

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

**July 26, 2012  
Central New Mexico Correctional Facility  
1525 Morris Road  
Los Lunas**

**July 27, 2012  
Office of the Medical Investigator  
1101 Camino de Salud NE  
Albuquerque**

The second meeting of the Courts, Corrections and Justice Committee was called to order by Representative Al Park, co-chair, on July 26, 2012 at 10:04 a.m. at the Central New Mexico Correctional Facility (CNMCF) in Los Lunas.

**Present**

Rep. Al Park, Co-Chair  
Sen. Peter Wirth, Co-Chair  
Sen. Rod Adair (7/27)  
Rep. Gail Chasey (7/26)  
Rep. Zachary J. Cook (7/26)  
Sen. Mary Jane M. Garcia (7/26)  
Sen. Clinton D. Harden, Jr.  
Sen. Linda M. Lopez  
Rep. Antonio "Moe" Maestas (7/26)  
Sen. Richard C. Martinez  
Rep. William "Bill" R. Rehm  
Sen. John C. Ryan (7/27)  
Rep. Mimi Stewart

**Absent**

Rep. Joseph Cervantes  
Rep. David L. Doyle  
Rep. Nate Gentry

**Advisory Members**

Rep. Thomas A. Anderson  
Sen. Lisa K. Curtis  
Rep. Brian F. Egolf, Jr.  
Rep. Dennis J. Kintigh  
Sen. Carroll H. Leavell  
Rep. W. Ken Martinez  
Sen. Cisco McSorley  
Rep. Bill B. O'Neill  
Sen. Sander Rue (7/27)  
Sen. David Ulibarri (7/26)  
Rep. Richard D. Vigil (7/27)

Rep. Eliseo Lee Alcon  
Rep. Cathrynn N. Brown  
Sen. William H. Payne  
Sen. John Pinto  
Sen. Michael S. Sanchez  
Rep. Sheryl Williams Stapleton

**Guest Legislators**

Rep. Alonzo Baldonado (7/26)

Rep. Nora Espinoza (7/26)

Rep. Miguel P. Garcia (7/26)

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

**Staff**

Maha Khoury, Staff Attorney, Legislative Council Service (LCS)

Douglas Carver, Staff Attorney, LCS

Leslie Porter, Research Assistant, LCS

Cassandra Jones, Research Assistant, LCS

**Guests**

The guest list is in the meeting file.

**Handouts**

Handouts and written testimony are in the meeting file.

**Thursday, July 26****Welcome and Introduction**

Representative Park welcomed committee members and guests. Committee members introduced themselves to the audience. Joseph Garcia, warden of the CNMCF, welcomed the committee to the facility.

**Prison Population Forecast**

Tony Ortiz, executive director of the New Mexico Sentencing Commission (NMSC), told the committee that, at the end of 2010, approximately 7.1 million people were under the supervision of federal or state adult correctional authorities in the United States. One-half of state departments of corrections reported decreases in their prison population during 2010. The New Mexico state inmate population reached a peak of 6,873 in fiscal year (FY) 2007. After 2007, the inmate population declined over a two-year period and then began to grow at a slow pace. The female inmate population in New Mexico has been trending upward. Currently, the female inmate population composes approximately 10 percent of the total inmate population. On June 1, 2012, the operational capacity for male inmates in the New Mexico Corrections Department (NMCD) was 6,431 beds, and the operational capacity for female inmates was 668 beds.

The NMSC attributes the stability of the total New Mexico state inmate population since FY 2007 to a number of factors. In 2006, Senate Bill 21 (Chapter 82) authorized the award of earned meritorious deductions to non-violent offenders during the initial 60 days of receipt by the NMCD. The NMSC estimates that the enactment of SB 21 yields an annual savings of 81 prison beds. In FY 2009 and FY 2012, new filings in district courts for criminal cases decreased by five percent. Other factors, such as felony drug court programs and the ability of the Adult Parole Board to impose sanctions other than a return to prison for parole violators, also contribute to the stability of New Mexico's inmate population.

The NMSC forecasts that New Mexico's inmate population will continue to grow slowly. The projected high count for the male population is 6,224 for FY 2013, 6,297 for FY 2014 and 6,879 for FY 2022. Because of the smaller size of the female population, it is more difficult to accurately forecast. The projected high count for the female population is 644 for FY 2013, 640 for FY 2014 and 718 for FY 2022.

### **Program Evaluation: Reducing Recidivism, Cutting Costs and Improving Public Safety in the Incarceration and Supervision of Adult Offenders; and Presentation of a Cost-Benefit Model**

Dr. Jon Courtney, program evaluator for the Legislative Finance Committee (LFC), Jack Evans, program evaluator for the LFC, and Gregg Marcantel, secretary of corrections, presented an LFC report regarding the NMCD. Dr. Courtney stated that the growing prison population is projected to exceed the current NMCD capacity within the next decade. In FY 2011, New Mexico spent almost \$300 million to house an average of 6,700 offenders and to supervise an additional 18,000 offenders on probation or parole. The average annual cost per inmate in New Mexico was \$34,000 in FY 2010.

Dr. Courtney told the committee that the NMCD needs more resources and needs to utilize existing resources more efficiently. The department would benefit from using more evidence-based programs to reduce recidivism, lower costs and increase public safety. According to the Pew Center for the States and the Washington State Institute for Public Policy, evidence-based programs are the best return on taxpayer investments. Less than one-fourth of the 40 programs that the NMCD runs for prisoners are evidence-based. Dr. Courtney reported the key findings of the report. Reducing recidivism by 10 percent could save \$8.3 million in prison costs and reduce victimization costs by an estimated \$40 million. In-house parole (IHP) exists as a result of difficulty finding placements for certain prisoners, including sex offenders and other hard-to-place inmates, and inmate refusal to participate in the parole process. IHP costs \$10 million each year. The report found that the NMCD does not adequately target treatment based on the risks or needs of the clients. Programs that have been proven to work in reducing recidivism on the national level have been cut by the NMCD, have long waiting lists and sometimes lack fidelity.

Mr. Evans told the committee that the NMCD should utilize the medical and geriatric parole programs established in statute. The report further recommends that the NMCD report on the medical and geriatric parole programs, prepare an implementation plan for administering and using a valid risk and needs assessment tool and work with research experts in the fields of correctional substance abuse treatment to assess program design deficiencies as well as take steps to increase the efficient use of NMCD funding as set out in the LFC report.

Secretary Marcantel told the committee that his department is aware of and attempting to correct many of the issues addressed in the LFC report. Aurora Sanchez, deputy secretary of administration, NMCD, discussed some of the issues the department faces with the Interagency Behavioral Health Purchasing Collaborative and OptumHealth. OptumHealth has been unresponsive with respect to certifying providers requested by the NMCD. The NMCD is looking for providers in order to move inmates into a transitional setting before they are released and to otherwise assist in the release of inmates. Joe W. Booker, Jr., deputy secretary of operations, NMCD, told the committee that the department is working to find placement for hard-to-place inmates. The department wants to reduce the number of inmates on IHP in order

to reduce costs and free up some beds. Secretary Marcantel told the committee that the NMCD is working diligently to address the problems identified in the report.

The committee asked questions and discussed policy options and various issues of concern, including parole violations; length of time that inmates spend in IHP; IHP costs; inmate transition and reentry upon release from the NMCD; effectiveness of various corrections programs; and the NMCD budget.

### **Sex Offender Parole and Parole Hearings**

R. David Pederson, general counsel for the Office of the Attorney General, told the committee of the upcoming and increasing need for sex offender parole hearings. Certain sex offenders are released on parole for an indefinite term up to 20 years or for the remainder of their lives. Those offenders are eligible for review hearings before the Parole Board five years after release and then at two-and-one-half-year intervals thereafter, as established in Section 31-21-10.1 NMSA 1978, to determine whether they should remain on parole. In 2012, nine people are eligible for these hearings, with seven hearings conducted and another two scheduled for September. Mr. Pederson projected that these hearings could increase to 39 by 2015. He and Jacqueline Cooper, chief public defender, informed the committee that they have put together a set of procedures to follow for these unique hearings. They and Sheri Stephens, acting director of the Parole Board, emphasized the need for funding in order to meet the requirements of the statute.

Committee members asked questions and discussed policy options. Sandy Deitz, chair of the Parole Board, joined the discussion and clarified some points on the functioning of the Parole Board.

### **Approval of Minutes**

The minutes of the previous meeting were approved by the committee.

### **Sex Offender Registration and Notification**

Representative Maestas presented the committee with draft legislation based on House Bill 298 (2011), which unanimously passed both houses of the legislature but was vetoed by Governor Martinez. He told the committee that the bill addresses many problems with current sex offender registration, including the heavy burden currently placed on sheriffs' offices. Instead of requiring renewal of registration every 90 days or annually, the bill allows for verification of registration after notice. The bill requires more information from sex offenders upon registration, including the provision of email addresses, monikers, screen names used on social networking sites, cell and other phone numbers, license plate numbers, descriptions of vehicles, schools the offenders are attending and copies of passports.

Members of the committee asked questions and discussed the draft legislation.

### **Tour of the CNMCF**

Committee members, staff and members of the public toured the CNMCF.

## **Recess**

The committee recessed at 4:15 p.m.

## **Friday, July 27**

The meeting was reconvened by Representative Park at 9:19 a.m.

### **Office of the Medical Investigator: Welcome and Update**

Amy Boulé, director of operations, Office of the Medical Investigator (OMI), welcomed the committee to the OMI facility and discussed the history and importance of the OMI in New Mexico. Ms. Boulé told the committee that in 1973, New Mexico transitioned from a county coroner system to a new system that provided for a statewide medical examiner based at the University of New Mexico (UNM) School of Medicine. She discussed how the OMI provides a quality death investigation system and some of the duties of the OMI, including determining the cause and manner of death; testifying in court; and discovering emerging trends in causes of death to facilitate and support prevention measures. She spoke of how the OMI attracts high-quality forensic pathologists and how its training produces well-trained new forensic pathologists. The OMI also focuses on public health issues specific to New Mexico. The OMI is accredited by the National Association of Medical Examiners and the College of American Pathologists. OMI funding comes from state appropriations and the UNM Department of Pathology, as well as from various contracts, fees and grants.

Committee members asked questions and discussed various issues concerning the OMI, including manner of death classification as reported on death certificates; autopsy protocol, particularly in culturally sensitive situations; how the OMI handles organ donations; and the cost of transporting bodies that have been in OMI custody back to the families and which entities are responsible for that cost.

### **Changes to the Sunshine Portal Transparency Act**

Senator Rue presented a bill draft to the committee based on Senate Bill 30 (2012), which passed both houses of the legislature last session but in different forms. The bill would have required that the names of all state employees be listed on the sunshine portal alongside their positions and salaries.

Josh Anderson, political coordinator, Council 18, American Federation of State, County and Municipal Employees, told the committee that he wants to work with the legislature to include more on the sunshine portal. He stated, however, that taxpayers deserve to know much more than the salary of every public employee. Taxpayers are entitled to know about the recipients of and the amount of money spent on various contracts. He stated that if the salary of every public employee is allowed to be listed, then the salaries of those who work for a business that contracts to do government work, such as in prisons, health care and the Motor Vehicle Division of the Taxation and Revenue Department, should also be listed on the sunshine portal.

Gwyneth Doland, executive director of the New Mexico Foundation for Open Government (FOG), told the committee that the FOG would like to provide as much information as possible on the sunshine portal. She stated that information that is public record and is subject to the Inspection of Public Records Act should be on the sunshine portal. Ms. Doland pointed out that most state agencies do not list information that is open to the public on their web sites

and that some state agencies do not list contact information for records custodians on their web sites as the law requires. She admitted that there are records and information that need to be made public and should be on the portal and conceded that the names of public employees are the non-controversial information or the "low-hanging fruit".

Committee members discussed the issues with the panel. Members were concerned about the priorities set forth in the bill and, in general, how the portal is being used. Committee members brought up various examples of contracts and other governmental activities that would benefit from the portal and disclosure. Members also discussed the move toward privatization of government work and how that would impact the portal. Senator Rue reminded the committee that the Sunshine Portal Transparency Act is a repository for all public information and, ideally, all information that is available to the public by law should be included on the portal.

### **Missing Persons and Identification of Human Remains**

Lupe Lopez-Haynes told the committee that her sister, Beatrice Lopez-Cubelos, has been missing since September 1989. She told the committee that there is no state or federal law that requires medical examiners to put information into a database. Ms. Lopez-Haynes told the committee that she would like the legislature to pass legislation that would require that medical examiners place information on missing persons into databases that are accessible nationwide; that would improve training for police officers in investigating missing persons; and that would make dental records, fingerprints and DNA mandatory for all men, women and children.

Ray Schultz, chief of police at the Albuquerque Police Department (APD), told the committee that the AMBER alert law has been very effective. He told the committee that missing persons are especially problematic because, in some situations, adults are missing because they choose to be. The APD works closely with the OMI in cases that involve unidentified remains. The APD is also in the process of creating a Child Abduction Response Team (CART). Eventually, there will be five CARTs in New Mexico, positioned for regional response. The teams involve local law enforcement and the Federal Bureau of Investigation. CART certification happens at the federal level. The APD has also implemented a silver alert, which functions similar to an AMBER alert but serves the elderly. Unlike the AMBER alert, the silver alert is not written into statute and the media is not legally obligated to broadcast these alerts.

Regina Chacon, bureau chief of the Law Enforcement Records Bureau at the Department of Public Safety (DPS), told the committee that the DPS has created a reference manual for law enforcement regarding missing persons. When a person is missing, the person is entered into the National Crime Information Center database immediately. The DPS provides resources for families and sometimes acts as a liaison between family members and law enforcement. Ms. Chacon told the committee that CART training has been available across the nation for five years, but that New Mexico has experienced difficulty implementing the teams. She stressed the need for CART in New Mexico. Ms. Chacon told the committee that, pursuant to statute, the DPS issues an endangered person advisory to the media when children, adults or elderly people are missing. The program has experienced a limited amount of media cooperation.

Dr. Peter W. Loomis, forensic odontologist, OMI, told the committee that the OMI has 90 dedicated staff members. The OMI is responsible for identifying human remains, which is sometimes very difficult. In 2011, the OMI was responsible for identifying approximately 5,300

cases of unidentified remains. The OMI was able to identify 99 percent of these. When a person is identified, the OMI reports it to law enforcement and does not disclose the information to the media. Often, remains are burned, fragmented or decomposed. Dr. Loomis told the committee that the OMI often utilizes the National Missing and Unidentified Persons System (NamUs) when identifying remains. NamUs is available to anyone and allows users to input information, including graphics, that may help someone identify missing persons.

Dr. Loomis also suggested that requiring doctors and dentists to supply records within 30 days after a person is reported missing would considerably lessen the amount of time it takes to identify remains. Mandatory input into the NamUs would also make the identification of missing persons more efficient. Wendy P. McQuade, Ph.D., forensic anthropologist, Terry Coker, deputy medical investigator, and Clarissa Krinsky, M.D., forensic pathologist, contributed to the discussion regarding the work of the OMI.

Committee members asked questions and discussed policy options. The panel of presenters clarified various issues to members of the committee. The committee and presenters discussed procedure that is followed when identified remains are unclaimed.

### **Adjournment**

There being no further business before the committee, the second meeting for the 2012 interim adjourned at 12:20 p.m.