, 2016. Ms. To and Mr. Van had agreed to separate shortly before the murder occurred. Ms. Viscoli said that 3,500 domestic violence protective orders are issued each year by New Mexico courts, and the state has the fourth-highest rate of gun violence in the nation. Thirty-one percent of women killed in New Mexico between 2010 and 2014 were killed with guns.

Adelyn Allchin, public health analyst, Public Education Fund to Stop Gun Violence, reviewed information from The Educational Fund To Stop Gun Violence and highlighted the fact that New Mexico is unique in not prohibiting subjects of domestic violence protective orders from purchasing or possessing firearms. The proposed legislation would align state law with federal law governing possession and purchase of firearms by persons who are the subject of a domestic violence protective order. Ms. Allchin said that research shows that a history of violence is the biggest predictor of future violence, and access to firearms increases the risk that a partner will be shot and killed. She explained that the proposed legislation would require temporary removal of all firearms from the subject of a domestic violence protective order. She added that Colorado requires surrender of firearms and ammunition that the subject of a domestic violence protective order already owns and prohibits the purchase of other firearms and ammunition while the domestic violence protective order is in effect.

Lisa Weisenfeld, policy coordinator, New Mexico Coalition Against Domestic Violence (NMCADV), informed the committee that, according to the Interpersonal Violence Data Central Repository in New Mexico, in 2014:

- there were 18,057 domestic violence incidents reported to law enforcement, 64 percent of which involved a weapon;
- in those incidents, 6,044 children, 68 percent of whom were age 12 and under, were present; and

- there were 5,889 domestic violence protective orders issued.

Ms. Weisenfeld said the NMCADV represents approximately 30 member domestic violence programs statewide and also represents the victims and families that the member programs serve. The NMCADV supports the proposed legislation because firearms are the primary weapon of choice in domestic violence homicides and one of the top three in non-fatal domestic violence assaults. She added that a perpetrator of domestic violence with access to a firearm poses a deadly threat not only to the intended victim, but to children, pets, extended family members, friends, bystanders and co-workers as well. She recalled the 2010 incident at an Albuquerque workplace, Emcore, when a man with a handgun shot his ex-girlfriend and killed three and wounded four other people. She noted that domestic violence calls to law enforcement are the most dangerous, especially when the abuser is armed with a firearm.

Ms. Weisenfeld concluded that the New Mexico Intimate Partner Violence Death Review Team, which includes members from the Office of the State Medical Investigator, the Office of the Attorney General and the courts, and from the fields of corrections, medicine, advocacy and prosecution, has for four consecutive years recommended passage of legislation that mirrors federal law prohibiting the possession of firearms by subjects of domestic violence protective orders. The team's 2015 process evaluation report is included in the presentation materials.

Jennifer Padgett, district attorney, First Judicial District, spoke in a personal capacity and referred to a report of the Prosecutors Against Gun Violence (PAGV), "Firearm Removal/Retrieval in Cases of Domestic Violence", which is included in the presentation materials. She stressed that when an abusive partner has access to a firearm, the risk that the other partner will be killed increases more than five-fold. One study found that approximately half of women killed by their intimate partner had abuse-related contact with the criminal justice system within the year prior to being murdered. Those contacts with law enforcement provide critical windows of opportunity to prevent a killing, Ms. Padgett said. Restricting abusers' access to firearms is an effective policy, reducing domestic violence homicides by as much as 25 percent. The PAGV's recommendations to diminish gun violence perpetrated by domestic abusers are: identify those respondents and defendants who possess a firearm; notify the subject of a domestic violence protective order that the subject is prohibited from possessing firearms during the term of the protective order; remove the firearms; and store the firearms in a safe place.

A committee member commented that if a person protected by a domestic violence protective order has a weapon, there is a good chance that the weapon could be used to harm the protected person. Another member reiterated that federal law already prohibits the subject of a domestic violence protective order from purchasing firearms and referred to the federal "Firearms Transaction Record Part 1 - Over-the-Counter" form that is completed and filed when a firearm is purchased from a store. Ms. Weisenfeld responded that in her experience as a former prosecutor, state judges do not believe they have the authority to prohibit purchase or possession of firearms by domestic abusers because there is no explicit provision to that effect in state law.

Ms. Padgett added that current state law does not explicitly provide for the removal of firearms from the subject of a domestic violence protective order. A member averred that the New Mexico Supreme Court could educate inferior courts about their authority to order removal of firearms, which would be more expedient than passing a new law.

A committee member wondered whether the legislation would discourage a person accused of domestic violence from agreeing to a protective order and speculated that an abuser could also bring domestic violence accusations against the abuser's partner, resulting in the partner being disarmed and helpless against the abuser. Another member expressed concern about enforcement and the storage and return of firearms.

The Link Between Animal Abuse and Domestic Violence

Representative Dines introduced Tammy Fiebelkorn, board president, Positive Links, and said that, thanks to the efforts of Positive Links, the Bernalillo County Sheriff's Department now trains its officers to observe family pets when responding to calls because those animals can be an indicator of abuse or domestic violence in a household. As a next step, he suggested that the CYFD and the Department of Public Safety could be encouraged to similarly train their staff members on the link between animal abuse and family violence. To that end, Representative Dines offered a proposed house joint memorial on the subject (see Item 5). To illustrate the value of the training, Representative Dines related a story about a long-time CYFD social worker who had received training from Positive Links and was investigating a complaint of possible abuse of a mother and children in a family. The social worker felt that the mother and children had been coached in how to respond to the social worker's questions regarding various injuries, and they provided no information about the possible abuse. The social worker then noticed that the family's dog was cowering and afraid, and the social worker was able to confirm abuse in the family through questions directed to the children about the dog. The social worker said that without the Positive Links training, she would not have made the connection between the dog's abnormal behavior and the abuse of the children and mother.

Ms. Fiebelkorn said that 56 percent to 68 percent of homes in the United States include at least one companion animal that is largely considered to be a family member. Studies have shown that abuse of or cruelty to animals is often concurrent with domestic violence, elder abuse or child abuse. Animal abuse is, therefore, a key indicator of domestic violence, but it often goes unreported, even though animal cruelty is now treated as a felony in all 50 states. This year, the Federal Bureau of Investigation began tracking cases of animal cruelty nationally to gain an understanding of how often it occurs, where it occurs and whether it is increasing.

She added that children who witness animal abuse and neglect are desensitized to violence, and their ability to develop empathy is impaired, increasing the potential that they will become abusers themselves. In addition, children who are cruel to animals are more likely to have experienced violence and abuse themselves. Therapy options for animal abusers of any age and children who have witnessed animal abuse center around re-teaching empathy.

Ms. Fiebelkorn cited a study that found that batterers who also abuse their pets are both more controlling and more likely to use more dangerous forms of violence than batterers who do not. An abuser who harms pets is demonstrating power over others in a household, Ms. Fiebelkorn said. Animal abuse also eliminates a source of support and comfort for family members and sometimes prevents a victim from leaving the home out of fear of additional violence against the animal. She noted that the top three indicators that a woman will be killed by her batterer are threats of homicide or suicide, access to weapons and threats to mutilate or kill pets.

Ms. Fiebelkorn suggested that some steps that can be taken to mitigate animal and human abuse include:

- providing funds for short-term housing for companion animals in domestic violence situations;
- working with domestic violence shelters to offer shelter to companion animals with their humans;
- including companion animals in domestic violence protective orders;
- encouraging cross-reporting between agencies, e.g., between the CYFD, law enforcement, animal control and professionals, such as therapists;
- passing bestiality laws; and
- offering training for more professions to recognize the link between animal abuse and human abuse.

A committee member asked who decides what kind of behavior constitutes animal abuse and who can make a complaint of such abuse. Ms. Fiebelkorn replied that the term is already defined at both the state and federal levels, and she is not suggesting any changes to those laws. She emphasized that Positive Links' focus is on training law enforcement, CYFD staff and other professionals to look for domestic violence when they identify animal abuse. Representative Dines added that anyone can make a complaint about animal abuse, and the proposed joint memorial would not change that process.

Considering Pregnancy and Incarceration in the New Mexico Prison System

Micaela Cadena, Cadena Strategies on Behalf of Young Women United, provided the committee with copies of a position statement titled "Women's Health Care in Correctional Settings" from the National Commission on Correctional Health Care; an article in the March 2009 issue of *Perspectives on Sexual and Reproductive Health*, titled "Abortion Access for Incarcerated Women: Are Correctional Health Practices in Conflict with Constitutional Standards?"; a November 2014 article published by the National Commission on Correctional Health Care titled "Pregnancy and Postpartum Care in Correctional Settings"; and an October 2014 article published by the National Institute of Corrections titled "Gender-Responsive Policy Development in Corrections: What We Know and Roadmaps for Change". Ms. Cadena then presented information to the committee about women who are pregnant while incarcerated.

Ms. Cadena, referring to Paragraphs J and K of the "New Mexico Corrections Department (NMCD) policy CD-170100, Medical Clinical Services, Psychiatry Services, Detoxification, Intoxication and Withdrawal", noted that the NMCD has policies regarding providing access to "pregnancy management services" for female inmates and that suggest that nursing infants may be allowed to remain with their incarcerated mothers. In addition, the contract between the NMCD and Centurion Correctional Healthcare of New Mexico LLC (Centurion), General Services Contract ID #16-770-1300-0097, has provisions for women's health care on pages 25 and 26, but the contract does not address the adequacy of prenatal care.

Ms. Cadena noted that although the contract with Centurion provides that "questions from pregnant females about continuation or termination of pregnancy should be expertly addressed in accordance with all applicable laws", it also provides that:

If a female inmate requests an abortion and it is not medically necessary to preserve her health, the Agency will neither provide nor pay for it, nor shall the contractor be obligated to pay for or offer such service either directly or by subcontracting. However, the Agency will reasonably facilitate access to pregnancy termination services. Such abortions will be provided at the inmate's or third party expense, at a facility that provides this service and is appropriately licensed under state law.

Ms. Cadena observed that this is not a requirement of the NMCD's policy, which also does not require female inmates to pay for any other kind of health care.

Regarding abortion services, Ms. Cadena said that a women's prison administrator reported that no pregnant inmate has requested an abortion, yet Ms. Cadena has spoken with a number of female inmates who said that they were never notified that they could choose abortion as an alternative to carrying a pregnancy to term. She also noted that pregnant inmates are strongly encouraged to place their babies for adoption, and she related several anecdotes about female inmates who were pregnant while incarcerated. Some of those inmates knew about their pregnancies prior to incarceration, while others discovered that they were pregnant only when they were tested upon incarceration. Some inmates wanted to keep their children and described many difficulties in making arrangements for post-natal care while they were incarcerated. Ms. Cadena noted that the NMCD does not track information related to pregnancy, such as the number of pregnant inmates, prenatal care provided or termination requests. Further, the NMCD does not monitor outcomes for inmates or babies in connection with pregnant inmates.

Renee Chavez described her experience being pregnant while incarcerated. Ms. Chavez's pregnancy was not confirmed until she was five months pregnant, and she recalled always being hungry because she did not have money to buy food from the canteen and she did not receive enough food at mealtime. Eventually, Ms. Chavez gave birth in a hospital while shackled and with two male guards present. With the assistance of a nonprofit organization, Ms. Chavez was able to arrange for postpartum care for her baby, but she was unable to see the baby for another three months after the birth. Ms. Chavez said that she did not receive lactation education or

treatment from prison health care personnel, and she relied on other inmates for such help. In addition, Ms. Chavez experienced postpartum depression, for which she had just one 35-minute visit with a mental health specialist. Ms. Chavez told the committee that her daughter is eight years old now, and Ms. Chavez has not committed a crime in those eight years.

Committee members expressed admiration and appreciation for Ms. Chavez's testimony.

Recess

The committee recessed at 4:23 p.m.

Tuesday, September 13

The committee reconvened at 9:30 a.m.

Judiciary's Unified Budget and Proposed Legislation

Chief Justice Charles W. Daniels, New Mexico Supreme Court, described the judiciary's unified budget process by which each judicial district court prepares a proposed budget, which is then considered and amended, if necessary, by the New Mexico Chief Judges Council. The New Mexico Chief Judges Council also considers issues that include courts' caseloads, operations and facilities. The council develops recommendations and submits them to the New Mexico Supreme Court, which makes final decisions about the budget requests that will be presented to the legislature.

Chief Justice Daniels noted that although the judiciary is a separate branch of government, it does not have the authority to make fiscal policy decisions and does not control its own budget. He said that the judicial branch's budget comprises less than three percent of the total state budget. Referring to his presentation materials (Item 7), he noted that the highest percentage of the state's total budget that was allocated to the judiciary was in FY 2010, when the judiciary received 2.76 percent of the state's total budget. The current budget is 2.58 percent of the total budget.

In response to the 2010 state budget crisis, the judiciary reduced services and programs. The current budget situation and cuts to the judiciary's budget mean that the judiciary is nearly impaired in its ability to provide essential services. Chief Justice Daniels emphasized that the judiciary cannot sustain a three percent cut to its current budget. He said that any further reductions from the FY 2017 already-reduced appropriations will impair proper functioning of the drug courts and other important court programs and services. A reduction beyond one percent will result in court closures, furloughs, income reductions of underpaid court employees and other unacceptable consequences.

Chief Justice Daniels related that the New Mexico Chief Judges Council requested:

- four new district court judges — after court caseload studies showed that 10 to 12 new judges are needed;
- a budget sufficient to fill existing vacancies — 90 percent of the judiciary's budget goes to personnel expenses. The overall vacancy rate in the courts is 13 percent; in the Second Judicial District Court, Metropolitan Court and the magistrate courts, the vacancy rate is 15 percent. With high vacancies, the courts cannot do their jobs in a timely manner, and high vacancies create turnover because employees are overburdened. Court clerks, especially, are affected by the high vacancy rates; 50 percent of new clerk hires leave employment within a year. The vacancy rate in the Second Judicial District Court is so high that it costs as much to train new hires as it would to give raises to those who stay, which could help reduce the turnover; and
- that the legislature abide by the recommendations of the Judicial Compensation Commission. New Mexico judge salaries are the lowest of the surrounding states and are among the lowest in the country. Between the relatively low salaries and the high caseloads, experienced, seasoned attorneys are not applying for judgeships.

Despite the recommendations of the New Mexico Chief Judges Council, and in recognition of the state's financial crisis, the judicial branch is not requesting any new judgeships or pay raises for judges.

Chief Justice Daniels said that LFC staff recommended a decrease in juror pay, which the New Mexico Supreme Court opposes. Juror pay is currently set near the minimum wage, and the New Mexico Supreme Court believes that cutting jury pay below minimum wage levels would amount to a tax on people who serve on juries.

To help with cost savings, the New Mexico Supreme Court ordered a reduction in mileage reimbursement rates for all judicial branch employees and jurors — from \$0.46 per mile to \$0.29 per mile, which Administrative Office of the Courts (AOC) staff calculated would reimburse drivers for the cost of gasoline and oil used while driving. The reimbursement reduction will save over \$500,000 per year. In addition, the New Mexico Supreme Court is considering a request for a change to the law that would allow mileage reimbursement to be paid as a flat rate.

Chief Justice Daniels reviewed the judiciary's 2017 legislative requests:

1. a constitutional amendment to allow the legislature to regulate appellate jurisdiction. In 1960, the legislature created the Court of Appeals to hear appeals from district courts. The Court of Appeals and the New Mexico Supreme Court review records created in lower courts of record. Appeals from non-record courts, such as magistrate courts, are made to the district courts, which must hold new trials to create a record that may be appealed. Although the Bernalillo County Metropolitan Court is a record court, appeals from its decisions are made to the district court, and the district attorney's office performs a record review rather than a trial, despite the fact that

- district attorneys are trial lawyers. The proposed constitutional amendment would allow the legislature to provide for all record appeals to be heard by the Court of Appeals or the New Mexico Supreme Court, which would relieve the district courts of record review appeals;
2. the creation of a judge pro tempore fund to be administered by the AOC and used to pay judges pro tempore;
 3. the creation of a language access fund, separate from the jury fund;
 4. closure of magistrate courts in Quemado to save annual lease costs of \$11,628 and in Questa to save annual lease costs of \$15,000, plus additional savings in reduced judge and clerk travel expenses; and
 5. increasing the warrant fee from \$100 to \$200.

In response to a member's question regarding warrant fees, Arthur Pepin, director, AOC, said that the fees cover the costs of warrant enforcement. Another member suggested that the AOC consider consolidating multiple warrants issued for the same person because if the person is unable to pay the multiple fees, the person will serve time in jail without having been convicted of a crime.

A member asked how the judiciary accommodated budget cuts in the past, and Mr. Pepin said that problem-solving courts, such as drug courts, are often cut first. Chief Justice Daniels commented that drug courts are effective tools to reduce recidivism and increase public safety, but, because their operation is not mandated by the Constitution of New Mexico, they get cut. He added that savings from the use of drug courts are realized in law enforcement's and corrections agencies' budgets and not the judiciary's budget. He reiterated that a budget cut of more than one percent would result in court closures and elimination of staff. A committee member recalled Mr. Ortiz's earlier statements that corrections costs would increase if drug courts were cut.

A member asked how New Mexico's judges' salaries compare with those in surrounding states, and Mr. Pepin said that district court and Court of Appeals judges' salaries are the lowest in the nation, and the New Mexico Supreme Court's justices' salaries are second to last in the nation. The Judicial Compensation Commission also found that the relative value of the state's judicial retirement program is on the low end of the nationwide average. He added that applicants for judicial vacancies are generally younger lawyers who often have narrower public service backgrounds.

A committee member noted that closing magistrate courts could have negative economic consequences for the building owners in small communities. Another member asked how the judiciary works to reduce frivolous lawsuits. Chief Justice Daniels responded that the Constitution of New Mexico requires that at least one hearing take place before a decision can be rendered, and appeals are also constitutionally guaranteed. Frivolous lawsuits are costly for the courts because judges and staff are required to hold hearings and complete paperwork in connection with the cases.

A committee member asked why fines are not always imposed in state criminal cases. Chief Justice Daniels responded that the United States Supreme Court has held that a person cannot be jailed for inability to pay court costs and fines. Mr. Pepin added that magistrate courts generate about \$15 million per year in court costs and fines.

In response to a member's question about whether a judge in a domestic violence arraignment has authority to order a defendant to relinquish firearms, Chief Justice Daniels said that judges have broad discretion to protect the community. Another member observed that the judiciary is an equal branch of government with constitutional mandates, and budget cuts are impairing its ability to function. The member asked what kind of budget increase the judiciary would need to remedy the state's judicial system. Chief Justice Daniels replied that if three percent of the state's budget were allocated to the judiciary, the system could be stabilized and improved. The member noted that the increase would amount to about \$10 million.

In response to a question about the number of new judgeships needed to allow the state to meet national judge caseload standards, Chief Justice Daniels said that 10 to 15 new judgeships would be needed. Mr. Pepin added that the legislature approved an appropriation to the judiciary to study the issue, but the appropriation was vetoed. In response to another staffing question, Mr. Pepin said that court clerks make approximately \$13.09 per hour, and those in Albuquerque average \$15.00 per hour. He added that, at that salary, a family of three would qualify for government assistance.

In response to a question about specialty courts, Mr. Pepin said that specialty courts cost approximately \$9 million. The member emphasized the significant savings to the state attributable to specialty courts.

Update from the Public Defender Department (PDD)

Bennett J. Baur, chief public defender, PPD, introduced the public defender commissioners, retired Judge Michael Vigil and Hugh Dangler; Philip Larragoite, deputy chief public defender, PDD; and Robert Mead, administrative services director, PDD. Mr. Baur said that the PDD is the largest law firm in the state, with nearly 200 public defenders and 150 contract lawyers representing criminal defendants in 70,000 new cases per year. Mr. Baur emphasized that the PDD is underfunded and struggling to meet its constitutional mandate to provide effective assistance of counsel to indigent defendants. He noted that additional funding for social services that address issues that lead to crime would help reduce the office's caseload. He added that prosecutors' and the PDD's caseloads increase four to five percent every year.

Mr. Baur explained that New Mexico's model of providing indigent defense services uses a combination of PPD employee attorneys in 13 counties and contract defenders in 20 of the state's 33 counties. He referred to his presentation materials (Item 8) "LOPD Caseload Assignments July & August 2016" and noted that the PDD caseloads significantly exceed recommended maximum numbers in 12 of the state's 14 divisions, and that caseloads in Hobbs are almost four and one-half times the recommended maximum. Contract defenders are paid a

flat rate of \$180 to \$750 per case, which requires most contract defenders to take as many cases as possible to stay in business. In FY 2016, the PDD sought contract defenders for Eddy and Lea counties and received just one response. Mr. Baur said that the PDD requests a 10 percent budget increase for the coming fiscal year, which will allow the PDD to hire 25 attorneys to help reduce caseloads.

Mr. Dangler said that the PDD has never refused a case, but because the caseloads are so high, for the first time ever the PDD may have to stop taking cases in some areas to ensure that it is providing effective assistance to clients. He added that the warrant fee system is in need of reform, and jailing a person who cannot pay the warrant fee has severe financial consequences for families.

A committee member noted that district attorneys can choose whether to prosecute a case, but defenders have to take every qualified client's case. Referring to the PDD's FY 2018 budget request, a member urged the PDD to propose legislation to remove jail penalties from certain traffic offenses. The member also suggested that the Law Enforcement Assisted Diversion program piloted in Santa Fe should be expanded statewide.

Impeachment Processes — Recommendations of the House Special Investigatory Committee (HSIC)

Douglas Carver, former LCS staff member, explained that the February 15, 2012 "Final Report of the Investigatory Subcommittee of the House Rules and Order of Business Committee" (Item 9) on the impeachment inquiry into former Public Regulation Commissioner Jerome D. Block, Jr. included recommendations regarding impeachment processes. He said that impeachment is not widely used, and before the impeachment of Senator Phil Griego in 2015 was contemplated, the process had only been considered three times, with respect to former State Treasurer Robert Vigil in 2004, former Commissioner Block in 2011 and former Secretary of State Dianna Duran in 2015. In each of those cases, the impeachment process was halted when those officials resigned from office.

Mr. Carver reviewed the constitutional basis for impeachment, and he noted a lack of statutory guidance for conducting impeachment proceedings. Without any procedural guidance, each impeachment inquiry requires rules and procedures to be developed, so the process could be improved through the development of statutory procedures, he said. He noted that there are statutory provisions that allow for the issuance of legislative subpoenas under specific circumstances only: during a regular or special session of the legislature; for perjury; and for criminal penalties for refusal to take an oath or affirmation prior to testimony. He said that the only instance in which an impeachment inquiry involved the issuance of subpoenas was in the case of former Commissioner Block. That inquiry occurred when the legislature was in regular session, so statute provided for the issuance of the subpoenas; however, if the need for subpoenas had arisen in the case of former Secretary of State Duran's impeachment inquiry, a special legislative session would have been required to allow the legislature to issue the subpoenas, which highlights a possible obstacle in an impeachment process. Mr. Carver noted that, if the

legislature's subpoena power is expanded, the power could be limited to impeachment inquiries to avoid the possibility of an abuse of power. In response to a member's question, Mr. Carver said that guidance on impeachment processes is not readily available from other states or the federal government.

A committee member who served on the HSIC in 2015, commented that work to develop procedures was undertaken in 2012, but that work did not become law and had to be repeated during the inquiry in 2015. Another committee member who served on a house special investigatory subcommittee observed that impeachment is a quasi-judicial function of the legislature and recalled that Senate Joint Resolution 17 (2015) proposed a constitutional amendment to provide for legislative subpoena power. Mr. Carver noted that a legislative subpoena statute exists, but it could be altered to provide specifically for subpoena power in impeachment proceedings.

The committee voted to continue work to implement the recommendations made in the report presented by Mr. Carver.

Human Trafficking and Runaway Children

Judge John J. Romero, Jr., presiding Children's Court judge, Second Judicial District, described a collaborative project to educate judges nationwide regarding sexual exploitation of children and runaway children. He said that many of the young people he sees in his courtroom, particularly in connection with sex-related charges, are being or have been abused or neglected, and many of them have been trafficked for sex, some from a young age. Many children who run away from abusive homes are recruited by traffickers, and often, the children end up in the juvenile justice system. He noted that children who have been abused and traumatized by trafficking are not willing participants in a sex trade but are instead engaging in what he termed "survival sex". Judge Romero said the term "child prostitute" always refers to a child who is being abused, regardless of the apparent level of physical or social maturity of the child. He strongly urged the legislature to revise the age in the state's law prohibiting sexual exploitation of children by prostitution (Section 30-6A-4 NMSA 1978) from 16 to 18.

Judge Romero said that the federal Preventing Sex Trafficking and Strengthening Families Act requires states to identify and protect children and youth at risk of being trafficked for sex. He complimented the CYFD for its quick action in response to the federal law to develop policies and procedures to identify children in state custody who are being trafficked and need assistance.

Judge Romero said that foster parents are vital to the child protection system, and the federal law sets a "reasonable and prudent parent" standard for a foster parent to make parental decisions about the child's participation in extracurricular, enrichment, cultural and social activities to maintain the child's safety and health. Foster parents are screened, selected and overseen by the CYFD with a goal of normalizing a family experience for children in the state's custody and making them less vulnerable to traffickers. Judge Romero said that some risk

factors for trafficking are the same factors that bring children into foster care, and he added that lesbian, gay, bisexual, transgender and queer children are at the highest risk of being trafficked.

Judge Romero recommended the following additional resources on children and trafficking:

- "The Sexual Abuse to Prison Pipeline: The Girls' Story", a joint report by the Human Rights Project for Girls, Georgetown Law Center on Poverty and Inequality and the Ms. Foundation for Women, issued in 2015;
- "Girls Like Us, Fighting for a World Where Girls Are Not For Sale"; a memoir by Rachel Lloyd, the founder of GEMS, Girls Educational and Mentoring Services in New York City; and
- a documentary film, "Prevention: Everybody's Business".

Judge Romero showed a YouTube video titled, "America's Daughters", that discussed how children may end up in the sex trade. He called for greater awareness and an end to adults blaming children for their victimization.

A committee member commented that changes to current law are needed to help law enforcement address issues related to runaways. HB 418 (2015), if it had been signed into law, would have required law enforcement to notify the CYFD upon receipt of a report of a runaway child. House Memorial 111 (2015), which did pass, requested the CYFD, law enforcement and public schools to study and develop an approach to identify and provide protective services to runaway children and their families. Currently, if a law enforcement officer identifies a runaway child, the officer may return the child to the environment the child fled, unless medical treatment is necessary, in which case the officer can take the child to receive care. The committee member observed that some runaways' parents do not report the child as missing because of fear of involvement by the CYFD and law enforcement. The member also noted that violent juvenile criminals are often runaways who may have also been expelled from school. Judge Romero agreed, and said that more services are needed in schools and within the CYFD, and he added that children should receive services through the Protective Services Division and not through the juvenile justice system.

A committee member asked how the legislature can help children who have run away from abusive environments and what can be done to intervene before a family becomes so toxic that a child runs away. Judge Romero referred to the documentary film, "Prevention: Everybody's Business", and said that programs that help with parenting skills are important, including nurse visitations immediately after a child is born.

Process for Replacement of Recused Public Regulation Commissioners

Judith Amer, associate general counsel, Public Regulation Commission (PRC), reviewed a memorandum in support of the PRC's Resolution No. 03-09-16 (Item 11) requesting that the

legislature determine what governmental body would be responsible for selecting a replacement for a recused commissioner and what criteria would be used to select the replacement commissioner. There are five commissioners, and a quorum of three is required to conduct business. The PRC proposes adoption of "the rule of necessity", which would allow a recused or disqualified commissioner to participate in discussions and decisions if the case cannot be heard otherwise due to a lack of a quorum. The application of this principle would mean that if three or more commissioners are disqualified by a party or recuse themselves because of personal bias, conflicts of interest or other reasons provided in Section 8-8-18 NMSA 1978, the recused or disqualified commissioners would still be able to participate in a proceeding to establish a quorum. Alternatives to the "rule of necessity" would be to amend the constitution to address the issue or amend the applicable statute to change the definition of "quorum" in the event of a recusal or disqualification of three or more commissioners.

Ernest Archuleta, chief of staff, PRC, introduced Commissioner Linda Lovejoy, who spoke in favor of the PRC's proposal. Commissioner Lovejoy said that a party had never filed a complaint in the New Mexico Supreme Court to force recusal of a commissioner before the Public Service Company of New Mexico San Juan Abandonment case (Case No. 13-00390-UT). In that case, the New Mexico Supreme Court did not require recusal, but the PRC wants to address the issue in case the situation ever arises again.

There was discussion of the possible situations that could lead to disqualification or recusal of commissioners. Ms. Amer noted that such situations are infrequent.

A committee member asked how other states address replacing recused or disqualified commissioners. Ms. Amer said that only 13 states have elected commissioners, the remainder of states have appointed commissioners. She noted that in Montana and Arizona, the governor appoints an acting commissioner to fill vacancies.

A committee member commented that the PRC's proposal would undermine the statute requiring recusal in cases of personal bias or conflict of interest and said that a different solution should be developed. It is important to have impartial decision-makers, and the "rule of necessity" would not support impartiality in the PRC's work and could harm its reputation.

Another member agreed but expressed concern about allowing the governor to appoint replacement commissioners. Other possibilities might include constitutional amendments providing for "at-large" commissioners instead of commissioners elected from districts, increasing the number of commissioners or making some commissioners elected and some appointed. Another member noted that a combination of elected and appointed commissioners could lead to contention as it has on other similarly constituted boards. The committee agreed that the issue needs further inquiry.

Public Comment

Mariel Nanasi, executive director, New Energy Economy (NEE), provided a handout regarding the PRC quorum issue (Item 11). The NEE's position is that the legislature should revise the definition of a quorum to allow three commissioners to vote on a final decision with a majority of two to decide. Another option is to establish a pool of replacement commissioners defined by the legislature and appointed by the governor. Ms. Nanasi said that the "rule of necessity" has never been applied in New Mexico except in the issue of judicial raises.

Adjournment

There being no further business before the committee, the third meeting of the CCJ for the 2016 interim adjourned at 4:23 p.m.