

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

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November 29-30, 2012
Room 307, State Capitol
Santa Fe

The fifth meeting of the Courts, Corrections and Justice Committee was called to order by Senator Peter Wirth, co-chair, on November 29, 2012 at 10:07 a.m. in Room 307 of the State Capitol.

Present

Sen. Peter Wirth, Co-Chair
Sen. Rod Adair (11/30)
Rep. Joseph Cervantes
Rep. Gail Chasey
Sen. Mary Jane M. Garcia
Sen. Linda M. Lopez
Rep. Antonio "Moe" Maestas
Sen. Richard C. Martinez
Rep. Mimi Stewart

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Absent

Rep. Al Park, Co-Chair
Rep. Zachary J. Cook
Rep. David L. Doyle
Rep. Nate Gentry
Rep. William "Bill" R. Rehm
Sen. John C. Ryan

Advisory Members

Rep. Eliseo Lee Alcon
Rep. Thomas A. Anderson
Sen. Lisa K. Curtis (11/30)
Rep. Brian F. Egolf, Jr. (11/30)
Rep. Dennis J. Kintigh
Sen. Carroll H. Leavell
Rep. W. Ken Martinez
Sen. Cisco McSorley (11/29)
Rep. Bill B. O'Neill
Sen. John Pinto
Sen. Sander Rue
Rep. Sheryl Williams Stapleton

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Rep. Cathrynn N. Brown
Sen. William H. Payne
Sen. Michael S. Sanchez
Sen. David Ulibarri
Rep. Richard D. Vigil

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

Staff

Maha Khoury, Legislative Council Service (LCS)
Douglas Carver, LCS
Cassandra Jones, LCS

Guests

The guest list is in the meeting file.

Handouts

Handouts and other written testimony are in the meeting file.

Thursday, November 29

Call to Order

Senator Wirth welcomed members of the committee and the audience.

Decreased Penalties for Possession of Marijuana

Emily Kaltenbach, state director of the Drug Policy Alliance (DPA), told the committee that the DPA is proposing legislation to decrease penalties for the possession of marijuana. The proposed statute changes would reduce penalties for adult marijuana possession of one ounce or less to no fine or penalty; two to eight ounces would be a civil penalty or fine; and greater than eight ounces would be a misdemeanor. Ms. Kaltenbach told the committee that in New Mexico, possession of up to eight ounces of marijuana is a misdemeanor that can include large fines and jail time. In 2012, there were 3,277 marijuana possession arrests in New Mexico. Marijuana possession arrest rates vary widely throughout the state. Ms. Kaltenbach told the committee that the DPA is concerned with the negative consequences of current penalties, including damage to a person's ability to get a job, child custody, access to health care and high fines to low-income families.

Dan Abrahamson, director of legal affairs for the DPA, told the committee that 15 states have enacted various forms of marijuana decriminalization. Many of these states have replaced criminal sanctions with the imposition of civil fines, while others have reduced marijuana possession from a felony to a fine-only misdemeanor. Mr. Abrahamson emphasized that the proposed legislation is very modest and conservative when compared to decriminalization laws in other states.

Members of the committee discussed, among other things, the decriminalization of marijuana possession in other states; the impact of various fines and penalties; potential consequences and benefits of decreasing penalties for possession of marijuana; legislation to decriminalize marijuana introduced in prior years; and effects of marijuana on health.

Second Judicial District/Bernalillo County Veterans' Court and Service Member Child Custody Act

Rachel Saiz, program director for the Second Judicial District Court, told the committee that the veterans' court at the Second Judicial District Court verifies veteran status and helps those that are eligible to receive veterans' services. Judges and staff from the Second Judicial District Court provide pretrial services, supervision and case management. Treatment plans are created for each veteran in the program. Ms. Saiz told the committee that two veterans graduated from the treatment program in November. The veterans' court was implemented in

November 2011. Two hundred twenty justice-involved veterans were identified in Bernalillo County. Currently, 67 veterans are on pretrial services supervision. The cost of incarcerating the 67 veterans at the Bernalillo County Metropolitan Detention Center (MDC) would be more than \$1.6 million each year. The cost of the veterans' court at the Second Judicial District Court is \$100,000. Ms. Saiz stressed the positive impact that the court has on veterans, their families and their communities.

Amanda Pagan, attorney for New Mexico Family Law, P.C., and chief warrant officer for the Judge Advocate General Office of the New Mexico Army National Guard, discussed the proposed Service Member Child Custody Act and told the committee that short-term alterations to custody and visitation arrangements of deployed service members can have long-term impacts. She told the committee that the legislature should work to balance the interests of service members who are absent due to military service with the best interests of their children. In order to do this, the past, current or potential deployment of a service member should not deprive the service member of legal custody of the member's child. Ms. Pagan told the committee that the law should, instead, recognize a temporary change in custody when a service member parent is deployed and thereafter, custody would automatically revert to the prior arrangement. Ms. Pagan told the committee that no permanent orders altering existing custody arrangements should be entered while a custodial parent is unavailable due to military service.

Members of the committee discussed veterans' services in cases of a less-than-honorable discharge; child custody issues; proposed legislation; judicial discretion in custody cases; funding for the veterans' court; and processes put in place by the military in cases where both parents of a child are deployed simultaneously.

Update on Jail Overcrowding in Bernalillo County

Matthew Rivera, public safety projects coordinator for the MDC, told the committee that the Bernalillo County Detention Center was built in the late 1970s to house 288 inmates. During the 1980s, the original structure was expanded to house 586 inmates. By early 2000, the population grew to almost 1,400 inmates. In December 2002, inmates began occupying the new MDC, which had a design capacity of 2,048 beds. In 2012, the MDC was the forty-seventh largest jail in the nation.

Mr. Rivera told the committee that the MDC has identified immediate, short-term and long-term solutions to deal with the population. Immediate solutions include: amending the STEPS program for probation and parole to incorporate a progressive sanctions program; analyzing MDC work-flow to review internal policies and procedures to identify unrealized efficiencies when processing inmates; analyzing and assessing the current population with the district court; alternative treatment programs with supervision in the community; relocating pretrial services to the Bernalillo County public safety building; and transferring inmates to in-state facilities. Short-term solutions include: identifying community resources and partners to increase treatment and services to prospective clients; enhancing prisoner transport; increasing staffing levels to take on more clients; day reporting with work detail as an alternative to incarceration; strategic plans for adult reform; erecting semi-permanent structures to alleviate

some of the crowding at the MDC; transferring inmates to out-of-state facilities; and creating the Bernalillo County Treatment Assessment Center, designed to work with the MDC to identify the level of treatment intensity for clients that need treatment services. Long-term solutions include renovating the Regional Correction Center to house sentenced inmates and creating a System Reform Committee.

D Members of the committee discussed the various options laid out by Mr. Rivera. The committee asked questions and offered input and advice. Members of the committee requested clarification of various programs, including a methadone program, at the MDC.

Public Financing of Elections

Viki Harrison, executive director, Common Cause New Mexico, referred the committee to a draft bill. She told the committee that the bill would not expand public financing of elections, but instead would amend current law to conform to a recent U.S. Supreme Court decision and a federal court decision that render the present law unconstitutional. The funding cap for public financing is the same. The change concerns how a candidate would obtain additional funds. The bill would allow candidates to raise small contributions that are then matched by the state.

Members of the committee discussed the proposed legislation.

Modifications to the DNA Identification Act

A John F. Krebsbach, administrator of the DNA Identification System, referred the committee to the draft legislation. He told the committee that the draft bill is the same as Senate Bill 357, introduced in 2011 and sponsored by Senator McSorley. He told the committee that the bill addresses some of the issues that had been raised about the location and operation of the DNA Administrative Center. In addition, the bill would require the New Mexico Corrections Department (NMCD) to collect DNA from felons transferred to New Mexico from other states.

Members of the committee discussed the proposed legislation.

Reciprocal Attorney Fees in Certain Civil Cases

F Representative Cervantes referred the committee to draft legislation. He told the committee that the legislation would require attorney fees to be awarded as costs to the prevailing party on either side of a contract dispute when the contract provides for attorney fees to one of the parties in the dispute.

Members of the committee discussed previous introduction of the legislation; other states with this type of legislation; and details of the legislation.

Hate Crimes Against the Homeless

T Representative O'Neill referred the committee to draft legislation. He told the committee that there have been several incidents in New Mexico over the past decade of hate crimes against the homeless. He said that, often, homeless people are targeted in the same way that other

vulnerable populations are targeted, and that homeless people should be included in the Hate Crimes Act. The proposed legislation amends the act to include homeless people.

Wendy Grace Evans, National Center on Family Homelessness, urged the committee to endorse the legislation. She emphasized that homelessness happens to people from all walks of life and stressed the importance of protecting the homeless population.

Father Rusty Smith, executive director of St. Martin's Hospitality Center, also urged the committee to endorse the draft legislation. He relayed personal experiences of working with the homeless population. He told the committee that crimes against the homeless often go unreported.

Members of the committee discussed the draft legislation.

Recess

The committee recessed at 3:20 p.m.

Friday, November 30

Duty to Report Abuse of Children

Senator Curtis referred the committee to draft legislation. She discussed recent events in the state and in the nation that led to the legislation. She explained to the committee that the bill would require leaders of youth clubs, organizations and teams to report the abuse or neglect of children, including sexual abuse inflicted by any person. She told the committee that some adults, such as teachers, are already required to report abuse of children.

Members of the committee discussed the draft legislation.

Corrections: Legislative Proposals from the NMCD and the Legislative Finance Committee (LFC)

Joe W. Booker, Jr., deputy secretary of operations at the NMCD, referred the committee to a draft bill that would include electronic communication or recording devices in the definition of items that are declared contraband and thus cannot be brought into a facility. Mr. Booker told the committee that this would prevent inmates from contacting victims or witnesses to intimidate them. Mr. Booker stated that sometimes these devices are used to coordinate drug trafficking or to plan escapes. Cell phone calls cannot be monitored by prison staff.

Aurora Sanchez, deputy secretary of administration for the NMCD, referred the committee to draft legislation that would increase the intensive supervision caseload. Ms. Sanchez clarified that technological advances have increased the ability of probation officers to handle more cases. She told the committee that the legislation complies with LFC recommendations.

Ms. Sanchez referred the committee to draft legislation that would authorize the NMCD to collect a \$100 DNA fee from offenders transferred from another state pursuant to an interstate compact agreement. She told the committee that the bill would close a loophole in the current law and has an effect on DNA lab operations.

Ms. Sanchez referred the committee to draft legislation that would expand the purpose of the NMCD Intensive Supervision Fund. She told the committee that the bill would give the department flexibility to use available funds to provide additional services to offenders, which in turn would protect communities and neighborhoods from further victimization.

Ms. Sanchez referred the committee to draft legislation that would eliminate community correction selection panels. She told the committee that the bill would eliminate state and local selection panels and authorize the NMCD to place offenders into a community corrections program based on the NMCD's placement criteria, which would allow more flexibility in placing offenders in available community programs, allow for better supervision and allow compliance with LFC recommendations.

Jon R. Courtney, Ph.D., program evaluator for the LFC, referred the committee to draft legislation that would provide a four-year phase-in of evidence-based programs in community corrections and intensive supervision. Dr. Courtney told the committee that a 2012 LFC evaluation showed that New Mexico recidivism rates and prison populations are growing. Direction of funds to evidence-based programs have resulted in improvements in public safety and cost savings in other states. Dr. Courtney told the members that the LFC has created the New Mexico Results First Model that can serve as a blueprint for programs that would provide the largest return on investment.

Members of the committee asked questions about and discussed each of the proposed bills. Ms. Sanchez clarified that the bill requiring a phase-in for evidence-based programming is not supported by the NMCD due to the department's inability to meet the requirements on the proposed time line. Members of the committee suggested that the LFC and the NMCD work together to come up with a more lenient time line that can be met by the department.

Independent Public Defender Commission

Representative Maestas referred the committee to House Bill 193, introduced in the 2008 legislative session, to clarify the requirements of creating an independent Public Defender Commission. Phyllis H. Subin, attorney at law, told the committee that the model in the draft legislation is consistent with national best practices. She told the committee that the commission would actively provide the kind of independent oversight that is needed and would be helpful for New Mexico. Rural counties and advocates will be represented. The governor, the speaker of the house of representatives, the senate president pro tempore, the dean of the University of New Mexico School of Law and the courts will all have the opportunity to make appointments to the commission. Representative Maestas reminded the committee that because of the passage of a constitutional amendment in the 2012 election creating a Public Defender Commission, enabling legislation is needed to provide for the duties and composition of the commission.

Members of the committee discussed the independent Public Defender Commission.

Endorsement of Legislation

Members of the committee discussed and voted on proposed legislation for endorsement. Bill drafts 4, 7, 8, 9, 10, 11, 13, 14, 17, 24, 26, 27, 28, 32, 35, 36, 37, 39, 40, 41, 42, 43, 44, 46 and 49 were endorsed.

In closing, Senator Wirth thanked committee members and staff.

Adjournment

There being no further business before the committee, the Courts, Corrections and Justice Committee adjourned for the interim at 1:27 p.m.