STATE OF NEW MEXICO
OFFICE OF THE ATTORNEY GENERAL

HECTOR H. BALDERAS
ATTORNEY GENERAL

January 25, 2021

The Honorable Dianna Luce
District Attorney
5th Judicial District
400 N. Virginia Avenue
Suite G-2
Roswell, NM 88201-6222

RE: Opinion Request on Pecos Valley Teen Court being considered a "local drug abuse resistance education program" under NMSA 1978, Section 31-20-6(E)

Dear Honorable District Attorney Luce;

QUESTION PRESENTED

Can Pecos Valley Teen Court ("PVTC"), an alternative sentencing program, be considered a "local drug abuse resistance education program" under NMSA 1978, Section 31-20-6(E) (amended 2007), and therefore be eligible to receive monetary contributions ordered by a court as a condition of a criminal defendant's deferred or suspended sentence?

CONCLUSION:

PVTC does not constitute a "local drug abuse resistance education program" under current New Mexico law, which refers to a specific program – Drug Abuse Resistance Education, otherwise known as D.A.R.E. Teen court is not a recognized D.A.R.E. program, is operationally different from D.A.R.E., and provides services unrelated to drug education.

ANALYSIS:

New Mexico courts have limited discretion to determine conditions for probation absent express statutory authorization. *See State v. Taylor*, 1986-NMCA-011, ¶ 36, 104 N.M. 88. If a metropolitan, magistrate or district court chooses to defer or suspend a criminal sentence, New Mexico law requires that the court impose certain conditions "to ensure that the defendant will observe the laws of the United States and the various states and the

ordinances of any municipality." Section 31-20-6. The law provides that a court shall impose certain conditions, such as paying the actual costs of supervised probation, and also gives the court discretion to impose certain other conditions. Among these other conditions, the court may require a defendant to make a monetary contribution to one of three listed programs - "a local crime stopper program, a local domestic violence prevention or treatment program or a local drug abuse resistance education program." Section 31-20-6(E). Because the statute does not define "a local drug abuse resistance education program", we must apply the rules of statutory construction to determine whether PVTC could constitute "a local drug abuse resistance education program," as contemplated by the legislature.

Generally, the "plain language of a statute [is] the primary indicator of legislative intent." *State v. Willie*, 2009-NMSC-037, ¶ 9. However, if the plain meaning of a statute is ambiguous or doubtful, courts will examine the statute as a whole and "construe the law according to its obvious spirit or reason." Id. This rule of analyzing legislative intent emphasizes that "[l]egislative enactments are to be interpreted to accord with common sense and reason." *Padilla v. Montano*, 1993-NMCA-127, ¶ 23 (citations omitted).

The most common use of "drug abuse resistance education" generally is in relation to a known national 501(c)3 organization founded in 1983, which uses the program acronym D.A.R.E. (Drug Abuse Resistance Education). The D.A.R.E. program brings local law enforcement into schools to aid in educating students about drug use and its dangers. While still in existence today, in the 1980s and 1990s the D.A.R.E. program was introduced prolifically in schools around the country. In 1990, proposed federal legislation titled the Drug Abuse Resistance Education Act specifically described the D.A.R.E. organization. *See https://www.dare.org/*. Other states have identified drug abuse resistance education and specifically reference the national D.A.R.E. program in law. *See e.g. Tennessee Drug Abuse Resistance Education (DARE) Act of 1989, Tenn. Code Ann.* § 49-1-401 (2009). In Iowa, state regulation recognizes that drug abuse resistance education programs are distinct. See Iowa Code Ann. § 602.8108 (2016) ("[money] is appropriated [to] the drug abuse resistance education program *and other programs directed for a similar purpose*") (emphasis added). Federal appeals courts specifically "reference drug abuse resistance programs" as the national D.A.R.E. organization. *See Brickey v. Hall*, 828 F.3d 298 (4th Cir. 2016) (Police officer stated, "I teach the D.A.R.E. [i.e., Drug Abuse Resistance Education] Program at [the] school [and talked to the chief] about ordering the supplies for the D.A.R.E graduation."); *See also Doe v. Beaumont Independent School Dist.*, 240 F.3d 462 (5th Cir. 2001); *Barner v. City of Novato*, 17 F.3d 1256 (9th Cir. 1994).

The legislative history of Section 31-20-6(E) supports the position that "a local drug abuse resistance education program" should be interpreted narrowly, and that it is only to be applied to programs under the D.A.R.E. organization. *See Quynh Truong v. Allstate Ins. Co.*, 2010-NMSC-009, ¶ 33, 147 N.M. 583, (citations omitted) ("With these general interpretive principles in mind, we 'consider the statute's history and background' insofar

as it may help to 'give effect to the Legislature's intent' and aid us in construing the [statute] and applying it . . . ."). An early version of the statute gave the courts only one option if they wished to order a defendant to make a monetary contribution, namely "to a local crime stopper program that operates in the territorial jurisdiction of the court and is approved by the crime stopper commission." *See N. M. Laws* 1988, Chap. 62, §1. Then, in 1997, "a local drug abuse resistance education program" was added to subsection E, which was about the time the D.A.R.E. organization increasingly was being implemented in schools. And, in 2007, a third option, "local domestic violence prevention or treatment programs," was added to the list of options a judge may order payments be made under Section 31-20-6(E). It is worth noting that, aside from the 2007 amendment, the earlier version of Section 31-20-6(E) and its 1997 amendment both reference nationally known organizations – Crime Stoppers and Drug Abuse Resistance Education. Hence, it would be reasonable to conclude that the legislature intentionally referenced a nationally known program, and that the statute should not be extended beyond its ordinary meaning.

In addition, it would prove problematic to interpret "a local drug abuse resistance education program" as being broader than a specific reference to a program under the D.A.R.E. organization because that then also would suggest the statute's use of "crime stopper" means something broader than the nationally known program under the same name. Such argument would be particularly dubious considering the well-known Crime Stoppers program began in Albuquerque in 1976 before spreading across the country. *See* *https://www.cabq.gov/police/programs/crimestoppers*.

The New Mexico Court of Appeals has previously considered and rejected such a broad interpretation of the language in Section 31-20-6(E). *See* *State v. Dominguez*, 1993-NMCA-042, ¶ 48, 115 N.M. 445 (holding that a defendant could not be required to contribute to a local sheriff's office because the statute "does not authorize trial courts to order charitable contributions to law enforcement agencies other than local crime stopper programs"). Although a sheriff's office implements programs to stop crime, the court recognized "crime stopper programs" as a specific named entity. Similarly, although Pecos Valley Teen Court Program undeniably includes some drug resistance education in its activities, it is not a recognized drug abuse resistance education (D.A.R.E.) program.

We therefore conclude that as used by the legislature in Section 31-20-6(E), "a local drug abuse resistance education program" refers to programs affiliated with the nationally known D.A.R.E. organization. While the Pecos Valley Teen Court is a worthy program, it is not "a local drug abuse resistance education program" to which a court may order a defendant to make a monetary contribution. It is reasonable to provide funding to teen court programs through contributions ordered as a condition of a deferred or suspended sentence, but it would be dependent upon a legislative amendment to Section 31-20-6(E) that adds teen court or similar program as an additional option that the court may mandate for a defendant to contribute to.

You have requested a formal opinion on the matters discussed above. Please note that such an opinion is a public document available to the general public. Therefore, we may provide copies of this letter to the general public. If we may be of further assistance, or if you have any questions regarding this opinion, please let us know.

Respectfully,

/s/ Joseph Dworak
Joseph M. Dworak
Assistant Attorney General