

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

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

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

Present

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

Absent

Sen. Mary Jane M. Garcia

Advisory Members

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

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

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Guest Legislator

Rep. Debbie A. Rodella (11/5)

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

Staff

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

Kim Bannerman, Staff Attorney, LCS

Leslie Porter, Research Assistant, LCS

Thursday, November 4

Call to Order

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

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

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

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

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

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

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

Chemical Blood Tests in DWI Cases

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

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

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

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

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

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

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

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

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

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

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

Eminent Domain Issues

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

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

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

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

Public Comment

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

Recess

The committee recessed around 4:30 p.m.

Friday, November 5

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

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

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

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

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

Independent Oversight of Prisons Task Force Report

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

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

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

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

Approval of Minutes

The minutes of the previous meeting were approved without objection.

Driver and Highway Safety Task Force: Report and Proposed Legislation

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

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

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

Endorsement of Proposed Legislation

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

Public Comment

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

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

Adjournment

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

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