

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

**October 19-20, 2006
Bob Moran Multi-Purpose Room
New Mexico Junior College
Hobbs**

The fifth meeting of the Courts, Corrections and Justice Committee for the 2006 interim was called to order by Representative Joseph Cervantes, co-chair, and Senator Cisco McSorley, co-chair, on Thursday, October 19, 2006, at 10:25 a.m. at the New Mexico Junior College in Hobbs.

Present

Rep. Joseph Cervantes, Co-Chair
Sen. Cisco McSorley, Co-Chair
Sen. Carroll H. Leavell
Sen. Richard C. Martinez
Rep. Al Park
Rep. Peter Wirth

Advisory Members

Sen. Gay G. Kernan
Rep. Jane E. Powdrell-Culbert

Absent

Sen. Rod Adair
Rep. Thomas A. Anderson
Rep. Gail Chasey
Sen. Lidio G. Rainaldi
Sen. H. Diane Snyder
Sen. Leonard Tsosie
Rep. Eric A. Youngberg

Sen. Ben D. Altamirano
Rep. Hector H. Balderas
Sen. Kent L. Cravens
Sen. Mary Jane M. Garcia
Sen. John T.L. Grubestic
Sen. Clinton D. Harden, Jr.
Sen. Linda M. Lopez
Rep. W. Ken Martinez
Sen. Gerald Ortiz y Pino
Sen. William H. Payne
Rep. Bill Rehm
Sen. John C. Ryan
Sen. Michael S. Sanchez
Rep. Sheryl Williams Stapleton
Rep. Mimi Stewart
Rep. Thomas E. Swisstack
Sen. James G. Taylor

Staff

Maha Khoury
Evan Blackstone
Lindsey Bilovesky

Guests

The guest list is in the meeting file.

Copies of all handouts and written testimony are in the meeting file.

Thursday, October 19

Call to Order

Senator McSorley and Representative Cervantes called the meeting to order. Senator Leavell welcomed the committee to his district. He recognized members of the public and introduced committee members and staff.

Welcoming Remarks

Harry Teague, Lea County Commission chair, welcomed the committee to Lea County. He emphasized that Lea County used to feel like "little Texas", but now truly feels like a county of New Mexico.

Dr. Steve McCleery, president of the New Mexico Junior College, thanked committee members for hosting their meeting at the college. He commented on services the college provides, such as housing the Law Enforcement Academy and training corrections officers.

Keith Rice, Lea County sheriff, welcomed the committee on behalf of all law enforcement officials. He offered to help committee members by answering any questions they had during their stay in Hobbs.

Committee Business

Attending members of the committee recommended approval of the minutes.

New Mexico Sentencing Commission Update

Michael Hall, executive director of the New Mexico Sentencing Commission (NMSC), described the commission's duties. Mr. Hall explained that the NMSC serves as a clearinghouse for New Mexico's justice system data, as well as housing the Sex Offender Management Board and the Justice Information Sharing Council (JISC). NMSC also doubles as an objective expert research group at the University of New Mexico. Mr. Hall described the JISC and its services to committee members. He highlighted new programs, such as the Consolidated Offender Query, that allow criminal justice personnel to gather detailed case information for DWI cases, protective orders, sex offender cases and warrant information.

Tony Ortiz, deputy director, NMSC, discussed the recent workload assessment study for judges, district attorneys and public defenders. Mr. Ortiz is collecting data from all entities in the judicial system. Over the last six months, he has met with each different judicial agency to decide how to most effectively collect the data. Following the data collection, an advisory group will compare the statistics to national standards. This study will provide evidence-based information that may help support the departments' legislative requests.

Mr. Ortiz also explained draft legislation that would require bills that increase criminal penalties to reflect cost increases that may occur as a result of the penalty change. The cost increase would be indicated on the face of the bill. This proposed process would cost an additional \$70,000 per year for staff at NMSC to estimate the increase, but may ultimately help the justice system with underfunding. Lastly, Mr. Ortiz discussed draft legislation developed by NMSC that uses a formula to distribute money to counties to reimburse them for housing felony offenders in county detention facilities.

Randall Cherry, senior general counsel, NMSC, discussed the Sex Offender Management Board. Work groups include: the adult treatment work group, the adult supervision guidelines work group, the juvenile treatment work group and the juvenile supervision guidelines work group. He described risk assessment tools and emphasized that treatment impacts recidivism. He noted a request that a member of the Native American community be added to the board to help make educated, culturally sensitive decisions in Native American cases. Senator Leavell invited public comment. Committee members discussed possible solutions and asked questions of the panel.

Update on the Implementation of Katie's Law

John Krebsbach, chair of the DNA Oversight Committee, updated the committee on the implementation of Katie's Law that will go into effect on January 1, 2007. Improved DNA collection kits have been created instead of the large cotton swabs that could potentially be used as weapons. The new swab is smaller and does not have to be refrigerated. However, the new kit is slightly more expensive, costing \$4.30 per kit. Saving on storage expenses will make up for the difference in cost. Mr. Krebsbach and his staff have also: created a list of qualifying offenses that will simplify the process of charging a suspect; created an electronic method of verifying previously collected samples; rewritten the software program; gained new hardware and computer connections; and started on-site training. Senator Leavell invited public comment. Committee members discussed possible solutions and asked questions of the panel.

The committee recessed for lunch at 12:38 p.m. and reconvened at 1:42 p.m.

Fifth Judicial District Court: Welcome and Update

Gary Clingman, chief judge of the Fifth Judicial District, and Cynthia Ohrazda, Lea County chief juvenile probation officer, welcomed the committee to Lea County. Ms. Ohrazda explained that Lea County is using an array of graduated sanctions for juveniles and risk assessment tools. She stated that the Juvenile Detention Center in Lea County is a regional facility. Currently, 13 juveniles are being housed from Lea and Eddy counties. Ms. Ohrazda discussed statistics for adjudication and referrals. She also mentioned that meth use is a major problem for children in juvenile detention. The accessibility and affordability of meth contributes to the problem. A major problem in her department is staffing. Ms. Ohrazda said that she is having trouble keeping the juvenile probation officer positions filled. Senator Leavell invited public comment. Committee members discussed possible solutions and asked questions of the panel.

Report from the Judiciary: Unified Budget and Proposed Legislation

Edward L. Chavez, New Mexico Supreme Court justice, began by introducing the judges and other members of the judiciary present at the meeting. James J. Wechsler, Court of Appeals judge, presented the judiciary's unified budget and priorities such as adequate base budgets, staff

salary increases, information technology initiatives, replacement of drug court funds, new staff, expanding and creating children's programs, expanding the drug court system, new judgeships, increasing salaries of court interpreters and other initiatives. Judge Wechsler also discussed performance measures and staffing details.

Arthur W. Pepin, director of the Administrative Office of the Courts, presented proposed legislation for fiscal year 2008, including new judgeships; drug court funding; court and district attorney facilities; increased jury pay; a Judicial Performance Evaluation Fund; the creation of a Court of Appeals Building Commission; an increase in the Bernalillo County Metropolitan Court judges' salaries; enhanced background checks in Bernalillo County Metropolitan Court; mental health court programs; restorative justice programs; pretrial services; the creation of a Municipal Court Support Division; and cleanup language for designated magistrate jurisdiction.

Michael Bustamante, Court of Appeals chief judge, and Gina Maestas, Court of Appeals chief clerk, discussed the status of the Court of Appeals Annex at the University of New Mexico School of Law to house judges and staff and include storage space. Judge Bustamante emphasized that a Court of Appeals Building Commission would ensure a transparent process.

Felix Briones, chair of the Judicial Performance Evaluation Commission (JPEC), described the work of the commission. The JPEC provides recommendations on judge retention based on merit since 1988. Mr. Briones spoke about proposed legislation for a nonreverting fund and compared New Mexico's budget and practices with that of surrounding states.

Judith Nakamura, Bernalillo County Metropolitan Court chief judge, described a pilot program in which \$400,000 would be used to hire personnel to perform more thorough background investigations of defendants posting bonds or responding to summonses. Judge Nakamura asked for an appropriation from the legislature for the program. She also requested an increase in metropolitan judges' salaries in hope of attracting quality judges. Senator Leavell invited public comment. Committee members discussed possible solutions and asked questions of the panel.

Tour

Committee members, staff and visitors toured the Lea County Correctional Facility.

Recess

The committee recessed at 6:45 p.m.

Friday, October 20

Call to Order

Senator McSorley and Representative Cervantes reconvened the committee at 9:20 a.m. at the New Mexico Junior College in Hobbs and welcomed members and guests. Senator Leavell asked for a short presentation from District Attorney Terry Hate about the difficulties in attracting prosecutors to Lea County.

Prosecuting in Lea County

Mr. Hate emphasized the importance of quality career prosecutors. The District Attorney's Office cannot attract quality prosecutors because it cannot pay them enough. He also

described how difficult it is to move up in the business. Mr. Hate said most moves are lateral and staff turnover is a problem. Senator Leavell invited public comment. Committee members discussed possible solutions and asked questions of Mr. Hate.

New Mexico Corrections Department: Overcrowding, Springer, Clayton and Camino Nuevo

Joe Williams, New Mexico Corrections Department (NMCD) secretary, gave the committee in-house predictions of correctional facility projected capacity. He said the statistics have not been evaluated by the NMCD's consultant yet, but they are a good rough estimate. Women's correctional facilities are increasing such that all beds will be full in 2013. This includes beds that are part of planned expansions. Men's correctional facilities are currently at 97 to 110 percent of their rated capacity. With planned expansions and new facilities, statistics predict that the facilities will be at or over capacity once again in 2009. Secretary Williams spoke about the upcoming expansion of the Guadalupe County Correctional Facility and described the newly opened women's correctional facility, Camino Nuevo and the Springer Correctional Facility. Secretary Williams emphasized that all facilities in the state will soon be accredited by the American Correctional Association. New Mexico would be one of only five states that will have statewide accreditation. Secretary Williams gave an update on the Corrections Population Control Commission and discussed possible changes and improvements to the commission.

Erma Sedillo, NMCD deputy secretary of operations, and Jolene Gonzales, NMCD deputy secretary of administration, explained the progress and status of obtaining an overnight family visitation trailer.

Mike Running, Clayton city manager, and Robert Beck, Clayton city attorney, described the status of the upcoming Clayton Correctional Facility and some details of the contracts involved. Construction has just begun and Mr. Running emphasized that construction costs have risen over 150 percent, which have slowed the process. The Clayton Correctional Facility is predicted to open in June 2008. The management positions have already been filled.

Diane Wood, Women's Justice Project administrator, and George Bach, American Civil Liberties Union staff attorney, expressed concern that correctional facility overcrowding has violated human rights. Ms. Wood said that an excess of inmates presents a problem because there is not enough staff to adequately attend to them. Mr. Bach linked overcrowding to high recidivism. He stated that New Mexico has three statutory early release and community involvement programs that are not utilized. Both Ms. Wood and Mr. Bach feel that the NMCD is violating those statutes.

Committee members discussed possible solutions and asked questions of the panel.

Inmate Health Care and Oversight

Mr. Bach spoke on behalf of current Wexford Health Sources, Inc., employees who are upset with the company's unsatisfactory health care services and are afraid of retribution for speaking out. NMCD contracts with Wexford for the provision of health care services. Mr. Bach said it is not providing adequate care. The company's usual excuse when a health care problem arises is that a filing mistake occurred in its administrative office. For example, if an inmate complained about not receiving medical care after attempting to obtain it, Wexford would

state that there was never a written request on file. Mr. Bach said that the Lea County Correctional Facility is short-staffed and its routine medical supplies are depleted before a new shipment arrives.

Norbert Sanchez, former staff nurse with the Long-Term Care Unit at the Central New Mexico Correctional Facility, spoke about his experiences with Wexford and the lack of adequate care provided to inmates. He also spoke on behalf of a currently employed nurse at the Lea County Correctional Facility whose training level mandates that she work under the supervision of a registered nurse but who is left alone to lift patients onto the examining table and disseminate medications, both of which she cannot and should not be doing.

Luis Martinez, father of an incarcerated son, explained his son's delicate medical condition. Mr. Martinez said his son has not received adequate medication, doctor appointments have been delayed and he was not transported to the hospital until he was bleeding severely.

Devendra Singh, M.D., NMCD, explained that all the correctional facilities' medical practices abide by national standards. He described the process and explained that many inmates are diagnosed with a disease for the first time at a correctional facility. He stated that patients with chronic illnesses are seen once a month, and if someone feels they are not getting adequate care, they can file an emergency medical grievance with the warden. He conceded that it is very difficult to employ dentists at prisons and there is a backlog to see the dentist. Dr. Singh said they have always had exceptional audits, and they are beginning to do an audit twice a year to further monitor health care service.

Mark Hale, president, Wexford Health Sources, Inc., said he is proud of the physician-run model of health care, and stated that Wexford was audited 14 times in two years and all audits have been sound. He said Wexford is providing health care in Illinois, Mississippi, Maryland, Virginia and Ohio.

Senator Leavell invited public comment. Committee members discussed possible solutions and asked questions of the panel. The co-chairs requested that the Legislative Finance Committee be requested to conduct a special performance audit of health care in the prisons and that it be done by an independent third party. Committee members present were all in favor of the audit and requested that interviews of Wexford employees be conducted anonymously and without fear of retaliation. Both Mr. Williams and Mr. Hale stated they welcome such an audit.

Adjournment

The committee adjourned at 1:00 p.m.