

**MINUTES  
of the  
SIXTH MEETING  
of the  
CORRECTIONS OVERSIGHT, COURTS AND JUSTICE COMMITTEE  
(not approved)**

**December 1-2, 2004  
State Capitol, Room 307  
Santa Fe, NM**

The sixth meeting of the corrections oversight, courts and justice committee was called to order by Senator Lidio G. Rainaldi on December 1, 2004 at 10:20 a.m. in Room 307, State Capitol.

**PRESENT**

Rep. W. Ken Martinez, Co-chair  
Sen. Michael S. Sanchez, Co-chair  
Rep. Joseph Cervantes (12/2)  
Sen. Carroll H. Leavell  
Sen. Richard C. Martinez

**ABSENT**

Rep. Thomas A. Anderson  
Sen. William H. Payne

**Advisory Members**

Rep. Gail C. Beam  
Sen. Mary Jane M. Garcia (12/2)  
Sen. Cisco McSorley (12/1)  
Rep. Al Park (12/1)  
Rep. Jane E. Powdrell-Culbert  
Sen. Lidio G. Rainaldi  
Sen. H. Diane Snyder  
Rep. Sheryl Williams Stapleton  
Rep. Mimi Stewart  
Rep. Joe Thompson  
Sen. Leonard Tsosie  
Rep. Peter F. Wirth

Sen. Ben D. Altamirano  
Sen. Gay G. Kernan  
Sen. Shannon Robinson  
Rep. Thomas E. Swisstack

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

**Staff**

Maha Khoury  
Evan Blackstone  
Tim Crawford  
Elizabeth Holmes

**Guests**

The guest list is in the meeting file.

## **Wednesday, December 1**

### **Committee Business**

Senator Rainaldi welcomed committee members and guests.

The committee approved the minutes from the October 12-13, 2004 meeting.

### **Duty of Title Insurance Companies for the Consumer**

Advocates for the consumer and representatives of title insurance companies presented to the committee their perspectives on the duty of title insurance companies to search and examine land titles. Eric Sedillo Jeffries, an attorney with Jeffries, Rugge and Rosales, P.C., Kurt Faust, Tierra Concepts, Inc., and James P. Ross, a consultant with Actuarial and Insurance Management Issues, presented to the committee a bill to reverse a law that was enacted in 1999. The proposed bill would allow actions by consumers against title insurance companies outside the policy. Edward J. Roibal, executive director of the New Mexico Land Title Association (NMLTA), Carolyn Monroe, president of the Land America Albuquerque Title Company, Kevin Peterman, an attorney with Vogel, Campbell and Blueher, P.C., and Dan Terrell, manager and past president of the NMLTA, represented the title insurance companies and stated that the title policy is sufficient to protect the consumer. Such a bill may put local title insurance companies out of business.

### **Proposals for a "Move Over" Law**

Representative Jeannette O. Wallace, Justin Grider, Los Alamos fire department captain, and Paul Jacobs, Bernalillo county sheriff sergeant, presented proposed legislation to the committee that would require New Mexico drivers to change lanes or slow down when approaching a stationary emergency vehicle with its flashing lights on. A motorist that fails to yield under the proposed legislation may be assessed a fine. Representative Wallace expressed her intention to introduce the legislation in the upcoming session.

### **Report from the Ignition Interlock Technology and Deployment Task Force**

Representative Ken Martinez, Rachel O'Connor, DWI czar, and John Wheeler, general counsel at the department of public safety, reported to the committee on the work of the task force on ignition interlock technology and deployment. The task force's recommendations to the legislature include requiring ignition interlock devices for all convicted DWI offenders, increasing the license revocation period to one year, developing concurrent process standards for offenders required to use ignition interlock devices, supporting laws for tampering with the ignition interlock devices and amending the ignition interlock fund to add a 10 percent standard fee. Representative Martinez also discussed the latest technological developments in ignition interlock devices.

### **Governor's Proposals for DWI Legislation**

Ms. O'Connor and Mr. Wheeler provided the committee with a summary of the

governor's proposals for DWI legislation. The proposals would lower the blood alcohol concentration level to six one hundredths (.06) for persons previously convicted of driving under the influence of alcohol, require ignition interlock devices for all convicted DWI offenders, establish a process that would empower local governments to restrict alcohol sales and create a "drunkbusters" toll-free hotline to report drunk drivers and sales of alcohol to minors.

### **Legislative Proposals from Qwest**

Representatives of Qwest presented legislative proposals to the committee on competition and the rural extension fund. Leo Baca, director of external affairs, Nina Taylor, regulatory director, and Loretta Aventa, Qwest's new CEO, summarized the proposals, presented data on competition and access lines in New Mexico and addressed their opponents' criticisms of the legislation. The competition proposal would permit pricing flexibility in Qwest's service areas where there are three or more competitors. The rural extension proposal would eliminate the public regulation commission requirement that Qwest maintain a rural extension fund.

### **Report on the Warrant Process Study (SJM 56) and the Competency Laws Study (SJM 49)**

Marc Saavedra, court administrator of the Bernalillo county metropolitan court, and Berri Roberts, executive director of the metropolitan criminal justice coordinating council, provided the committee with an update on the warrant process study. Mr. Saavedra and Ms. Roberts reported that various strategies are being developed to reduce the backlog of warrants. These strategies include sending letters to remind persons they have outstanding warrants, purging the outstanding warrants list of deceased persons and conducting warrant blitzes or roundups. Mr. Saavedra and Ms. Roberts also reported on the implementation of a traffic arraignment court in July 2002 to decrease warrants.

The Honorable Neil Candelaria, second judicial district court judge, the Honorable Cristina Jaramillo, Bernalillo county metropolitan court judge, Dr. Chris Singer, department of health, Barry Bitzer, senior analyst of the Albuquerque mayor's office, and Judith Reed, mental health coordinator of the public defender's office, briefed the committee on the competency laws study. They described the mental health courts in Bernalillo county, summarized the debate on whether to amend the current competency laws and discussed possible alternatives to changing the law. The aim is to develop a system to identify and treat individuals with mental illness that the court deals with on a revolving basis. The district attorney's office and the public defender's office are working on a memorandum of understanding to help solve the problem.

### **Loan Repayment Assistance for Assistant District Attorneys, Assistant Public Defenders and Nonprofit Legal Aid Services**

John Bigelow, chief public defender, Donald Gallegos, president-elect of the New Mexico district attorney's association, Gail Evans, senior attorney at the New Mexico center on law and poverty, and John Feldman, director of career and student services at the university of New Mexico school of law, presented draft legislation on loan repayment assistance for assistant district attorneys, assistant public defenders and attorneys for nonprofit legal services. Mr. Feldman informed the committee of the need to attract and retain lawyers in these public service positions. The proposed loan repayment program would help lawyers pay debts accrued during

law school for tuition and living expenses. The program includes a minimum year service requirement and a penalty for persons who fail to complete their obligations under the program.

### **Funding for Contract Representation in Death Penalty Cases**

Mark H. Donatelli, member of the New Mexico criminal defense lawyers association, reported on the expenses incurred by private attorneys who contract with the public defender's department to defend individuals charged with the commission of capital murder. The proposed legislation would appropriate funds to raise the current level of payments for defense of death penalty cases to the level of payment available for defense of basic civil claims against the state. The fees for attorney compensation would be paid on an hourly basis comparable to the existing risk management division's schedule for attorney fees.

### **Magistrate and District Court Clerks**

Tobie Souratt, magistrate court clerk in Lovington, Rosemary Naegely, magistrate court clerk in Roswell, and Fern Goodman, administrative office of the courts, briefed the committee on the problem of retaining court clerks, especially at the magistrate court level. Ms. Souratt and Ms. Naegely expressed their support for the proposed legislation presented by the judiciary to increase the salaries of full-time judicial employees.

### **Meritorious Deductions Earned by Prisoners**

Michael Hall, executive director of the New Mexico sentencing commission (NMSC), and Paul Guerin, Ph.D., and Linda Freeman, both research scientists at NMSC, provided the committee with a report that estimates the average proportion of time served by inmates released from July 1, 2003 to June 30, 2004 who earned credits to their sentences under the earned meritorious deductions statute and corrections department policies. The 2004 study required 750 staff hours to complete and reports a greater number of offenders than had been reported in previous years.

Ms. Freeman reported on the status of an NMSC study being conducted for the New Mexico association of counties on offenders charged or convicted under state law but housed in county facilities. The study includes information on parole and probation violators and should be completed by mid-January 2005.

### **Opiate Replacement Therapy for Inmates**

Dr. Barbara McGuire, MD, president of the greater Albuquerque medical association, Dr. Ron Vorhees, MD, chief medical officer for the department of health, and Dr. Sandra Penn, MD, requested committee support for legislation that would allow intervention in ongoing heroin use in correctional facilities by providing opiate replacement therapy to inmates. They also informed the committee that opiate treatment could reduce rates of hepatitis C and other infectious diseases. Frank Pullara, health services director for the corrections department, informed the committee of an opiate replacement therapy pilot program being implemented at the metropolitan detention center in Bernalillo county.

### **Public Comment**

The committee received public comment from Bennett Baur, who expressed his concerns to the committee regarding proposals to lower the blood alcohol concentration level for repeat DWI offenders and requiring ignition interlock devices for DWI offenders upon their first conviction.

The committee recessed at 6:30 p.m.

### **Thursday, December 2**

The committee reconvened at 9:35 a.m. in Room 307, State Capitol.

### **Revisions to Sex Offender Registration and Notification Act**

Randall Cherry, staff for the sex offender management board of NMSC, and Mr. Wheeler summarized the revised proposed amendments to the Sex Offender Registration and Notification Act. The 10 changes incorporate suggestions the committee made during its October meeting. NMSC has not approved the revisions and will meet in January to make its final recommendations.

### **Pre-Release Benefits Assistance for Incarcerated Persons with Mental or Developmental Disabilities**

Nancy Koenigsberg, managing attorney for the protection and advocacy system, provided an overview of proposed legislation that would facilitate community reintegration from correctional facilities for persons with mental and developmental disabilities. Ms. Koenigsberg informed the committee that when incarcerated persons with disabilities leave correctional facilities, they often face a high risk of relapse and homelessness if there is no continuity of care. She hopes the proposed legislation will work to establish a partnership between state agencies and local entities to develop a system to identify persons with mental or developmental disabilities and ensure they have benefits before being discharged from correctional facilities.

### **Juvenile Justice Update and Proposals for Revisions to the Children's Code**

Mary-Dale Bolson, secretary of children, youth and families, Dan Pearlman, general counsel for the children, youth and families department (CYFD), and Dave Schmidt, member of the New Mexico Children's Code task force, provided an overview on revisions to the Children's Code that will be proposed during the 2005 legislative session. CYFD convened a task force of individuals from around the state involved in the child welfare and juvenile justice system to identify Children's Code revisions. The proposed revisions include adding offenses for youthful offenders, establishing time frames for preliminary inquiries, requiring a mandatory parole period, modifying the authority of delinquency courts to refer cases for abuse and neglect, clarifying that only the adjudication of youthful offender offenses can support youthful offender sentencing, defining conditions for extension of facility commitments and restructuring the juvenile parole board staff and authority.

Secretary Bolson and Diane Rivera-Valencia, deputy secretary for CYFD, provided the committee with a juvenile justice update regarding the functional family therapy implementation and facility population trends.

**Consideration of Legislative Proposals**

The committee reviewed and considered the legislative proposals it received during the interim. The committee adopted only those proposals for which there were no objections. A list of the proposals and what was adopted was prepared by staff.

The committee adjourned at 3:00 p.m.