



New Mexico State Legislature
Courts, Corrections and Justice Committee

2010
INTERIM REPORT

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Legislative Council Service
411 State Capitol
Santa Fe, NM

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Work Plan and Meeting Schedule

**2010 APPROVED
WORK PLAN AND MEETING SCHEDULE
for the
COURTS, CORRECTIONS AND JUSTICE COMMITTEE**

The Courts, Corrections and Justice Committee was created by the New Mexico Legislative Council on May 12, 2010. Committee members are as follows:

Members

Rep. Al Park, Co-Chair
Sen. Peter Wirth, Co-Chair
Sen. Rod Adair
Rep. Thomas A. Anderson
Rep. Joseph Cervantes
Rep. Gail Chasey
Rep. Zachary J. Cook
Sen. Mary Jane M. Garcia

Sen. Clinton D. Harden, Jr.
Sen. Linda M. Lopez
Rep. Antonio "Moe" Maestas
Sen. Richard C. Martinez
Rep. William "Bill" R. Rehm
Sen. John C. Ryan
Rep. Mimi Stewart

Advisory Members

Rep. Eliseo Lee Alcon
Rep. Elias Barela
Rep. Brian F. Egolf, Jr.
Sen. Gay G. Kernan
Rep. Dennis J. Kintigh
Sen. Carroll H. Leavell
Rep. W. Ken Martinez
Sen. Cisco McSorley

Rep. Bill B. O'Neill
Sen. William H. Payne
Sen. Michael S. Sanchez
Rep. Sheryl Williams Stapleton
Rep. Jack E. Thomas
Sen. David Ulibarri
Rep. Gloria C. Vaughn

Work Plan

During the 2010 interim, and as time permits, the committee proposes to address the following and recommend appropriate legislation:

- (1) oversee and monitor issues relating to corrections, prison reform and reentry and impact of budget cuts;
- (2) review operations of the judiciary and its projects, committees, specialty courts, budget, impact of budget cuts and recommended legislation;
- (3) examine issues relating to criminal justice and public safety, including criminal laws and procedures, public defenders, district attorneys and law enforcement issues;
- (4) monitor juvenile justice issues and the Cambiar model adopted by the Children, Youth and Families Department;

(5) provide guidance and recommendations to the Government Restructuring Task Force by examining the programs and missions of the agencies overseen by the committee with an eye toward making those agencies more efficient and cost-effective, including ranking programs in terms of criticality to the core functions of those agencies;

(6) examine real estate issues, including homeowners associations, foreclosures and solar rights;

(7) examine issues relating to good government such as ethics, elections, qui tam and allegations of voter fraud;

(8) study border issues, including border violence and enforcement, border communities, the roles of the state and federal governments and immigration detention facilities;

(9) visit the new facility of the Office of the Medical Investigator;

(10) review some legislative proposals of the Uniform Law Commission;

(11) review legislative proposals of the governor and the attorney general related to the work of this committee; and

(12) address related issues as appropriate.

2010 Approved Meeting Schedule

<u>Date</u>	<u>Location</u>
May 27	Santa Fe
July 1-2	Santa Fe
August 4-5	Santa Fe/Albuquerque
September 23-24	Anthony
November 4-5	Santa Fe

Summary of 2010 Interim

Courts, Corrections and Justice Committee 2010 Interim Summary

The committee began the interim with an extensive hearing on a bill that would provide treatment instead of incarceration for drug possession offenders. The bill passed the house in the 2010 session. Two national experts from the Drug Policy Alliance as well as two district attorneys were on the panel. Costs, safety and the effectiveness of treatment of addiction were discussed, as well as 13 programs in other states that emphasize treatment for drug offenders rather than jail time. The district attorneys' primary objection to the bill seemed to be that it would take out of their hands and give to a judge the power to decide whether an offender should be treated for substance abuse or face conviction and incarceration.

The Children, Youth and Families Department presented some results and outcomes of the implementation of the Cambiar New Mexico method for rehabilitating juveniles. The department found less violence, a decrease in recidivism and overall improved safety. Incidents have declined in facilities; collaboration between staff has improved; and staff training is ongoing. Daily group sessions and better communication with youth have eased the transition to supervised release and the return to society. A legislator brought up a number of incidents that have occurred since this model was implemented.

Due to budget cuts, the Corrections Department has had to renegotiate medical and food service contracts, increase vacant positions, cut back on vocational programs and behavioral health services and reduce therapeutic communities. Interestingly, the secretary of corrections stated that the department has survived primarily by moving inmates from the privately run facilities to the public prisons. The department has more control over public prisons and their costs, whereas contracts with private prisons cannot be easily changed. There was much discussion on the monitoring of private prisons and the penalty assessments that the department may impose when contract obligations are not met, especially regarding staffing patterns. The department has chosen not to impose any penalties despite long-term vacant staff positions. The committee requested that the Legislative Finance Committee staff review the private prison contracts and their enforcement and whether any penalties were imposed, especially with respect to staffing patterns. A report was published in September estimating that \$18.6 million in unpaid salaries were potentially eligible to be recovered by the department under the contracts.

The committee heard and discussed real estate issues this year. The committee examined issues concerning the Solar Rights Act and how local governments, homeowner associations and neighborhoods were addressing the rights given to homeowners to install solar collectors on their property. The committee addressed some of the conflicts arising between zoning laws and the Condominium Act. It also studied problems that homeowners and condominium owners are having with their associations and examined eminent domain issues, specifically with respect to the City of Rio Rancho. A work group was formed, consisting of legislators and public members, to study issues relating to homeowner and condominium associations. The group met and proposed two bills to the committee that were endorsed at the final meeting.

In August, the committee heard testimony on the controversy surrounding the relocation of the New Mexico DNA Identification System Administrative Center from the City of Albuquerque Police Department to the Department of Public Safety. After the hearing and the extensive discussion that followed, the committee resolved to write a letter to the governor requesting that he discuss the issue with the secretary of public safety and reconsider the relocation. The governor's chief of staff responded to the letter, indicating that the concerns raised by the committee were already fully discussed and considered.

A meeting in Las Cruces brought border issues to the attention of the committee. The committee heard from a consul general of Mexico who discussed the Merida Initiative, Mexico's relationship with the United States, Arizona's new law and the problems Mexico is facing and its response to those problems. An eight-member panel, including federal representatives, a U.S. Border Patrol chief and human rights advocates, addressed the committee and discussed border security, trends, communities, crime and intergovernmental agreements and the relationships between border communities and law enforcement. Senator Richard C. Martinez presented his bill on local enforcement of immigration laws in further discussion of the border and immigration issues.

The attorney general brought his legislative proposals, consisting of 14 bill drafts and 16 concepts for legislation, to the committee. The proposals included criminal law, border issues, tax, the environment, ethics and miscellaneous civil matters.

The judicial branch expressed the very real threat to its ability to function due to these unprecedented fiscal challenges. It has avoided furloughs by a grant of federal stimulus funds. However, unless the courts receive supplemental funding for FY 2011, furloughs and court closings will be required after February 2011. The judiciary discussed its continuing efforts to perform its constitutional functions more efficiently and effectively. A 16-member reengineering commission, consisting of legislators, judges, chambers of commerce and others, was recently created to oversee and hear recommendations from the National Center for State Courts (NCSC). The NCSC is conducting an extensive study on, and an examination of, all of the operations of the judiciary in order to make them more efficient and cost-effective. The judiciary discussed the increased number of case filings primarily due to foreclosures but also due to criminal cases. At the same time, the judiciary struggles with a decrease in resources. It proposed 13 pieces of legislation, all but one of which require no appropriation, to allow the judiciary to run more effectively.

The committee examined many other issues throughout the interim, including certification of reserve officers, allegations of voter fraud, qualifications for DWI blood draws, incarceration of youth 18 to 21 years old, independent oversight of corrections and youth and elderly driving requirements. The committee also heard about the new, state-of-the-art FBI computer forensic laboratory at the University of New Mexico and the services and opportunities it will provide to New Mexico citizens.

During the interim, the committee toured the Penitentiary of New Mexico outside of Santa Fe; the Office of the State Medical Investigator in Albuquerque; and the MTC Otero County Processing Center, a privately run facility close to the border with Mexico that houses

people accused of being in the United States illegally.

Endorsements

Forty legislative proposals were brought to, and examined by, the committee throughout the interim. The committee endorsed 31 bills for introduction in the 2011 legislative session.

Agendas

Revised: May 17, 2010

**TENTATIVE AGENDA
for the
FIRST MEETING
of the
COURTS, CORRECTIONS AND JUSTICE COMMITTEE**

**May 27, 2010
Room 307, State Capitol
Santa Fe**

Thursday, May 27

- 10:00 a.m. **Call to Order**
—Representative Al Park and Senator Peter Wirth, Co-Chairs
- 10:10 a.m. **Briefing on the Government Restructuring Task Force**
—Paula Tackett, Director, or Raúl E. Burciaga, Director-Designate,
Legislative Council Service
- 10:30 a.m. **Work Plan and Meeting Schedule for the 2010 Interim**
—Committee Members and Staff
- Public Comment**
- Adjourn**

Revised: June 29, 2010

**TENTATIVE AGENDA
for the
SECOND MEETING
of the
COURTS, CORRECTIONS AND JUSTICE COMMITTEE**

**July 1-2, 2010
Room 322, State Capitol
Santa Fe**

Thursday, July 1

- 10:00 a.m. **Call to Order**
—Senator Peter Wirth and Representative Al Park, Co-Chairs
- 10:05 a.m. **Approval of Minutes**
- 10:10 a.m. **Treatment in Lieu of Incarceration (Bill Draft #1)**
—Representative Antonio "Moe" Maestas
—David R. Schmidt, Director, New Mexico Council on Crime and
Delinquency
—Daniel N. Abrahamson, Director, Office of Legal Affairs, Drug Policy
Alliance
—Margaret Dooley-Sammuli, Deputy State Director, Southern
California, Drug Policy Alliance
—Richard Flores, District Attorney, Fourth Judicial District
—Lemuel L. Martinez, District Attorney, Thirteenth Judicial District
- 12:00 noon **Lunch**
- 1:30 p.m. **Certification of Reserve Police Officers (Bill Draft #2)**
—Representative William "Bill" R. Rehm
—Bruce Swingle, Loss Prevention Manager, New Mexico County
Insurance Authority, New Mexico Association of Counties
—Raymond Cobos, Luna County Sheriff
—Clarence Gibson, Torrance County Sheriff
—Greg Solano, Santa Fe County Sheriff
—Inspector Michael Valverde, Director, Training and Recruiting
Division,
Department of Public Safety, and Assistant Director, Law
Enforcement Academy (LEA)
—Gilbert Najjar, Deputy Director, LEA

3:00 p.m. **Update on Cambiar New Mexico: Juvenile Supervision, Facilities and Programming and the Impact of Budget Cuts**
—Dorian Dodson, Secretary Emerita, Children, Youth and Families Department (CYFD)
—Bill Dunbar, Deputy Secretary, CYFD
—Debra Pritchard, Director, Juvenile Justice Services, CYFD

Public Comment

Recess

Friday, July 2

9:00 a.m. **Inmate Population Forecast; Provisions for Reducing Inmate Population: Geriatric and Medical Release, Good Time Deductions for Parolees and Controlled Release Pilot Program**
—Tony Ortiz, Executive Director, New Mexico Sentencing Commission

10:00 a.m. **Report from the Corrections Department**
• **Private Prison Monitoring and Costs**
• **Classification of Prisoners and Visitation Policies**
• **Status of Reentry and Reform Efforts**
• **Impact of Budget Cuts**
—Joe R. Williams, Secretary of Corrections
—Jeff Serna, Classification Bureau Chief, Corrections Department (CD)
—Bernard Lieving, Reentry and Prison Reform Czar, Office of Reentry and Prison Reform, CD

12:00 noon **Public Comment**

12:30 p.m. **Lunch**

2:00 p.m. **Tour of the Penitentiary of New Mexico**

Adjourn

Revised: August 2, 2010

**TENTATIVE AGENDA
for the
THIRD MEETING
of the
COURTS, CORRECTIONS AND JUSTICE COMMITTEE**

**August 4, 2010
Room 307, State Capitol
Santa Fe**

**August 5, 2010
Office of the Medical Investigator
1101 Camino de Salud
Albuquerque**

Wednesday, August 4

- 9:30 a.m. **Call to Order**
—Representative Al Park and Senator Peter Wirth, Co-Chairs
- 9:35 a.m. **Approval of Minutes**
- 9:40 a.m. **Solar Rights Issues**
—Faren Dancer, Chair, Santa Fe Green Building Council; President,
Sundancer Creations Custom Builders; Member, Architectural
Advisory Committee, Eldorado Community Improvement
Association
—Matthew O'Reilly, Director, Land Use Department, City of Santa Fe
—Katherine Mortimer, Supervising Planner, Housing and Community
Development, City of Santa Fe
—Tom Willmott, President, Eldorado Community Improvement
Association
—Sharon Woods, Chair, Historic Design Review Board, City of Santa Fe
- 12:00 noon **Lunch**
- 1:30 a.m. **The Condominium Act and Zoning Issues**
—Matthew O'Reilly, Director, Land Use Department, City of Santa Fe
—Frank D. Katz, Former City Attorney, City of Santa Fe
—John N. Patterson, Scheuer, Yost and Patterson PC
—Janice M. Ahern, Rubin Katz Law Firm PC

3:00 p.m. **Issues with Homeowner and Condominium Associations**
—Scott Varner, President, Towne Park Neighborhood Association;
 Former Board Member, Towne Park Homeowners Association
—Meriam Jawhar, Village 5 Councilmember, Zocalo Village Councils,
 Zocalo Condominiums
—Tom Simon, Owner, Westgate Properties, LLC
—John N. Patterson, Scheuer, Yost and Patterson PC
—Janice M. Ahern, Rubin Katz Law Firm PC

4:45 p.m. **Public Comment**

Recess

Thursday, August 5

9:00 a.m. **New Mexico DNA Identification System Administrative Center: DPS
Audit and Proposed Relocation**
—Dr. Michael L. Mier, Deputy Secretary of Administration,
 Department of Public Safety (DPS)
—Germaine R. Chappelle, General Counsel, DPS
—Noreen Purcell, Acting Director, Forensic Laboratory, DPS
—Paul Feist, Commander, Scientific Evidence Division,
 Albuquerque Police Department (APD)
—Kathryn C. Levy, General Counsel, APD
—Darren White, Public Safety Director, City of Albuquerque

10:30 a.m. **Uniform Law Commission: Proposed Legislation (Bill Drafts #3-5)**
—John P. "Jack" Burton, Uniform Law Commissioner

11:30 a.m. **Overview of the Office of the Medical Investigator (OMI)**
—Ross Reichard, M.D., Assistant Chief Medical Investigator

12:00 noon **Public Comment**

Tour of the New Facility of the OMI

Adjourn

Revised: September 17, 2010

**TENTATIVE AGENDA
for the
FOURTH MEETING
of the
COURTS, CORRECTIONS AND JUSTICE COMMITTEE**

**September 23-24, 2010
Barbara Hubbard Room, Pan American Center Annex
Payne St. and Stewart St.
New Mexico State University
Las Cruces**

Thursday, September 23

- 10:00 a.m. **Call to Order**
—Senator Peter Wirth and Representative Al Park, Co-Chairs
- 10:02 a.m. **Approval of Minutes**
- 10:03 a.m. **Welcoming Remarks**
—Wendy K. Wilkins, Ph.D., Executive Vice President and Provost,
New Mexico State University
- 10:10 a.m. **Mexico's Perspective on the U.S.-Mexico Border**
—Ambassador Roberto Rodriguez, Consulate General of Mexico, El Paso
Office
- 11:00 a.m. **Panel Presentation on Border Issues: Security, Communities, Trends,
Intergovernmental Agreements and Crime**
—Chief Randy R. Hill, U.S. Border Patrol, El Paso Sector, Customs and
Border Protection, U.S. Department of Homeland Security (DHS)
—Francisco Venegas, Deputy Field Office Director, Enforcement and
Removal Operations, Immigration and Customs Enforcement,
DHS
—John Wheeler, Secretary, New Mexico Homeland Security and
Emergency Management Department
—Richard Williams, Chief of Police, City of Las Cruces
—Vicki B. Gaubeca, Director, Regional Center for Border Rights,
American Civil Liberties Union (ACLU) of New Mexico
—Fernando Garcia, Executive Director, Border Network for Human
Rights
—Sister Anne Salaun, Religious of the Assumption, Chaparral
—Marcela Diaz, Executive Director, Somos Un Pueblo Unido

1:45 p.m. **Proposed Legislation on Local Enforcement of Federal Immigration Laws (Bill Draft #6)**

—Senator Richard C. Martinez

—Greg Solano, Santa Fe County Sheriff

—Diane Wood, Policy Director, ACLU of New Mexico

2:30 p.m. **Public Comment**

Travel to and Tour the MTC Otero County Processing Center

Recess

Friday, September 24

9:00 a.m. **Allegations of Voter Fraud in Dona Ana County**

—Lynn Ellins, Dona Ana County Clerk

10:00 a.m. **Legislative Proposals from the Attorney General and Update on the Border Violence Division (Bill Drafts # 7-19)**

—Gary King, Attorney General of New Mexico

11:30 p.m. **Proposed Legislation on Animal Cruelty (Bill Draft #20)**

—Heather Ferguson, Legislative Director, Animal Protection of New Mexico

12:00 noon **Public Comment**

Adjourn

Revised: November 1, 2010

**TENTATIVE AGENDA
for the
FIFTH MEETING
of the
COURTS, CORRECTIONS AND JUSTICE COMMITTEE**

**November 4-5, 2010
Room 307, State Capitol**

Thursday, November 4

- 10:00 a.m. **Call to Order**
—Representative Al Park and Senator Peter Wirth, Co-Chairs
- 10:02 a.m. **Approval of Minutes**
- 10:05 a.m. **Report from the Judiciary: Unified Budget, Restructuring and Proposed Legislation (Bill Drafts #21 - 33)**
—Charles W. Daniels, Chief Justice, New Mexico Supreme Court
—Celia Foy Castillo, Judge, New Mexico Court of Appeals
—Arthur W. Pepin, Director, Administrative Office of the Courts
- 12:30 p.m. **Lunch**
- 2:00 p.m. **Chemical Blood Tests in DWI Cases (Bill Draft #34)**
—Senator Carroll H. Leavell
—Janetta B. Hicks, District Attorney, Fifth Judicial District
- 2:30 p.m. **Incarceration of Youth Ages 18-21: Report from HM 29 Task Force and Proposed Legislation (Bill Draft #35)**
—Bob Cleavall, Chair, House Memorial 29 (2010) Task Force, and Chair, Juvenile Committee, New Mexico Sentencing Commission
—Scott Cameron, Assistant General Counsel, Children, Youth and Families Department (CYFD)
—Ted Lovato, Deputy Director, Youth and Family Services, CYFD
- 4:00 p.m. **Eminent Domain Issues**
—Thomas E. Swisstack, Mayor, City of Rio Rancho
—Scott Scanland, Lobbyist

Public Comment

Recess

Friday, November 5

9:00 a.m. **University of New Mexico (UNM)-FBI Regional Computer Forensics Laboratory**

—Douglas M. Brown, Dean, Anderson School of Management, UNM
—Darrin Jones, Director, NM Regional Computer Forensics Laboratory

9:30 a.m. **Independent Oversight of Prisons Task Force Report**

—Representative Gail Chasey
—Gary King, Attorney General of New Mexico

10:30 a.m. **Driver and Highway Safety Task Force: Report and Proposed Legislation (Bill Drafts #36-37)**

—Senator Peter Wirth
—Michael R. Sandoval, Director, Motor Vehicle Division, Taxation and Revenue Department

11:30 a.m. **Review and Endorsement of Proposed Legislation**

—Committee Members

Public Comment

Adjourn

Minutes

MINUTES
of the
FIRST MEETING
of the
COURTS, CORRECTIONS AND JUSTICE COMMITTEE

May 27, 2010
Room 307, State Capitol
Santa Fe

The first meeting of the interim Courts, Corrections and Justice Committee was called to order by Representative Al Park, co-chair, on May 27, 2010 at 10:05 a.m. in Room 307 of the State Capitol.

Present

Rep. Al Park, Co-Chair
Rep. Peter Wirth, Co-Chair
Sen. Rod Adair
Rep. Thomas A. Anderson
Rep. Joseph Cervantes
Rep. Gail Chasey
Rep. Zachary J. Cook
Sen. Mary Jane M. Garcia
Sen. Clinton D. Harden, Jr.
Rep. Antonio "Moe" Maestas
Sen. Richard C. Martinez
Rep. William "Bill" R. Rehm
Rep. Mimi Stewart

Absent

Sen. Linda M. Lopez
Sen. John C. Ryan

Advisory Members

Rep. Eliseo Lee Alcon
Rep. Elias Barela
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
Rep. Sheryl Williams Stapleton
Rep. Jack E. Thomas
Rep. Gloria C. Vaughn

Sen. Gay G. Kernan
Sen. William H. Payne
Sen. Michael S. Sanchez
Sen. David Ulibarri

Staff

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

Kim Bannerman, Staff Attorney, LCS

Leslie Porter, Research Assistant, LCS

Guests

The guest list is in the meeting file

Briefing on the Government Restructuring Task Force

Raúl E. Burciaga, director-designate, LCS, informed the committee that the Government Restructuring Task Force, created by HB 237 (2010), is charged with developing recommendations for restructuring state government. He stated that given the state's financial situation, the New Mexico Legislative Council (LC) has directed that each interim committee look at efficiency and effectiveness of those government agencies within its oversight, examine each agency's core functions, prioritize where appropriate and ensure that the agencies are effectively performing those functions.

Mr. Burciaga and Paula Tackett, director, LCS, discussed the request from the LC that, in response to budget cuts, all meetings of interim committees be held in Santa Fe. Ms. Tackett discussed the rationale of the LC in imposing this requirement and added that if the committee feels it must meet outside of Santa Fe, the work plan must provide justification to the LC. Ms. Tackett briefly spoke about restructuring issues and the possibility of making magistrate courts the courts of record for DWI cases. Mr. Burciaga closed by mentioning Ms. Tackett's retirement and how honored he is to be appointed the new director.

Committee members asked questions and discussed options with Ms. Tackett and Mr. Burciaga. Members indicated the value of visiting prisons and obtaining input from prisoners and how the failure of the provision of health care by Wexford in the Hobbs facility and other facilities would not have been discovered had the committee not visited the prisons and held meetings outside of Santa Fe. Senator Wirth concurred with committee members and suggested a trip to the Santa Fe level six prison facility and a visit to the new office of the State Medical Investigator in Albuquerque.

Work Plan and Meeting Schedule for the 2010 Interim

Committee members discussed possible topics for the committee and voiced their preferences on topics to be addressed this interim. The co-chairs invited members of the audience to comment and indicate other topics for consideration.

Adjournment

The committee adjourned at 12:00 noon.

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

**July 1-2, 2010
Room 322, State Capitol
Santa Fe**

The second meeting of the Courts, Corrections and Justice Committee was called to order at 10:10 a.m. by Senator Peter Wirth, co-chair, on Thursday, July 1, 2010, in Room 322, State Capitol in Santa Fe, New Mexico.

Present

Rep. Al Park, Co-Chair (July 1)
Sen. Peter Wirth, Co-Chair
Sen. Rod Adair
Rep. Thomas A. Anderson
Rep. Joseph Cervantes
Rep. Gail Chasey
Sen. Mary Jane M. Garcia
Sen. Clinton D. Harden, Jr.
Sen. Linda M. Lopez (July 1)
Rep. Antonio "Moe" Maestas (July 1)
Sen. Richard C. Martinez
Rep. William "Bill" R. Rehm
Rep. Mimi Stewart

Absent

Rep. Zachary J. Cook
Sen. John C. Ryan

Advisory

Rep. Eliseo Lee Alcon
Rep. Elias Barela
Rep. Brian F. Egolf, Jr.
Rep. Dennis J. Kintigh
Sen. Carroll H. Leavell (July 1)
Sen. Cisco McSorley
Rep. Bill B. O'Neill
Rep. Sheryl Williams Stapleton
Rep. Gloria C. Vaughn

Sen. Gay G. Kernan
Rep. W. Ken Martinez
Sen. William H. Payne
Sen. Michael S. Sanchez
Rep. Jack E. Thomas
Sen. David Ulibarri

Guest Legislators

Rep. Ernest H. Chavez
Rep. Debbie A. Rodella (July 1)

(Attendance dates are noted for members who did not attend the entire meeting.)

Staff

Maha Khoury, Staff Attorney, Legislative Council Service (LCS)
Kim Bannerman, Staff Attorney, LCS
Leslie Porter, Research Assistant, LCS

Handouts

Copies of all handouts are in the meeting file.

Thursday, July 1**Call to Order**

Senator Wirth called the meeting to order at 10:10 a.m. and asked Representative Maestas to discuss the history of his bill.

Treatment in Lieu of Incarceration

Representative Maestas explained the bill draft as the final version of the bill that passed the house of representatives during the last legislative session. He discussed possible drug treatment plans and assured the committee that the bill would stop the indictment process before any criminal proceedings take place, thus saving time and public attorney and court costs. David R. Schmidt, director, New Mexico Council on Crime and Delinquency, explained the bill's intent as treatment and invited legislative input on the bill.

Margaret Dooley-Sammuli, deputy state director, Southern California, Drug Policy Alliance, works exclusively on treatment instead of incarceration. She noted that there are currently 13 states with treatment instead of incarceration programs, with California having several models, the largest being very similar to this proposed legislation. She explained California's program and its success.

Daniel N. Abrahamson, director, Office of Legal Affairs, Drug Policy Alliance, discussed the allowance of treatment to low-level nonviolent offenders in Arizona and the results of people diverted from the system and the dollar amounts saved. He believes that the proposed New Mexico program would be as, if not more, effective than the Arizona program. He briefly discussed research findings on the rate of success of methamphetamine addicts who undergo treatment, which show those addicts doing as well as everyone else.

Representative Maestas discussed the difference between his bill and the current drug court program, explaining that drug court programs occur after conviction, whereas this bill allows treatment before conviction, thus preventing people from entering the criminal justice system at all. He addressed the issue of a lack of treatment plans and facilities in rural areas, which may develop if this bill passes. He stated that the district attorneys do not like this bill because it takes power away from them and gives it to judges.

Richard Flores, district attorney (DA), Fourth Judicial District, voiced his prime concerns with the bill, such as the definition of a "qualified program"; the source of funds for treatment;

and which treatment facilities will be used, given that there is a lack of them currently. He illuminated the fact that treatment centers will not accept individuals who take psychotropic drugs, who have had gang affiliations or who have committed violent acts. He declared that it is very rare that a DA, upon a first drug possession case, will send an individual to prison, and he disputed the cost savings of the proposed program. However, he wanted to clarify that the DA's office is not opposed to treatment.

Lemuel L. Martinez, DA, Thirteenth Judicial District, discussed the addictive nature of various drugs. He added that his district is in favor of treatment in lieu of incarceration. He echoed the sentiment that there is a shortage of treatment facilities in New Mexico and summarized existing law requiring conditional discharge for a first offense of drug possession, described in Section 30-31-28 NMSA 1978. He stated that in many cases, an individual does not enter the criminal justice system until after a fourth drug possession offense. He added that most drug crimes are attached to other crimes and that not everybody will stay clean throughout the program. He also stated that he is not opposed to treatment.

Hugh Dangler, chief public defender, Public Defender Department, stated that the bill is consistent with current practice. He would like to see more individuals diverted from entering the judicial system. He respects the concern that New Mexico needs more facilities and agreed with Representative Maestas that, if the program is enacted, the facilities will come.

Members of the committee asked questions, discussed policy options and concerns and the benefits and issues raised by the bill and requested points of clarification from the panel.

Certification of Reserve Police Officers

Representative Rehm explained the bill, noting its difference from the version introduced last session. The bill creates three levels of reserve officers and allows law enforcement agencies to bring in the level they desire. He highlighted that reserve officers are, many times, volunteers; that training levels across the state are not uniform; and that the New Mexico Law Enforcement Academy (NMLEA) does not recognize a reserve officer. He explained the three levels of reserve offers and qualification standards.

Bruce Swingle, loss prevention manager, New Mexico County Insurance Authority, New Mexico Association of Counties, mentioned that law enforcement agencies are largely understaffed and underfunded and that the law enforcement community is inheriting unfunded mandates. He stated that reserve officers complement the full-time staff, saving hundreds of thousands of paid man hours.

Raymond Cobos, Luna County sheriff, expressed his support for the bill and stated that his department saves about \$300,000 a year with reserves. He added that reserves made 200 criminal transport trips last year with 100,000 miles driven. He declared that his office could not operate without the reserves.

Gilbert Najar, deputy director, NMLEA, stated that the NMLEA board is in support of

tiered reserves up to level 2 and that the concerns stem from the level 3 reserve officer having the same abilities as that of a full-time officer.

Members of the committee voiced their concerns with level 3 reserve officers. Topics included the question of the need for a level 3 reserve to wield a firearm; how counties deal with liability for level 3 reserves and if they will be covered under workers' compensation; and why there is a need for level 3 reserves. Suggestions were made to strike out level 3 reserves from the bill or to develop two pieces of legislation: one that includes reserve levels 1 and 2 and another to address level 3 reserves.

The committee heard brief comments from law enforcement audience members.

Update on Cambiar New Mexico: Juvenile Supervision, Facilities and Programming and the Impact of Budget Cuts

Dorian Dodson, secretary, Children, Youth and Families Department (CYFD), stated that the juvenile justice system was violent and not working and that Cambiar has lowered violence and recidivism in New Mexico youths. She said it is the right and smart thing to do and that this model is the ideal way to treat juveniles. She stated that it is essential for the children to know that society has not given up on them.

Debra Pritchard, director, Juvenile Justice Services, CYFD, updated the committee on the status of the facilities and related changes in the Children's Code; for example, juveniles are now released on "supervised release" rather than "parole". She stated that staff training is ongoing and a big part of the new approach and that youths as well as the staff feel safer than they had in the past. She discussed costs and benefits and emphasized that, within the living units, the staff works with the child and the issues at hand. She explained how the living units now have a softened environment resembling a dormitory; improved collaboration and communication between security and behavioral health staff; and daily group sessions with the clients. She noted that probation officers are present and involved in activities with the clients and highlighted her desire to obtain a transition coordinator for each child leaving the facility. She noted the significant decline in incidents within the facility, the lower employee turnover rate and the success of supervised release. She mentioned that youths released from the program have not yet completed their supervision requirements and the statistics provided to date are of those who have.

Secretary Dodson explained that medical, behavioral and educational expenses for the children are paid for through the budget for the CYFD. In planning for the future, she would like to see more facilities in rural New Mexico so that they are accessible to children statewide.

The committee heard testimony from two clients of the Cambiar program, Richard Padilla and Marco Rivera. Mr. Padilla stated that group sessions and the one-on-one time with the staff helped him with his anger. He was consequently released to the reintegration center in Carlsbad, where he has successfully enrolled in New Mexico State University. He added that he now has a future, whereas prior to the program, he did not. Mr. Rivera said that he was sentenced

as a youth, and he now has different perspectives and approaches to life. He feels he is part of a community and a team. He added that the program's tattoo removal provides him with a future.

Bill Dunbar, deputy secretary, CYFD, stated that the department takes security very seriously. Supervisors Hamlin and Stuart stated that the Cambiar program is at a manageable level with 12 clients per unit and that the biggest challenge is building a community within each unit and with other units. They explained that the clients engage in family therapy. When finished with the program, the young men are sent around the state, where they are able to solidify what they have learned in the Cambiar community. Mr. Stuart stated that nine young men have left the program and only two have returned.

Members of the committee exchanged thoughts with the panel concerning a three-year plan for the program; the reintegration centers; the reduction of incidents in the units due to therapy; and increased security.

Public Comment

The committee heard public comment.

Recess

The committee recessed for the day at 5:10 p.m.

Friday, July 2

Inmate Population Forecast; Provisions for Reducing Inmate Population: Geriatric and Medical Release, Good Time Deductions for Parolees and Controlled Release Pilot Program

Tony Ortiz, executive director, New Mexico Sentencing Commission, clarified that this is the first year the commission has conducted the inmate population study. He stated that there are more prisoners in county jails than there are in state prisons, and he emphasized that the committee should not overlook the importance of the felony drug courts in New Mexico because they have a positive impact on the county and state jail systems. He discussed other possible factors that contribute to the prison population.

He began to explain the forecast, noting that there is a high degree of confidence in a forecast that projects up to five years, but not beyond. There has been a spike in the prison population from January 2009 to today. He noted that males contribute a higher amount to the growth of the prison population than females. He stated that the state is not forecasting a large increase in the prison population, but a stable population, which includes the period of time for FY12.

He discussed the controlled release pilot project for female inmates and the prospect of release for nonviolent and geriatric inmates. In 2009, there were 60 inmates who qualified. He emphasized that not all those who qualified are appropriate candidates for release. He briefly discussed the earned meritorious deductions for parolees and noted that the mentioned programs have been implemented successfully in other jurisdictions to properly manage prison populations.

Members of the committee asked questions and discussed policy options and issues such as crime trends in New Mexico and the "trans-institutionalization of the mentally ill".

Committee Business

The minutes of the last meeting were approved.

Report from the Corrections Department: Private Prison Monitoring and Costs; Classification of Prisoners; Visitation Policies; and Status of Reentry and Reform Efforts

Joe R. Williams, secretary of corrections, introduced some of his staff and discussed the capacity, levels of classification, number of full-time-equivalents, budgets and per diem costs per prisoner for each of the private prison facilities. Secretary Williams explained the monitoring of those facilities and the basis for a decrease in payments to privately run facilities. He stated that, other than for staffing vacancies, no penalties have been imposed on privately run facilities. Secretary Williams emphasized that all of the prisons are nationally accredited and explained the visitation policies of the Corrections Department (CD) for different levels of inmates.

Jeff Serna, classification bureau chief, CD, explained the inmate classification system and the various levels of security at facilities around the state, as well as at each level at the Penitentiary of New Mexico facility. He emphasized that his bureau does not want to overclassify an inmate and aims to place inmates in the least restrictive environment necessary. He stated that the department transfers approximately 200 inmates per month between facilities due to reclassification.

Bernard Lieving, reentry and prison reform czar, Office of Reentry and Prison Reform, CD, explained that the successful reentry of inmates into society must begin in prisons as early intervention. It requires a cultural change in prisons and communities and must be community-driven. He discussed the Compass Needs and Risk Assessment Tool and stated that, at this time, the department does not have the resources to respond. He discussed a hepatitis C educational project and a medical assistance program for prisoners addicted to opiates or alcohol.

Secretary Williams discussed the department's adjustment to budget cuts, which included renegotiating the medical and food service contracts, no cost-of-living increases in 2009 or 2010 for contractors, vacant positions, cutbacks in vocational programs and behavioral health services and a reduction in therapeutic communities. He also stated that the department has survived by moving inmates from private to public prisons because the department has more control over public prisons and their costs.

Committee members exchanged thoughts with the panel concerning private versus public facilities; inmate addiction programs; state identification and reentry cards; the rehabilitation of sex offenders; the growth of the DWI population; foreign nationals; the amount of staffing at current facilities; and other topics.

Public Comment

The committee heard comments from members of the public.

Recess

The committee had a short recess for lunch.

Tour of the Penitentiary of New Mexico

Committee members, staff and members of the public toured the Penitentiary of New Mexico.

Adjournment

The committee adjourned after the tour, around 5:00 p.m.

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

**August 4, 2010
Room 307, State Capitol
Santa Fe**

**August 5, 2010
Office of the Medical Investigator
1101 Camino de Salud
Albuquerque**

The third meeting of the Courts, Corrections and Justice Committee was called to order at 9:40 a.m. by Senator Peter Wirth, co-chair, on Wednesday, August 4, 2010, in Room 307 of the State Capitol in Santa Fe, New Mexico.

Present

Sen. Peter Wirth, Co-Chair
Rep. Al Park, Co-Chair (Aug. 4)
Rep. Thomas A. Anderson
Rep. Joseph Cervantes
Rep. Gail Chasey (Aug. 4)
Rep. Zachary J. Cook (Aug. 4)
Sen. Mary Jane M. Garcia
Sen. Clinton D. Harden, Jr.
Sen. Linda M. Lopez
Sen. Richard C. Martinez
Sen. John C. Ryan (Aug. 5)
Rep. Mimi Stewart

Advisory Members

Rep. Eliseo Lee Alcon
Rep. Brian F. Egolf, Jr. (Aug. 4)
Sen. Gay G. Kernan (Aug. 4)
Sen. Carroll H. Leavell
Sen. Cisco McSorley
Rep. Bill B. O'Neill
Rep. Jack E. Thomas
Rep. Gloria C. Vaughn (Aug. 4)

Absent

Sen. Rod Adair
Rep. Antonio "Moe" Maestas
Rep. William "Bill" R. Rehm

Rep. Elias Barela
Rep. Dennis J. Kintigh
Rep. W. Ken Martinez
Sen. William H. Payne
Sen. Michael S. Sanchez
Rep. Sheryl Williams Stapleton
Sen. David Ulibarri

Guest Legislator

Sen. Timothy M. Keller (Aug. 4)

(Attendance dates are noted for members who did not attend the entire meeting.)

Staff

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

Kim Bannerman, Staff Attorney, LCS

Leslie Porter, Research Assistant, LCS

Guests

The guest list is in the meeting file.

Handouts

Copies of all handouts are in the meeting file.

Wednesday, August 4

Call to Order

Senator Wirth asked Representative Stewart to give a little background on the Solar Rights Act. Representative Stewart stated that the purpose of HB 611 and SB 1031 in 2007 was to prohibit interference with solar rights, including interference by homeowners' associations (HOAs). Senator Wirth read Section 3-18-32 NMSA 1978 and asked the panelists to begin their presentation.

Solar Rights Issues

Katherine Mortimer, supervising planner, housing and community development, City of Santa Fe, explained the different types of solar collectors and described the prime issues with solar rights controversies as being between neighbors, namely, knowing whether one's neighbor has solar rights and is not violating those rights when one makes additions to one's home.

Faren Dancer, chair, Santa Fe Green Building Council; president, Sundancer Creations Custom Builders; and member, Architectural Advisory Committee, Eldorado Community Improvement Association, offered the additional concern of aesthetics, for individuals do not like solar installations in their view, and he noted that when building, he takes this visual impact into consideration. He mentioned the various regulations of solar modules on property, one being to camouflage or hide the modules. He offered two options of paint and trees, both of which are environmentally unfriendly: the former due to chemicals and the latter due to the lack of water in New Mexico.

Matthew O'Reilly, director, Land Use Department, City of Santa Fe, illuminated the conflicts of the Solar Rights Act with the escarpment ordinance for the City of Santa Fe. The act gives individuals the right to use solar power, while the ordinance protects the Santa Fe hills and ridgetops from development and has a limit on the height of structures built. He mentioned a

second hurdle with the Solar Rights Act and the historic districts and how there has been confusion on how Santa Fe may regulate the angles and size of the mechanisms on those buildings. He added that the City of Santa Fe would like to see as many solar mechanisms as possible.

Tom Willmott, president, Eldorado Community Improvement Association, discussed the number of homes in Eldorado and the layout of the community. He stated that the majority of the residents are cooperative with the screening process on solar collectors. The issues in Eldorado usually arise with ground-based solar arrays. He spoke about an instance where a committee of the association resigned *en masse* at a hearing on a solar tracker. He issued a strong word of caution with respect to not allowing any type of aesthetic regulation of energy-saving measures and gave the example of windmills.

Sharon Woods, chair, Historic Design Review Board, City of Santa Fe, explained that there are eight historic districts in New Mexico that get federal funds. In Santa Fe, there are 6,000 structures in the historic district, many of which are landmarks and significant buildings. She wondered how Santa Fe can keep the landmark-significant status of 25% of its structures while integrating solar collectors into the historic district. She discussed the Santa Fe-style ordinance and the preservation ordinance. She declared that the board is not against solar power, but it takes its responsibility to protect the buildings very seriously.

Members of the committee engaged in conversation with panel members, asked for points of clarification and discussed policy options and solutions concerning solar rights.

Senator Wirth asked Kathy Holian, Santa Fe County commissioner, to give an update on the Property Assessed Clean Energy Program and the Renewable Energy Financing District (REFD). Ms. Holian explained the programs and how a letter from the Federal Housing Finance Agency to Fannie Mae and Freddie Mac gave instructions that place restrictions on loans to any REFD area that would kill any lending in such a district. She believes the federal government misunderstands the program. Thus, the program is now on hold. She also discussed how Santa Fe County is rewriting its Land Development Code and may address some HOA issues in the new code. Committee members briefly discussed the programs and asked questions.

The Condominium Act and Zoning Issues

Mr. O'Reilly discussed the City of Santa Fe's Land Use Department's struggle with the "condominiumization" of the R1 zoning areas, or one private residence per parcel, in the city. He stated that guesthouses are being sold separately from main houses, which, in effect, turns an R1 parcel into an R2 parcel without approval from the city. He stated that this process of selling guesthouses or other structures violates the city's zoning authority and the problem lies with the Condominium Act. He stated that a city's zoning authority should be provided an opportunity to approve the proposed condominium. Frank D. Katz, former city attorney, City of Santa Fe, offered suggested language for changing a section of the act allowing for city approval. He stated that because such a requirement is not present, the city relies on voluntary compliance by landowners. He highlighted the fact that this is the only scenario where a division of land can be accomplished without municipal approval.

Janice M. Ahern, Rubin Katz Law Firm PC, stated that the condominium form of ownership is similar to a cotenancy form of ownership. She noted that the City of Santa Fe is trying to regulate ownership; it only has the authority to regulate use and density pursuant to its zoning ordinances. Ms. Ahern pointed out that the use has not changed, whether it is a guesthouse or a condominium. She suggested that the problem is a local one that is caused by the city's guesthouse ordinance.

John N. Patterson, Scheuer, Yost and Patterson PC, discussed the guesthouse ordinance and suggested that the City of Santa Fe define the term "use" in it. He suggested other methods by which the city can control whether a guesthouse is sold as a condominium, for example, through utility and building permit controls. He stated that the city's proposed amendment to the statute goes beyond the zoning and density issue to require city approval for every condominium declaration.

Members of the committee asked questions of the panel and discussed policy options and examples of some of the issues involved in the creation of condominiums.

Issues with Homeowner and Condominium Associations

Scott Varner, president, Towne Park Neighborhood Association, and former board member, Towne Park HOA, described how he was forced to take legal action against his HOA with respect to xeriscaping his land. He stated that HOA boards are sometimes vindictive, arbitrary and abusive and that many times, a homeowner has to hire a lawyer simply to have access to the records. He briefly discussed how the use of proxies was manipulated in an election process at the Hillcrest HOA. He suggested the enactment of laws that allow for water conservation, full disclosure of records and alternative dispute resolutions and that there be a system in place to increase the accountability of board members. He noted the general low participation in HOAs and the lack of qualified individuals who are on the boards.

Meriam Jawhar, Village 5 councilmember, Zocalo Village Councils, Zocalo Condominiums, described the current status of Zocalo Condominiums, the numbers of units sold, units for sale and permits to build. She expressed the frustration of residents with laws that give the developer control over the condominium association board until 90% of the units are built and sold. She emphasized that the unit owners have no recourse to protect their investments, as their requests to the board are continually denied. She discussed the lack of transparency and lack of access to financial and other records of the association. She suggested that audits be required by law and that unit owners have a right to elect board members to the association instead of the developer appointing a unit owner to the board. She provided a handout that further detailed the issues and requested legislation to support condominium owner's rights.

Tom Simon, owner, Westgate Properties, LLC, discussed his business as a property manager who contracts with HOAs and condominium associations for management, administration, governance and property maintenance. He stated that the management, structure and governance of these associations can be complex, and many choose to contract with a property manager. He expressed the importance for, and responsibility of, the owners to educate

themselves on the functions of their associations.

Ms. Ahern discussed the current laws, such as resale certificates and financial disclosure provisions, with respect to the circumstances mentioned. Because HOAs and condominium associations are usually nonprofit corporations, she discussed provisions in the Nonprofit Corporation Act and the Condominium Act dealing with duties of the board and financial disclosure. She agreed that board members are volunteers and need to be educated on the issues. She added that the cost of an audit can be prohibitive and should be considered before requiring it by law.

Mr. Patterson stated that covenant disclosure should be made available to everyone before purchase. He stated that board members are immune unless they breach fiduciary duties. He briefly discussed proxy voting, legislative action on prohibition of extensive water use, dispute resolution and audits of the financial records. He emphasized the importance of educating board members and stated how many associations are running on a bare-bones budget with no reserves for big expenses or repairs.

Members of the committee asked questions of the panel and discussed possible legislation, changes and solutions to the expressed concerns. Representative Stewart announced the creation of a voluntary work group to look more closely at some of the issues. She asked Senators Keller and Ryan and Representative Anderson to join her in the group, as well as the members of the panel. Senator Wirth stated that individuals interested in attending any work group meeting should contact Ms. Khoury so they can be notified of the meeting.

Committee Business

The minutes of the last meeting were approved.

Public Comment

The committee heard comments from the public, including the following:

Max McCauley, a unit owner at Tres Caminos, discussed problems with his condominium association being controlled by a majority of absentee owners/investors who do not address quality-of-life issues and violate the laws and rules of the association.

Edyne Gordon of Zocalo discussed more issues with those condominiums, including how unit owners are ignored by the developer-controlled board; how it is too expensive to bring a legal action; and how the board is unresponsive and its attorney refuses to talk with the owners.

Christopher Johnson discussed oversight of associations, proxies, attorney fees and how HOAs violate their own bylaws or selectively enforce them and how they do not respond to owners' requests or complaints.

Recess

The committee recessed at 5:30 p.m.

Thursday, August 5

New Mexico DNA Identification System Administrative Center: Department of Public Safety (DPS) Audit and Proposed Relocation

Dr. Michael L. Mier, deputy secretary of administration, DPS, introduced the DPS members of the panel and stated that the DPS believes this move would be cost-effective and more efficient for the state.

Noreen Purcell, acting director, Forensic Laboratory, DPS, stated that New Mexico is one of the only states that does not have its DNA Identification System Administration Center (DNA Center) in a state agency. Instead, it is located at the Albuquerque Police Department (APD) Crime Laboratory in Albuquerque. She mentioned that the state database for the DNA Center has been compiled from felony offenders and that the DNA Center works separately from various crime laboratories. She emphasized that the DPS Forensic Laboratory has never lost accreditation and that, when its accreditation expired last year, casework was voluntarily ceased and international accreditation was granted six weeks later. She made it clear that the international accreditation given to the DPS crime laboratories is the highest accreditation given to any laboratory in the state. She stated that the decision to locate the crime laboratory in Albuquerque, made by Darren White as secretary of public safety, was made due to the DPS Forensic Laboratory having limited staff and space. She noted that the crime laboratory has expanded since that time and its forensic database laboratory is separate, which prevents cross-contamination of samples.

Louise Riebe, budget bureau chief, DPS, explained that the DNA Center is funded through fees and appropriations. She offered figures of those fees as well as general fund appropriations received since the inception of the DNA Center. She explained how the Federal Bureau of Investigation has to approve the transfer of the DNA Center and certify the DPS for this function. She expects it would be operational sometime in October.

Germaine R. Chappelle, general counsel, DPS, discussed the internal audit conducted and its findings, including cost savings with the relocation of the DPS to Santa Fe; an anticipated faster turnaround time for DNA results due to on-site analysis; and oversight concerns with the current administration of the DNA Center. She stated that the law designates the DNA Center as a unit of the DPS and gives the cabinet secretary the discretion to relocate it. She added that the DPS is the default location for the DNA Center. She stated that the current location of the DNA Center can be terminated with 90 days notice, and the DPS's decision to relocate the center had been discussed with APD staff.

Mr. White, public safety director, City of Albuquerque, expressed concern over the reasons given for moving the DNA Center and feels there is no legitimate reason to support the relocation. He stated that he understands the current budget cuts and the claim of cost savings given by the DPS. He expressed concern over the known and unknown DNA samples being tested at the same site because currently, known samples are sent to a private laboratory to prevent cross-contamination and to sustain credibility of those positive identification samples in a court of law.

Paul Feist, commander, Scientific Evidence Division, APD, addressed his many concerns with the given testimony by the DPS representatives, including the cost-savings figures; fees collected; and the legitimacy of the audit. He declared that the DPS did not discuss this plan with the DNA Identification System Oversight Committee and that the DPS is requesting an action that is not legal and not done in the appropriate time frame.

Members of the committee and the panel engaged in rigorous conversation discussing the interpretations of the statute, asking for points of clarification and further information. Senator Ryan made a motion for the committee to send a letter to Governor Richardson expressing concern with the proposed relocation. Representative Anderson seconded the motion, and the motion passed with Representatives Anderson and Cervantes and Senators Harden, Lopez and Ryan voting yes; and Representative Stewart and Senators Garcia, Martinez and Wirth voting no. Members discussed putting the vote in the letter.

Uniform Law Commission: Proposed Legislation

Jack Burton, uniform law commissioner, explained bill draft #3, relating to genetic information in the employment context. The bill would enact the Uniform Protection of Genetic Information in Employment Act and amend the Genetic Information Privacy Act. Members of the committee asked brief questions on the draft bill.

Mr. Burton gave an overview of bill draft #5, updating and revising the Uniform Probate Code, the Uniform Trust Code and the Uniform Principal and Income Act, enacting the Uniform Guardianship and Protective Proceedings Jurisdiction Act and amending the Uniform Power of Attorney Act. The draft would also repeal the Uniform Fiduciaries Act. Fletcher Catron, a probate attorney, commented on the need to update the Uniform Probate Code. Committee members asked questions and discussed aspects of the bill draft.

Mr. Burton discussed bill draft #4 that would enact the Uniform Child Abduction Prevention Act and provide the courts with guidelines to follow in custodial disputes with respect to child abductions. He discussed how the majority of child abductions (over 75%) are conducted by family members. Members of the committee discussed familial abductions and asked for clarification on a couple of points.

Overview of the Office of the Medical Investigator (OMI)

Ross Reichard, M.D., assistant chief medical investigator, OMI, explained that the statewide office was established in 1973. He emphasized how New Mexico was on the forefront of medical investigation at the time of the establishment of the OMI. He noted important aspects and upgrades of the new facility, including increased biosafety for employees and visitors. He discussed how all forensic pathologists at the OMI are also members of the Department of Pathology at the University of New Mexico (UNM). He noted that having the OMI in an academic setting has placed it in a nonpolitical environment and has led it to be held out as a model across the country. He discussed how the OMI pathologists are involved in resident training and specialty training with UNM annually and how this has influenced how forensic pathology is practiced around the country. Committee members inquired about various topics,

such as upgrades in the new facility, autopsies, investigations, wrongful deaths, corpse transport and the examination of bodies.

Public Comment

The committee heard comments from members of the public against the proposed relocation of the DNA Center and against some of the provisions in the genetic information bill draft discussed earlier.

Tour of the New Facility of the OMI

Committee members, staff and members of the public toured the new facility of the OMI.

Adjournment

The committee adjourned after the tour, around 2:00 p.m.

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

**September 23-24, 2010
Barbara Hubbard Room, Pan American Center Annex
Payne St. and Stewart St.
New Mexico State University
Las Cruces**

The fourth meeting of the Courts, Corrections and Justice Committee was called to order by Representative Al Park, co-chair, on September 23, 2010 at 10:10 a.m. in the Barbara Hubbard Room, Pan American Center Annex at New Mexico State University (NMSU) in Las Cruces.

Present

Sen. Peter Wirth, Co-Chair
Rep. Al Park, Co-Chair
Rep. Thomas A. Anderson
Rep. Joseph Cervantes
Rep. Gail Chasey
Rep. Zachary J. Cook (9/23)
Sen. Clinton D. Harden, Jr.
Sen. Richard C. Martinez
Rep. Mimi Stewart

Advisory Members

Rep. Eliseo Lee Alcon
Rep. Dennis J. Kintigh
Sen. Cisco McSorley
Rep. Gloria C. Vaughn

Guest Legislators

Rep. Mary Helen Garcia (9/24)
Sen. Mary Kay Papen (9/24)
Sen. Nancy Rodriguez

Absent

Sen. Rod Adair
Sen. Mary Jane M. Garcia
Sen. Linda M. Lopez
Rep. Antonio "Moe" Maestas
Rep. William "Bill" R. Rehm
Sen. John C. Ryan

Rep. Elias Barela
Rep. Brian F. Egolf, Jr.
Sen. Gay G. Kernan
Sen. Carroll H. Leavell
Rep. W. Ken Martinez
Rep. Bill B. O'Neill
Sen. William H. Payne
Sen. Michael S. Sanchez
Rep. Sheryl Williams Stapleton
Rep. Jack E. Thomas
Sen. David Ulibarri

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

Staff

Maha Khoury, Staff Attorney, Legislative Council Service (LCS)
Leslie Porter, Research Assistant, LCS

Thursday, September 23

Call to Order

Being that NMSU is in Representative Cervantes' district, Representative Park suggested that he be the chair of the meeting. It was so done. Representatives Cervantes and Park and Senator Wirth welcomed committee members and the public. The members introduced themselves.

Welcome to NMSU

Wendy K. Wilkins, Ph.D., executive vice president and provost, NMSU, thanked the committee for choosing NMSU as the location to hold the meeting. She gave a brief video presentation on the activities and accomplishments of the university.

Mexico's Perspective on the U.S.-Mexican Border

Ambassador Roberto Rodriguez, Consulate General of Mexico, El Paso Office, began by discussing the relationship between the United States and Mexico, mentioning the opportunities that have arisen due to this relationship. He stated that these are difficult times in Mexico and that crime has resulted, at least partially, from a very bad economic situation.

He briefly explained the Merida Initiative: the bilateral plan between the U.S. and Mexico to combat transnational organized crime. He mentioned the tension between the U.S. and Mexico created by drug trafficking and stated that blaming each other does not solve the problem. While illustrating the seven primary drug cartel areas of control in Mexico, Ambassador Rodriguez emphasized that drug use and drug trafficking are hemispheric issues.

Ambassador Rodriguez discussed the main security challenges, including violence as a result of government action against the drug cartels. He elaborated on a plan for cooperation between the U.S. and Mexico with respect to combating the illegal drug trade and spoke of steps Mexico is taking to combat it on its own, such as the Rule of Law Program. This is an attempt to build a judicial system more similar to that of the U.S. to allow Mexico to apply the rule of law. Mexico is also creating a national police force.

Members of the committee asked Ambassador Rodriguez questions about unemployment and the challenges of increasing trade with Mexico due to border violence; the legalization of drugs in Mexico as an attempt to curb drug trafficking; migration to the U.S. due to unemployment; efforts made by Mexico to keep its citizens in Mexico; and the effects that the Arizona law has had on the relationship between Sonora and Arizona.

Panel Presentation on Border Issues: Security, Communities, Trends, Intergovernmental Agreements and Crime

Chief Randy R. Hill, U.S. Border Patrol, El Paso Sector, Customs and Border Protection, U.S. Department of Homeland Security (DHS), stated that part of the U.S. Border Patrol's success is the result of the collaboration with various law enforcement agencies and access to better technology. He gave figures on the number of illegal alien arrests in New Mexico over the past several years, stating that the number of arrests is decreasing. Using border patrol standards, he

declared that the New Mexico border is secure, with 14.3 miles of pedestrian fence, 100 miles of vehicle barriers and with 2,700 agents in the El Paso Sector.

Chief Hill opined that border security is affected by all levels of government. He stated that one way to measure violence is the number of assaults on agents, which has been reduced due to a decline in the number of immigrants crossing over the border. He expressed concern over the new and more sophisticated methods of crossing and smuggling, such as tunneling beneath the border and the use of juvenile smugglers.

John Wheeler, secretary, Homeland Security and Emergency Management Department, discussed intergovernmental cooperation and programs and emphasized the need for information-sharing among agencies involved in border security. Both he and Chief Hill discussed how this department is the conduit for coordinating state and federal resources along the border.

Vicki B. Gaubeca, director, Regional Center for Border Rights, American Civil Liberties Union (ACLU) of New Mexico, works in Las Cruces. She explained that the Las Cruces office works with affiliates in San Diego, with various national legal programs and with border advocacy groups. She expressed that the border issue is multidimensional, and while the ACLU recognizes that federal law enforcement's primary focus is border security, the ACLU believes that immigration enforcement should be guided by equal protection and due process.

Ms. Gaubeca brought forth concerns of the ACLU, including the massive increase of federal law enforcement resources on the border. She informed the committee that this deployment occurred at a rapid pace and without adequate oversight. She added that the current rhetoric focuses on false theory, claiming that before the broken immigration system can be fixed, the federal government must seal the border. She stated that there is no rampant crime, and the media and the government are exaggerating the issue of corruption. She mentioned that there are now 9.4 agents per U.S. border mile and that this does not include unmanned vehicles. The ACLU desires the prevention of human rights violations and hopes to meet with the U.S. Immigration and Customs Enforcement (ICE) and U.S. Border Patrol to discuss how to prevent such violations. Ms. Gaubeca ensured the committee that the ACLU is attempting to form a holistic approach to border security that includes not only enforcement, but also community well-being and opportunity and drug policy reform.

Sister Anne Salaun, Religious of the Assumption, stated that Chaparral is a colonia with hard-working, low-income families of mixed immigration status. She discussed a police raid in the middle of the night in September 2007 where sheriffs deputies, followed by U.S. Border Patrol agents, used pretexts, such as an unleashed dog or a refrigerator left outside, to ask for immigration papers and deport members of the community. She noted that law enforcement did not address the crack house in town or other crimes but only focused on immigration. She stated how the raid has caused a rift and a breach of trust between the community and law enforcement. Crimes and domestic violence incidents go unreported because many families are of mixed immigration status. She expressed concern that if situations such as this are allowed to continue, the welfare of the community will continue to dissolve.

Richard Williams, chief of police, City of Las Cruces, discussed crime rates and population growth in Las Cruces and their impact on law enforcement in the area. He mentioned the collaboration of law enforcement agencies and the effectiveness of reorganization to ensure public

safety during the current budgetary challenges. He assured the committee that he does not direct his officers to conduct raids, and has not heard of the Las Cruces Police Department conducting raids or assisting in the enforcement of immigration laws.

Francisco Venegas, deputy field office director, Enforcement and Removal Operations, ICE, DHS, explained that the El Paso Office covers 18 counties in west Texas and all of New Mexico. The primary mission is the removal of illegal aliens, which requires the identification of those individuals with an emphasis on those individuals with criminal backgrounds. He stated that his agency does not "go knocking on doors", but works with other agencies to promote public safety and national security. Mr. Venegas stated that interagency operations are needed to eliminate international criminal threats. He gave an explanation of "enforcement", which includes the apprehension of aliens and violent criminal aliens and gathering intelligence. He noted his office also participates in homeland security operations. He echoed the sentiment of Chief Hill that cooperation among agencies is a must.

Fernando Garcia, executive director, Border Network for Human Rights, stated that the border is generally safe and secure and the idea that killings and chaos exist is untrue, and that this idea has been sold to the media due to political interests and a racist agenda. He discussed the border community security poll that was conducted in an attempt to seek the truth of this matter, which indicated that the majority of border residents feel safe. He also declared that the border has no spillover and the need for increased border officials is a false argument. He opined that the U.S. has a system that does not work and that it needs a change in how it views the border, immigrants and enforcement.

Marcela Diaz, executive director, Somos Un Pueblo Unido, discussed some of the problems that occur when undocumented immigrants are arrested in New Mexico. She explained that some counties hold immigrants for the ICE and are not getting reimbursed from the federal government. She discussed the 287(g) Program in which the ICE deputizes jail officials to interview prisoners while they are incarcerated at the local facility on an ICE hold. She stated that the Corrections Department will be instituting this program shortly. Ms. Diaz discussed the distinction between an undocumented immigrant and a criminal illegal alien and declared that many individuals in the system do not meet the definition of a "criminal illegal alien". She also mentioned problems with the system, including the ICE detention center and individuals being discouraged to post bail.

Members of the committee asked for points of clarification and information and engaged in rigorous discussion and questions about border issues with the panel.

Proposed Legislation on Local Enforcement of Federal Immigration Laws

Senator Martinez discussed the history of the bill and explained the intent of the bill.

Greg Solano, Santa Fe County sheriff, emphasized that this is an important bill, and in order for law enforcement to be effective, it cannot arrest people solely on immigration status. He discussed the public safety concern when victims of crimes or witnesses to crimes do not come forward due to a fear of being deported. He explained the importance of trust between law enforcement and the community in the reduction and prevention of crime.

Diane Wood, policy director, ACLU of New Mexico, stated that New Mexico cannot afford to divert state and local resources into enforcement of federal immigration laws and should be wary of the racial profiling that could occur if such laws are enforced locally. She feels this bill allows victims to report those crimes committed against them.

Members of the committee asked questions, discussed policy options and gave suggestions on the bill.

Public Comment

Leo Mihas, a member of the public, brought forth his concern regarding the bill draft. He expressed concern about what encourages illegal immigration and that the legislation at hand may make New Mexico the preferred portal. He is concerned about the issuance of driver's licenses to illegal immigrants and about the bill making it more difficult for law enforcement personnel to do their jobs.

Approval of the Minutes

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

Travel and Tour of the Management and Training Corporation (MTC) Otero County Processing Center

Recess

The committee recessed around 6:10 p.m., after the tour of the MTC Otero County Processing Center.

Friday, September 24

Committee Business

Representative Cervantes gave a brief background on allegations of voter fraud in Dona Ana County and mentioned that the claims were given to the local attorney general's office, the district attorneys' office and the United States attorney general. He emphasized that the individuals and organizations that made the allegations were invited to appear at the meeting today, along with Representative Dianne Miller Hamilton. Representative Park added that the aforementioned parties initially accepted the invitation but notified the co-chairs last week that they would be unable to attend due to an FBI investigation.

Allegations of Voter Fraud in Dona Ana County

Lynn Ellins, Dona Ana County clerk, was elected in the 2008 general election. He stated that he will be addressing Representative Hamilton's and Dona Ana County residents' concerns in regard to voter fraud. He explained that these allegations have been brought forth by individuals in favor of photo voter identification cards. He warned that hasty accusations and unverified claims promote needless skepticism. He assured the committee that the allegations were investigated and no voter fraud was found, and he also stated that where substantial and credible concerns of voter fraud are raised, the Dona Ana County Clerk's Office will take the appropriate action.

Mr. Ellins expressed his concern over the lack of standards or requirements for third-party registration agents that gather voter registrations. He clarified that he is in favor of third-party

registration, but standards are required. Mr. Ellins briefly discussed a proposal for election day vote centers, which are centers that serve as voting locations for all individuals on voting day, despite where their precincts are.

Daniel Ivey-Soto, executive director, New Mexico Clerks, discussed the investigation conducted in response to the allegations. Representative Cervantes asked if anyone from the public would like to speak on the issue, and he noted that the *Las Cruces Sun-News* was also invited to substantiate these claims. Nobody in the audience was present to bring forth the allegations.

Members of the committee engaged in a conversation with Mr. Ellins and Mr. Ivey-Soto on voter fraud and elections.

Legislative Proposals from the Attorney General and Update on the Border Violence Division

Gary King, attorney general (AG) of New Mexico, began by discussing how the AG's Office is responding to border violence and about the Rule of Law Program in Mexico. Concerning the office's response to border violence, he mentioned sources of information and funding for the Mexican government in dealing with border violence and drug cartels, including a grant from the United States Agency for International Development and the New Mexico AG's Border Violence Division. He added that the office has also developed advanced training for law enforcement agencies for human and arms trafficking as well as a public information campaign.

Regarding the Rule of Law Program, the AG's Office is helping the Mexican government evolve its judicial systems to one based on trial and advocacy. One aspect of this program showing success is the Article 4 prosecutions. Article 4 prosecutions are those that occur if a criminal is in Mexico and Mexico will not extradite the criminal. In that case, the criminal can be prosecuted in Mexico for the crime committed in the United States. The information for the trial is assembled in the United States and is sent to the prosecutors in Mexico. Attorney General King stated that these have been very successful and feels this process will aid in relieving border violence in the long run.

Attorney General King addressed his 2011 legislative priorities, which include bill drafts on border and drug enforcement issues; ethics and campaign finance reform; DWI and underage drinking prevention; domestic violence; criminal laws; the environment; and miscellaneous civil matters. Members of the committee asked questions and discussed the proposed bill drafts.

Proposed Legislation on Animal Cruelty

Heather Ferguson, legislative director, Animal Protection of New Mexico, briefly discussed changes in the bill draft from last year's version, which includes adding bestiality as a crime of animal cruelty and taking out the provisions on leaving pets in hot cars. Members of the committee asked for points of clarification.

Public Comment

Rich Ferrari, a member of the Mesilla Valley Resource Center, which is the successor of Mothers Against Drunk Driving, feels that if underage drinking is approached in the same manner as underage smoking, the state would see better results. He stated that research illustrates that no safe level of underage drinking exists because it impacts the development of the hippocampus.

Mr. Ferrari would like to see a civil administration process developed to deal with underage alcohol users.

Joan Ferrari added that the course of action should not simply be preventive, but should also include enforcement of rules and getting underage alcohol abusers the treatment needed. She would like to see a change in the law for consumption of alcohol, not just possession of alcohol.

Adjournment

There being no further business before the committee, the fourth meeting of the Courts, Corrections and Justice Committee adjourned at 1:25 p.m.

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

November 4-5, 2010
Room 307, State Capitol

The fifth meeting of the Courts, Corrections and Justice Committee was called to order by Senator Peter Wirth, co-chair, on November 4, 2010 at 10:05 a.m. at the State Capitol in Santa Fe.

Present

Sen. Peter Wirth, Co-Chair
Rep. Al Park, Co-Chair
Sen. Rod Adair (11/5)
Rep. Thomas A. Anderson
Rep. Joseph Cervantes
Rep. Gail Chasey
Rep. Zachary J. Cook
Sen. Clinton D. Harden, Jr.
Sen. Linda M. Lopez (11/5)
Rep. Antonio "Moe" Maestas
Sen. Richard C. Martinez
Rep. William "Bill" R. Rehm
Sen. John C. Ryan (11/5)
Rep. Mimi Stewart

Absent

Sen. Mary Jane M. Garcia

Advisory Members

Rep. Eliseo Lee Alcon
Rep. Elias Barela (11/5)
Rep. Brian F. Egolf, Jr.
Rep. Dennis J. Kintigh
Sen. Carroll H. Leavell
Rep. W. Ken Martinez
Sen. Cisco McSorley
Sen. William H. Payne (11/5)
Rep. Sheryl Williams Stapleton
Rep. Gloria C. Vaughn

Sen. Gay G. Kernan
Rep. Bill B. O'Neill
Sen. Michael S. Sanchez
Rep. Jack E. Thomas
Sen. David Ulibarri

Guest Legislator

Rep. Debbie A. Rodella (11/5)

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

Minutes Approval

Because the committee will not meet again this year, the minutes for this meeting have not been officially approved by the committee.

Staff

Maha Khoury, Staff Attorney, Legislative Council Service (LCS)
Kim Bannerman, Staff Attorney, LCS
Leslie Porter, Research Assistant, LCS

Thursday, November 4

Call to Order

Senator Wirth called the meeting to order and welcomed committee members and guests and representatives from the judiciary.

Report from the Judiciary: Unified Budget, Restructuring and Proposed Legislation

Charles W. Daniels, chief justice of the New Mexico Supreme Court, discussed how the judiciary is severely understaffed and under-resourced. He explained the 16-member New Mexico Reengineering Commission, created to examine the operations of the judiciary with respect to efficiency, effectiveness and cost. The commission will work with the National Center for State Courts, an independent nonprofit organization that will lend its expertise at no cost. Chief Justice Daniels stated that 30 new judgeships are needed statewide; 10 are critically needed, but the judiciary is requesting only one judge. He noted that the legislation proposed will allow the judiciary to run more effectively and emphasized that the courts are not requesting more resources.

Arthur W. Pepin, director, Administrative Office of the Courts, stated that the Odyssey case management project is working very well and making the courts more efficient. He illustrated the vision of having electronic traffic citations, as well as appellate court decisions, flow directly into the Odyssey system. Mr. Pepin stated that the reengineering commission is comprised of members from various arenas, including the legislature, the judiciary and the chambers of commerce. The approach of the commission is to analyze the current functioning of the courts and then identify three or four things that can be realistically implemented. He anticipates that the proposals will be presented in November 2011. He noted that states that have gone through this process have saved money. Mr. Pepin displayed his willingness to meet with the commission and any members of the committee to answer questions.

Celia Foy Castillo, judge, New Mexico Court of Appeals, and chair of the Budget Committee of the Chief Judges Council, stated that the judiciary has had a \$16 million budget reduction since 2009 and that the First Judicial District Court judges and metropolitan court judges agreed to cut their salaries at the same level as their employees salaries were cut. She briefly discussed the judiciary's Unified Budget, highlighting the 11.5% full-time-employee vacancy level and the effect another budget cut would have on the courts, including furloughs. Mr. Pepin reminded the committee that furloughs require the courts to be closed, thus denying the public services to which they are constitutionally entitled. He emphasized how dire the situation is, declaring that short of using volunteers, the courts cannot stay open.

Members of the committee asked questions of the panel, discussed policy options and made inquiries and information requests. Topics discussed included the caseloads of the courts, the types of cases responsible for increased court filings, the need for additional judgeships, how to make courts more efficient, the Odyssey system, stratifying filing fees and warrant issues.

Mr. Pepin briefly reviewed with the committee the bill drafts numbered 21-33. Members asked questions and requested clarification on the proposed legislation.

Chemical Blood Tests in DWI Cases

Senator Leavell gave background on a bill draft stating that when automobile accidents occur near the New Mexico border, often the injured driver is taken out of state due to the proximity of the nearest emergency medical facility. This presents a problem when it is suspected that alcohol is involved in the crash.

Janetta B. Hicks, district attorney, Fifth Judicial District, confirmed that this situation occurs in Lea County on a regular basis. She explained that this legislation would allow an emergency medical technician to draw blood prior to the individual being taken out of state for emergency medical care. Without this authorization, a person must be arrested before blood can be drawn. She noted that when an individual obtains a driver's license, the individual gives "implied consent" to have blood drawn in circumstances such as this. It is "implied" because an individual may withdraw the consent if the individual is conscious at the time of arrest.

Members of the committee voiced their concerns, asked for points of clarification and discussed the bill draft.

Incarceration of Youth Ages 18-21: Report from House Memorial 29 (HM 29) Task Force and Proposed Legislation

Bob Cleavall, chair of the HM 29 Task Force, discussed the sponsor, members and progress of the memorial and its presentation to the Children, Youth and Families Department (CYFD).

Scott Cameron, assistant general counsel, CYFD, explained the recommendations of the task force and went over the bill draft. The bill provides protection for children previously incarcerated as adults and for 18-year-olds subject only to the jurisdiction of the children's court, allowing the judge to decide whether the 18-year-old belongs in a juvenile or county jail. He discussed the language addressing who is required to notify the courts and Juvenile Probation Office (JPO) when children are being held in detention because many children are held for unnecessary lengths of time. Another proposal addresses the fact that 18-year-olds are sent to adult facilities upon breaking the terms of their drug court agreement, even though they were charged as juveniles. The bill also addresses how to deal with outstanding juvenile warrants for persons over 18 years of age.

Ted Lovato, deputy director, Youth and Family Services, CYFD, clarified that the purpose of the cleanup of the language in current law is to address youth that have reached the age of 18 but are still under juvenile jurisdiction and have not committed new crimes.

Thomas E. Swisstack, mayor, City of Rio Rancho, expressed his concerns with the bill, especially with respect to juveniles who have already served adult time. His concern is that the person who has served adult time will have picked up the habits of the adult facilities and bring them into the juvenile facilities. He asked the committee to consider that if a child or 18-year-old has served adult time, that person should not be put back into the juvenile system for the safety of the other juveniles. Mayor Swisstack opined that part of the problem at hand is that a system for handling 18-year-olds and 19-year-olds has not been developed and it is distressing the system.

Dave Schmidt, director, New Mexico Council on Crime and Delinquency, refuted Mayor Swisstack's position on persons who have served adult time and were not allowed to serve juvenile time. There are occurrences in which an 18-year-old is processed in an adult facility and has stayed there a day or two, but still has an outstanding juvenile warrant. He stated that the situations vary, and the decision should be the judge's.

Mr. Cleavall, who is also the chair of the Juvenile Committee of the New Mexico Sentencing Commission, explained that part of the population believes that 18-year-olds do not belong in juvenile facilities and part of the population believes they do. He illustrated a situation in which an 18-year-old weighs 100 pounds, and the individual will most likely be sent to a juvenile facility for that individual's protection, but only if it is the judge's decision.

Members of the committee discussed the issues and asked for points of clarification on the bill draft.

Eminent Domain Issues

Mayor Swisstack described problems in the subdividing and sale of land in Rio Rancho. He explained that while the selling of half-acre lots in the 1960s and 1970s has resulted in homebuilding that has aided the city's growth, many of the lots are undeveloped and are in the city's center. Additionally, many lots are in arroyos or hills, as the grid divided the land without reference to the topography. He stated that this type of land division and ownership has made it very difficult for the City of Rio Rancho to provide basic services and schools, and this compromises public safety service delivery.

Mayor Swisstack also explained problems caused by the 2007 changes to the Metropolitan Redevelopment Code, limiting the correction of obsolete or impractical planning that threatens the health, safety and welfare of persons or property due to erosion, flooding and inadequate drainage. He noted that prior to 2007, Rio Rancho was able to develop more than 1,000 acres of vacant land, producing two subdivisions. He added that he is willing to hear input on how to alleviate this situation, for he would like Rio Rancho to become an independent and self-sufficient city.

James Jimenez, city manager, Rio Rancho, emphasized that this situation was inherited as a result of a land sales program that was a scam, but then it went well and turned into a city.

Committee members inquired about the severity of the situation, asking about sewage, water and streets, the redrawing of property lines and the property acquisition methods used by the City of Rio Rancho.

Public Comment

Members of the public commented on eminent domain issues in Rio Rancho.

Recess

The committee recessed around 4:30 p.m.

Friday, November 5

Senator Wirth reconvened the meeting at 9:30 a.m. Representative Park welcomed Douglas M. Brown, dean, Anderson School of Management, University of New Mexico (UNM).

UNM Federal Bureau of Investigation (FBI) Regional Computer Forensics Laboratory

Dean Brown explained the increased need for computer forensics. He explained that the new laboratory will be training all levels of law enforcement in computer diagnostics. In regard to funding, he noted that UNM has a \$300,000 debt obligation on a lease and has paid the first half of the lease costs.

Darrin Jones, director, New Mexico Regional Computer Forensics Lab, explained that the forensics lab exists under a cooperative agreement. He illustrated how 10 years ago on the west coast, the FBI and local law enforcement recognized that the demand for digital evidence was increasing. In response to the demand, the first regional forensics lab was built and became a national model. New Mexico's is the second lab in the nation with state-of-the-art digital facilities. He clarified that all digital evidence gathered in New Mexico will be sent to this facility and will be processed without charge to law enforcement agencies in the state. He explained that because the forensics lab is associated with UNM, this relationship allows the facility to employ students and staff. He also noted that the partnership is with the Anderson School of Management due to the highly qualified computer experts at the school.

Members of the committee asked the presenters questions on various topics, including the costs incurred by local law enforcement agencies.

Independent Oversight of Prisons Task Force Report

Representative Chasey informed the committee that this study arose from a recommendation from the Commission on Safety and Abuse in America's Prisons that each state develop an independent entity to oversee its corrections facilities. The task force was assembled by the attorney general (AG) pursuant to House Memorial 72 (2007).

Gary King, AG of New Mexico, explained that the task force met over the span of two interims and recommended the creation of an independent oversight entity with "golden key access". He noted that the second task force created by the AG's Office pursuant to House Memorial 47 (2010) was tasked with developing a plan for correctional facilities oversight that could be implemented at a nominal cost that would save the state money in the long run. He emphasized that the only authority this oversight group had was to identify issues and make recommendations to the legislature and to those who have the authority to implement change.

Joe Williams, secretary of corrections, declared that he and Jim Brewster, general counsel for the Corrections Department (CD), attended the task force meetings and opposed the recommendation for an oversight entity. He explained that the CD submits itself for review through the American Corrections Association and that all facilities under his jurisdiction are accredited and have scored highly. He stated that the CD was under the Duran Decree for 20 years and that this committee has golden key access. He said many bodies, including the grand jury, come in and inspect the facilities. He closed by saying that experts do not run prisons and that the CD would like to run prisons the way it sees fit instead of having an oversight task force telling it how to run its prisons.

Members of the committee engaged in conversation with the panel members on various topics, including national accreditation, the significance of oversight, their appreciation for Secretary Williams, the importance of education in preventing the need for increased corrections funding, fear of retaliation against inmates if their concerns are brought forth via legislators and privately run prisons.

Approval of Minutes

The minutes of the previous meeting were approved without objection.

Driver and Highway Safety Task Force: Report and Proposed Legislation

Senator Wirth described the bills and their origin, including Senate Memorial 21 and Eliza Sultan, the inspiration for the memorial. Ms. Sultan told the story of an elderly friend who caused an accident and was told by the police officer merely to "strategize better". The incident concerned her, and she brought her concerns to Senator Wirth.

Michael R. Sandoval, director, Motor Vehicle Division, Taxation and Revenue Department, explained that a task force convened and split into two working groups: one to work with the issue of elderly drivers and another to deal with the issue of teenage drivers. The first bill extends a teenager's provisional driver's license date from 12 months to 18 months. It also adds not using seat belts and using cell phones to the list of violations and requires that 30 days be added to the end of either the driver's permit or provisional license for each violation. The second bill deals with elderly drivers and sets up renewal periods as drivers age. It also requires that drivers 75 years of age and older undergo examinations when they renew their licenses. Senator Wirth noted the statistics illustrating a decrease in teenage deaths due to longer provisional licenses.

Committee members asked for points of clarification and questioned the proposed required testing of elderly drivers.

Endorsement of Proposed Legislation

Committee members discussed and voted on legislation for endorsement. Bill drafts 1-8; 11; 12; 14; 15; 18; 20; 21; 23-27; 29-33; 35; 36; and 38-40 were endorsed.

Public Comment

Mr. Brewster objected to the way in which the oversight task force meetings were held, claiming that the CD was not invited to the last meeting. He declared that the state does not need to spend hundreds of thousands of dollars for oversight when national programs do this already.

Alternatively, Diane Wood of the American Civil Liberties Union expressed strong support for independent oversight of the CD. She gave the example of four women who alleged they were raped in the women's facility and then were put in segregation.

Adjournment

There being no further business, the fifth and final meeting for the 2010 interim of the Courts, Corrections and Justice Committee adjourned at 1:45 p.m.

Legislative Proposals

COURTS, CORRECTIONS AND JUSTICE COMMITTEE
LEGISLATION PROPOSED IN THE 2010 INTERIM

- 1. Treatment in Lieu of Incarceration for Drug Possession Offenses.**
- 2. Certification of Reserve Police Officers.**
- 3. Uniform Protection of Genetic Information in Employment Act.**
- 4. Uniform Child Abduction Prevention Act.**
- 5. Revisions to the Uniform Probate Code, Uniform Trust Code, and Other Acts.**
- 6. Local Enforcement of Federal Immigration Laws.**
- 7. Governmental Contractor Disclosures and Prohibitions.**
- 8. Apply Governmental Conduct Act to Local Governments.**
- 9A. Prohibit Intoxication by Persons under 21 Years Old.
- 9B. Prohibit Consumption of Alcohol and Intoxication by Persons under 21 Years Old.
10. Authorize Class A Counties to Impose a Local Liquor Excise Tax.
- 11. Family Violence Protection Act Revisions.**
- 12. Uniform Interstate Enforcement of Domestic Violence Protection Orders Act.**
13. Allow the Attorney General to Enforce the Uniform Securities Act.
- 14. Reconcile Multiple Amendments to the Definitions Section of the Sex Offender Registration and Notification Act.**
- 15. Provide a Penalty for Violation of the Inspection of Public Records Act.**
16. Create Private Cause of Action to Enforce Certain Environmental Statutes.
17. Allow Department of Environment to Deny Air Quality Control Permit Based on Poor Compliance History.
- 18. Amendments to the Fraud Against Taxpayers Act.**
19. Expand Crime of Cruelty to Animals and Increase Penalties. (Attorney General)
- 20. Expand Crime of Cruelty to Animals and Increase Penalties.** (Animal Protection of New Mexico)
- 21. New Judgeship in the Eighth Judicial District.**

22. Allow Retired Peace Officers to Return to Work as Court Security Personnel Without Suspension of Retirement Benefits.
- 23. Require Background Checks for Persons in the Safe Exchange and Supervised Visitation Program.**
- 24. Increase the Magistrate Courts Operations Fee from \$4.00 to \$7.00.**
- 25. Increase Docket Fees in Appellate Courts to Pay for Appellate Transcripts in Indigent Criminal Appeals and Abuse and Neglect Cases.**
- 26. Uniform Convenience Fees for Electronic and Credit Card Transactions.**
- 27. Provide That a Judgment by a District Court That Includes Fines, Fees or Costs Constitutes a Money Judgment.**
28. Clarify Qualifications of Metropolitan Court Judges.
- 29. Changes and Clean-up to Certain Sections of the Motor Vehicle Code.**
- 30. Penalty Assessment Citation Remittances to the Courts.**
- 31. Require One Judge in the Ninth Judicial District to Maintain a Principal Office in Roosevelt County.**
- 32. Constitutional Amendment to Require Appointed Judges to Serve at Least One Year Before a General Election is Held for That Office.**
- 33. Appropriation for Enhanced Background Investigations for the Bernalillo County Metropolitan Court.**
34. Clarify Who Can Perform Chemical Blood Tests in DWI Cases.
- 35. Expand Options for Incarceration of Youth 18-21 Years of Age.**
- 36. Modify Requirements for Licensing Drivers under Eighteen Years of Age.**
- 37. Modify Renewal and Testing Requirements for Drivers Seventy-Five Years of Age and Older.**
- 38. Homeowners Association Act and Water Conservation Measures.**
- 39. Amend Sections of the Condominium Act to Provide More Rights to Unit Owners.**
- 40. Require Condominium Declaration to Comply with Local Zoning and Subdivision Laws.**

(legislation endorsed by the committee is in **bold**)