



**Integrative Leadership
Reducing Felony Case Delay and Jail Overcrowding
A Lesson in Collective Action in Bernalillo County, New Mexico**

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INTRODUCTION

The Bernalillo County Criminal Justice Review Commission (Commission), a special multi-agency body created by the New Mexico Legislature in July 2013, provides a grand lesson in addressing common and seemingly intractable criminal justice challenges. The Commission has been able to breakdown silos and build bridges between local and state government organizations in Greater Albuquerque to successfully confront system wide issues and turn them into opportunities for public good.

The National Center for State Courts (NCSC), a nonprofit justice system consultancy, provided advice and counsel to the Commission. A State Justice Institute grant managed by Bernalillo County paid for the services of NCSC. This monograph by NCSC documents the problems, processes, and actions of the Commission over 18 months (July 2013 to December 2014) to reduce felony case delay and jail overcrowding in the County. It provides a case study and practical insights in integrative leadership – leading beyond the boundaries of the judicial branch – that other urban areas may find helpful.

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I. Tackling the Problem: A War of the Parts against the Whole

The criminal justice system in Bernalillo County, New Mexico, the state's most populous county and home to Albuquerque, its largest city, is similar to other urban communities in America. It is a mosaic of separate organizations and elected or appointed officials who answer to different authorities and funding agencies causing them to carry out their day-to-day functions in relative isolation. The system - in truth less a system than a loosely-linked set of processes - is overseen by different agencies that by and large interact with one another as adversaries. Each stakeholder is charged with advocating a specific perspective and managing their own part of the process.

For the most part, **criminal justice systems are quite resistant to organization-wide change**. The individual agencies possess a relatively high level of autonomy vis-à-vis the larger system within which they exist. Actions in one part of the system can have little or no effect in another, or may trigger unintended consequences that can cause serious technical or caseflow difficulties.¹ Although communications among the various agency leaders are generally cordial, none have the ability to compel the others to change internal operations, staffing, business processes, or organizational configurations. This is especially problematic in such process-oriented systems where the standard operating methods are often described as a “war of the parts against the whole.”

The autonomous nature of the organizations hampers systemwide improvements in other noticeable ways, too. In times of fiscal stress, attempts to change priorities among loosely coupled structures are not only initially resisted, but often considered too disruptive and disturbing to pursue. As economic struggles linger, as they have today since the recession in many communities, pressures are inclined to mount for more transformational change that refocuses on the larger system. The work of the Bernalillo County Criminal Justice Review Commission (Commission or BCCJRC) is an example of that broader direction, targeting greater economies of scale, improved efficiencies, and increased uniformity systemwide.

Criminal justice agencies have a tendency to operate in independent silos where the focus is inward and information exchange is largely confined within agencies. The silo syndrome commonly extends to electronic information systems and digitized data as well as work procedures. Separate computer systems in law enforcement agencies, the court, the prosecutor's office, and public defense offices are examples.

Silo mentality inhibits collaboration since there is little understanding of mutual needs and opportunities to streamline processes outside the agency. Silos create an environment where

¹ Examples of changes in the justice system that may complicate or unexpectedly impact overall day-to-day operations, jail overcrowding, or the pace of litigation include new or ramped up crime reduction initiatives (i.e., DUI patrols, prostitution stings, photo radar, etc.), the nature of what is criminal and the degree of punishment or type of sanctions required by law (i.e., tougher drug/alcohol violation laws, deferred prosecution programs, etc.), and the level of public defense or prosecution services available to adjudicate cases.

sharing and collaboration for anything other than a particular silo's special interests is tough to accomplish. If it seems necessary to involve a different agency, function or business unit, it is frequently up to a department head, elected official or a senior manager to engage them. As a result, silo thinking is a common killer of innovation. And, innovation is a critical component in cross-agency reforms. Criminal justice systems don't change because they want to. They change because they are forced to by caseloads (e.g., growth in volume), lack of resources (the Great Recession), the law (e.g., new hearings or case types), a higher authority (Supreme Court), or advances in science (DNA) and technology (wireless).

Criminal justice systems are commonly disjointed in their approach to change.

Rarely is a system-wide tact taken to address business process improvements, electronic information exchanges, caseload management², enforcement and compliance programs, or compatible policy setting. Yet, justice systems do from time to time revamp themselves successfully. How is that possible if they are so predisposed to separate actions?

Experience has repeatedly shown that when interagency discussions take place in earnest, there is a very high level of consistency among issues related to efficient work processing. Often this surprises participants who have assumed that the interests and perceptions of judges, prosecutors, defense lawyers, and others differ substantially. In fact, it turns out that most participants can look beyond their immediate concerns and positions regarding their own jobs and agencies when defining how an effective system should operate. The upside is that shared interests form the basis for agreement on necessary changes. The downside is the justice system itself is so loosely coupled, silo ridden, and uncoordinated that promoting enterprisewide innovation and efficiency, where the biggest returns on investment exist, is difficult. Not impossible; just challenging. So, who has the responsibility to do so?

In the case of Bernalillo County, the Legislature did so through the creation of a special Commission. Furthermore, they vested the Judicial Branch and New Mexico Supreme Court, through its Administrative Director of the Courts, with the responsibility for setting the agenda and prompting action.

Positioned at the center of the justice system, the Judicial Branch is the single entity vested with ensuring overall processes are fair and impartial and individual rights are protected based on Constitutional provisions and guarantees. As such, court leaders have an obligation to coordinate interdependencies among justice system partners by working beyond the boundaries of the Judicial Branch itself. This mandate positions the court as more than just a justice system stakeholder. It expects the court to take a systemwide problem-solving and coordinating role to ensure the decisional independence of judges in individual cases, the institutional independence of the court, and the effective functioning of the entire system. The court cannot effectively

² Caseload management is a term that describes the procedures, processes, and resources utilized in a court system to adjudicate cases from filing to disposition, regardless of the type of disposition (e.g. plea, trial, dismissal, conviction, etc.)

carry out its role as justice guardian, without simultaneously promoting systemwide efficiency and safeguarding fundamental due process rights.

Bernalillo County criminal justice stakeholders exhibit the classic characteristics of a loosely coupled, autonomous collection of organizations. Though they have struggled over the years to operate as a system, it has not resulted. None of the organizations has been immune to an insular, narrow-minded focus; even the trial court.

The **Albuquerque Police Department (APD) and Bernalillo County Sheriff's Office (BCSO)**, funded by the county and city, respectively, have a polite but distant relationship even though they occupy the same building in downtown Albuquerque and have operated for years under a joint agreement to coordinate arrest and warrant records processing. Their recordkeeping and computer systems are different causing inter-agency data transfer problems. A November 2009 report by the National Center for State Courts (National Center, Center, or NCSC) itemized a series of delay-causing processes between the two departments, most centering on APD where lags of 30-90 days to transmit data to prosecutors were routine adding to discovery problems downstream. After five years, the level of improvement remains questionable based on statements by APD representatives at a July 29, 2014, meeting of the Commission.³

The **District Attorney's Office (DA)**, funded by the state, has few electronic data connections to APD or BCSO. Additionally, there is minimal internal technology support for prosecutors and no high-level office manager or administrator to improve office systems and business processes; resultantly, improvements in the near future are uncertain. The DA has no investigators on staff but relies on APD and BCSO to gather the majority of evidence. Complicating working relationships, there is perceptible tension and strained relationships between the DA and APD.⁴ Slowing the entire front-end criminal felony process has been the practice of the DA to process the vast majority of cases by indictment rather than information (formal accusation).⁵

The state-funded **Public Defender (PD)**, similar to public defense functions nationwide, has fewer "natural" allies in their work within the justice system. Although sometimes seen as obstructionists in reform efforts to streamline case processing rather than valued for their role in

³ APD representatives concluded there likely would be continued delays in getting reports, witness statements, and forensic evidence to prosecutors since elaborate, internal quality control process within APD must be completed before data is transferred. The Commission contemplates evidence will be submitted promptly from police to prosecutors to defense.

⁴ This viewpoint is based on a series of interviews, meetings, conferences, observations, and data collected from justice system stakeholders in 2009, 2010, and 2013 by NCSC consultants.

⁵ Most prosecutors in New Mexico file the majority of their cases by information, a less costly and more efficient approach. Nationwide, where indictment by grand jury is permitted in state courts (approximately half the states), it is generally reserved for the most egregious and serious cases (e.g. capital murder, police officer shootings, etc.). Presenting all felonies to a grand jury in an urban justice system is quite unusual. Consequently, a principal NCSC 2009 study recommendation was to shift more felony processing from indictment to information.

preserving constitutionally guaranteed due process rights for the accused, the challenge of collaboration sometimes is simply being invited to the table. (The Commission has included the PD exceptionally well in all its discussions). Needless to say, there are numerous hindrances and barriers for the PD in performing their functions; chief among them are discovery complications. Discovery is exacerbated for the defense bar by arrest report delays, restrictive police policies in accessing records, and delays in receiving forensic evidence and prosecution data. Also, as with most PD agencies, they are generally staffed at levels lower than the prosecutor's office and have limited, stand-alone case management systems and technology.

The **Second Judicial District Court**, funded by the state, has experimented with various caseflow changes over a number of years with little long-term success. Trial court delay has lengthened and pretrial jail populations have grown as the 10 judges assigned to the Criminal Division each operate rather autonomously.⁶ This is especially true in trial courts organized like the Second District where individual calendars require cases remain with the same judge from arraignment to disposition, regardless of the type of disposition.⁷ There is little uniformity in policies or procedures among judges, other than required by state or local rules. The Criminal Division judges meet periodically to discuss operational issues but their governance system is ill-defined, relying mainly on consensus decision-making. When and if case processing decisions occur, they may not be binding on every judge.⁸

The **Metropolitan Detention Center (MDC)**, funded and operated by the county, has suffered severe jail overcrowding since its opening in 2003. Many reasons, contended by NCSC consultants, flow from the disjointed practices within the criminal justice community and either reluctance or ineffectiveness in dealing with jail capacity problems systemically. Felony arrestees comprise the largest portion of the jail population and those inmates stay longer than misdemeanants; reductions in their length of stay would have a significant impact on MDC populations. In 2009, most pretrial felons were confined 8-9 months before final adjudication.⁹ Over past years, county administration developed numerous programs to reduce jail population with only marginal success.

⁶ As an example, the District Court's pending inventory was about 20% higher on February 28, 2009, than on June 30, 2004, based on the November 2009 NCSC felony caseload study.

⁷ It should be noted that any pervasive exercise of peremptory challenges and removals of a judge by counsel, which occur from time to time, can confound a balanced distribution of work among judges, one of the goals of an individual calendar system.

⁸ Governance is the exercise of political and administrative authority to manage organizational affairs. It is a continuing process through which conflicting or diverse interests are accommodated and cooperative action is taken. An effective governance model must achieve balance ensuring all affected parties have an opportunity to contribute to policy decisions but it must clearly pinpoint who has the ultimate authority to make binding decisions. Good governance is necessary to accomplish the core purposes of courts: delivering timely, effective, fair, and impartial justice for all. (See: Chief Justice Christine Durham and Daniel Becker, *A Case for Court Governance Principles*, Harvard Executive Session for Court Leaders, National Center for State Courts, 2013).

⁹ *Felony Caseflow Management in Bernalillo County, New Mexico*, National Center for State Courts (November 2009).

A federal court consent decree occasioned by a class action lawsuit on behalf of the inmates (*McClendon vs. Bernalillo County*) commenced in 1995 over conditions at a downtown Albuquerque jail that governs pretrial overcrowding, mental health and disability treatment, and housing conditions at the new MDC as well. A continual concern by county officials is avoiding a consent decree violation. (Although the design capacity of the MDC is 2,236 inmates, that figure includes hospital beds and other unavailable space for the general population. The federal court consent decree cap is 1,950 inmates). In 2010, the average daily population was 2,483 or 111% of its rated capacity. When the MDC reaches limits close to the consent decree threshold, inmates are transported and housed in holding facilities outside the county as far away as Texas. Millions of dollars in costs for the county (i.e. taxpayers) have resulted. In 2013, as an example, the County budgeted \$11.4 million for out-of-county transfers of inmates expected to occur in 2014.

In 2012, Bernalillo County contracted the National Center to estimate the potential impact of better criminal caseflow management on the MDC inmate population. The analysis, issued in January 2013, estimated improvements in felony processing had a potential to reduce the average MDC population by as much as 210-250 inmates. Also, the report stated that streamlining caseflow by implementing recommendations contained in an earlier comprehensive National Center felony case management study (circa 2009) would be the equivalent of adding one more judge, two to three more prosecutors, and two to three more public defenders as well as a comparable number of additional support staff who work on criminal cases. (Appendix A: Highlights of NCSC Report, November 2009.)

II. Raising the Level of Urgency

John Kotter, a renowned expert in organization and transformational change, maintains that efforts to alter attitudes, values, beliefs and behavior “always fail to achieve their objectives when complacency levels are high.”¹⁰ Without a sense of urgency people won’t give the extra effort essential to experiment and incorporate new ways of doing things, instead they’ll cling to the status quo.¹¹

Despite assorted consultant studies, reams of data about felony delay, caustic news articles, and a federal lawsuit and consent decree on jail overcrowding, across-the-system

¹⁰ Kotter, John P., *Leading Change*, Harvard Business School Press, Boston, MA (1996), p. 4.

¹¹ John Kotter’s research and writings on successful organizational change are acclaimed by academics and business and government leaders alike. He identifies an eight-step process that leaders generally must follow, consciously or unconsciously, to accomplish impactful and sustainable change. National Center consultants have found Kotter’s process relevant to the complex world of courts and criminal justice systems. Interestingly, the steps taken in reducing felony case delay and jail overcrowding in Bernalillo County parallel many of Kotter’s prescriptive and sequential steps, including the needs to (1) establish a sense of urgency, (2) create a guiding coalition, (3) develop a vision and strategy, (4) communicate the change vision, (5) empower broad-based action, (6) create short-term wins, (7) consolidate gains while produce increasing amounts of change, and (8) anchor new approaches in the culture of a system or organization. This monograph uses that general framework to lend understanding and legitimacy to the processes, decisions, and actions taken by the Legislature, Supreme Court, Second Judicial District, Bernalillo County Government, and the Commission to date.

problem solving in the state's largest urban county languished. Then in 2013, whether through fate, planning, or politics, the New Mexico Legislature raised the level of urgency, supported and aided by the Supreme Court. A special guiding coalition of criminal justice entities in the county was created called the BCCJRC. The Commission has prompted a wave of action. Criminal justice problems in the county moved from a local focus with no agreeable and workable solutions in play to a mandate for action by the leaders of the Legislative and Judicial Branches of State Government. The problems were no longer merely local matters.

The Commission was empowered to review “...*the judicial process, sentencing, community corrections alternatives and jail overcrowding, for the purposes of identifying changes that will improve each members’ agency or organization’s ability to carry out its duties in the criminal justice system and ensuring that criminal justice is indeed just.*” (Appendix B: BCCJRC enabling legislation, HB 608). Many metropolitan counties in the country have similar coordinating councils, but few are enabled by a state legislative to act and required to be led by the director of a Supreme Court’s statewide administrative office. The principal leaders of the major criminal justice organizations in the county were designated as members of the Commission.

Shortly after the development of the Commission, the National Center, a long-time advocate for criminal justice reform in Bernalillo County, was asked by its leaders to help identify “impediments to progress toward the goals set out by the New Mexico Legislature.” On **October 20, 2013**, the Center formally contracted with Bernalillo County Government to advise and assist the Commission.

A few weeks later, on **November 4-7, 2013**, two NCSC consultants, Hon. Joseph P. Farina, Chief Judge, Eleventh Judicial Circuit of Florida (a part-time consultant from Miami/Dade County), and Gordon Griller, full-time Principal Court Management Consultant, traveled to Albuquerque to meet and interview various Commission members and their staffs. Both Judge Farina and Mr. Griller were part of the 2009 NCSC team that studied and produced an earlier report for Bernalillo County that outlined various problems and suggested remedies to reduce jail overcrowding and court delay (Appendix A: Highlights of NCSC Report, November 2009).

The purpose of the visit was to assess the current situation, including unaddressed issues since the 2009 report, and identify promising corrective options. Artie Pepin, Director of the Administrative Office of the Courts (AOC) and Chairman of the Commission, and Fern Goodman, General Counsel for the AOC, accompanied the NCSC consultants. It was concluded by the Center and AOC officials that many of the problems identified four years previously remained, some had grown worse; only a few had slightly improved. Subsequently, a letter was written by the NCSC consultants to Mr. Pepin suggesting the New Mexico Supreme Court take a stronger role in advancing change, principally within the courts.

Two important Commission meetings followed the visit by Judge Farina and Mr. Griller. On **December 12, 2013**, Mr. Pepin, Chair of the Commission, outlined the nature and extent of the unresolved problems remaining and requested Commission members to review the list and propose possible solutions. A core working group of staff members from the criminal justice agencies were selected to gather additional data and help identify alternatives to prompt improvements.

On **January 16, 2014**, the Commission began its development work in earnest. In laying a foundation to more creatively act together, the group began by discussing ways to increase trust and cooperation among themselves and their agencies. They agreed that high levels of trust were necessary in changing systems as complicated and intertwined as criminal justice practices. In many ways at that point their focus began to change. They became invested in challenging the status quo not defending it. They tacitly committed themselves as a group to examine the process as a whole by putting justice goals first (a selfless focus), embracing new knowledge and approaches without preconceived judgments (an intellectual focus), and refraining from making critical public statements about untried solutions until they were tested (implementation focus).

The justice system stakeholders also reviewed a series of suggested AOC plans to reduce case processing delays and speed caseflow (e.g. limits on the time to disposition for criminal cases, sanctions for lawyers who unnecessarily delay the timely movement of cases, and reductions in felony prosecution by grand jury in favor of prosecution by information). The Second Judicial District Chief Judge and Presiding Criminal Judge were asked to develop and submit a proposal to the Supreme Court regarding a time to disposition rule outlining manageable timelines and sanctions for failure to meet deadlines. The District Court, in turn, requested the DA, PD, and the private defense community to offer suggestions for consideration by the Criminal Division judges.

III. Sparking Reform from the Top: The Supreme Court Weighs In

Change is not a function of circumstance; it's a matter of conscious choice.¹² As the Commission began its work in the spring of 2014, the New Mexico Supreme Court made a deliberate decision to spearhead improvements in felony case processing at the Second Judicial District. On **June 19, 2014**, all Justices of the New Mexico Supreme Court formally met with the Commission in Albuquerque to review two proposals submitted to the Commission to reduce felony case delay and unnecessary incarceration; a District Court plan and a counter design offered by the PD. The District Court plan, endorsed by all 10 Criminal Division judges, called for differentiated case management (DCM); essentially a triage approach with cases assigned to different tracks (i.e. expedited, standard, complex) within 35 days of arraignment or waiver of arraignment based on realistic distinctions in case processing requirements designated in a

¹² Collins, Jim, Good to Great. Harper Collins, Inc., New York, NY (2001).

scheduling order.¹³ Relatively routine cases with straightforward legal and factual issues and having minimal problems regarding witnesses and evidence (Track 1) would be set for trial within 7 months of arraignment. Cases involving more serious charges, motions in limine, witness and evidence issues (Track 2) would be set 10 months out from arraignment. Complex cases calling for more ongoing and extensive involvement of the court due to the difficulty of the issues and fact situations (Track 3) would be governed by speedy trial rules, trials being set 12 months from arraignment. Failure of a party to comply with a scheduling order would subject them to sanctions including reprimand, suppression/exclusion of evidence, dismissal or monetary fines. For exceptional circumstances the court would grant one extension (continuance) for up to 30 days.

The PD proposal suggested the creation of a master calendar system. In the pretrial process (prior to sending a case to the master assignment judge) cases would follow a pre-set pattern that included discovery exchange, pretrial offers/negotiations, and a formal criminal settlement conference. Once a case reached a trial ready stage, it would be channeled to a master calendar judge with authority to assign it to a cadre of available judges for hearings and trials.

Both proposals reflected significant improvements over the status quo. When asked by the Chief Justice how the Commission would like to proceed in considering the two proposals, there was unanimous agreement that any caseflow changes would only succeed if they were implemented by order of the Supreme Court. Both plans were taken under advisement by the Supreme Court and the District Court and the AOC set out to craft a feasible solution based on the work and testimony from the Commission.

IV. Developing a Vision and Strategies for Caseflow Reform

On **July 29, 2014**, all Supreme Court justices met a second time in Albuquerque with the District Court judges, DA, PD, and law enforcement agencies to review a draft case management order (CMO) developed by the AOC using elements from both District Court and PD proposals. The CMO called for:

- A bi-furcated assignment system with seven Criminal Division judges assigned to a “new calendar” composed of all cases less than 6 months old and three Criminal Division judges assigned to a “special calendar” of backlogged cases developed under the existing system older than 6 months;
- New calendar cases would be assigned to one of three DCM tracks pending a status hearing before the assigned judge and set for trial within 180, 270, or 365 day limits depending on their complexity with dismissal as a sanction;

¹³ Within 35 days of the arraignment, the court conducts a status hearing to review the nature and issues in the case. And within 15 days of the status conference, the court would enter a scheduling order placing the case on one of three tracks based on its case complexity and case priority.

- Mandatory required actions for discovery for new calendar cases were required to be placed in a scheduling order within 30 days of arraignment (or waiver of arraignment);¹⁴
- New calendar judges would be rotated among three assignment blocks scheduled for a week or more at a time on (1) trials, (2) motions and sentencing, and (3) arraignments, pleas and miscellaneous matters with two judges serving in each block and the seventh judge acting as “back-up” for the others;
- Special calendar cases were to be divided evenly among the three assigned judges, reviewed as to their status and the assigned judges were required to hold hearings to resolve them;
- One of the three special calendar judges would serve as a supervising judge to coordinate the work of the special calendar docket; and
- The eventual reassignment of special calendar judges upon the elimination of the backlog would eventually take place under a range of options as determined by the District Court.

The basic concepts contained in the CMO remained largely intact over the next few months as judges, lawyers, and staff added supporting and peripheral features including specific sanctions against lawyers who are unprepared, a three week rotation for “new calendar” judges, and provisions for additional judicial support including pro-tem and visiting judges. The Supreme Court adopted the draft CMO on **October 15, 2014**, with an effective date of January 12, 2015. Later, the date was changed to February 2, 2015, to allow more time to organize the new case processing approach. The final features of the CMO were adopted by the Supreme Court on **November 6, 2014**. The primary elements of the CMO are outlined in Table 1 on the next page.

¹⁴ Depending on the track assignment, time deadlines were established for plea agreements, pretrial conferences, notices for an interpreter, pretrial motions, responses to motions, witness interviews, and disclosure of scientific evidence.

Table 1: Second Judicial District Court Pilot Criminal Case Management Plan

Calendar designation	Special Calendar	Current Calendar
Purpose	Eliminate backlogged case	Process newly filed cases
Enabling authority	Rule LR2-400 NMRA. Commonly referred to as the CMO Adopted unanimously by the New Mexico Supreme Court, November 6, 2014	
Case types included	All criminal cases, except special proceedings in Art. 8, Criminal Rules of Procedure ¹⁵	
Assignment mechanics	Individual calendar	DCM calendar with 3 tracks
✓ Initial case assessment	Status hearing on every case Scheduling order set for cases not dismissed or on warrant	Status hearing <30 days after arraignment. Cases set on 180/270/365 day tracks to trial date. Findings required for 365 day assignment (Track 3)
✓ Ongoing case assessment	Based on periodic status hearings	Based on periodic status hearings
Judges assigned	3	7
Number of cases (estimate)	4,800 cases (1,600 per judge)	4,830 cases (690 per judge)
Case affected	All cases filed before July 1, 2014	All cases filed on or after July 1, 2014
Pilot program start date	February 2, 2015	February 2, 2015
Continuances		
✓ Pretrial period	Contingent on case	Limited to 15 days total
✓ Trial date	Contingent on case	Up to 30 days for causes beyond control of parties ¹⁶
Rotation of judges	None	Determined by Criminal Presiding Judge
Rotation blocks	None, cases divided evenly Each case reviewed as to status with scheduling order set regarding pretrial processes	✓ trials ✓ motions, sentencings ✓ arraignments, pleas, miscellaneous ✓ backup judge
Discovery management	Determined by judge/parties	Mandatory required action via scheduling order
Supervising judge	Master calendar judge (selected from the 3 judges) coordinates case distributions/assignments	Criminal Presiding Judge
Preemptory excusals	No right to an excusal	Right to excusal per existing criminal rules
Caseflow data	Required, sent to Supreme Court	Required, sent to Supreme Court
Future changes	Reassignment to current docket	Remain on current dockets

V. Gaining Momentum and Support from the Trial Court

As momentum built during the summer and fall of 2014, judicial and court leadership in the Second Judicial District began to exhibit a new sense of dedication to the success of the CMO and the developing changes. There likely are multiple causes, although three reasons tend to stand out.

Judge Nan Nash became the top administrative judge for the court bringing fresh viewpoints as a former Civil Division judge where calendars were in good order and embraced many of the caseflow practices targeted for criminal cases. Her previous involvement on various statewide Judicial Branch committees, boards, and task forces (e.g. Chair, Alternative Dispute Resolution Task Force, Member, Judicial Standards Commission, etc.) provided her with high-level leadership skills in working with the Supreme Court and managing complex projects.

¹⁵ These proceedings include probation violations, sentencing modifications, fugitive complaints, extraditions, habeas corpus, and appeals.

¹⁶ Requires a finding in writing by the assigned judge and approval by the chief judge or designee.

Secondly, National Center consultants have found that when irrefutable data is assembled about unnecessary and inordinate delay in a court's caseflow, judges and court leaders typically rally in support of stronger judicial controls over the adjudication process. Ernie Friesen, author, researcher, and authority on caseflow management, refers to this mindset change as embracing the *Doctrine of Judicial Responsibility*. The doctrine, central to sound principles of judicial and court administration, is based on two assertions. The court is the only neutral party in the adjudication of publicly filed civil and criminal disputes. All other parties have a vested interest in the outcome; the court's only interest is justice. Also, the court as a government forum for the peaceful resolution of disputes has a duty to manage the pace of litigation in responsible and efficient ways to avoid needless delay which can harm the ability to achieve just outcomes (i.e. "justice delayed is justice denied").

Third, when presented with case management data that shows how many times the same cases are scheduled before a judge, the number of continuances amassed due to unprepared parties, or the time elapse between major events in the adjudication process when nothing happens to move the case forward, most judges are astonished. And that realization, coupled with a greater understanding that proven remedies (best practices) exist to manage preventable delay uniformly and consistently courtwide, most judges embrace systemic changes more readily and quickly understanding their jobs become easier with less meaningless redundancy.

VI. Generating Short-Term Wins to Reduce Jail Overcrowding

In tandem with the Commission's analysis and suggested revisions of the CMO, a county-funded work group, quietly without fanfare, developed and expanded a series of pretrial supervision programs and specialized initiatives for arrestees in lieu of incarceration. Historically, county leaders have been quite willing to institute a wide variety of measures, even though some are costly, to diminish in-custody levels at the MDC. The return on investment vis-à-vis the expense of incarceration and rampant recidivism has been validated numerous times across the country. MDC inmate levels began to drop and overall savings for the county increased and were widely documented.

Mr. Pepin reviewed a series of these short-term wins in a **November 18, 2014**, presentation to the New Mexico Legislative Finance Committee. As early successes, they were highly visible, unambiguous, and clearly related to the overall efforts of the Commission. Admittedly, these series of changes were "one-off initiatives" specifically targeting the MDC. The successes of these early-on jail population reforms built credibility for the Commission, won over a number of skeptics and fence-sitters, and strengthened the resolve of true believers. Additionally, their accomplishments have aided the Commission in successfully testing part of its mission against concrete conditions. Highlights describing these reforms are outlined in Table 2 on the next page.

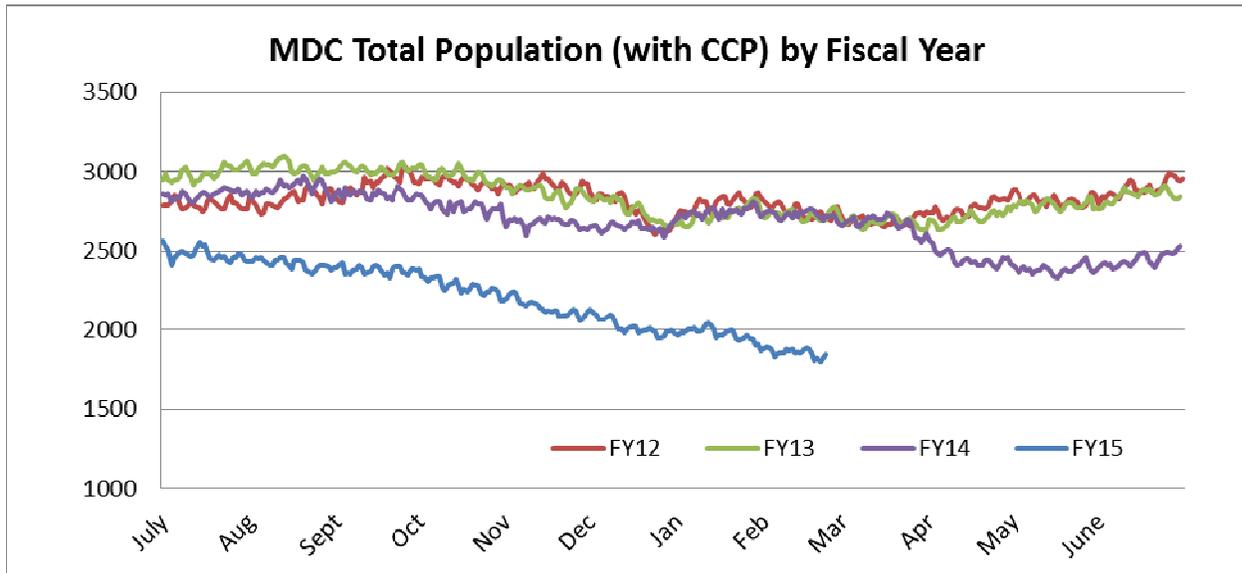
Table 2: Metropolitan Detention Center Improvements

Reform	Area/Program Effected	Result
Inmate population reduction	Pre and post trial detainees	224 inmates below 1,950 federal cap (12/2014)
Good time sentence reductions	Post trial inmates	More inmates released earlier
Pretrial program expansion	District Court	More defendants monitored on pretrial release
Early review of bonds	Pretrial detainees	Unnecessary high bonds reduced
Expanded community custody	Non-custody alternative	Expanded from 100 to 350 defendants
Printed pretrial conditions	Released defendants	More likely to understand court directives
Early hearings	Failure to appear arrestees	Faster processing through the courts
Risk assessment instrument	District Court	Better appraisal regarding detention or release
Discontinue ICE holds	MDC	More MDC inmate space available
Increased filings by information	District Attorney	Non-violent felonies processed faster
Expedited processing	Probation violations	Cases reviewed at 20 rather than 40 days
Increased use of cite and release	Law enforcement agencies	Fewer bookings; more police presence on streets
Expanded early plea program	District Court	Faster sentencing of low risk felons
Faster processing of prelims	DA Office/District Court	Reduced attorney time and case delay
Improved address accuracy	Metro/District Courts	Greater compliance with court notices
DA at first appearance	Metro Court	In-custody misdemeanor cases resolved faster
<i>Dismiss non-indicted cases</i>	<i>District Court</i>	<i>Early removal of felonies that will not proceed</i>
<i>New risk assessment instrument</i>	<i>Metropolitan Court</i>	<i>Better assessment as to detention or release</i>
<i>Expanded mental health services</i>	<i>MDC</i>	<i>Alternative to arrest and incarceration</i>
<i>e-Reminders of court hearings</i>	<i>District Court</i>	<i>More defendants appearing; fewer FTA's</i>
<i>Limit money bonds</i>	<i>Judicial decisions</i>	<i>Enhanced use of pretrial monitoring</i>

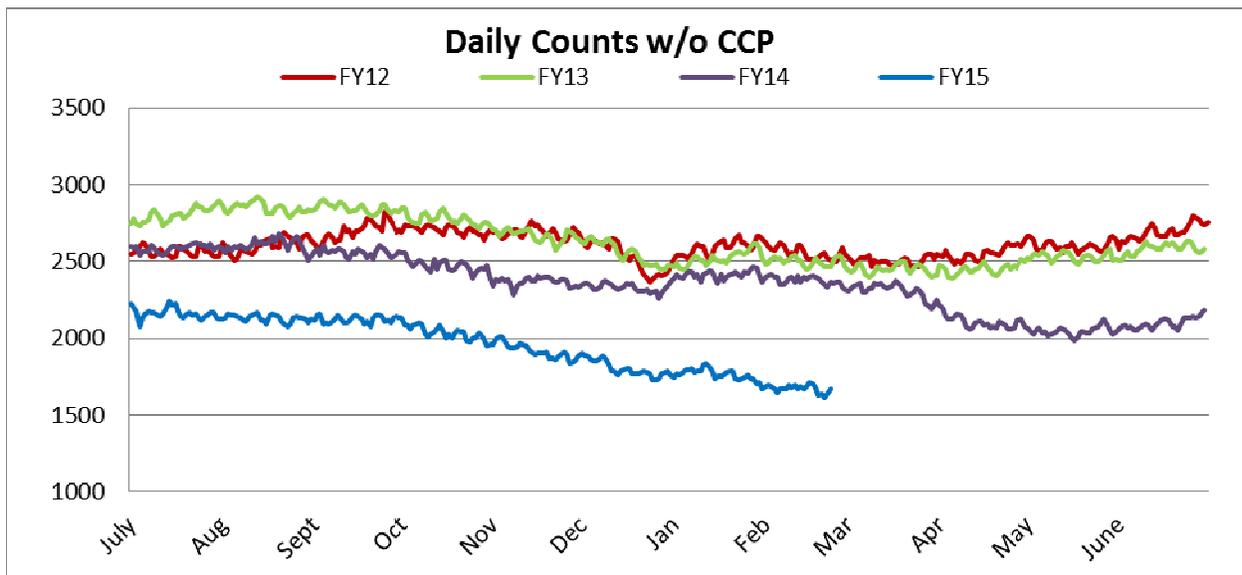
Note: *Italics* indicate reforms agreed to and likely to be implemented in the near future

The impact of these reforms in reducing jail population has been significant as depicted in the two graphs on the following page. Graph 1 indicates the MDC population including inmates transferred from the MDC to non-county holding institutions to relieve overcrowding. This initiative was dubbed the community custody program (CCP). Graph 2 depicts the population decline without the CCP transfers. It is important to consider both graphs since the county's need to purchase out-of-county beds is based on overall MDC population. As can be seen, the total population has dropped dramatically as a result of improvements in the system, and not simply by moving inmates out of the facility onto community custody. Although community custody is a good option, creating greater efficiencies in the system is much better solution for justice, the inmate, and the taxpayer.

Graph 1: Detention Center Population with the Community Custody Program



Graph 2: Detention Center Population without the Community Custody Program



The latest report (**January 31, 2015**) from the County Government Working Group shows the Commission’s initiatives continue to reduce jail population. The MDC population was below the 1,950 goal (federal court cap) during the last two months of 2014 and the first month of 2015, for the first time since 2003. On January 31, 2015, MDC had 1669 inmates and shipped no one out-of-county.

VII. Instituting a Case Management Order

On **February 2, 2015**, the new, pilot case management order approved by the Supreme Court became operational. It promises to be a change of epic proportions for the Second Judicial District.

The case processing techniques required by the CMO are based on proven, evidence-based methods supported by more than 40 years of research in case delay reduction practices nationwide. Some have labeled them *technical solutions* since they are “ready-made,” “shrink-wrapped” approaches to attack common problems of needless delay that plague numerous trial courts. They employ current know how in caseflow improvement by changing routines, rules, expectations, and preferences regarding how judges, lawyers, and staff do their work. When applied conscientiously as fixes for delay-ridden systems, they are generally successful and tend to last over time. The reforms do not damage or diminish due process requirements; rather they strengthen and enhance them by reducing unnecessary delay.

Aside from the Doctrine of Judicial Responsibility mentioned earlier, these technical solutions embrace a number of long-established delay reduction principles. Integrating them in the court’s caseflow and following them consistently has been found to yield positive results for trial courts seeking to improve the pace of litigation. Among the most important technical solutions are the following five processes, all embraced in the Supreme Court’s case management order for the Second Judicial District.

1. Early court intervention and continuous court control of case progress.

Early court control is clearly shown by research to be correlated with shorter times to disposition. In practice, early control begins with monitoring the case when it’s filed, normally part of the court’s automated case management information system. Case progress is controlled through the life of the case by ensuring, either clerically or via the case management system, it is never off calendar (relegated to judicial limbo) but always set for a next event.

2. Meaningful events and realistic case processing schedules.

For the management of case progress to be effective, the court must promote responsible and consistent preparation for court events by parties and lawyers. Professor Ernie Friesen rightly observes that more than 95 percent of all criminal cases are resolved by lawyers prior to trial. In this reality, it is vitally important for the court (especially all judges and staff) to create the expectation that a scheduled hearing, conference, or trial setting will not only occur when set, but will substantially contribute to the progress of the case toward disposition. When that expectation is commonplace, lawyers will prepare in earnest for the event, cases will resolve earlier, and the court and parties will have more time to concentrate on the smaller number of complex and problematic cases that require more preparation and attention. Realistic schedules mean parties have

enough time to prepare for an event given the complexity and priority of the case. Some cases require more time, some less. Here, DCM provides the needed technical solution.

3. Differentiated case management

DCM is a highly recommended and preferred means for ongoing court control of case progress. It includes early case screening and assignment of cases to unique processing tracks based on the amount of attention they need from judges and lawyers (complexity) and the pace at which they can reasonably be expected to proceed to conclusion (priority). The Second Judicial District approach calls for three case processing tracks: simple, standard, and complex.

4. Performance accountability linked to all participants

Time standards, limits on continuances (i.e. resets, extensions of time), and sanctions for willful noncompliance in preparing for meaningful events or abiding by established court processing schedules govern the movement of cases from filing to disposition. Each and every party, attorney, judge and court staff member involved in the flow of criminal cases is obligated and required to follow the policies and procedures set out in the Supreme Court case management order. To that end, performance statistics are generated regarding elapse times between major events, outcomes occurring at scheduled events, and the reasons, causes, decisions, and participants involved in case re-sets. The purpose is to pinpoint any reoccurring, unexpected delay that deviates from the scheduled movement of a case so corrective action can be taken whether the problem attaches to a participant or the process itself. It is hard to improve the effectiveness of a new case processing system without accurate and timely performance data.

5. Firm and credible hearing and trial dates

Hearings and trials should commence on the first date scheduled. Creation of the expectation that events will occur as scheduled is critically important. If case participants doubt that these events will be held at or near the scheduled time and date, they will not be prepared and the case will languish in the system needlessly. If, on the other hand, it is far more likely than not the hearing or trial will commence on the first-scheduled date, counsel and parties will be prepared to either formally adjudicate the matter or negotiate a resolution. Because most cases are disposed by plea or settlement, reasonably firm trial dates will produce earlier pleas and settlements as well as encourage trial preparation in cases that cannot be resolved by other means. National research shows firm hearing and trial dates are associated with shorter times to disposition in felony cases.¹⁷

¹⁷ Goerdt, John et al., *Examining Court Delay: The Pace of Litigation in 39 Urban Trial Courts* (Williamsburg, VA: National Center for State Courts).

VIII. Anchoring Changes in the Culture

National Center researchers and consultants have found that sometimes, even with the infusion of proven technical solutions, court and criminal justice systems over time have a tendency to slip back into a culture of delay where apathy, disinterest and complacency weaken momentum. “Culture,” in our circumstances here, refers to the norms of behavior and shared values among those that regularly work within the court system. In the world of processing and adjudicating cases, it largely centers on judges and lawyers and is commonly referred to as the “local legal culture.” It is a dynamic that is at play in the Second Judicial District which will shape the effectiveness of the new calendaring system in the months ahead. Understanding more about this phenomenon is important to the long-term sustainability of the current caseflow reform efforts.

In 1982, court researchers studying the pace of litigation in a series of trial courts concluded that case delay and the speed of disposition for both civil and criminal cases was not singularly conditioned by court structure, resources, procedures, caseload, or trial rate.¹⁸ Rather, speed and backlog were largely determined by the established expectations, norms, practices, and informal rules of behavior of judges and attorneys. In other words, court systems become accustomed to a given pace of litigation. In courts where the practitioners expected cases to be resolved in a timely manner, they were resolved faster. Expectations for timeliness were associated with the degree of timeliness.

Ten years later, other researchers (Eisenstein, Flemming, and Nardulli)¹⁹ studied courts in three states and identified “work orientations” (attitudes related to one’s sense of profession, efficiency, and a pragmatic notion of “how work should be done”) as a phenomenon conditioning the speed of litigation through a trial court. Their findings essentially supported the idea of a cultural affect.

In 1999, Ostrom and Hanson at the National Center studied 9 courts concluding that attorneys have distinctive attitudes toward four basic aspects of the work environment: (1) adequacy of available resources, (2) extent of clear court policies governing the pace of litigation, (3) the competency of opposing counsel, and (4) the effect of opposing counsel’s practices (i.e., plea bargaining, negotiating) on the timeliness of court resolution. Where lawyers had a positive reaction to those work environment features, the court tended to be more expeditious.²⁰

This research and numerous studies in the business, military, and nonprofit sectors suggest the phenomenon is a natural human occurrence in response to change in various

¹⁸ Thomas Church, “The ‘Old and the New’ Conventional Wisdom of Court Delay,” *7 Justice System Journal* 3, 1982, pages 395-415.

¹⁹ *The Craft of Justice: Politics at Work in Criminal Court Communities* by Roy B. Flemming, Peter F. Nardulli, and James Eisenstein. Philadelphia: University of Pennsylvania Press, 1992.

²⁰ Brian J. Ostrom and Roger A. Hanson, *Efficiency, Timeliness, and Quality: A New Perspective from Nine State Criminal Trial Courts*. Williamsburg, VA: National Center for State Courts, 1999.

organizations and work-related environments. It's important for court and criminal justice leaders to understand since it has potential to cause backsliding and disruption in the practices instituted by the recent case management order. Technical solutions can be undone, even after months or years of effort, because the new approaches have not been anchored firmly in the local legal culture.

In many caseload reform efforts, core pieces of the old local legal culture may not necessarily be incompatible with the new approaches, although admittedly, some norms will not mesh. In those situations, "the challenge is to graft the new practices into the old roots while killing off the inconsistent pieces," as John Kotter says.²¹

People adapt to a new culture only after they are convinced that the new practices and solutions collectively improve performance and produce better results (benefits) than the old methods. Once new behaviors produce better group benefits (e.g. a more responsive court, reduced case delay, lower jail populations, less recidivism, etc.), people will see the advantage of a new way of doing things whether it means easier or more simplified work for them personally, or they come to an abstract realization that the purposes and core values of the court and criminal justice system are substantially strengthened. It is at this point that sustainable change occurs.

To that end, it is the National Center's firm belief that the work of the Commission should be continued beyond its June 15, 2015, sunset date. The Commission has proven its value by successfully delivering disturbing news, raising difficult questions, and challenging the status quo in a way that justice system stakeholders could absorb, prodding them to act on the message rather than ignore it. In successfully doing so, the Supreme Court played a key role in stimulating and guiding changes through the Commission. It should continue to lead the Commission for a time to ensure the reforms are truly anchored in the culture of the county and Second Judicial District.

²¹ Kotter, John P., Leading Change, Harvard Business School Press, Boston, MA (1996), p. 151.

APPENDIX A

Felony Caseflow Management in Bernalillo County NM, Nov 2009: Final Report Highlights

Chapter I. What the Numbers Show about Felony Case Processing Times

Highlights of Findings:

- District Court's pending inventory was about 20% higher on 2/28/09 than on 6/30/04.
- For cases with indictment, arrest to indictment averages about 4 months, with one case taking 9 months, and many cases had no indictment 9 months after arrest.
- District Court filing to nontrial disposition averages almost 6 months, and one case took about 29 months.
- District Court filing to jury trial disposition averages almost 20 months, and one case took about 4 ½ years.
- About 60-70% of cases have failures to appear and bench warrants.

Highlights of Recommendations:

- District Court monitoring of felony case processing times should begin at arrest and should include the date of initial appearance and determination of probable cause. Scheduled court events and continuances should routinely be made available from judges' chambers to the District Court's central case information system. The Court should continue monitoring felony clearance rates and should routinely monitor how many cases were older than applicable time standards at disposition; how many active pending cases are currently approaching or older than applicable time standards; and how frequently does the trial in a case actually commence on the first-scheduled trial date.

Chapter II. Understanding the Numbers

Highlights of Findings:

- Average length of stay in pretrial detention for serious felons is about 8-9 months.
- Even with electronic records, exchange of information between Metro Center, District Court and other criminal justice partners is largely by paper.
- Initial arrest reports from APD routinely take 30-90 days to be transmitted, and there is a dramatic difference of perspective between APD and other criminal justice partners.
- APD has increased its sworn officers, but it has a shortage of non-sworn staff.
- Sixty-four percent of those booked at MDC are released from jail shortly after initial appearance in Metro Court. Most are charged with minor violations.
- Virtually all felony cases in Bernalillo County are prosecuted by indictment.
- Cases are assigned to individual judges at or soon after arraignment. The exercise of peremptory removal supports at least an appearance of "judge shopping," and some judges may have significantly fewer active assigned cases, with their approach to dealing with cases being seen as a burden on their colleagues.
- Rule 5-501 provides that unless the Court orders a shorter time, the DA must disclose discoverable evidence to the defendant within 10 days after arraignment or waiver of arraignment. The DA's Office understands this to mean that there is no entitlement to discovery before indictment.
- Continuing problems in the transmission of police reports and other discoverable information from the APD to the DA's Office are seen as a source of discovery delay.
- Rule 5-604 provides that a trial must typically commence within six months after arraignment, providing that a case can be dismissed with prejudice if trial is not started within time limits. It appears that this sanction is seldom applied, however. Since almost two-thirds of all cases had at least one bench warrant, it is likely that time extensions are often granted because a defendant had failed to appear.

Chapter II. Understanding the Numbers (continued)

Highlights of Recommendations:

- There should be a coordinated, sustained effort toward integrating and sharing electronic data among the various digitized case management systems in the county.
- The District Court should explore the possibility of assuming responsibility for felony inmate jail monitoring from the County.
- The APD Records Department should be reorganized and staffed more appropriately. Electronic field automation incident reporting should be integrated with Records Department business practices and paper records from other sources.
- Compatibility between BCSO and APD electronic computer report writing systems should be sought. The DA's Office and the Public Defender's Office should adjust business processes and introduce software as necessary to promote efficient electronic receipt of law enforcement reports and discoverable information.
- Serious consideration should be given to ways that more cases can be resolved before indictment.
- A probation violation calendar should be established by the District Court and overseen by a specially-assigned PV judge, who need not be the sentencing judge.
- The DA's Office should consider having many more felonies prosecuted by information rather than by indictment. An ad hoc committee led by the Chief Judge and composed of knowledgeable and high-level prosecutors and defense lawyers should be created to explore earlier discovery exchange geared toward prosecutions by information and early pleas at or before District Court arraignment.
- Consistent with its authority under Rule 5-501 to order earlier discovery, the District Court should encourage the DA's Office to disclose discoverable information before indictment to allow an experienced attorney from the Public Defender's Office to review a case before indictment and engage in discussions with a prosecutor about a possible plea or the most suitable way to proceed on felony charges.
- After communication with the District Attorney's Office and the Public Defender's Office, the District Court should consider the introduction of a plea cutoff policy to promote earlier pleas and greater certainty of trial dates. (See Appendix E for more details.)
- The Criminal Division should adopt a policy limiting unnecessary continuances, reflecting best practices for the management of criminal cases and the need to provide credible trial dates. (See Appendix D for a model continuance policy.) This policy should be applied with reasonable consistency by all the judges of the Criminal Division.

Chapter III. Comprehensive Caseflow Management Improvement Program

Based on their assessment of felony case-processing situation in Bernalillo County, the NCSC project team members offer an overall program for felony caseflow management improvement with the following features:

- There should be consensus and commitment to caseflow management among Criminal Division judges.
- The DA's Office should work with law enforcement on early provision of reports and early discovery exchange.
- C. Defense counsel must have early contact with clients and be conversant with cases at the first pretrial conference.
- There should be established criteria for success in timely case processing.
- Information technology improvements are needed to provide efficient information exchange and effective case status monitoring.
- The District Court and each of its criminal justice partners should take steps to exercise active caseflow management.
- There should be consensus about priorities and implementation steps.

APPENDIX B

AN ACT – HB 606

**RELATING TO CRIMINAL JUSTICE; CREATING THE BERNALILLO COUNTY
CRIMINAL JUSTICE REVIEW COMMISSION; PROVIDING DUTIES AND
REQUIRING A REPORT.**

BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF NEW MEXICO:

SECTION 1. BERNALILLO COUNTY CRIMINAL JUSTICE REVIEW COMMISSION.

A. The "Bernalillo county criminal justice review commission" is created to exist from July 1, 2013, through June 30, 2015.

B. The commission shall be composed of the following members or their designees:

- (1) the chief judge of the second judicial district;
- (2) the chief judge of the Bernalillo county metropolitan court;
- (3) the second judicial district attorney;
- (4) the Bernalillo county sheriff;
- (5) the chair of the board of county commissioners of Bernalillo county;
- (6) the chief of the Albuquerque police department;
- (7) the district public defender of the second judicial district;
- (8) the director of the administrative office of the courts, under the supervision and direction of the supreme court;
- (9) the region manager of region 2 of the adult probation and parole division of the corrections department; and
- (10) the executive director of the New Mexico association of counties.

C. The director of the administrative office of the courts, or the director's designee, shall chair the Bernalillo county criminal justice review commission. The chair shall call the first meeting of the commission to take place within thirty days of the effective date of this section, and the commission shall subsequently meet at the call of the chair. The commission shall organize itself in a manner appropriate to accomplish its duties pursuant to this section. The commission may call upon any of its members' agencies or organizations to support the work of the commission.

D. The Bernalillo county criminal justice review commission is charged with reviewing the criminal justice system in Bernalillo county, including the judicial process, sentencing, community corrections alternatives and jail overcrowding, for the purposes of identifying changes that will improve each members' agency or organization's ability to carry out its duties in the criminal justice system and ensuring that criminal justice is indeed just. State agencies shall provide prompt and pertinent responses to reasonable commission requests for information or support.

E. Following its review of the Bernalillo county criminal justice system, the Bernalillo county criminal justice review commission shall make written recommendations for revisions or alternatives to local and state laws that in the determination of the commission will serve to improve the delivery of criminal justice in Bernalillo county. A copy of the report shall be provided to each member of the board of county commissioners of Bernalillo county, to the administrative office of the courts, to the New Mexico association of counties, to the legislative finance committee and to the appropriate interim legislative committee.