



New Mexico State Legislature
Courts, Corrections and Justice Committee

2008
INTERIM REPORT

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Legislative Council Service
411 State Capitol
Santa Fe, New Mexico

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**2008 APPROVED
WORK PLAN AND MEETING SCHEDULE
for the
COURTS, CORRECTIONS AND JUSTICE COMMITTEE**

The Courts, Corrections and Justice Committee was created by the Legislative Council on May 5, 2008. The committee members are:

Members

Sen. Cisco McSorley, Co-Chair
Rep. Al Park, Co-Chair
Sen. Rod Adair
Rep. Thomas A. Anderson
Rep. Joseph Cervantes
Rep. Gail Chasey
Sen. Clinton D. Harden, Jr.

Sen. Carroll H. Leavell
Rep. Antonio "Moe" Maestas
Sen. Richard C. Martinez
Sen. Lidio G. Rainaldi
Rep. William "Bill" R. Rehm
Rep. Peter Wirth
Rep. Eric A. Youngberg

Advisory Members

Rep. Elias Barela
Sen. Kent L. Cravens
Rep. Daniel R. Foley
Sen. Mary Jane M. Garcia
Sen. John T. L. Grubestic
Sen. Gay G. Kernan
Sen. Linda M. Lopez
Rep. W. Ken Martinez
Sen. William H. Payne

Rep. Jane E. Powdrell-Culbert
Sen. John C. Ryan
Sen. Michael S. Sanchez
Rep. Sheryl Williams Stapleton
Rep. Mimi Stewart
Rep. Thomas E. Swisstack
Sen. James G. Taylor
Rep. Teresa A. Zanetti

Work Plan

During the 2008 interim and as time permits, the committee proposes to address the following and recommend appropriate legislation:

(1) oversee and monitor issues relating to corrections with a focus on prison reform, reentry and rehabilitation of inmates and prison reform efforts in other states, review recommendations of Governor Richardson's Prison Reform Task Force and oversee any issues relating to the new facilities at Clayton and Springer;

(2) review operations of the judiciary, its projects, committees, specialty courts, allocation of resources, budget and recommended legislation;

(3) examine issues relating to criminal justice and public safety, including criminal laws and procedures, the public defender, district attorneys and law enforcement issues;

(4) monitor juvenile justice issues and examine the Missouri Model being adopted by the Children, Youth and Families Department;

(5) review sex offender registration laws, residency requirements, GPS monitoring and the impact of the federal Adam Walsh Child Protection and Safety Act of 2006;

(6) study water adjudication issues in a joint meeting with the Water and Natural Resources Committee;

(7) review issues relating to car title loans;

(8) review enforcement of the Dee Johnson Clean Indoor Air Act;

(9) examine limited liability companies' filing requirements with the Public Regulation Commission;

(10) review audit provisions and training relating to elections;

(11) study the rationale for excluding farm workers from the Workers' Compensation Act;

(12) examine adult guardianship and domestic partnership issues;

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

(14) review legislative proposals of the Uniform Law Commission;

(15) receive an update on the federal Real ID Act and examine related privacy issues;

(16) examine the extent, if any, of civil litigation abuse and consider other civil litigation issues;

(17) examine alternative dispute resolution in construction cases;

(18) examine disproportionate incarceration of Native Americans; and

(19) address related issues as appropriate.

2008 Approved Meeting Schedule

Date

Location

June 10

Santa Fe

July 1-2

Albuquerque

August 18-20

Las Cruces

August 27-28

Clayton/Springer

October 20-22

Santa Fe

November 17-19

Santa Fe

Agendas

Revised: June 30, 2008

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

**July 1, 2008
Continuing Education Building
University of New Mexico
1634 University Blvd. NE
Albuquerque**

**July 2, 2008
Metropolitan Assessment and Treatment Services (MATS)
5901 Zuni SE
Albuquerque**

Tuesday, July 1

- 10:00 a.m. **Call to Order**
—Senator Cisco McSorley and Representative Al Park,
Co-Chairs
- 10:05 a.m. **Approval of Minutes**
- 10:10 a.m. **Welcoming Remarks**
—Rita Martinez Purson, Director, UNM Continuing Education
- 10:15 a.m. **Report and Recommendations of Governor Richardson's Prison
Reform Task Force**
—John Bigelow, Chair, Prison Reform Task Force
—Joe Williams, Secretary of Corrections
—John Wheeler, Crime Policy Advisor to the Governor
- 12:30 p.m. **Lunch**
- 1:30 p.m. **The Success of New Mexico Drug Courts**
—Justice Charles W. Daniels, New Mexico Supreme Court
—Judge Richard Knowles, Second Judicial District Court

2:00 p.m.

How States Can Reduce Prison Populations and Save Taxpayer Dollars While Improving Public Safety

—Richard Jerome, Project Manager, Public Safety Performance Project, Pew Center on the States (PCS)

—Jake Horowitz, Senior Associate, Public Safety Performance Project, PCS

—Alison Lawrence, Criminal Justice Policy Associate, National Conference of State Legislatures (NCSL)

—Keven Pellant, Deputy Secretary, Community and Field Services, Kansas Department of Corrections

Public Comment

Recess

Wednesday, July 2

9:00 a.m.

Welcoming Remarks

—Thaddeus Lucero, Bernalillo County Manager

9:10 a.m.

Update on the Federal Real ID Act and Options for New Mexico

—Melissa Savage, Program Director, NCSL

—Rick Homans, Secretary, Taxation and Revenue Department (TRD)

—Ken Ortiz, Director, Motor Vehicle Division, TRD

10:30 a.m.

Limited Liability Companies' Filing Requirements with the Public Regulation Commission (PRC)

—Sandy Jones, Commissioner and Vice Chair, PRC

—Juan Rios, Administrative Services Director, PRC

—Ann Echols, Corporations Bureau Chief, PRC

—Avelino Gutierrez, Staff Attorney, PRC

11:30 a.m.

Lunch

Tour of the Bernalillo County MATS Facility

Adjourn

Revised: July 31, 2008

**TENTATIVE AGENDA
for the
WATER AND NATURAL RESOURCES COMMITTEE
and the
COURTS, CORRECTIONS AND JUSTICE COMMITTEE**

**August 4-6, 2008
NMSU Golf Course Club House
3000 Herb Wimberly Drive
Las Cruces**

Monday, August 4

- 8:00 a.m. **Call to Order and Introductions**
—Representative Andy Nuñez, Water and Natural Resources Committee Chair
—Senator Cisco McSorley, Courts, Corrections and Justice Committee Co-Chair
—Representative Al Park, Courts, Corrections and Justice Committee Co-Chair
- Welcome to NMSU**
—Waded Cruzado-Salas, Interim President, New Mexico State University (NMSU)
- 8:15 a.m. **Alamogordo Desalination Project Status**
—Steven Castillo, Dean, College of Engineering, NMSU
—Karl Wood, Director, Water Resources Research Institute
- 9:15 a.m. **Food Security and Farm Sustainability**
—Jeff Witte, College of Agriculture, NMSU
—Janet Jarratt, Farmer
—Edward Avalos, New Mexico Department of Agriculture
- 10:30 a.m. **Why Water Rights Adjudication Is Important**
—Joe Stell, Former Chair, Water and Natural Resources Committee (WNRC)
—Tom Turney, Former State Engineer
- 12:00 noon **Working Lunch**
- 12:30 p.m. **AOC-OSE Work Group Status Report**
—Bill Hume, Office of the Governor
—Celina Jones, Administrative Office of the Courts
- 2:00 p.m. **Texas Litigation; Status of Appropriation**
—Frances Bassett, Office of the Attorney General
—John Draper, Attorney, Montgomery and Andrews

- 3:00 p.m. **Pre-1907 Water Rights Status and Acequia Adjudications**
—Tessa Davidson, Rio Grande Water Rights Association
—Richard Trujillo, Office of the State Engineer
—Hilario Rubio, Office of the State Engineer
- 4:00 p.m. **The Role of Ombudsman and Intervenors in Water Adjudications**
—Darcy Bushnell, Joe M Stell Ombudsman Program, Utton Transboundary
Center, University of New Mexico (UNM) Law School
- 5:00 p.m. **Recess**

Tuesday, August 5

- 8:00 a.m. **Gila River Planning**
—Estevan Lopez, Director, Interstate Stream Commission
—Adrian Oglesby, The Nature Conservancy
- 9:00 a.m. **Domestic Wells Legal Status (*Bounds vs. State*)**
—Steve Hernandez, Attorney
—Bill Hume, Office of the Governor
- 10:00 a.m. **Lower Rio Grande Adjudication Status Report**
—The Honorable Jerald A. Valentine, Judge, Third Judicial District
- 11:00 a.m. **Elephant Butte/El Paso Water District Settlement**
—Gary Esslinger, Manager, Elephant Butte Irrigation District
- 12:00 noon **WNRC Adjourn**

COURTS, CORRECTIONS AND JUSTICE COMMITTEE

- 1:00 p.m. **Call to Order**
—Senator Cisco McSorley, Courts, Corrections and Justice Committee Co-Chair
—Representative Al Park, Courts, Corrections and Justice Committee Co-Chair
- 1:05 p.m. **Juvenile Justice Reforms — Recent Efforts and Future Planning: The Missouri Model and Juvenile Facilities**
— Dorian Dodson, Secretary of Children, Youth and Families
— Debra Pritchard, Director, Juvenile Justice Services, Children, Youth and Families Department
- 3:30 p.m. **Tour of J. Paul Taylor Center**
- Recess**

Wednesday, August 6

- 9:00 a.m. **Report from the Attorney General's Animal Cruelty Task Force; Legislative Proposals**
—Heather Ferguson, Legislative Director, Animal Protection of New Mexico and Animal Protection Voters
—Steve Suttle, Special Counsel, Office of the Attorney General
- 10:30 a.m. **Legislative Proposal on Eyewitness Identification Procedures**
—Michael Stout, New Mexico Criminal Defense Lawyers Association (NMCDLA)
—Henry Valdez, First Judicial District Attorney
- 11:15 a.m. **Amenability Hearings for Serious Youthful Offenders**
—Anna Gabrielitis, Attorney, Juvenile Division, Public Defender Department
—Rory Rank, Attorney, Juvenile Division, Public Defender Department
—Michael Stout, NMCDLA
—Henry Valdez, First Judicial District Attorney

Public Comment

Adjourn

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

**August 27, 2008
Springer Correctional Center
201 Highway 468
Springer**

**August 28, 2008
Northeast New Mexico Detention Facility
185 Dr. Michael Jenkins Road
Clayton**

Wednesday, August 27

- 10:00 a.m. **Call to Order**
—Representative Al Park and Senator Cisco McSorley,
Co-Chairs
- 10:05 a.m. **Tour of the Springer Correctional Center**
—Joe R. Williams, Secretary of Corrections
—Michael Martinez, Warden, Springer Correctional Center
- 12:00 noon **Lunch**
- 12:45 p.m. **State of the State on DWI: Successes and Future Challenges**
—Rachel O'Conner, DWI Coordinator, Office of the Governor
- 2:30 p.m. **Possible Reasons for the Decline in New Mexico's Prison Population**
—Tony Ortiz, Deputy Director, New Mexico Sentencing Commission
(NMSC)
—Paul Guerin, Ph.D., Senior Research Scientist, NMSC
- 3:00 p.m. **Public Comment**
- Recess**

Thursday, August 28

9:00 a.m.

Welcome to Clayton

- Representative Brian K. Moore
- Jack Chosvlg, Mayor of Clayton
- Richard Arguello, Chair, Union County Commission

9:15 a.m.

**New Facilities at Clayton and Springer; Public and Private Prisons;
Response to the Prison Reform Task Force**

- Joe R. Williams, Secretary of Corrections
- Gail Oliver, Deputy Secretary of Reentry and Reform

Report from the Probation and Parole Division

- Charlene Knipfing, Director

11:00 a.m.

Tour of the Northeast New Mexico Detention Facility

- Joe R. Williams, Secretary of Corrections
- Timothy Hatch, Warden, Northeast New Mexico Detention Facility

Adjourn

Revised: October 17, 2008

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

**October 20-22, 2008
Room 307, State Capitol
Santa Fe**

Monday, October 20

- 10:00 a.m. **Call to Order**
—Representative Al Park and Senator Cisco McSorley,
 Co-Chairs
- 10:05 a.m. **Approval of Minutes**
- 10:10 a.m. **Understanding Sex Crimes and Disorders for Policymakers**
—Fred S. Berlin, M.D., Ph.D., Director, National Institute for the Study,
 Prevention and Treatment of Sexual Trauma, and Associate
 Professor, Johns Hopkins University School of Medicine
- 12:30 p.m. **Working Lunch**
- 12:40 p.m. **Juvenile Sex Offenders: An Overview of Offense Patterns, Re-Offense Rates
and Risk Issues**
—Michael Caldwell, Ph.D., University of Wisconsin at Madison
- The Federal Adam Walsh Child Protection and Safety Act: Issues and
Perspectives**
—Michael Caldwell, Ph.D., University of Wisconsin at Madison
—Randall Cherry, General Counsel, Sex Offender Management Board
—John Wheeler, Crime Policy Advisor to the Governor
—David Schmidt, Director, NM Council on Crime and Delinquency and Chair-
 Elect, National Coalition on Juvenile Justice

2:30 p.m. **New Mexico Corrections Department's Policies on Sex Offender Supervision; Update on GPS Monitoring**

—Charlene Knipfing, Director, Probation and Parole Division, New Mexico Corrections Department (NMCD)

—Gary Carson, Region Manager, District II Special Programs, Probation and Parole Division, NMCD

Issues with NMCD's Supervision of Sex Offenders

—Kraig Vandenberg, Director, Special Programs, Fifth Judicial District Attorney's Office

—TBA, Public Defender Department

4:00 p.m. **Proposed Legislation: Require Persons Convicted of Aggravated Stalking of a Person Under Sixteen to Register as Sex Offenders (Bill Draft #1)**

—Representative Jimmie C. Hall

4:30 p.m. **Public Comment**

Recess

Tuesday, October 21

9:00 a.m. **Call to Order**

9:05 a.m. **Uniform Law Commission: Proposed Legislation (Bill Drafts #2-7)**

—John P. Burton, Uniform Law Commissioner

10:45 a.m. **Enforcement of the Dee Johnson Clean Indoor Air Act**

—Dr. Alfredo Vigil, Secretary of Health

—Nathan Bush, Government Relations Director, New Mexico American Cancer Society

—Pete Dinelli, Chief Public Safety Officer, City of Albuquerque

—Robert Ortega, Fire Chief, City of Albuquerque

—Andrew Chavez, Fire Marshal, City of Albuquerque

12:00 noon **Lunch**

1:30 p.m. **Repeal Employment of Women Statutes (Bill Draft #8)**

—Whitney Warner, Vice Chair, Workplace Issues Committee, Association of Commerce and Industry of New Mexico

- 1:45 p.m. **New Mexico Sentencing Commission:**
* **Report on Senate Memorial 47 (2008)**
* **Proposed Sentencing Legislation (Bill Draft #9)**
* **Gender-Specific Probation and Parole**
—Mike Hall, Executive Director, New Mexico Sentencing Commission
—Tony Ortiz, Deputy Director, New Mexico Sentencing Commission
- 2:30 p.m. **Recommended Changes for Adult Guardianship (Bill Drafts #10-11)**
—Jim Jackson, Executive Director, Protection and Advocacy
—Greg McKinzie, President, New Mexico Guardianship Association
- 3:30 p.m. **Legislative Proposals from the Attorney General (Bill Drafts #12-26)**
—Gary King, Attorney General

Public Comment

Recess

Wednesday, October 22

- 9:00 a.m. **Report from the Judiciary:**
* **Unified Budget**
* **Allocation of Resources**
* **Proposed Legislation (Bill Drafts #27-38)**
—Edward L. Chavez, Chief Justice, New Mexico Supreme Court
—James J. Wechsler, Judge, New Mexico Court of Appeals
—Arthur W. Pepin, Director, Administrative Office of the Courts
- 11:30 a.m. **Funding for Civil Legal Services (Bill Draft #39)**
—John Arango, Chair, Civil Legal Services Commission
—Bill Strouse, Executive Director, New Mexico Legal Aid
—Stuart Bluestone, Board of Directors, New Mexico Legal Aid
- 12:00 noon **Public Comment**

Adjourn

Revised: November 13, 2008

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

**November 17-18, 2008
Room 307, State Capitol**

**November 19, 2008
Room 317, State Capitol
Santa Fe**

Monday, November 17

- 10:00 a.m. **Call to Order**
—Senator Cisco McSorley and Representative Al Park,
Co-Chairs
- 10:05 a.m. **Approval of Minutes**
- 10:10 a.m. **Update on the DNA System and Proposed Legislation (Bill Draft #33)**
—John Krebsbach, Chair, DNA Oversight Committee
- 10:45 a.m. **Oversight of Law Enforcement Officers**
—Paul Barunda, Concerned Citizen, Las Cruces Watch Group
—Fred Chilton, Concerned Citizen, Las Cruces Watch Group
—Arthur Ortiz, Director, New Mexico Law Enforcement Academy
—Gary King, Attorney General and Chair, New Mexico Law
Enforcement Academy Board
—Bill White, Municipal Judge, Town of Edgewood
- 12:00 noon **Lunch**
- 1:30 p.m. **Proposed Legislation: Methamphetamine Use in the Presence of
Children (Bill Draft #34)**
—Representative Nora Espinoza
—Hayley Slape
- 1:45 p.m. **Second Chance Program**
—Joy Westrum, President, Second Chance Center
—Rick Pendery, Director, Second Chance Center
—Paul Guerin, Ph.D., Senior Research Scientist, Institute for Social
Research, University of New Mexico

2:30 p.m. **Measuring the Fiscal Impact of Legislation Affecting Criminal Penalties: Two Approaches (Bill Drafts #35, 36)**
—John Bigelow, Chair, New Mexico Sentencing Commission
—Tony Ortiz, Deputy Director, New Mexico Sentencing Commission

2:45 p.m. **Jail Administration and Overcrowding: Proposed Legislation and Report on HJM 22 (Bill Draft #37)**
—Marc M. Lowry, Attorney, Rothstein Law Firm
—Patrick Snedeker, Warden, San Miguel County Jail
—Tony Ortiz, Deputy Director, New Mexico Sentencing Commission
—Paul Gutierrez, Director, New Mexico Association of Counties

4:00 p.m. **Proposed Legislation: Allow County with Metropolitan Court to Assess Fee for Local Government Corrections (Bill Draft #38)**
—Alan Armijo, Chief County Commissioner, Bernalillo County
—Thadeus Lucero, Bernalillo County Manager

4:15 p.m. **Visitation Pilot Program for Children of Jailed Parents**
—Grace Philips, Staff Attorney, New Mexico Association of Counties
—Patrick Snedeker, Warden, San Miguel County Jail

Public Comment

Recess

Tuesday, November 18

9:00 a.m. **The Workers' Compensation Act and Farm Workers (Bill Draft #39)**
—Kim Posich, Executive Director, New Mexico Center on Law and Poverty

10:00 a.m. **Prohibit Law Enforcement from Collecting Social, Political or Religious Information Unrelated to Criminal Conduct (Bill Draft #40)**
—Diane Wood, Director, Northern Regional Office, American Civil Liberties Union New Mexico

10:40 a.m. **Substance Abuse Treatment in Lieu of Incarceration for Low Level Drug Offenders: Costs and Benefits (Bill Draft #41)**
—Julie Roberts, Policy Coordinator, Drug Policy Alliance

11:15 a.m. **Providing Treatment to Sexually Abusive Youth: Training Program for Therapists**
—Kim Alaburda, Executive Director, New Mexico Coalition of Sexual Assault Programs
—Susan Loubet, Executive Director, New Mexico Women's Agenda

12:00 noon **Lunch**
1:30 p.m. **Car Title Loans (Bill Draft #42)**

—Robert Reich, President, Community Loans of America
—Karen Meyers, Director, Consumer Protection Division, Attorney
General's Office

3:00 p.m. **Report on Independent Oversight of Correctional Facilities (HM 72)**
—Gary King, Attorney General

3:30 p.m. **Auto Theft: Report on HM 53 and Proposed Legislation (Bill Draft #43)**
—Representative William "Bill" R. Rehm
—Ken Ortiz, Director, Motor Vehicle Division, Taxation and Revenue
Department
—Ray Schultz, Chief of Police, City of Albuquerque
—Insurance Industry Representative

4:00 p.m. **Require Mediation of Construction Cases (Bill Draft #44)**
—Peter G. Merrill, President and CEO, Construction Dispute Resolution
Services, LLC

4:30 p.m. **Collateral Consequences of Arrest, Conviction and Incarceration**
—Mike Hall, Executive Director, New Mexico Sentencing Commission
—Angie Vachio, President, Women's Justice Project, Inc.
—Christina Vigil, Director, Women's Justice Project, Inc.

Public Comment

Recess

Wednesday, November 19

9:00 a.m. **Governor's Legislative Proposals (Bill Drafts #45-48)**
—John Wheeler, Crime Policy Advisor to the Governor
—Sharon Pino, Domestic Violence Coordinator, Office of the Governor

10:00 a.m. **Post-Election Evaluation of Voting Systems (Bill Draft #49)**
—Paul Stokes, Coordinator, United Voters of New Mexico

11:00 a.m. **Election Day Registration (Bill Draft #50)**
—Regina M. Eaton, Deputy Director, Democracy Project, Demos
—Stephen Fetting, United Voters of New Mexico

12:00 noon **Committee Endorsement of Proposed Legislation**
—Committee Members

Public Comment

Adjourn

Minutes

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

**June 10, 2008
Room 307, State Capitol
Santa Fe**

The first meeting of the Courts, Corrections and Justice Committee was called to order at 10:10 a.m. by Senator Cisco McSorley, co-chair, on Tuesday, June 10, 2008, in Room 307 of the State Capitol in Santa Fe, New Mexico.

Present

Rep. Al Park, Co-Chair
Sen. Cisco McSorley, Co-Chair
Sen. Rod Adair
Rep. Thomas A. Anderson
Rep. Joseph Cervantes
Sen. Carroll H. Leavell
Sen. Richard C. Martinez
Sen. Lidio G. Rainaldi
Rep. Peter Wirth
Rep. Eric A. Youngberg

Advisory Members

Rep. W. Ken Martinez
Sen. William H. Payne
Rep. Jane E. Powdrell-Culbert
Sen. John C. Ryan
Rep. Teresa A. Zanetti

Absent

Rep. Gail Chasey
Sen. Clinton D. Harden, Jr.
Rep. Antonio "Moe" Maestas
Rep. William "Bill" R. Rehm

Rep. Elias Barela
Sen. Kent L. Cravens
Rep. Daniel R. Foley
Sen. Mary Jane M. Garcia
Sen. John T.L. Grubestic
Sen. Gay G. Kernan
Sen. Linda M. Lopez
Sen. Michael S. Sanchez
Rep. Sheryl Williams Stapleton
Rep. Mimi Stewart
Rep. Thomas E. Swisstack
Sen. James G. Taylor

Staff

Maha Khoury
Aldis Philipbar

Interim Committee Protocols

Paula Tackett, director, Legislative Council Service (LCS), addressed questions and concerns regarding interim committee protocols. She began with the issue of obtaining a quorum. She said that a quorum consists of one-half plus one of the voting members assigned to the committee. She said that the speaker of the house and the president pro tempore have the authority to appoint voting members to the committee. Once a quorum is established, it is presumed to exist. She also said that a committee can dissolve into a subcommittee to hear testimony. She added that members may resign at any time. Ms. Tackett said that only voting members are allowed to vote. She then discussed the blocking provision, which states that no action shall be taken if a majority of total members from one house appointed to the committee vote against the measure. Ms. Tackett addressed issues related to the sound systems in the committee rooms. The sound systems adjust automatically and are easily disrupted by background noise. If a committee member is having trouble hearing, Ms. Tackett suggested checking for excessive background noise. She noted that laptop screens can block the microphones. She said that the microphones should be turned off until a member is ready to speak to avoid feedback. Finally, Ms. Tackett discussed the interim committee calendar. She said that meeting conflicts were avoided as best as possible during the calendar creation. She added that any changes to the calendar must be approved by the Legislative Council.

New Mexico Sentencing Commission: Budget and Current Projects

Mike Hall, executive director, New Mexico Sentencing Commission (NMSC), began by discussing the NMSC main web site and the Consolidated Offender Query (COQ). He stated that the main web site receives about 400,000 hits per month, and the COQ site, accessible only by law enforcement and crime agencies, receives 200,000 hits per month. He added that data from the COQ site have been transferred to a CD-rom and sent to schools. The COQ site currently have about 3,000 users, and the commission would like to expand that to 6,000 users. He added that it takes about 30 seconds to find information on the COQ site, whereas, prior to the COQ site, it took about one hour to track down information. He said that the COQ site has helped automate the victim notification system and puts protective orders into the system in real time so that they are available to law enforcement across the state. Interlock and domestic violence alerts have been added to the COQ system, and the system is facilitating electronic data transfers between the district attorney's office, the crime lab and the courts. He added that the COQ system is secure. Mr. Hall said that the sentencing commission is prepping an assessment of nonviolent offenders who have served 50 percent of their time and violent offenders who have served 85 percent of their time. He also said that the commission is conducting several studies, including two sex offender studies, a study on bias-based policing, a study on gender-specific parole and alternatives to incarceration.

Randall Cherry, general counsel, Sex Offender Management Board (SOMB), said that the SOMB is conducting a recidivism study on sex offenders and just completed a residential study. He added that lifetime supervision was added for the more serious sex offenders last year and

that, in 2005, sex offender registration and notification were brought in line with federal requirements. He said that the U. S. Department of Justice has not yet published guidelines for the federal Adam Walsh Act (Walsh). Under Walsh, 14 year olds could be registered as sex offenders for life. He said that there has been a lot of push-back from the states on Walsh. August 27, 2009 is the deadline for states to be in line with Walsh, but since there are no guidelines, that date may be pushed-back as far as two years. Mr. Cherry said that the SOMB has been working with ValueOptions on a treatment program for juvenile sex offenders. He described some of the problems with the law requiring GPS surveillance of sex offenders on parole. He added that there are currently 47 sex offenders on active GPS surveillance at a cost of \$35.00 per day and 392 sex offenders on passive GPS surveillance out of a total of 634 sex offenders on probation or parole.

Tony Ortiz, deputy director, NMSC, said that the state inmate population has flattened and that the commission is looking at the causes and developing a paper to address possible causes. Mr. Ortiz also spoke about the progress of the work requested by Senate Memorial 47 to measure the fiscal impact of criminal penalties. Mr. Hall then addressed the NMSC's budget. He said that the commission has a base budget of \$850,000. Mr. Hall said that the NMSC would probably be back to request an increase in its budget for several reasons. The commission will have to start paying rent to the University of New Mexico. The commission needs funds for salary increases, employee benefits, a half-time programmer, the bias-based policing study, the COQ system and for the work to be done in response to Senate Memorial 47.

The panel then addressed the questions and concerns of the committee.

Work Plan and Meeting Schedule for the 2008 Interim

Representative Park went over the proposed work plan and meeting schedule and requested input from committee members and members of the public. New topics were added to the proposed work plan, and the committee approved a work plan that includes three additional meetings days and expanding the meetings in August, October and November to three-day meetings.

There being no further business, the committee adjourned at 12:45 p.m.

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

**July 1, 2008
Continuing Education Building
University of New Mexico
1634 University Blvd. NE
Albuquerque**

**July 2, 2008
Metropolitan Assessment and Treatment Services (MATS)
5901 Zuni SE
Albuquerque**

The second meeting of the Courts, Corrections and Justice Committee was called to order by Senator Cisco McSorley, co-chair, at 10:15 a.m. on Tuesday, July 1, 2008, in the Continuing Education Building at the University of New Mexico in Albuquerque.

Present

Sen. Cisco McSorley, Co-Chair
Sen. Rod Adair
Rep. Thomas A. Anderson
Rep. Joseph Cervantes (July 1)
Rep. Gail Chasey (July 1)
Sen. Carroll H. Leavell (July 2)
Rep. Antonio "Moe" Maestas (July 1)
Sen. Richard C. Martinez
Sen. Lidio G. Rainaldi
Rep. William "Bill" R. Rehm
Rep. Peter Wirth
Rep Eric Youngberg (July 1)

Absent

Rep. Al Park, Co-Chair
Sen. Clinton D. Harden, Jr.

Advisory Members

Rep. Daniel R. Foley
Sen. Mary Jane M. Garcia
Sen. Linda M. Lopez
Rep. Jane E. Powdrell-Culbert
Rep. Sheryl Williams Stapleton (July 1)
Rep. Mimi Stewart

Rep. Elias Barela
Sen. Kent L. Cravens
Sen. John T.L. Grubestic
Sen. Gay G. Kernan
Rep. W. Ken Martinez
Sen. William H. Payne
Sen. John C. Ryan
Sen. Michael S. Sanchez
Rep. Thomas E. Swisstack
Sen. James G. Taylor
Rep. Teresa A. Zanetti

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

Guest Legislators

Rep. Ray Begaye (July 1)

Rep. Nick L. Salazar

Sen. Sue Wilson Beffort (July 1)

Rep. Thomas C. Taylor (July 1)

Staff

Maha Khoury

Jennie Lusk

Aldis Philipbar

Guests

The guest list is in the original meeting file.

Tuesday, July 1**Report and Recommendations of Governor Richardson's Prison Reform Task Force**

John Bigelow, chair, Prison Reform Task Force, began by outlining the task force's report contents. He said a drafting committee was formed to put the report together and comments were received from task force members. He added that there were some grammatical errors, but no substantive errors, and that the report is available on the governor's website. Mr. Bigelow said that some subjects were not discussed because they would have taken longer than the time allowed. The task force concentrated on specific issues. It made recommendations with a view toward cutting down on re-incarceration rates and lowering the costs of corrections.

Mr. Bigelow reviewed the various categories that the recommendations fell into, including: pre-incarceration, incarceration, re-entry and transition. He added that all of the recommendations were made with the idea of increasing public safety. He stated that 85 percent of New Mexico's inmates have mental health issues. Mr. Bigelow added that the national three-year recidivism rate is 52.7 percent, while the three-year recidivism rate in New Mexico is 46.7 percent.

In order to implement the recommendations, the task force recommended that the governor create by executive order the New Mexico Council on Prison Re-Entry and Transition, a new re-entry division within the Corrections Department, re-entry centers and a work force development bureau (a combination of the education and industries divisions) and that he change the name of the department to the New Mexico Rehabilitation and Corrections Department. The department should promulgate the philosophy that "re-entry begins upon arrest".

Joe Williams, secretary of corrections, said that implementing the recommendations will take the cooperation of all agencies to be effective. He said that the recommendation to combine the education and industries divisions was one of the more interesting suggestions. Mr. Williams

added that the New Mexico Sentencing Commission is getting ready to release a report on why there has been a decline in the prison population in New Mexico.

John Wheeler, crime policy advisor to the governor, said that virtually all of the recommendations from the public were issues that had already been identified by the task force. He called it a resounding endorsement of the process and said he was happy to share the task force results with the committee, the public and the visitors from Washington, D.C., and Kansas.

Senator McSorley asked members of the committee who served on the task force to share their thoughts. Representative Rehm said that he felt the task force was narrowly directed and did a good job of staying on track. Representative Cervantes added that he thought there was a fair opportunity for everyone on the task force to contribute, despite its large size.

The panel then addressed the questions and concerns of the committee.

The committee recessed for lunch at 12:30 p.m.

The Success of New Mexico Drug Courts

Justice Charles W. Daniels, New Mexico Supreme Court, said that lengthening sentences for criminals does not address root issues. Drug courts try to do something other than sending drug offenders to prison. The average drug court costs \$25.27 per day per client, whereas incarceration costs around \$81 per inmate per day. The recidivism rate of drug court graduates in New Mexico is 11.9 percent, better than the national average. Justice Daniels said that the program started small, with pilot projects that have expanded over the years. He also added that the program has been expanded to other kinds of specialty courts.

Justice Daniels then discussed the New Mexico Drug Court Advisory Committee. He said it had established a five-year plan that was adopted by the court. He added that the committee wants to make drug courts accessible to every person in New Mexico who needs one. He said the committee will work with the legislature to provide stable and predictable funding. He said that it will be submitting a request for \$1.6 million to establish new drug courts, but that money will eventually come back to the community.

Judge Richard Knowles, Second Judicial District Court, said that drug courts are working with the help and support of the legislature. The program is doing what was intended, it costs less than the alternative and it saves lives. Judge Knowles added that the courts want to try to get at least one drug court in every county.

Justice Daniels added that drug courts require thinking outside the box because they are unlike normal courts, where the judge determines a "winner". There is a lot of involvement in drug courts, including counseling and self-evaluation. He said the program is much more rigorous than an inmate lying on a taxpayer-paid bed.

How States Can Reduce Prison Populations and Save Taxpayer Dollars While Improving Public Safety

Richard Jerome, project manager, Public Safety Performance Project, Pew Center on the States (PCS), began by stating that 1 out of 99.1 adults in this country is behind bars. He said that the rise in the national prison population is not necessarily because of higher crime, but rather is due to change in policies. Right now, New Mexico is in the lowest fifth among the states in terms of prison growth. He said there has been a prison population growth, especially in the West. He added that probation and parole violators account for 60 percent of that growth, and the increase in the rate of incarcerated women (57 percent) is growing faster than men (34 percent). He said there has been a rise in age, meth-related cases and mental health problems.

Mr. Jerome said this is an exciting time in criminal justice because of advances in the science of behavior change, advances in supervision technology and broad public support for alternatives. He said there is now a trend toward managing for results, and he has seen bipartisan reform efforts due to budget pressures. He added that this effort is not always easy because many programs have up-front costs, but it is money that is wisely spent because it leads to increased safety and savings.

Keven Pellant, deputy secretary, Community and Field Services, Kansas Department of Corrections, explained the steps that Kansas has taken toward alternatives to incarceration. She said that in Kansas, a steep incline in the projected prison population scared legislators, who then requested alternatives from the corrections secretary. She said the department started collecting consultants and asking them to look back over the last 20 years. They found that Kansas was very good at containment, but did not do so well in helping people be successful after release. Ms. Pellant said the department needed to be very targeted in asking for help from the legislature, so they looked at parolees who were failing and saw that the department was setting them up to fail. The department changed its vision to focus more on success for offenders after release, creating greater public safety and saving public money. Its goal was to have a certain percentage of adult and juvenile offenders successfully reintegrate into the community. It researched various areas and found that offenders have a lot of things to reintegrate to (friends, family, new jobs, etc.), and many get overwhelmed. She said reasons for failure can often be anticipated (poor motivation, lack of job skills, learning disabilities, negative peer pressure, lack of housing options, substance abuse issues and health or behavioral health issues). Ms. Pellant said the department held focus groups with staff to review findings and discovered that a simple handshake can make a world of difference in building a relationship with an offender and in helping an offender's transition. She said that rather than waiting for offenders to fail, the department is trying to promote completion of supervision systematically. She added that a focus on prevention can also alter one's approach to work. The department learned to work on reintegration before an offender left prison. She said it found the most effective programs to be:

- multimodal and integrated;
- cognitive-behavioral in nature;
- skills-oriented;
- linked with parallel services in the community; and
- matched based on risk, needs and responsiveness.

Low-risk offenders with reduced supervision were more successful. Ms. Pellant identified some promising practices, such as identifying triggers for offenders to prevent recidivism and providing healthcare. She said that this new plan has allowed Kansas to put off building a new prison until 2016 and has reduced annual jail per diem expenditures. She said the goal is a 50 percent reduction. She added that it is necessary to identify how New Mexico wants to do this business and what it wants to accomplish.

Alison Lawrence, criminal justice policy associate, National Conference of State Legislatures (NCSL), said that legislatures have been instructing courts and corrections to use evidence-based practices. She said that states have been looking at preventing recidivism and are targeting specific populations to keep those groups out of prison. Ms. Lawrence added that states are looking at re-entry and working with targeted offenders. She said that legislatures are instructing prisons to assist in creating individualized reintegration plans and creating and expanding substance abuse and work force training programs upon release.

Jake Horowitz, senior associate, Public Safety Performance Project, PCS, illustrated a couple of strategies in two states, but added that one cannot just transfer a strategy to New Mexico and hope it will work, because every state is unique. He began with Texas, stating that between 1983 and 1997, the state spent millions of dollars on new prisons, and 10 years later, it was facing the need to build another prison. So Texas took a serious look at alternatives, including: inpatient and outpatient beds; intermediate sanctions; reduction in prison terms; incentives to reduce probation failures; and expanding drug and other specialty courts. The alternative programs are projected to save the state hundreds of millions of dollars over the biennium and eliminate the prison bed shortfall by 2011.

Mr. Horowitz then discussed Arizona, stating that it has the highest crime rate in the country. Arizona spends around \$100 million per year to incarcerate probation violators, 79 percent of whom are drug or property offenders. Governor Janet Napolitano signed SB 1476, which creates performance incentives for reducing probation failures.

The panel then addressed questions and concerns of committee members and other participants.

Drug Policy Alliance Update

Reena Szczepanski, director, Drug Policy Alliance, said that the alliance's goals include reducing death and disease, protecting families, reducing crime and using resources wisely. She said it agrees with using evidence-based practices in prevention. It also supports the Prison Reform Task Force recommendations. Ms. Szczepanski said that New Mexico has been in the top three states for several years for the number of people who need substance abuse treatment. The alliance strongly supports re-entry proposals and supports "banning the box", namely, the proposal to eliminate conviction boxes on applications. She suggests that a list be provided instead that prevents certain convicts from obtaining certain positions. She added that the alliance is looking at housing for offenders and enrollment in state benefits upon release.

There being no further business, the committee recessed at 4:45 p.m.

Wednesday, July 2

Update on the Federal Real ID Act and Options for New Mexico

Melissa Savage, program director, NCSL, said that the NCSL's position is that the Real ID Act is an unfunded mandate, and it is supporting legislation in Congress to repeal the act. According to the NCSL, Real ID will cost states \$10 billion to \$11 billion. She said the federal government originally estimated costs of implementation at \$14 billion, but the government is now saying that it will only cost \$4 billion. Real ID increases the cost of a driver's license. Most states are looking at ways to lower the cost to ensure that everyone can get a driver's license. States want everyone to have a license for several reasons, including identification purposes and to encourage acquiring auto insurance. Ms. Savage said that with the publication of the rules, states will have more time to enroll current driver's license holders. She also said that states will have the ability to determine which employees will have to undergo background checks.

Ms. Savage then addressed many of the concerns related to Real ID. She said that connectivity is an issue because states have to connect to federal databases to ensure that documentation is authentic. Privacy is also a concern, as well as the total cost, which is virtually unknown. She said that the states have been active in this area, with many states passing legislation prohibiting compliance with Real ID and a few passing legislation to implement Real ID. She said that 16 states have passed legislation urging Congress to repeal or amend the act. She said that citizens in states that are not in compliance will have to use a passport or military identification to fly or to enter federal buildings. Arizona and Idaho passed bills that prohibit compliance with Real ID and require state agencies that are being pressured by the federal government to comply to alert the legislature.

Ms. Savage said there are several approaches states can take on Real ID. They can prohibit compliance, appropriate funds to comply, pass a memorial urging Congress to repeal Real ID or wait and see. She said states can also implement enhanced driver's licenses like those in Washington State. She added that the NCSL will continue to monitor the Real ID Act.

Rick Homans, secretary of taxation and revenue, said that the executive is highly opposed to Real ID. He said that costs only continue to go up and that there are taxation and constitutional issues. He said there is clearly a lot of opposition across the country to the bill in its current form. He said he hears from the Motor Vehicle Division (MVD) of the Taxation and Revenue Department (TRD) that the government is pushing the homeland security issue. MVD clerks would need security clearances and would be required to look at every person coming in for a driver's license as a potential criminal, which puts the clerks in a difficult position. They are not immigration officials. He said there are training, security and enforcement issues. Mr. Homans said that New Mexico is in compliance with three of 15 compliance features in Real ID. He added that, on top of the identified costs, the MVD has a 30-year old computer system that is on its last legs. He said there are hidden costs because the MVD has to interface with the federal system. He said that the New Mexico driver's license has already been modified for security

purposes, including preventing identity theft.

Ken Ortiz, director, MVD, said that Real ID was originally attached to the Emergency Supplemental Appropriations Act for Defense, the Global War on Terror and Tsunami Relief of 2005. It requires source documents to be digitally captured and requires citizens to bring documentation to prove who they are. This presents a problem for many citizens and residents, such as the elderly and the native populations. The federal government did appropriate \$79.5 million in grant funding for Real ID implementation, and New Mexico received \$500,000.

Limited Liability Companies' (LLC) Filing Requirements with the Public Regulation Commission (PRC)

Sandy Jones, commissioner and vice chair, PRC, discussed SB 168, which was introduced last session. He said there is a problem with corporations forming LLCs to avoid legal obligations. He said they need a mechanism for LLCs to report, and, as it stands now, it is difficult to track LLCs. Also, there is no way for the TRD to track down an LLC if there is a problem or complaint. Mr. Jones added that the lack of transparency in LLCs is disconcerting.

Senator Leavell also discussed the bill and said it concerned reporting by LLCs more than any other issue. He said that there is no tracking to see who is still in business and that is a great concern. He also said he would like the committee to consider making this piece of legislation a committee-endorsed bill.

On a motion made and seconded, the June minutes were unanimously approved.

Lunch

Tour of Bernalillo County MATS Facility

The committee was taken on a tour of the Bernalillo County Metropolitan Assessment and Treatment Services by Director Adan Carriaga.

Adjournment

There being no further business, the committee adjourned at 2:00 p.m.

**MINUTES
of the
WATER AND NATURAL RESOURCES COMMITTEE
and the
COURTS, CORRECTIONS AND JUSTICE COMMITTEE**

**August 4-6, 2008
NMSU Golf Course Club House
3000 Herb Wimberly Drive
Las Cruces**

The joint meeting of the Water and Natural Resources Committee (WNRC) and the Courts, Corrections and Justice Committee (CCJ) was called to order by Representative Andy Nuñez, chair, at 8:12 a.m. on Monday, August 4, 2008, at the New Mexico State University (NMSU) Golf Course Club House in Las Cruces.

Water and Natural Resources Committee

Present

Rep. Andy Nuñez, Chair
Rep. Paul C. Bandy
Rep. Elias Barela
Rep. Ray Begaye
Rep. Joseph Cervantes
Sen. Mary Jane M. Garcia
Rep. Dona G. Irwin (Aug. 5)
Rep. Larry A. Larrañaga
Rep. Kathy A. McCoy
Sen. Steven P. Neville
Sen. Mary Kay Papen
Rep. Don L. Tripp

Advisory Members

Sen. Carlos R. Cisneros
Rep. Anna M. Crook
Rep. Nora Espinoza (Aug. 4)
Rep. Candy Spence Ezzell
Sen. Gay G. Kernan
Sen. Cisco McSorley
Sen. Leonard Lee Rawson (Aug. 5)
Rep. Henry Kiki Saavedra
Rep. Peter Wirth

Absent

Sen. Phil A. Griego, Vice Chair
Sen. Sue Wilson Beffort
Sen. Dede Feldman
Sen. Clinton D. Harden, Jr.
Sen. Cynthia Nava
Rep. Mimi Stewart

Sen. Rod Adair
Sen. Vernon D. Asbill
Sen. Timothy Z. Jennings
Rep. Ben Lujan
Rep. James Roger Madalena
Rep. Danice Picraux
Sen. Nancy Rodriguez
Sen. John C. Ryan
Rep. James R.J. Strickler
Rep. Eric A. Youngberg

Courts, Corrections and Justice Committee

Present

Sen. Cisco McSorley, Co-Chair
Rep. Al Park, Co-Chair (Aug. 4-5)
Sen. Rod Adair (Aug. 6)
Rep. Thomas A. Anderson
Rep. Joseph Cervantes
Sen. Carroll H. Leavell
Rep. Antonio "Moe" Maestas (Aug. 5)
Sen. Richard C. Martinez (Aug. 5-6)
Rep. William "Bill" R. Rehm
Rep. Peter Wirth

Advisory Members

Rep. Elias Barela
Sen. Mary Jane M. Garcia (Aug. 4-5)
Sen. Gay G. Kernan
Sen. Linda M. Lopez (Aug. 5)
Rep. Jane E. Powdrell-Culbert (Aug. 5-6)

Absent

Rep. Gail Chasey
Sen. Clinton D. Harden, Jr.
Sen. Lidio G. Rainaldi
Rep. Eric A. Youngberg

Sen. Kent L. Cravens
Rep. Daniel R. Foley
Sen. John T.L. Grubestic
Rep. W. Ken Martinez
Sen. William H. Payne
Sen. John C. Ryan
Sen. Michael S. Sanchez
Rep. Sheryl Williams Stapleton
Rep. Thomas E. Swisstack
Sen. James G. Taylor
Rep. Teresa A. Zanetti

(Attendance dates for WNRC members are noted for members not present for the entire joint meeting. Attendance dates for CCJ members are noted for members not present for the entire three-day meeting.)

Staff

Jon Boller
Jeret Fleetwood
Maha Khoury
Gordon Meeks
Aldis Philipbar

Guest Legislators

Rep. Nathan P. Cote (Aug. 4 — joint meeting)
Rep. Anna M. Crook (Aug. 6 — CCJ meeting)
Rep. Candy Spence Ezzell (Aug. 6 — CCJ meeting)

Guests

The guest list is in the original meeting file.

Monday, August 4

Waded Cruzado-Salas, interim president, NMSU, welcomed the committee to NMSU and thanked the members for coming.

Alamogordo Desalination Project

Karl Wood, director of the Water Resources Research Institute at NMSU, provided the committee with an update regarding desalination technology. He explained that water problems in New Mexico fall into one of four categories: it is available in the wrong place, at the wrong time or in the wrong quantity, or it is of poor quality. Dr. Wood went on to explain that while there are significant ground water resources beneath New Mexico, the water is of particularly poor quality. He noted that one way of taking advantage of those resources is through desalination. Dr. Wood pointed out that trying to make use of brackish water resources is not a problem unique to New Mexico and discussed the various challenges associated with desalination, such as energy requirements, scale buildup on filters and, most of all, disposal of the leftover concentrate.

Dr. Wood went on to explain that a federally funded program to study desalination technology has been established in Tularosa. He went on to provide the committee with some of the features of the facility built to house the program, including testing areas, bench-scale system testing, a laboratory, chemical storage facilities and renewable energy as a partial power source. However, Dr. Wood pointed out that the facility is still not operational.

Finally, Dr. Wood noted that not all of New Mexico's water problems will be solved through desalination and discussed several of the water-related study programs being conducted at NMSU. For example, Dr. Wood indicated that there are hydrogeology, surface-to-ground water interaction, irrigation efficiency and water and wastewater treatment programs available at NMSU.

Questions and comments included:

- money granted to Lea County for research on produced water;
- late summer rainfall as an example of water being available at the wrong time;
- whether the costs associated with desalination make it unattractive as a municipal water source;
- how much more federal money is required to make the Tularosa facility operational;
- reverse osmosis is the technology of choice for desalination;
- possibility of New Mexico purchasing water from a desalination plant operating in El Paso, Texas; and
- deep injection wells operating in Texas along the New Mexico border.

Food Security and Farm Sustainability

Jeff White, College of Agriculture, NMSU, provided the committee with testimony regarding the recent outbreak of salmonella and its suspected origin in jalapenos grown in Mexico. He pointed out that although New Mexico had not even harvested its jalapenos, many buyers may shy away from New Mexico products, which could have a tremendous impact on New Mexico's agricultural economy.

Mr. White went on to discuss the training and exercises that the College of Agriculture undergoes to help ensure that New Mexico's food is safe. He did point out, however, that recent federal Department of Homeland Security regulations concerning the registration of chemicals, including those used by farmers, could pose problems for the agricultural industry.

Janet Jarratt, a dairy farmer, explained that food security issues cover a wide range of topics, including availability. She explained that as land use trends continue to move toward the gentrification of farmland, many farmers, particularly small-scale ones, are being squeezed out of business. Ms. Jarratt went on to note that water issues are closely tied to agriculture and the issue of food availability. She pointed out that constant transfers of water rights, and their purpose, puts increased pressure on farmers. She also cautioned the committee to examine the ability of municipalities to condemn water rights. Ms. Jarratt went on to indicate that while there is a movement afoot to highlight locally grown produce, farmers' markets are simply not a viable means of distributing produce to the public. She also suggested that one way of getting more value out of agricultural products is to create regional brands, such as marketing chile grown in Hatch.

Edward Avalos, New Mexico Department of Agriculture, provided the committee with testimony regarding the various ways the state can aid local farmers in marketing their products. For example, he noted that international marketing strategies have helped New Mexico farmers and ranchers sell their products to China, Mexico and several other nations. Mr. Avalos also noted that label and marketing assistance, particularly the "Taste the Tradition" label, helps to brand products as produced in New Mexico. He also discussed how trade show, commodity and retail promotions conducted by the New Mexico Department of Agriculture can help New Mexico farmers and ranchers sell their products.

Questions and comments included:

- salmonella issues;
- the possibility of New Mexico losing its bovine tuberculosis-free designation;
- mixed effects of NAFTA on New Mexico's agricultural economy;
- regulatory barriers confronting farmers and ranchers;
- the source of funding for the "Taste the Tradition" label promotion;
- the power of the Bernalillo County/Albuquerque Water Utility Authority to condemn water rights in New Mexico; and
- the potentially devastating effects of the salmonella outbreak on New Mexico's agricultural economy.

Why Water Rights Adjudications Are Important

Former Representative Joe M Stell provided the committee with testimony regarding the history of water rights in New Mexico, explaining that the prior appropriation doctrine has roots in Spain and North Africa. He went on to discuss the effects of the Treaty of Guadalupe Hidalgo on water rights, pointing out that it was that treaty that tied water rights to property rights. Representative Stell went on to note that there are basically two kinds of water rights in New Mexico: pre-1907 and post-1907. He also discussed the relationship between ground water and surface water, and how that relationship came to be understood in New Mexico.

Representative Stell also discussed the recent court case concerning the Mimbres River and its potential effect on the future of water rights in New Mexico. He also discussed the fact that there are several rivers in the state that have not been fully adjudicated, including the Rio Grande. Representative Stell emphasized that completing those adjudications is important, because trying to administer water rights without a thorough understanding of how much water each user is entitled to is similar to spending money without really knowing how much money is available in the bank account.

Tom Turney, former state engineer, also provided the committee with testimony regarding the importance of water rights adjudications. He began by explaining that the state has a finite amount of water in the state, and that it is the state engineer's job to administer water rights in the state. Mr. Turney also explained that the tools available to the engineer to administer those water rights are licenses and adjudications. He highlighted the benefits of adjudications, particularly that they allow the engineer to adhere to the constitution and that they provide certainty to water users. He also provided the committee with a brief history of adjudications in the state and an overview of the ongoing ones and the issues associated with them.

Questions and comments included:

- whether the courts have adequate funding to carry adjudications out;
- whether separate courts dedicated to adjudications along the middle Rio Grande would work;
- the status of the silvery minnow;
- the use of claims-based adjudications in other states;
- why a lack of pressure to adjudicate makes adjudications take such a long time to complete;
- compact delivery issues;
- Native American water issues and their effect on adjudications; and
- the possibility of dedicating money for adjudications at the upcoming special legislative session.

AOC-OSE Work Group Status Report

Celina Jones, Administrative Office of the Courts (AOC), provided the committee with an update on the progress of the work group made up of representatives of the AOC and the Office of the State Engineer (OSE) who are tasked with improving the adjudications process. She explained that while it is unlikely that large changes will be made to the process, some changes to streamline the process will probably occur. Ms. Jones indicated that the work group has had meetings with representatives from other states, and the meetings have been particularly helpful.

She did caution, though, that keeping the adjudication process moving forward will require recurring funding.

Bill Hume, Office of the Governor, also updated the committee on the work group's progress. He indicated that while the work group still has some work to do, it is nearly finished and will issue a report detailing its work and will present that report to both the executive and the legislature.

Questions and comments included:

- why it may be necessary to re-adjudicate some areas;
- number of disputed claims along the middle Rio Grande;
- representation of special river masters on the work group;
- competition among water court judges and other judges for funding from the legislature; and
- whether water courts have a special line item in the unified judiciary budget.

Texas Litigation: Status of Appropriation

Frances Bassett, Office of the Attorney General, provided the committee with an update regarding money the legislature appropriated to defend New Mexico against threatened litigation by the State of Texas on the Rio Grande. She began by explaining that Texas claims that New Mexico has violated the Rio Grande Compact in two ways: first by depleting surface flows and then by delivering overly salinated water to Texas. Ms. Bassett then detailed the steps New Mexico has taken to address those claims, beginning with drilling wells equipped with monitoring devices that detect the effects of ground water pumping and water quality.

Ms. Bassett went on to note that still more money had been spent on development of a ground water computer model, which also took four years to complete. She emphasized that, for the time being, the efforts undertaken to this point have averted a potentially costly lawsuit. Ms. Bassett also noted that Texas's claims regarding New Mexico farmers increasing the salinity levels of the river have been refuted. However, Ms. Bassett cautioned that an agreement between the Elephant Butte Irrigation District and its El Paso counterpart, which helped avert any lawsuit with Texas, could have long-term ramifications for the region.

John Draper, a water rights attorney with Montgomery and Andrews, discussed several other interstate lawsuits over water and how they could affect New Mexico. He explained that each of the cases he has worked on has cost the losing state millions of dollars. Mr. Draper noted that although none of those cases translates exactly to New Mexico's situation, there are similarities in that they all involve upstream states underdelivering water to downstream ones by curtailing surface flows. He emphasized that New Mexico should endeavor to avoid this type of lawsuit.

Pre-1907 Water Rights Status and Acequia Adjudications

Richard Trujillo and Hilario Rubio, both of the OSE, provided the committee with

testimony regarding the OSE's communication plan, which is designed to improve communication between northern New Mexico water stakeholders and the OSE during the adjudication process. They explained that the plan was developed during the adjudication of the Rio Gallinas to help keep the lines of communication open between claimants and the OSE. Mr. Trujillo and Mr. Rubio outlined the core messages of the communication plan, which include fairness, an emphasis on the increasing demand for water resources and their decreasing availability and the notion that there is no simple solution to the problem of water availability.

Mr. Trujillo and Mr. Rubio explained that there is an element of mistrust among acequia users toward the OSE and that the communication plan is, in part, an attempt to address that. They noted that the adjudication on the Rio Gallinas went well and that the development of a line of communication between stakeholders and the OSE probably helped.

Questions and comments included:

- development of a procedural order by the OSE that reflects the successes experienced on the Rio Gallinas;
- a shift in focus by the OSE to smaller geographic areas for adjudications;
- success of the OSE field office in keeping lines of communication open throughout the adjudication process;
- whether any statutory changes are necessary to help the OSE implement the communication plan and field office approach; and
- source of historical data used by the OSE.

Tessa Davidson, Rio Grande Water Rights Association (RGWRA), provided the committee with testimony regarding the makeup and history of the RGWRA and issues related to the OSE's administration of water along the Rio Grande. She explained that the RGWRA is a grass-roots group of water users along the middle Rio Grande.

The Role of Ombudsman and Intervenors in Water Adjudications

Darcy Bushnell, director of the Joe M Stell Ombudsman Program at the Utton Transboundary Center at the University of New Mexico Law School, provided the committee with an overview of the ombudsman program, its past work and its ongoing needs. She began by noting that the program began as a pilot program in 2005 to ensure continued service to the water rights adjudication community. Ms. Bushnell went on to discuss the services provided by the program, including outreach, toll-free phone help lines, a detailed web site and instructional DVDs. She went on to note the work the program has done to aid claimants on the Rio Grande and San Juan rivers, the Nambe-Pojoaque-Tesuque area (for the *Aamodt* settlement), the Zuni and Jemez basins and the Rio Gallinas. Finally, Ms. Bushnell emphasized that the program is composed of a relatively small staff whose needs are quickly outgrowing their resources.

Questions and comments included:

- funding needs for the program and the Utton center;
- work the program has done on adjudications in Lea and Curry counties; and
- that the program is currently funded with nonrecurring revenue.

Tuesday, August 5

Gila River Planning

Allison Williams, Interstate Stream Commission (ISC), provided the committee with an update regarding the planning process for the Arizona Water Rights Settlement and the Gila River. She reminded the committee about the parameters of the settlement, which dictate that New Mexico must have a plan in place by 2012 regarding any water project along the Gila before the state can begin receiving federal funding from the settlement. She also reviewed the makeup of the stakeholder group that must begin developing such a plan and noted that several studies are currently being conducted by the stakeholder group to ensure that the best possible science is available to the stakeholders. She also noted that the stakeholder group has hired a public outreach employee to ensure that the public is adequately notified of any meetings or developments.

Adrian Oglesby, Nature Conservancy, also discussed the work of the stakeholder group, noting that some disagreement still exists among stakeholders about exactly what the desired future condition of the river is. He also acknowledged that any public planning process generally moves slowly, and that this one is no different. Mr. Oglesby went on to note that, in addition to a public relations person, the stakeholder group has also employed an information contractor to help organize the information and studies already gathered by the group.

Howard Hutchinson, Gila/San Francisco Study Group, echoed Mr. Oglesby's comments, explaining that the information contractor would help to determine the studies the stakeholder group had already requested to get a better understanding of the questions that still need to be answered.

Estevan Lopez, director of the ISC, reviewed the 2004 Arizona Water Rights Settlement Act, explaining that New Mexico receives both the right to develop some of the water on the Gila River and at least \$66 million in federal funding to do so. He pointed out that New Mexico does not need to develop a project, but that if the state does decide to do that, it must have a plan in place by 2012. Mr. Lopez noted that a project could be construed as any diversion of water along the Gila. He also acknowledged that a number of people are concerned about moving forward with any type of dam or diversion on the Gila.

Questions and comments included:

- the timetable for making a decision about whether or not to proceed with a project on the Gila;
- there is no requirement that New Mexico make use of any of the water offered to it under the settlement;
- the Consumptive Use and Forbearance Agreement dictates that New Mexico may only receive water during peak flows, so there is a potential need to store water if the state wishes to use it;
- the definition of a stakeholder;
- the nearest dam on the Gila River is 60 miles past the Arizona/New Mexico border;

- the desire of the executive to have the best possible science available before any kind of decision is made;
- the value of the water that would go to Arizona if New Mexico fails to use it somehow;
- the location of stakeholder meetings and notification for them;
- Endangered Species Act issues on the Gila River; and
- average and peak flows of the Gila River.

Domestic Well Legal Status

Mr. Hume provided the committee with a basic overview of the issues involved in a recent court case concerning domestic wells. He explained that the statute governing domestic wells allowed the OSE to issue permits for domestic wells. However, a senior water rights holder on the Mimbres River sued on the grounds that the domestic wells statute is unconstitutional in that it curtails senior water rights holders. Mr. Hume indicated that a district court and then the court of appeals ruled in favor of senior water rights holders. He pointed out that the OSE has attempted to address the issue of domestic wells through various other means, such as the Active Water Resource Management (AWRM) regulations, the promulgation of domestic well rules and declaring certain areas of the state as domestic well management areas. However, Mr. Hume pointed out that the AWRM regulations were challenged in court almost immediately. He also indicated that the OSE would likely appeal the court of appeals decision because the issue is of statewide importance and also because appealing would probably give the legislature time to address the issue. Mr. Hume acknowledged that it could be time to develop a new approach to domestic wells.

Steve Hernandez, the attorney representing senior water rights holders in the court case involving domestic wells, explained that the continued issuance of domestic well permits by the OSE will cause problems for water rights holders on the Pecos River and the Rio Grande, although he pointed out that there will likely be fewer problems in other areas of the state. He went on to note that while the state engineer has tried to manage domestic wells, his clients simply could not wait for their water rights to be impaired and took their case to court. Mr. Hernandez indicated that he felt that the reluctance of the state engineer to issue a priority call was probably a dereliction of duty. He went on to note that the decision in the case should hold up to further appeal. He finished by stating that there is a pressing need for water rights stakeholders and the OSE to develop an approach to the issue of domestic wells that addresses the problems yet ensures due process.

Questions and comments included:

- how a priority call by the state engineer would actually bring the domestic well statute back into compliance with the constitution;
- the status of adjudications on the Mimbres River and the Rio Grande;
- the number of new domestic wells drilled each year;
- allowing the OSE to issue well permits only when there is no other option;
- involvement of the legislature in any kind of plan to address the domestic well issue; and
- whether the OSE is still issuing well permits in the Sixth Judicial District (where the

domestic well court case was originally heard).

Lower Rio Grande Adjudication Status Report

Judge Gerald A. Valentine, Third Judicial District, provided the WNRC with an update regarding the work his court is doing to adjudicate the water rights of the state. He presented the committee with statistics showing the overall number of existing subfiles, the number of cases with offers of judgments, the total number of claimants and the number of claimants joined. Judge Valentine also provided the committee with breakdowns by basin of those same statistics. He pointed out that almost all of the water rights claimants in the lower Rio Grande have been joined.

Judge Valentine went on to indicate that court personnel and OSE staff have been working together with representatives from other states, particularly Idaho, to identify efficient adjudication procedures that New Mexico can adopt. He also provided the committee with a preliminary list of suggestions that might help streamline the adjudication process. Judge Valentine's suggestions included maintaining online deed records, exploring the importance of hydrographic surveys and further study of the claims-based adjudication process that several other states employ.

Questions and comments included:

- use of the ombudsman program to mediate adjudications claims;
- the possibility of appropriating additional money for adjudications at the planned special legislative session;
- funding and staffing needs of the ombudsman program; and
- the possibility of drafting legislation based on Judge Valentine's suggestion for endorsement by the WNRC.

Elephant Butte/El Paso Water District Settlement

Gary Esslinger, manager of the Elephant Butte Irrigation District (EBID), provided the committee with testimony regarding the settlement reached between the EBID and El Paso Water Improvement District Number 1. He explained that the settlement, which divides water between New Mexico and Texas, was signed on February 14, 2008. Mr. Esslinger went on to discuss several key points of the settlement, such as that it:

- ties Texas's water allocation to storage levels in Elephant Butte and Caballo reservoirs;
- protects both Texas and Mexico from the impacts of ground water pumping in New Mexico;
- eliminates the threat of litigation between New Mexico and Texas over ground water pumping;
- provides New Mexico flexibility to conjunctively manage its surface and ground water without outside interference;
- costs New Mexico nothing; and
- allows New Mexico to capture and use, store or recharge to the aquifer any storm water without changing allocations to Texas or Mexico.

Mr. Esslinger also discussed the poor condition of the lower Rio Grande's flood control

infrastructure and provided the committee with an overview of the various functions that the EBID performs.

The WNRC adjourned at 12:30 p.m.

Call to Order

The CCJ meeting was called to order by Senator McSorley, co-chair.

Juvenile Justice Reforms — Recent Efforts and Future Planning: The Missouri Model and Juvenile Facilities

Dorian Dodson, secretary of children, youth and families, began by introducing Children, Youth and Families Department (CYFD) staff members that had accompanied her to Las Cruces. Secretary Dodson reviewed the status of current juvenile justice facilities, stating that most were located along the Rio Grande corridor and in Albuquerque. She said that most juvenile offenders in the facilities are over 17 years old and more programs are needed that are specifically geared toward this age group. She said that about 10 percent of incarcerated juveniles are female, and there is an over-representation of minorities that is inconsistent with the demographics in the state. She added that the majority of incarcerated juveniles are high-risk and high-need. Secretary Dodson discussed the importance of smaller facilities and dorm-style rooms as used under the Missouri Model. She highlighted the short-term goals of the juvenile justice facilities, including implementing a unit management approach in all facilities and conducting 15-day diagnostic evaluations in detention settings statewide. She also discussed long-term goals with regards to Cambiar New Mexico (New Mexico's name for the Missouri Model), including shifting program emphasis from confinement and punishment to rehabilitation and restorative justice and establishing front-end and after-care transition services. She went on to state that the Cambiar New Mexico education plan requires individual education plans for all residents and maintains a standards-based curriculum consistent with the Public Education Department. She said the Cambiar facilities promote a positive peer culture and include specialized services.

Secretary Dodson and Debra Pritchard, director of juvenile justice services, CYFD, then discussed issues and answered questions from the committee.

Tour of the J. Paul Taylor Center

Committee and staff were taken on a tour of the J. Paul Taylor Center, a juvenile justice facility located outside of Las Cruces, by Secretary Dodson and CYFD staff.

Wednesday, August 6

Report from the Attorney General's Animal Cruelty Task Force: Legislative Proposals

Steve Suttle, special counsel, Office of the Attorney General, described the work of the task force as a crusade. He said that the Office of the Attorney General is limited by statute in its ability to prosecute animal cruelty cases, so it works with local district attorneys. He said that the task force and law enforcement have been active in this field and helped rescue a number of pit bulls in Chaparral and arrested two brothers in connection with dog fighting. He said that they

also broke up a cockfighting ring in Anthony. However, the roosters in that case were so badly damaged that they had to be euthanized. In December, they raided a "cockfight holiday weekend", and, in June, they raided a cockfight on the West Mesa in Albuquerque. Mr. Suttle said that the misdemeanor designation for cockfighting limits prosecution.

Heather Ferguson, legislative director, Animal Protection of New Mexico and Animal Protection Voters, said that the task force has allowed her groups to work on-the-ground. She requested that the reptile exemption be removed from the animal cruelty statute and briefly went over the proposed legislation on animal cruelty. Ms. Ferguson then invited several guests in the audience to speak of their experiences with animal cruelty cases.

Robin Boykivich, investigator, Dona Ana Sheriff's Department, discussed a case involving reptiles in which two boys broke into a reptile shelter and stabbed and killed 24 reptiles. She said they could not be prosecuted under the current animal cruelty statute due to the reptile exemption. She also discussed issues related to the abandonment of animals.

Todd Garrison, sheriff of Dona Ana County, said there is a high cost associated with caring for and maintaining animals taken into custody in animal cruelty cases. He added that the sheriff's office has reached out to other areas to lend their expertise in animal cruelty cases. Miles Culbertson of the New Mexico Livestock Board joined the panel and discussed livestock issues and how Section 30-18-1 NMSA 1978 is used for prosecuting cruelty to livestock as well as other animals.

Jack Fisher, board member of Horse Shelter in Cerrillos, said that the shelter is located on 300 acres and currently houses 40 horses and two foals. He said it costs approximately \$3,500 per year per horse and that the New Mexico Livestock Board covers some of the cost, but not all. Ms. Boykivich added that the cost to house a dog is \$15.00 per day, and the cost to house a horse is \$35.00 per day, not including medical treatment. She said that it is a high cost for the county.

The panel then answered questions from the committee.

Legislative Proposal on Eyewitness Identification Procedures

Michael Stout, New Mexico Criminal Defense Lawyers Association, began by stating that 75 percent of convicted offenders exonerated by the Innocence Project were convicted based on eyewitness testimony. He said that the eyewitness identification procedures bill is not an attack on law enforcement. He said that an eyewitness often develops an enhanced memory once the eyewitness has confirming evidence. He called this a human frailty issue as opposed to intentional misconduct. Mr. Stout then quickly reviewed the bill, stating that the critical points include a double-blind procedure, sequential lineups and recording and documentation.

Henry Valdez, First Judicial District attorney, said that a study was conducted with the Illinois Police Department that showed that sequential lineups were not better than simultaneous lineups and were perhaps worse. However, this study was called into question by experts in the field. Nevertheless, Mr. Valdez said that the Department of Justice is conducting a study on eyewitness identification procedures. Mr. Valdez said that it is not known if the procedures

outlined in the bill will be an improvement until the results of the study are back, which should be in about two years.

Mr. Stout and Mr. Valdez then answered questions from the committee.

Amenability Hearings for Serious Youthful Offenders

Anna Gabrielitis, attorney, Juvenile Division, Public Defender Department, said that a small change needs to be made to the Children's Code. This change would require all children facing charges as adults to receive an amenability hearing to determine whether or not the child can be treated as a child or if an adult sanction would be better. She said that the current system is inconsistent in how it treats juveniles. Currently, serious youthful offenders do not have a right to an amenability hearing and the judge has no discretion.

Rory Rank, attorney, Juvenile Division, Public Defender Department, said that currently, a serious youthful offender designation equals an automatic transfer to an adult facility. He said that the charge itself should not preclude an amenability hearing. He said that the child should be given the greatest protection possible.

Mr. Valdez said that the serious youthful offender designation is only given to children who have been charged with first degree murder. He said that in 1993, the legislature determined that this conviction deserved an adult sentence and removed the judge's discretion. Mr. Rank said that the federal government has conducted a study highlighting the problems associated with sending children to an adult facility, including a higher rate of recidivism.

The panel then addressed questions from the committee.

Public Comment

Paul Borunda wanted to know why complaints against law enforcement officers are not accepted by the Department of Public Safety's Law Enforcement Academy or by some other statewide authority. He went over his efforts to require the academy to accept citizen complaints against law enforcement officers. A discussion ensued between Mr. Borunda and members of the committee, and Representative Cervantes suggested that the committee explore this issue when the Department of Public Safety is also present.

There being no further business, the committee adjourned at 1:03 p.m.

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

**August 27, 2008
Springer Correctional Center
201 Highway 468
Springer**

**August 28, 2008
Northeast New Mexico Detention Facility
185 Dr. Michael Jenkins Road
Clayton**

The fourth meeting of the Courts, Corrections and Justice (CCJ) Committee was called to order by Senator Cisco McSorley, co-chair, at approximately 10:35 a.m. on Wednesday, August 27, 2008, at the Springer Correctional Facility in Springer, New Mexico.

Present

Sen. Cisco McSorley, Co-Chair
Rep. Al Park, Co-Chair (Aug. 27)
Sen. Rod Adair
Rep. Thomas A. Anderson
Rep. Gail Chasey (Aug. 27)
Sen. Clinton D. Harden, Jr.
Sen. Richard C. Martinez (Aug. 27)
Sen. Lidio G. Rainaldi
Rep. William "Bill" R. Rehm
Rep. Eric A. Youngberg (Aug. 28)

Absent

Rep. Joseph Cervantes
Sen. Carroll H. Leavell
Rep. Antonio "Moe" Maestas
Rep. Peter Wirth

Advisory Members

Rep. Jane E. Powdrell-Culbert
Rep. Mimi Stewart

Rep. Elias Barela
Sen. Kent L. Cravens
Rep. Daniel R. Foley
Sen. Mary Jane M. Garcia
Sen. John T.L. Grubestic
Sen. Gay G. Kernan
Sen. Linda M. Lopez
Rep. W. Ken Martinez
Sen. William H. Payne
Sen. John C. Ryan
Sen. Michael S. Sanchez
Rep. Sheryl Williams Stapleton

Rep. Thomas E. Swisstack
Sen. James G. Taylor
Rep. Teresa A. Zanetti

Guest Legislators

Rep. Brian K. Moore (Aug. 28)

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

Staff

Maha Khoury
Aldis Philipbar

Guests

The guest list is in the meeting file.

Wednesday, August 27

Tour of the Springer Correctional Center

The meeting began with committee member introductions. Joe R. Williams, secretary, New Mexico Corrections Department (NMCD), then introduced NMCD staff. Secretary Williams said that over 40 families are employed by the correctional facility. The department then played a short movie that showed how the correctional center at Springer came to be and the work and changes that occurred. Committee members then inquired about the correctional center in Springer and discussed related issues with members of the NMCD.

Secretary Williams and NMCD staff then led the committee and members of the public on a tour of the Springer Correctional Center.

State of the State on DWI: Success and Future Challenges

Rachel O'Conner, DWI coordinator, Office of the Governor, briefed the committee on the success of current DWI programs as well as the future challenges. She said that in 2007, there were 177 alcohol-involved fatalities (both pedestrian and DWI). As of August 2008, there were 83 fatalities, making 2008 the fourth year in a downward trend. She noted that in 2006, New Mexico moved from number five to number eight in the nation in alcohol-involved fatalities per 100,000. She said that the governor's office has contracted with the University of New Mexico to see what is working well and what needs improvement. She noted that a cooperative between local and state law enforcement has worked well in Dona Ana County. Ms. O'Connor also discussed Native American issues with regard to DWI. She said that they are working on Native American initiatives, including task forces in McKinley and San Juan counties. She showed the committee samples from the We Care Campaign, which features Native American celebrities, calling it the most successful campaign the department has ever seen. She said that they have received overwhelming support from the Native American community. She touched on the

Drunkbusters hotline, saying that it received 800 contacts that resulted in 300 arrests and then proceeded to discuss ignition interlock devices. She said that 8,500 interlocks have been installed as of June 2008. Ms. O'Connor said that 65,000 drunk driving incidents have been prevented by interlock devices. She discussed alternatives to ignition interlocks, including some other form of electronic monitoring. Ms. O'Connor discussed drugged-driving. She said that of the 2,818 blood specimens received in 2007, 93 percent of those with a BAC below .08 tested positive for other drugs. She added that 14 percent of those who tested positive had no alcohol in their systems.

David Mills, director, Scientific Laboratory Division, Department of Health, added that marijuana, cocaine, and methamphetamine are the most popular drugs. He said that positive drug tests have risen since 2001 in car fatalities. Mr. Mills noted that some states have per se laws for drugs because drug-driving cases are more complex since there is no way to test on the spot such as with a Breathalyzer. Drugged-driving cases usually require expert testimony from toxicologists.

Ms. O'Connor and Mr. Mills then answered questions from the committee.

Possible Reasons for Decline in New Mexico's Prison Population

Tony Ortiz, deputy director, New Mexico Sentencing Commission (NMSC), attributed the decline in New Mexico's prison population to several factors, including management practices, legislation and the increase and success of drug courts. Mr. Ortiz noted that while the prison population has declined in New Mexico, the jail population has increased. He said that from May 2006 to June 2008, there was a steady decline in the prison population; however, since July 2008, there has been an increase. He added that the 85-percent rule for violent offenders still applies, as well as mandatory sentences for DWI and sex offenders. Mr. Ortiz encouraged everyone to remain aware and remember that recession puts stress on people and families and could cause an increase in criminal behavior.

Mr. Ortiz and Paul Guerin, Ph.D., senior research scientist, NMSC, answered questions from the committee.

Thursday, August 28

The committee was welcomed to Clayton by Representative Moore, Mayor Jack Chosvg and Union County Commission Chair Richard Arguello.

NMCD New Facilities; 10-Year Plan; Public and Private Prisons; Response to the Prison Reform Task Force

Secretary Williams welcomed the committee to the Northeast New Mexico Detention Facility and gave a brief history of the new prison. Secretary Williams discussed some issues related to corrections and prisons in New Mexico. He said that severe overcrowding led to the "county jail solution". He said that Camino Nuevo opened with 107 female offenders, but closed with only 22, who were moved to the facility in Grants. The NMCD then entered into a memorandum of understanding with the Children, Youth and Families Department (CYFD) for

24 months and, in two years, hopes to reopen the facility as gender-specific with daycare. Secretary Williams briefly touched on the department's 10-year plan, saying that it has had many changes since drafted. He said that the state penitentiary is the highest-level (level 6) facility in the state and that New Mexico does not have a huge need for a level 5 facility. He said that if the Grants facility were renovated, it could be used to house level 5 inmates. Secretary Williams added that the southern facility is in need of renovation. The central facility should be renovated after the southern facility. He said that this would help with growth.

Gail Oliver, deputy secretary of re-entry and reform, discussed New Mexico prison reform plans. She said there is a focus on individual barriers for offenders in the education programs. She stressed that re-entry begins upon arrival and that a risk/needs assessment is conducted at reception and diagnosing. She said that they look at pre-incarceration issues such as employment history to help determine possible barriers. She said that gender-responsive programming should be continued and she would like to see nurseries added to women's facilities and daycare and Girl Scout programs implemented. Ms. Oliver said that they have linked with the community college to address the specific needs of each offender and launched an entrepreneurial pilot program called Transition Accountability Plan (TAP). She said that the NMCD is requesting a study on the need for halfway housing and looking at ways to decrease barriers to employment, education and housing. Recommendations for decreasing these barriers include "ban the box", providing driver's licenses, identification cards or social security cards upon re-entry. Some of the programs already implemented by the department include risk and needs assessments, TAP, motivational interviewing, domestic violence programs, vocational training, gender-responsive programming and a relational inquiry tool that looks at the strengths and weaknesses of an offender in terms of family (part of TAP). Ms. Oliver said that there are several more programs for FY 2010 that may need legislative approval, including community behavioral health treatment, six more restorative justice panels, substance abuse treatment, success for offenders after release, the La Bodega Model, a faith-based re-entry coordinator and community behavioral health staff. Ms. Oliver said that they would also need legislative approval to expand halfway housing in 2011.

Report from the Probation and Parole Division

Charlene Knipfing, director, said that the goal of the Probation and Parole Division (PPD) is to ensure effective coordination and supervision of offenders as they are released back into the community. Ms. Knipfing said that success requires balanced caseloads, a well-trained work force, specialized caseloads to meet risks and needs, outpatient and residential treatment services and access to community resources, employment opportunities and housing. She then discussed some probation and parole highlights. Transitional reporting centers were created to serve as reception and diagnostic centers in the community of release to inform the PPD. In addition, in 2002 a federal grant was awarded that created an infrastructure to ensure treatment flowed from prison to parole and an officer was assigned to each region to ensure linkage with community resources. Some additional highlights include a reduction in caseloads and workloads, creation of a response center, video-conferencing implementation, job readiness seminars and financial assistance for recently released offenders. She said that there are specific barriers to re-entry that require a variety of specialized treatment options, community involvement, jobs skills and access to benefits. The current caseload has been reduced to 92 per officer (previously 132), there were 500 early discharges in FY 2008 and the offender employment rate is 74 percent. Ms. Knipfing

then discussed some of the challenges still being faced. She said that barriers to offender success include trouble accessing resources, an ongoing need for substance abuse and/or mental health treatment, limited services in rural areas and lack of employment and job skills, among others. She then discussed some best practices and considerations for the offender population. Ms. Knipfing then discussed the division's current initiatives which include:

- a health care specialist in the Albuquerque probation-parole office to work closely with staff on needs cases and facilitate community referrals;
- gender-specific special programs caseload;
- development of a gender specific curriculum for officer basic and refresher courses;
- relocation of the New Mexico women's recovery academy residential program for Los Lunas to Turquoise Lodge in Albuquerque;
- relocation of Fort Stanton men's residential program to Los Lunas;
- pilot with ValueOptions and county jail diversion programs around data sharing; and
- GPS installation for sex offenders.

Ms. Knipfing, Ms. Oliver and Secretary Williams then answered questions from the committee.

Tour of the Northeast New Mexico Detention Facility

Timothy Hatch, warden of the Northeast New Mexico Detention Facility, led the committee, staff and members of the public on a tour of the facility.

There being no further business, the committee adjourned at 1:45 p.m.

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

**October 20-22, 2008
Room 307, State Capitol
Santa Fe**

The fifth meeting of the Courts, Corrections and Justice Committee was called to order by Senator Cisco McSorley, co-chair, at approximately 10:25 a.m. on Monday, October 22, 2008, in Room 307 of the State Capitol in Santa Fe, New Mexico.

Present

Sen. Cisco McSorley, Co-Chair
Rep. Al Park, Co-Chair
Rep. Thomas A. Anderson
Rep. Joseph Cervantes
Rep. Gail Chasey
Rep. Antonio "Moe" Maestas
Sen. Richard C. Martinez
Sen. Lidio G. Rainaldi
Rep. William "Bill" R. Rehm
Rep. Peter Wirth
Rep. Eric A. Youngberg (Oct. 21-22)

Absent

Sen. Rod Adair
Sen. Clinton D. Harden, Jr.
Sen. Carroll H. Leavell

Advisory

Rep. Elias Barela (Oct. 20-21)
Rep. Daniel R. Foley (Oct. 21)
Sen. Linda M. Lopez (Oct. 20)
Rep. W. Ken Martinez (Oct. 20-21)
Rep. Jane E. Powdrell-Culbert
Rep. Sheryl Williams Stapleton
Rep. Mimi Stewart

Sen. Kent L. Cravens
Sen. Mary Jane M. Garcia
Sen. John T.L. Grubestic
Sen. Gay G. Kernan
Sen. William H. Payne
Sen. John C. Ryan
Sen. Michael S. Sanchez

Guest Legislators

Rep. Ernest H. Chavez
Rep. Roberto "Bobby" J. Gonzales (Oct. 20)
Rep. James Roger Madalena (Oct. 20)
Rep. Rick Miera (Oct. 20)
Rep. Gloria C. Vaughn (Oct. 20-21)

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

Staff

Maha Khoury
Aldis Philipbar

Guests

The guest list is in the original meeting file.

Monday, October 20**Understanding Sex Crimes and Disorders for Policymakers**

Fred S. Berlin, M.D., Ph.D., director, National Institute for the Study, Prevention and Treatment of Sexual Trauma, and associate professor, Johns Hopkins University School of Medicine, said that sex offenders tend to be considered one homogeneous group. He said that he approaches the issue from a mental health standpoint, but the law defines individuals as sex offenders because they behaved in a certain way. He said the first question to ask is: "Is there a psychological disorder present?" and the second question is: "Is that disorder affecting sexual behavior?". Dr. Berlin said that some non-sexually disordered offenders commit sex offenses, but they are not any more likely to recidivate than other criminals who committed non-sexual offenses. He said that the mentally retarded also sometimes commit sex offenses. There is a limited availability of appropriate sex partners for the mentally retarded due to their mental age. He said that they are not pedophiles, but they need help for the safety of communities. He said that very few recidivate. Dr. Berlin said that zoning issues sometimes make situations worse by adding stress and making it harder for sex offenders to participate in the community.

Dr. Berlin then focused on how people differ sexually. He said that people differ in their sexual behavior, partners, intensity and attitudes about their own desires. Behaviors include transvestism, exhibitionism, sexual masochism and sexual sadism. People can be attracted to the opposite sex (heterosexual), same sex (homosexual), animals (zoophilia), dead bodies (necrophelia) and children (pedophilia). He said that not everyone who commits a sex act against a child is a pedophile. Pedophiles are sexually attracted to pre-pubescent children. Pedophiles can be divided into different groups by gender attraction (male, female or both), whether the pedophile is exclusively attracted to children or is attracted to both children and adults. He added that exclusive homosexual pedophilia does not equal gay because the individual is not attracted to adult males. However, he stressed that other personality traits (kindness, cruelty, etc.) cannot be determined with a sex offense label and must be evaluated separately.

Dr. Berlin addressed the development of pedophilia and distinguished personal character, mental disorders and sexual urges. He emphasized that it is not a voluntary choice; however, it is the responsibility of people with this affliction to control their urges, and they need community support. He said that sexual abuse, especially of males, is a contributing factor. However, he stressed that a majority of children go on to lead productive lives.

Dr. Berlin then discussed treatment options. He said that treatment must be a

collaborative effort and that group therapy, including therapeutic confrontation, therapeutic support and relapse prevention, is important. He said that not enough is known about the biology of pedophilia to cure it; however, enough is known about the intensity of sexual desire that is driven by testosterone. He emphasized that it is not necessary or effective to put a person through unnecessary surgery (e.g., removal of testes) when a monthly injection can lower testosterone levels. Dr. Berlin said that legislation should allow access to medication for those who need it and want it, but it should not be mandatory.

Dr. Berlin then answered questions from the committee.

Juvenile Sex Offenders: An Overview of Offense Patterns, Re-Offense Rates and Risk Issues

Michael Caldwell, Ph.D., University of Wisconsin at Madison, said that juvenile recidivism rates do not seem to rise with time. He said that whatever drives adult sex offenders is different than what drives juvenile sex offenders. Dr. Caldwell said that juvenile sex offenders have low adult sexual recidivism rates that are similar to non-sex offending delinquents. He said that juvenile sex offenders respond well to treatment and that there is no evidence that registration laws reduce re-offending in juveniles. He added that there is some evidence that the Sex Offender Registration and Notification Act (SORNA) may target lower-risk juveniles and make communities less safe.

Dr. Caldwell answered questions from the committee.

The Federal Adam Walsh Child Protection and Safety Act: Issues and Perspectives

Randall Cherry, general counsel, Sex Offender Management Board, gave a brief review of the Adam Walsh Act, which creates a three-tier national sex offender registry operated by the FBI. He said that states do not have to adopt all three tiers, but New Mexico is largely compliant with the tier system. Mr. Cherry said that tribes must maintain registries or the responsibility falls to the state. He said that all New Mexico tribes have opted to have their own registry. Mr. Cherry added that the Adam Walsh Act shortens the community notification and registration time from 10 days to three days, but the notification can be web-based. The Adam Walsh Act also expands the required information to be included on the registration web site. There is also a retroactive component to the act that requires offenders convicted of any new crime to register for past sex crimes. Mr. Cherry said that the act requires any juvenile over 14 convicted of criminal sexual penetration to be registered for life, but the offender may appeal after 25 years if no new offense has been committed. Mr. Cherry added that the compliance date for the Adam Walsh Act is July 2009, that states can seek extensions and that, currently, no states are in compliance.

David Schmidt, director, New Mexico Council on Crime and Delinquency, and chair-elect, National Coalition on Juvenile Justice, said that the Adam Walsh Act mandates that children be treated as small adults and it is offense-based rather than offender- or risk-based. Mr. Schmidt said that juveniles are not fully developed until age 25 and that there is a lack of intent in juvenile sex offenders. He said that they are very amenable to treatment. He noted that there are enormous collateral consequences associated with registering juvenile sex offenders (e.g., lack of employment, education, etc.) and enormous costs associated with the implementation of the registry. Mr. Schmidt cited Virginia, saying that the state estimates implementation will cost \$12 million. He said that some counties in New Mexico have only one sheriff who will have to handle everything. He added that there is an ethical issue associated with retroactivity, especially with regards to plea bargains. He said that judges will not find juveniles guilty to avoid registration (e.g., rape becomes battery), but then the juvenile will not be eligible for treatment. Mr. Schmidt urged the state to request more time and not do anything with the Adam Walsh Act this year. He said that the act needs another year of study, and he urged the attorney general to issue a legal opinion on all aspects of the Adam Walsh Act, especially the retroactivity portion.

John Wheeler, crime policy advisor to the governor, said that the executive is exploring compliance with the Adam Walsh Act. He said that the first goal should be to prevent victimization, and he reminded the committee that for every juvenile offender, there is a victim. He said that the focus should be on protecting the victim. Mr. Wheeler said that the Adam Walsh Act does not create criminals because the crime was already committed. He said that the New Mexico Children's Code has been heralded as a national model, but that some have said that the Adam Walsh Act is not in compliance with the Children's Code. Mr. Wheeler suggested that perhaps the Children's Code should be changed. He also said that he is aware of the burden on the system, but that maybe the system should be geared in that direction. The state has an interest in helping the offender, but also in helping the victim. He said that New Mexico will seek an extension, but that the state will have to show an attempt to comply.

The panel then answered questions from the committee.

New Mexico Corrections Department's Policies on Sex Offender Supervision; Update on GPS Monitoring

Charlene Knipfing, director, Probation and Parole Division, New Mexico Corrections Department (NMCD), said that the Probation and Parole Division walks a fine line between public safety and rehabilitating sex offenders. Gary Carson, region manager, District II Special Programs, Probation and Parole Division, NMCD, said that the NMCD is bound by state statutes and SORNA. Mr. Carson discussed the containment model used with sex offender supervision, which includes motivational interviewing. He said that a lot of field work is done, but that the NMCD has limited funding to carry out the types of programs discussed by Dr. Berlin. Mr. Carson added that the NMCD has a behavioral contract, and it discusses areas that need to be worked on with the offender. He said that the NMCD also monitors residency restrictions and uses state-of-the-art techniques in supervision. Jeremiah Anibabo said that the NMCD is currently mandated to provide real-time GPS monitoring on all sex offenders paroled after 1995. He said that active GPS monitoring costs \$8.00 to \$10.00 per day per offender, and passive

monitoring costs \$4.00 to \$5.00 per day per offender. Mr. Anibabo said that GPS monitoring restricts the offender's ability to make contact with the victim and helps with compliance. He added that the community is supportive of the program. Ms. Knipfing reiterated that the Probation and Parole Division's biggest challenge is to provide public safety while reintegrating sex offenders into the community. She said that the division has a 25 percent officer turnover rate, and that it is forced to err on the side of caution.

Issues with NMCD's Supervision of Sex Offenders

Kraig Vandenberg, director, special programs, Fifth Judicial District Attorney's Office, said that he has no problem with the Probation and Parole Division's policies, but that there needs to be some kind of classification system. He said that the Probation and Parole Division classifies all sex offenders as predators, and that he hopes to present the human aspect of sex offenders. He said that there are a number of people seeking direction about treatment for their friends or family members who are sex offenders and that there has been some confusion as to who initiates the two-and-a-half-year and five-year reviews: the NMCD or the lawyer for the sex offender. Mr. Vandenberg said that supervision levels changed drastically after May and that the concerned parties contacted the NMCD, but were never given any guidance. Mr. Vandenberg then read two letters that he had received from concerned individuals. He also said that the NMCD has a risk/needs assessment that should be applied. In response, Ms. Knipfing said that risk/needs assessments for sex offenders with previous offenses are only performed in Albuquerque at a cost of \$1,500 each. She said that the NMCD does not have the funding to provide those assessments to everyone, but that it would be beneficial. Mr. Vandenberg added that current law says the court can make special exceptions upon sentencing. Mr. Cherry clarified that the two-and-a-half-year and five-year reviews determine whether supervision should continue.

Nancy Hewitt, Public Defender Department, discussed some problems that have come up in the Second Judicial District. She said that probation officers were told that children had to be removed from the homes of individuals with previous sex offenses, even though they are not currently on probation for that offense. She gave examples of problems and confusion over policies.

Ms. Hewitt and Mr. Vandenberg then answered questions from the committee.

Proposed Legislation: Require Persons Convicted of Aggravated Stalking of a Person Under 16 to Register as Sex Offenders (Bill Draft #1)

Representative Jimmie C. Hall introduced James and Betsy Gilman, whose daughter was the inspiration for the bill. Mr. Gilman said that their 13 year-old daughter was working at their law firm when their security guard began stalking her. Their daughter, now 18, has suffered psychological trauma and has continuing issues. He said that aggravated stalkers are sex offenders who are under the radar or who have not yet evolved into more serious criminals. He said that they have a big impact on their victims. In their case, Judge Blackmer sentenced the stalker to four years of probation. He said that by fashioning appropriate sanctions, society's needs can be met, whether they are rehabilitation, punishment, etc. Mr. Gilman said that stalking offenders should have limited access to society, especially to their victims, and that it is possible

to keep these predicate acts from evolving into more serious criminal offenses. Mrs. Gilman explained that Judge Blackmer chose probation because it guaranteed that the courts would have jurisdiction over the offender for four years, whereas with jail time, the offender could be out after one year.

Mr. Cherry said that the biggest concern of the New Mexico Sentencing Commission (NMSC) is the large net that this bill casts to catch a very small population. Mr. Cherry said that this is more of a sanctioning issue than a registry issue, and that he is concerned with diluting the registry.

Dr. Berlin added that there are no studies of how many stalkers go on to commit sex offenses, but sexual offenders often stalk prior to committing crimes to establish victims' patterns.

The panel then answered questions from the committee.

Public Comment

Ana GabriELITIS, attorney, Juvenile Division, Public Defender Department, said that she was there as a member of the public to discourage the legislature from adopting the registration requirements for juveniles in the Adam Walsh Act. Melissa Hill, New Mexico Criminal Defense Lawyers, encouraged a move from offense-based registration to risk-based registration.

There being no further business, the committee recessed at 4:45 p.m.

Tuesday, October 21

Uniform Law Commission: Proposed Legislation (Bill Drafts #2-7)

John P. Burton, uniform law commissioner, walked the committee through the Uniform Law Commission bill drafts. One draft makes some technical amendments to the Uniform Revised Limited Partnership Act and another clarifies the application of an advance health-care directive in the Jonathan Spradling Uniform Anatomical Gift Act. A third bill makes technical amendments to the Uniform Commercial Code and the Uniform Residential Mortgage Satisfaction Act to provide mechanisms for title companies to give notice to lenders asking for release by a certain date. Mr. Burton said that amendments to the Uniform Assignment of Rents Act cleans up an old technicality in real estate law, which he called the most outdated law on the books, and the Uniform Money Services Act amendments deal with money laundering issues unique to non-banking and non-depository institutions.

Enforcement of the Dee Johnson Clean Indoor Air Act

Nathan Bush, government relations director, New Mexico Cancer Society, discussed how a cigar bar is defined under the act and said that the act is not being enforced in Albuquerque and that there has been no training on enforcement. He said that the Department of Health (DOH) is currently considering four applications for cigar bars, but the cancer society does not consider any to be actual cigar bars. He added that no applications for cigar bar status have been turned down.

Pete Dinelli, chief public safety officer, City of Albuquerque, said that he takes exception to the statement that the city has not been enforcing the act. Mr. Dinelli gave examples of citations issued, but also said that officers cannot determine whether 10 percent of sales is from cigars because they are not auditors. He said that Albuquerque has a city ordinance that reflects the state law. Mr. Dinelli said that enforcement is difficult because the law requires the fire marshal and police to enforce the law, not the Department of Environment or the DOH. He said that under the law, personnel can only issue citations. Mr. Dinelli said that the law says nothing as to whether the city has the authority to close the establishment.

Robert Ortega, fire chief, City of Albuquerque, said that the fire department has taken a proactive approach. He said that, originally, eight bars wanted cigar bar status, but after meeting with the owner to discuss the requirements, four backed out. He said that the fire department will continue to be proactive. Andrew Chavez, fire marshal, City of Albuquerque, said that the fire department has had some difficulties in that the statute imposes an unfunded mandate because many bars operate after hours and the fire department has to use overtime for enforcement. However, he said the fire department is working to remedy the situation. Mr. Chavez said the fire department has followed up on every complaint and that it is actively enforcing the law and ordinance.

Mr. Dinelli said that fire marshals are often met with hostility from business owners and that citations are often viewed like traffic tickets. He said that more is needed than what is in the law for adequate enforcement. He called it a matter of practicality.

Jessica Sutton, deputy secretary, DOH, said that a cigar bar certification is not the equivalent of a license and that the DOH is not the enforcer of the act. She discussed the requirements for certification and said that the DOH has only granted an application to imbibe. Ms. Sutton added that nowhere in the statute does it specify that the DOH should be issuing certifications.

The panel then answered questions from the committee.

Repeal Employment of Women Statutes (Bill Draft #8)

Whitney Warner, vice chair, Workplace Issues Committee, Association of Commerce and Industry of New Mexico, requested a repeal of the employment of women statutes located in Article 5 of Chapter 50 of the NMSA 1978. She said that the statutes are grossly outdated, place stringent limitations on the number of hours women can work in specified types of employment and run afoul of the constitution. She said that though the statutes are not enforceable, the continued presence of the statutes on the books has been unfortunately overlooked and should be remedied by repeal.

New Mexico Sentencing Commission:

- * **Report on Senate Memorial 47 (2008)**
- * **Proposed Sentencing Legislation (Bill Draft #9)**
- * **Gender-Specific Probation and Parole**

Tony Ortiz, deputy director, NMSC, said that the proposed bill would remedy a statute that was made unconstitutional by supreme court decisions. The bill would require a finding by a jury before a sentence can be enhanced due to aggravating circumstances surrounding the offense or offender. He said that the judge would still have final say in the enhanced sentence that could be up to an extra one-third of the original sentence. Mr. Ortiz noted that the attorney general suggests extending the range of sentences and allowing a judge more discretion. However, Mr. Ortiz said that Tennessee found that, over time, longer sentences were being imposed on low-level crimes.

Linda Freeman, research scientist, NMSC, conducted a survey on gender-specific probation and parole issues. She emphasized that the NMSC tried to be as independent from the NMCD as possible. Ms. Freeman said that the NMSC sent out 2,500 surveys and had an 84.5 percent delivery rate. It had a 25 percent response rate, which was similar across the region. She said the NMSC found that the top needs among the women who responded were managing stress, improving relationships and assistance in finding a job. It also found that most women under the current system were supervised by female officers, and they had positive responses about their probation officers.

Mike Hall, executive director, NMSC, discussed SM 47, which requires the NMSC to measure the fiscal impact of criminal justice legislation. He said that the NMSC devised a budget to see how much it would cost to do analysis on all bills. Mr. Hall said it would need a recurring sum of around \$176,000 to provide fiscal impact reports for all criminal justice legislation.

The panel then answered questions from the committee.

Recommended Changes for Adult Guardianship (Bill Drafts #10-11)

Greg McKinzie, president, New Mexico Guardianship Association, defined "guardianship" as having control over another person's health and "conservatorship" as having control over another person's money. He said that guardians and conservators are supposed to file annual reports with the court, but there is no evidence that the court actually reviews the reports, which can lead to embezzlement and abuse. Mr. McKinzie said a task force was created to come up with short- and long-term recommendations to solve the lack of monitoring problem, and the hope is to develop a process in Albuquerque that can be used statewide. He said that his organization is revising the annual report form and that the first guardianship report is now due in 90 days. Jim Jackson, executive director, Protection and Advocacy, said that his organization is proposing to change the term "ward" to "protected person" in the statutes.

Pat Putnam, executive director, Developmental Disabilities Planning Council, said that many families do not even know they are supposed to file annual reports. He said they receive no training upon becoming a guardian. He requested a recurring appropriation of \$148,700 for two staffers to provide training and field questions and a one-time appropriation of \$200,000 to develop a web site so families can access information.

Legislative Proposals from the Attorney General (Bill Drafts #12-26)

Gary King, attorney general, went over the bill drafts and answered questions on the bills from the committee. He said that draft 12 gives the Attorney General's Office primary jurisdiction to prosecute corruption charges against statewide public officials. Draft 13 limits contributions by persons and political committees to candidates and political committees, and draft 14 prohibits public employers from retaliating against public employees. Attorney General King said that draft 15 creates an independent ethics commission to issue ethical opinions and refer any ethical concerns to the appropriate agency. Draft 16 includes local governments in the Governmental Conduct Act, and draft 17 includes judges elected on a non-statewide basis under the Voter Action Act. Draft 18 prohibits a former legislator from taking a position as a lobbyist for one year after the end of the term for which the legislator was elected or appointed, and draft 19 prohibits the consumption of alcohol by minors. Draft 20 prohibits driving under the influence of a combination of alcohol and drugs, draft 21 prohibits the manufacture, sale and distribution of malt beverages containing stimulants and draft 22 provides that a felony DUI conviction shall be used in the same manner as any other felony when sentencing a habitual offender. Attorney General King then went over some of the changes in the Family Violence Protection Act in draft 23 and the uniform law in draft 24 allowing registration and enforcement of foreign domestic violence protection orders. Draft 25 requires the district attorney to petition for an HIV test on a person charged with or convicted of certain sex offenses upon the request of the victim, and draft 26 prohibits the intimidation of or retaliation against a judge. Attorney General King also said that he will propose other bills not yet drafted, including two human trafficking bills, legislation to regulate alcohol advertising near youth areas and sentencing legislation.

On a motion made, seconded and unanimously approved, the minutes of the August 4-6 and the August 27-28 meetings were adopted.

There being no further business, the committee recessed at 5:15 p.m.

Wednesday, October 22

Report from the Judiciary:

***Unified Budget**

***Allocation of Resources**

***Proposed Legislation (Bill Drafts #27-38)**

Edward L. Chavez, chief justice, New Mexico Supreme Court, said that when there is an economic downturn, crime goes up and the work of the judiciary increases. He said that the judiciary does not have the luxury of turning people away, but justice does get delayed. Chief Justice Chavez added that he realizes this is a difficult time, but hopes the legislature can find a way to help.

Leo Romero, dean, University of New Mexico School of Law, encouraged a four percent increase in salaries of all permanent judicial employees and an additional .5 percent increase if executive branch employees receive an increase of at least four percent. He noted that the judiciary received only a 2.4 percent increase last year and the executive branch received 2.9 percent. Dean Romero also suggested the adoption of the Judicial Compensation Commission's recommendation to raise salaries of justices and judges.

James J. Wechsler, judge, New Mexico Court of Appeals, reviewed the budget with the committee. He noted the effectiveness of drug courts and the success the judiciary has had with mental health courts. He said that the judiciary would be requesting funding for drug and mental health courts and for additional judgeships. Judge Wechsler also presented the committee with a chart of performance measures requested by the legislature as part of court funding.

Arthur Pepin, director, Administrative Office of the Courts (AOC), discussed the judiciary's statewide initiatives and reviewed bill drafts #27-38 with the committee. He said that draft 27 would appropriate a little less than \$4 million for 10 judges and related staff. Draft 28 would fund and expand drug courts, and draft 29 would fund and expand mental health courts. Mr. Pepin said draft 30 would clean up language for access and supervised visitation programs, and draft 31 would reduce the number of times the jury database is updated to twice a year. Draft 32 authorizes fees for e-filing services, draft 33 requires that judges and justices appointed by the Judicial Nominating Commission serve at least one year before running for office and draft 34 makes an appropriation to the Sixth Judicial District to implement and support juvenile and adult restorative justice services. Draft 35 makes an appropriation to the Eleventh Judicial District Court for a pretrial services program, and draft 36 makes an appropriation to provide judges with comprehensive background information about criminal defendants posting or responding to criminal summonses in Bernalillo County. He said that draft 37 increases protection for judges by providing for a substitute address, and draft 38 exempts building and security plans, video camera security footage and personal identifying information from public inspection.

Chief Justice Chavez added that the judiciary has tried to pare down the budget. He said he understands what is going on with the economy, but that justice should not be rationed.

A discussion ensued between committee members and members of the panel.

Funding for Civil Legal Services (Bill Draft #39)

Stuart Bluestone, executive director, New Mexico Legal Aid, said that there is a need for continued and increased funding for legal services for the poor. He said that the poor need help more than ever due to the economy. Mr. Bluestone introduced two guests who had received Legal Aid services.

John Arango, chair, Civil Legal Services Commission, said the supreme court appointed the Access to Justice Commission to make plans to deliver legal services to the poor. He said that about 17,000 people are turned away from Legal Aid each year due to a lack of resources. Mr. Arango said that the typical services performed by Legal Aid are short, such as a letter to the opposing party. He said that the infrastructure is paid for by other entities so appropriations go directly to services, and he added that the money from other sources has been relatively flat for the past 10 years. He said that the commission has been helping in foreclosure cases and that its goal is to have an office in every district.

Bill Strouse, executive director, New Mexico Legal Aid, said that it was able to open an office in Socorro and it is providing services in Otero County. He said that this is the first time that Legal Aid has been fully staffed and that the big difference has been the appropriation from the legislature to make salaries more attractive. Mr. Strouse added that the demand for services is going up all the time.

Mr. Arango discussed a new supreme court rule requiring lawyers to use interest-bearing trust accounts. The interest earned goes to civil legal services. He said it is estimated that interest will provide at least \$1 million a year in funding, but an additional \$4 million is still needed.

Public Comment

Liz McGrath, Pegasus Legal Services for Children, said that there is a huge effort being made to improve and expand civil legal services.

There being no further business, the committee adjourned at 12:30 p.m.

(not approved)

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

**November 17-18, 2008
Room 307, State Capitol**

**November 19, 2008
Room 317, State Capitol**

The sixth meeting of the Courts, Corrections and Justice (CCJ) Committee was called to order by Senator Cisco McSorley, co-chair, at approximately 10:25 a.m. on Monday, November 17, 2008, in Room 307 at the State Capitol in Santa Fe, New Mexico.

Present

Rep. Al Park, Co-Chair
Sen. Cisco McSorley, Co-Chair
Sen. Rod Adair (Nov. 17)
Rep. Thomas A. Anderson
Rep. Joseph Cervantes (Nov. 18-19)
Rep. Gail Chasey
Sen. Clinton D. Harden, Jr. (Nov. 18-19)
Sen. Carroll H. Leavell (Nov. 17-18)
Rep. Antonio "Moe" Maestas
Sen. Richard C. Martinez
Sen. Lidio G. Rainaldi
Rep. William "Bill" R. Rehm
Rep. Peter Wirth
Rep. Eric A. Youngberg

Absent

Advisory Members

Rep. Elias Barela
Sen. Mary Jane M. Garcia
Sen. Gay G. Kernan (Nov. 17-18)
Sen. Linda M. Lopez (Nov. 17)
Rep. W. Ken Martinez
Rep. Jane E. Powdrell-Culbert
Rep. Sheryl Williams Stapleton (Nov. 18)
Rep. Mimi Stewart
Rep. Teresa A. Zanetti (Nov. 18)

Sen. Kent L. Cravens
Rep. Daniel R. Foley
Sen. John T.L. Grubestic
Sen. William H. Payne
Sen. John C. Ryan
Sen. Michael S. Sanchez
Rep. Thomas E. Swisstack
Sen. James G. Taylor

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

Staff

Maha Khoury
Aldis Philipbar
Mark Harben

Guests

The guest list is in the original meeting file.

Monday, November 17

The committee stood for a moment of silence in honor of the passing of Emilio Naranjo, a former state senator, county sheriff and chairman of the Rio Arriba Democratic Party.

Update on the DNA System and Proposed Legislation

John Krebsbach, chair, DNA Oversight Committee, updated the committee on the DNA system and discussed legislation for possible endorsement. He said that there are only three employees for the statewide DNA operation and that there is no backlog now. He clarified that the crime labs in Hobbs and Las Cruces do not have DNA labs. Mr. Krebsbach discussed the DNA matches with other states, case-to-case matches, case-to-offender matches and the high number of investigations aided by DNA in New Mexico. New Mexico also has the highest match rate in the nation. He presented the committee with several newspaper articles detailing how DNA aided in investigations and, in one instance, freed a suspect. He added that the DNA database has proven more proactive than originally anticipated. He also discussed changes to the DNA Identification Act in the proposed legislation.

Mr. Krebsbach then answered questions from the committee. Attorney General Gary King said that his office had no problems with the bill.

Oversight of Law Enforcement Officers

Paul Barunda, concerned citizen, Las Cruces Watch Group, said there is a lack of a system of checks and balances for the police. He said that the police are protected by their own internal reviews to avoid civil suits. He said that the attorney general (AG) is not the attorney of the people, the AG is the attorney of the state and it is the duty of the AG's Office to protect police from lawsuits, leaving citizens without anywhere to turn. Mr. Barunda added that the existing policies and regulations are in conflict with the law regarding redress of grievances by private citizens against police abuse. He pointed out various grievances where no action was taken and said that a virtual police state exists in Dona Ana County, with false arrests, intimidation and bureaucratic coverups. In order to fix the problem, Mr. Barunda recommended that a "blue ribbon" review be conducted to hold public hearings, a joint memorial be passed to conduct a study of the current system and a special investigator be appointed to look into the situation in Dona Ana County.

Bill White, municipal judge, Town of Edgewood, attributed the problem with law enforcement to paramilitary policing, solidarity among law enforcement and a pact of silence. He discussed several examples of botched police raids, including one in which a 92-year-old woman was shot 39 times when police raided the wrong house. Judge White also made suggestions to help fix the problem. He recommended that SWAT raids be videotaped and a point system with a sliding scale be developed for substantiated complaints. He suggested prohibiting the acceptance of forfeiture assets, the use of National Guard forces for SWAT operations and implementing a higher standard for any warrant served by SWAT. He said the police need to return to the original purpose of SWAT. He suggested prohibiting warrants based on unsubstantiated informants and prohibiting SWAT responses to suicides, medical marijuana usage and cases where there is no threat to others. He also said that raids conducted on the wrong house should be considered presumptively negligent and that a database should be used to keep track of warrants that resulted in an inaccurate raid by using the names of the judge and the informant as cross-references. He also suggested limiting the power of police unions.

Arthur Ortiz, director, New Mexico Law Enforcement Academy (NMLEA), said that he agrees with Mr. Barunda and Judge White that there is a problem, but he wants to make sure that law enforcement remains an honorable profession. He said he was surprised at the low numbers of misconduct reports when he became director of the NMLEA. Mr. Ortiz stated that, in March 2007, he held a meeting with police chiefs to notify them that they would not receive training funds if they were not in compliance. He said he is trying to hold everyone accountable and to educate them. He added that the AG assigned an attorney to the NMLEA to help it move misconduct cases along. He said the academy is trying to close all of its misconduct cases in the next six months and that it is implementing community service programs. He said the biggest problem is that police chiefs and sheriffs are not reporting misconduct and that the requirement in the statutes for a conviction makes it difficult to punish misconduct. He added that it is very hard to prosecute police officers; they often get just a slap on the wrist, but they need to be held to a higher standard.

Attorney General King, chair, NMLEA, said that the duty of the AG's Office is not to represent private litigants. He said that the NMLEA Board certifies and decertifies law enforcement personnel. He said that none of the issues brought by Mr. Barunda or Fred Chilton, concerned citizen, Las Cruces Watch Group, at the Las Cruces meeting was a certification issue. He said that the AG's Office has little jurisdiction in this arena, with the exception of some criminal acts by law enforcement. Attorney General King added that complaints should be brought to the district attorney and that he sent Mr. Barunda a letter outlining the jurisdiction of the board. He also added that the county sheriff is an elected official subject to the control of the electorate and that it is typically the sheriff or police chief who handles complaints against an officer. He conceded that there is no formal route to complain about a police chief or the entire police department and said the legislature may want to consider creating a citizens' review board to handle those kinds of complaints.

Jim Burelson, executive director, New Mexico Sheriffs' and Police Association, said that for the dozens of horror stories about the police, there are trillions of examples of good conduct. He said there are avenues of redress. He suggested telling another officer or an institutional review board, adding that the tolerance level for wrongdoing among police officers is low. He said that the district attorney holds the police academy accountable. Mr. Burelson added that Attorney General King has been proactive about preventing corruption in government, including among the police.

The panel then answered questions from the committee.

Proposed Legislation: Methamphetamine Use in the Presence of Children (Bill Draft No. 34)

Representative Nora Espinoza discussed a proposed bill that would criminalize methamphetamine (meth) use in the presence of children and introduced two guests to testify on behalf of the legislation. Ron Mullens, senior instructor, Investigations and Enforcement Branch, Homeland Security and Emergency Management Department, said that he worked with the New Mexico State Police and saw many children trapped in these drug environments. He said that there is just as much meth on the street as ever before, despite stronger pseudo-ephedrine laws, because 98 percent of the drugs come from Mexico. Mr. Mullens said that smoking the drug contaminates everything, leaving residue 1,000 times higher than what the federal Occupational Health and Safety Administration would approve. He emphasized that children are very active in their environments and that 75 percent of children who come out of this kind of environment test positive for meth. He added that meth use results in extreme neglect and abuse and that there is a big hole in the system when it comes to caring for these children.

Hayley Slape, a former police officer and mother of three, also testified on behalf of the proposed bill. She said that she is currently caring for her four-year-old granddaughter, who was exposed to meth, and that her granddaughter's sibling actually died of meth exposure. She said that children who are exposed to meth are sick all the time because their little bodies cannot fight the bacteria while they are fighting the meth. She said that her granddaughter lost her hair and would claw her skin. She encouraged the passage of this bill to help children living in this situation.

The committee thanked the panel for its testimony, and a question-and-answer period ensued.

Second Chance Program

Joy Westrum, president, Second Chance Center, said that the Second Chance Program addresses all forms of substance abuse and is more cost effective than incarceration. According to Ms. Westrum, the Second Chance Program costs the state \$65.00 per day per offender, whereas incarceration costs \$85.00 per day per offender. The program has received money from the federal government and funds from the state and from counties.

Doug Eberhart, Second Chance graduate, told the committee that substance abuse cost him

his family. He said that there are no rehabilitation services in the Corrections Department. He said that he was sent to jail multiple times with no changes in his behavior, then he was sent to Second Chance, and he now works for the program and is back with his family. Mr. Eberhart said that the most important tool in his recovery was the Narconon component and a detoxification sauna. He said that this program offers help, saves lives and builds life skills that are practiced daily so they are not a foreign concept upon release.

Paul Guerin, Ph.D., senior research scientist at the Institute for Social Research, University of New Mexico, discussed an evaluation of the Second Chance Program. He said that his preliminary findings include the following: offenders are not screened when they come into the program; the program lasts six months, yet Second Chance is taking people with 90-day sentences or less; and Second Chance is not following its own policies. He added that Criminon, a program used by Second Chance, contains some "best practices" of cognitive behavioral therapy, but that Narconon is very controversial and is not widely accepted in the medical community. He said that the institute needs three years for a better understanding of how the program works as well as a control group to compare benefits, if any.

The panel then answered questions from committee members.

Measuring the Fiscal Impact of Legislation Affecting Criminal Penalties: Two Approaches

Tony Ortiz, deputy director, New Mexico Sentencing Commission (NMSC), said that the original bill tackling this issue was pocket vetoed by the governor. He discussed some of the technical issues surrounding that bill, including some procedural issues. He outlined the second approach, which would simply give the NMSC an appropriation to measure the impact without changing legislative procedures. John Bigelow, chair, NMSC, said that the consensus of the NMSC is that the principal concept of the bill — requiring the NMSC to measure the fiscal impact of legislation affecting criminal penalties — is good, but at the same time, the commission recognizes that the procedures might interfere with legislative and executive prerogatives. Mr. Bigelow said that the NMSC is well aware of the revenue shortfalls for the coming year; however, the task is something that would be beneficial to the state, but cannot be done without the necessary resources.

Allow Counties with a Metropolitan Court to Assess Fees for Local Government Corrections and Jail Administration and Overcrowding

Alan Armijo, chief county commissioner, Bernalillo County, and Thaddeus Lucero, Bernalillo County manager, presented four bill drafts for the committee's consideration, including two tax bills, a bill that would allow counties with a metropolitan court to assess a local corrections fee and a bill to prohibit incarcerating violent felons in county jails. The committee had not been previously apprised of three of these bill proposals.

Paul Gutierrez, director, New Mexico Association of Counties (NMAC), presented three bill drafts. The bills seek to allow jail administrators to award credit for good behavior; create standards for a county alternative to incarceration and make escape from that program a crime; and create a county detention facility population control commission. Patrick Snedeker, warden,

San Miguel County jail, noted that all bills were a result of the hard work of the task force created by House Joint Memorial 22.

Mr. Ortiz discussed a survey sent out by the NMSC that focused on three questions, including deduction of time for good behavior. He said that of the 28 counties with detention facilities, 15 indicated that their facilities had established rules for the accrual of earned time.

Marc C. Lowry, attorney, Rothstein law firm, said that the bills presented by Mr. Gutierrez are spin-offs of the bill proposed by him this year and last year. He said that the bills attempt to tackle overcrowding and noted that the Bernalillo County jails are drastically overcrowded with insufficient staff. He said that inmates who are denied good behavior credit by a judge at sentencing have no incentive to behave well in the jails. He added that these bills seek to clarify that a county can create alternatives to incarceration of nonviolent offenders, independent of the judiciary. In response to a question asked by a committee member, Mr. Lowry said there is a problem with stacking misdemeanor offenses without good behavior credit and with housing the offender in a county jail rather than sending the offender to prison where good behavior credit is earned.

Visitation Pilot Program for Children of Jailed Parents

Grace Philips, staff attorney, NMAC, described a pilot children's visitation program and the success it has had for inmates, children and families. She called the visitation program an effective inmate management tool. She said that inmates have to earn the visits and that the goal of the program is to address the needs of children. She said that PB&J Family Services is currently providing child resource advocates.

Mr. Snedeker added that the initial funding came from the legislature and that the Children, Youth and Families Department monitors and administers two pilot programs. He said that San Miguel County received a \$25,000 grant.

The panel then answered questions from the committee.

Tuesday, November 18

The Workers' Compensation Act and Farm Workers

Kim Posich, executive director, New Mexico Center on Law and Poverty, played a short video for the committee showing farm workers' stories and injuries to farm workers in New Mexico. He said that the Workers' Compensation Act requires employers of three or more workers to purchase insurance that will provide scheduled amounts of compensation to covered workers who are injured or killed on the job. Businesses in the construction industry must purchase this insurance regardless of how many workers they employ. He said that in New Mexico, the agricultural industry is the only industry exempted from complying with this act. Mr. Posich said that the act benefits employees by providing basic health benefits and benefits employers by preventing lawsuits. Mr. Posich called farming one of the most dangerous occupations in the U.S. and said that most farm-related injuries in New Mexico are not covered

by insurance. He said that 63 percent of farm laborers work fewer than 150 days per year. The annual cost to cover these farm workers is \$528 per year for those in the assigned risk pool and \$380 per year for those in the voluntary market. Mr. Posich said that New Mexico can afford the coverage; net farm income in New Mexico in 2006 was \$429 million, and in 2007 it surpassed \$800 million. He cited a report by New Mexico State University Professor Al Barryman that concluded that workers' compensation coverage for agricultural workers is moderate and is comparable to the construction industry. He added that almost all of the states that produce the same commodities as New Mexico's leading commodities provide workers' compensation for agricultural workers. He said that 33 states require workers' compensation for farm workers, although some exempt small farms and part-time employees. Mr. Posich said that covering agricultural workers in New Mexico is good public policy and it is affordable.

In response to questions from committee members, Mr. Posich said his center has been attempting to work with the industry on a joint proposal, but the industry has been dragging its feet and has been uncooperative. Senator McSorley added that the agriculture industry had agreed to provide a proposal for covering farm workers at the time the act was modified, but it has not yet done so. Mr. Posich stated that his organization has gone to the Business and Labor Workers' Compensation Coalition and was on the agenda of the Advisory Council on Workers' Compensation and Occupational Disease Disablement for the following day.

Prohibit Law Enforcement from Collecting Information Unrelated to Criminal Conduct

Diane Wood, director, Northern Regional Office, American Civil Liberties Union of New Mexico, discussed a proposed bill that prohibits a law enforcement agency from collecting information on the political, religious or social associations or activities of a person that do not directly relate to investigation of criminal conduct.

Ms. Wood answered questions from the committee. There was some discussion on clarifying the meaning of "reasonable grounds" in the bill.

Substance Abuse Treatment in Lieu of Incarceration for Low-Level Drug Offenders: Costs and Benefits

Julie Roberts, policy coordinator, Drug Policy Alliance New Mexico, discussed a proposed bill that would provide substance abuse treatment for persons charged with certain substance abuse offenses. She said that under this legislation, people charged with drug possession offenses or drug-related probation and parole violations would receive supervision and appropriate community-based treatment services. She said that the proposed law tries to intervene in the cycle of addiction and incarceration. She said that this proposal would make communities safer by reducing drug-related crime and preserving jail and prison space for more serious offenders. She also discussed the cost savings associated with the bill, citing a study by the RAND Corporation that found that every additional dollar invested in substance abuse treatment saves taxpayers \$7.46 in societal costs.

Donald Gallegos, New Mexico District Attorney's Association, said that district attorneys have concerns with the bill. He said that the criminal conduct language in the bill adds another

level of scrutiny and that there are no provisions for additional crimes.

Providing Treatment to Sexually Abusive Youth: Training Program for Therapists

Susan Loubet, executive director, New Mexico Women's Agenda, discussed a training program for therapists who treat sexually abusive youth and some of the comments made by participants. Kim Alaburda, executive director, New Mexico Coalition of Sexual Assault Programs, said that in 2007, the legislature approved a measure to fund initial and continuing training of therapists certified to provide treatment to youth with sexual behavior problems. She noted many reasons why this training is necessary, including that as much as half of all child sexual abuse is committed by children under the age of 18 and that there is mounting evidence that treatment intervention with juveniles will make communities safer and give sexually abusive youth the opportunity to live abuse-free lives. She said that between July 2007 and June 2008, the New Mexico Coalition of Sexual Assault Programs sponsored two two-week training programs. Each participant and supervisor had to commit to providing a minimum of one year of free services to New Mexican youth and their families. Ms. Alaburda said that in October 2008, the coalition provided an advanced three-day training to previous participants and will provide another in June 2009. She said that it would also provide another two-week certification class for up to 25 students in February 2009. She requested that the New Mexico Department of Health keep the funding intact as originally requested by First Lady Barbara Richardson and approved by the legislature and added that it has a waiting list of therapists.

Randall Cherry, general counsel, Sex Offender Management Board (SOMB), said that he attended the training and that many people from outside of Albuquerque attended as well. He emphasized the importance of specialized training in this area and said that the SOMB supports the program.

Car Title Loans

Karen Meyers, director, Consumer Protection Division, AG's Office, said that the AG believes it is time to regulate the car title loan industry. The car title loan industry has proposed an interest rate of 403 percent per annum with a limit of nine loan rollovers. These terms would place people at great risk because they can lose their car, and the loss of a car can result in the loss of a job. Ms. Meyers emphasized that the AG is not trying to put anybody out of business, he is only trying to protect consumers. She said that the industry-proposed bill lacks protections.

Eric Vasquez, senior policy analyst, Office of the Lieutenant Governor, said that his office receives calls from people who have received car title loans and are having problems. He said that he cannot offer them any help because the activities are not illegal. He said that there needs to be consumer protections while providing a responsible line of credit by instituting caps and creating a database. Mr. Vasquez added that predatory lending is at the heart of the current economic crisis and can no longer be tolerated.

Robert Reich, president, Community Loans of America, said that there is currently no official industry bill, only comments added to a bill circulated by Representative Park. He said that his company has been operating in New Mexico since 1997 and that it has been audited every

year. He said that some people do not use the product wisely and that the single largest reason for a default is when a car breaks down. Mr. Reich said that title loans are non-recourse, they are halfway between a loan and a pawn and that about one-third of their borrowers are self-employed. He said that car title loans often get lumped in with payday loans, but they are not the same. He said that once a lien is put on a car, no other loan can be taken out against it. Mr. Reich added that his company is required to do financial reporting. With regards to legislation, he urged the committee to make sure that the Financial Institutions Division of the Regulation and Licensing Department has the resources to implement whatever is required by the bill. He said that he would like to be part of the discussion and would be happy with the same interest rate cap as payday loans.

The panel then answered questions from the committee.

Report on Independent Oversight Correctional Facilities

Attorney General King introduced members of the House Memorial 72 Task Force. Dave Pederson, Gallup city attorney, said that New Mexico has the highest percentage of prisoners in private systems, which leads to issues of oversight. He said that there are no statutory provisions that control the operation of private prisons. He said that the task force recommends the creation of an independent oversight entity with "golden-key access", allowing the oversight body to go into the prisons at any time. Mr. Pederson said that the purpose of oversight is to supervise operations. He also said that New Mexico now has about 2,000 more inmates in county jails than in prison facilities. He added that the population has been shifting from the state level to the local level and it is important to shed light on what is going on and have public comment. He stressed that this oversight body would not be a policing agency. Mr. Pederson pointed out that the Corrections Department does not see the need for an oversight body with "golden key access" because there has been no evidence to suggest that such an entity is effective. The Corrections Department also pointed out that its prisons are already subject to several oversight agencies, including the American Correctional Association, the National Commission on Correctional Health Care, the CCJ and the Legislative Finance Committee.

The panel then answered questions from the committee.

Auto Theft Report and Proposed Legislation

Ken Ortiz, director, Motor Vehicle Division (MVD), Taxation and Revenue Department, said that pursuant to House Memorial 53, the secretary of public safety and the director of the MVD assembled a task force to conduct a comprehensive study of the problem of auto theft in New Mexico and make recommendations on changes to the law or regulations as necessary.

Lou Heckroth, sergeant, Auto Theft Unit, Albuquerque Police Department, said that in 2006 the economic loss of stolen vehicles in New Mexico amounted to \$83 million. Mr. Heckroth listed various examples of vehicle-related crimes and said that sharing a border with Mexico puts New Mexico residents at a greater risk. He discussed "chop-shop" operations and said that vehicles are worth three times as much in parts. Mr. Ortiz discussed the initiatives at the MVD and the Department of Public Safety (DPS), including exploring electronic vehicle titling,

alternating the color of registration stickers each year, implementing a "Watch Your Car" program and providing more auto theft training to law enforcement officers. Mr. Heckroth discussed the initiatives of other law enforcement agencies, including proposed legislation and creating an auto theft prevention authority. Mr. Ortiz said that auto theft and vehicle-related crimes affect the economy as well as vehicle and highway safety and that there is a need to remain vigilant to reduce the incidence of these crimes.

Marty Trujillo, Farmers Insurance, said that there are some numbers that concern him, such as the \$83 million financial impact of auto theft. He said that this issue goes beyond the theft of a car. He said that accidents that affect law-abiding citizens are often caused by stolen vehicles. He said that the insurance industry does not see an immediate impact on premiums, but there could be an increase in premiums down the road if effective action is not taken to prevent auto theft.

Require Mediation of Construction Cases

Peter G. Merrill, president and chief executive officer, Construction Dispute Resolution Services, LLC, reviewed a proposed bill draft that would require all construction disputes to go to mediation. He argued that requiring construction disputes to go to alternative dispute resolution (ADR) would provide timely decisions. He said that the industry does not need a full right-to-cure law and that both parties must agree to ADR.

Ms. Meyers said that the AG's Office has strong concerns with the bill. She said that this legislation takes away a person's right to choose where to take a case. She said that the court system has mediation, and it is free, whereas this legislation would require a private mediator and those who cannot afford it will have no recourse. Lisa Martinez, Construction Industries Division, Regulation and Licensing Department, said that she was not provided with an opportunity to review the proposed bill and is not sure how it would work with the Construction Industries Licensing Act.

Mr. Merrill and Ms. Meyers answered questions from the committee.

Collateral Consequences of Arrest, Conviction and Incarceration

Mike Hall, executive director, NMSC, reminded the committee that the legislature provided funding to the NMSC to convene a task force to study the collateral consequences of criminal arrest, conviction and extended periods of incarceration and to make recommendations on how to neutralize or eliminate those consequences. He said that collateral consequences are generally regarded as the negative effects that persist after the completion of a court-ordered sentence and may include forfeiture of the right to vote; disqualification for occupational opportunities; lack of available housing and access to education; and registry in an offender database. Mr. Hall said that the NMSC also looked at the issue of proportionality in that some collateral consequences can be so extensive that they are disproportionate to the crime. The task force found 71 instances of collateral consequences in the New Mexico statutes. Mr. Hall said the task force found 19 instances of general civil consequences in the statutes or court rulings and 47 statutes affecting specific occupations. Angie Vachio, president, Women's Justice Project, Inc., noted that this

study does not include federal barriers. Christina Vigil, director, New Mexico Women's Justice Project, Inc., made recommendations regarding this issue, including allowing for a remedy when a felon is denied employment and some form of protection for employers who hire felons. Other recommendations included providing an incentive to employers who hire felons and legislation that would toll the time running on automatic loss of parental rights during incarceration or drug or alcohol rehabilitation.

Wednesday, November 19

Governor's Legislative Proposals

John Wheeler, crime policy advisor to the governor, discussed some of the governor's criminal law proposals. He spoke about the drugged driving bill and electronic administrative hearings for DWI. With respect to gangs, he said that the administration is in the conceptual stage of creating a youth intervention specialist position to work with at-risk youth and the DPS gang interventionist with the goal of intervening at the earliest possible stage to prevent gang involvement. He said that the administration wants to punish those that recruit. He added that the SOMB has a meeting in December and will discuss the federal Adam Walsh Child Protection and Safety Act of 2006. He said that it is the intention of the administration to put forward the less controversial parts of the act. He also addressed some "cleanup" issues with respect to sex offender registration laws, saying that last year the legislature passed the human trafficking bill, which includes sex trafficking, and that the Governor's Office is currently discussing with the NMSC and the SOMB whether the sex offender registry is the appropriate place for sex traffickers. He also said there are discussions about including palm prints in the registry.

Sharon Pino, domestic violence coordinator, Office of the Governor, said that four legislative initiatives were recommended in the New Mexico Domestic Violence Leadership Commission's 2008 annual report to the governor. She said that a bill promoting the financial independence of victims of domestic violence, sexual assault and stalking would allow survivors to participate in legal proceedings and seek protection from abuse without jeopardizing their employment. Ms. Pino addressed a second bill related to stalking, which affects one in four women and one in 14 men, according to the 2005 statewide victimization survey. She said that of those stalking incidents resulting in an arrest, only 51 percent result in a conviction. She said that criminal damage or deprivation of property against a household member is another issue that needs to be addressed. She said that there is a gap in protection for victims of domestic violence and that this type of behavior is commonly used to exert power and control in domestic violence incidents. She also addressed domestic violence issues with regards to law enforcement. She said that one challenge in enforcing domestic violence laws and providing strong protections for victims of domestic violence is in properly addressing the issue of law enforcement officers who are perpetrators of domestic violence. She said that law enforcement officers need to be held to a higher standard and that a proposed bill would include domestic violence as one of the crimes that would deny an individual certification as a law enforcement officer or may cause a certification to be suspended or revoked.

Post-Election Evaluation of Voting Systems

Paul Stokes, coordinator, United Voters of New Mexico, discussed a proposed bill that would require a post-election evaluation of the accuracy of voting systems. Mr. Stokes said that a voting machine audit involves randomly selecting a small number of precincts and comparing the machine counts of the ballots to the hand counts. He said that voting system audits are necessary because voting machines can make errors resulting in the wrong candidate being declared the winner. He also said that the current audit provision needs to be changed because a two percent sample size is too large and too costly for races won by large margins and too small for races won by small margins. Mr. Stokes said that the proposed audit concept would choose a random sample of precincts just large enough so that some miscounts would likely be included if enough miscounts were present to swing the election.

Comments were taken from the audience, including representatives from the Secretary of State's Office, New Mexico county clerks and from Maggie Toulouse-Oliver, Bernalillo County clerk. A discussion with committee members, Mr. Stokes and members of the audience ensued.

Election Day Registration

Regina M. Eaton, deputy director, Democracy Project, said that nine states allow voters to register and vote on the same day. She said that those states do have registration deadlines to get poll books together, but voters can still register after the deadline. They just have to register in person and vote on the same day. She said that allowing people to register and vote on the same day allows people who have traditionally been left out of the democratic process to be involved. Ms. Eaton added that there is also a bill at the congressional level that deals with this issue. Stephen Fettig, United Voters of New Mexico, touched on some fraud concerns, but he said that there are ways to prevent voter fraud. He said that there is no extra cost associated with allowing voters to register and vote on the same day and that it may actually cost less than the current system. He also added that there is no requirement in the bill that registration be electronic.

Comments were taken from members of the audience, and a question-and-answer period followed.

Committee Endorsement of Proposed Legislation

The committee voted to adopt bill drafts numbered 1-33, 35, 37, 39-41, 43 and 49-50 in the bill books. Senator Harden voted against bill drafts numbered 2, 3, 11, 16, 17, 18, 35, 37, 39, 40, 41, 49 and 50. Senator Martinez voted against bill drafts numbered 12, 16, 39 and 40.

There being no further business, the committee adjourned at 12:00 noon.

Legislative Proposals

COURTS, CORRECTIONS AND JUSTICE COMMITTEE
ENDORSED LEGISLATION - 2008 INTERIM

1. Clarify and Amend Animal Cruelty Law
2. Eyewitness Identification Act
3. Provide Amenability Hearings for Serious Youthful Offenders
4. Repeal Employment of Women Statutes
5. Require a Jury Finding Before a Sentence can be Enhanced due to Aggravating Circumstances
6. Funding for Civil Legal Services
7. Create New Judgeships
8. Funding for Drug Courts
9. Funding for Mental Health Courts
10. Updates to Juror Databases to occur every six months rather than monthly or quarterly
11. Authorize Fees and Create Fund for Electronic Filing and Access to Court Documents
12. Constitutional Amendment to Require Appointed Judges to Serve at Least One Year Before Holding an Election for that Office
13. Fund Restorative Justice for Juveniles and Adults in the Sixth Judicial District
14. Fund Pre-Trial Services in the Eleventh Judicial District
15. Fund Enhanced Background Investigations on Offenders in Bernalillo County
16. Allow Judges to Provide a Substitute Address for all Licenses, Permits, Identification Cards and for Certificates of Voter Registration
17. Exempt Building Plans, Security Systems and Personal Identifying Information from Public Inspection

*Item numbers correspond to bill numbers in books

18. Appropriation for Feasibility Study for Monitoring Guardianships and Conservatorships

19. Changes to Adult Guardianship Laws
 20. Amendments to Revised Uniform Limited Partnership Act
 21. Amendments to Jonathan Spradling Uniform Anatomical Gift Act
 22. Amendments to the Uniform Commercial Code
 23. Uniform Residential Mortgage Satisfaction Act
 24. Uniform Assignment of Rents Act
 25. Uniform Money Services Act
 26. Uniform Parentage Act
 27. Uniform Athlete Agents Act
 28. Uniform Prudent Management of Institutional Funds Act
 29. Uniform Debt Management Services Act
 30. Uniform Child Abduction Prevention Act
 31. Uniform Interstate Enforcement of Domestic Violence Protection Orders Act
 32. Uniform Foreign Country Money Judgments Recognition Act
 33. Amending the DNA Identification Act to Comply with Federal Regulations
 35. Appropriation to the New Mexico Sentencing Commission to Measure Fiscal Impact of Criminal Legislation
 37. Local Government Administration of Local Jails: Credit for Good Behavior and Community Custody Release Programs
 39. Include Farm Workers in the Worker's Compensation Act
 40. Prohibit Law Enforcement from Collecting Social, Political or Religious Information Unrelated to Criminal Conduct
- *Item numbers correspond to bill numbers in books
41. Substance Abuse Treatment in Lieu of Incarceration for Low Level Drug Offenders
 43. Additional Penalties and Sentencing Enhancements for Auto Theft

49. Post-Election Voting System Accuracy Check

50. Allow Voter Registration on Election Day

*Item numbers correspond to bill numbers in books