

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

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

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

Present

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

Absent

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

Advisory

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

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

Guest Legislators

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

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

Staff

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

Kim Bannerman, Staff Attorney, LCS

Leslie Porter, Research Assistant, LCS

Handouts

Copies of all handouts are in the meeting file.

Thursday, July 1**Call to Order**

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

Treatment in Lieu of Incarceration

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

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

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

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

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

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

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

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

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

Certification of Reserve Police Officers

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

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

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

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

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

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

The committee heard brief comments from law enforcement audience members.

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

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

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

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

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

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

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

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

Public Comment

The committee heard public comment.

Recess

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

Friday, July 2

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

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

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

He discussed the controlled release pilot project for female inmates and the prospect of release for nonviolent and geriatric inmates. In 2009, there were 60 inmates who qualified. He emphasized that not all those who qualified are appropriate candidates for release. He briefly

discussed the earned meritorious deductions for parolees and noted that the mentioned programs have been implemented successfully in other jurisdictions to properly manage prison populations.

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

Committee Business

The minutes of the last meeting were approved.

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

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

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

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

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

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

Public Comment

The committee heard comments from members of the public.

Recess

The committee had a short recess for lunch.

Tour of the Penitentiary of New Mexico

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

Adjournment

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