

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

November 14-15, 2011
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 14, 2011 at 9:10 a.m. in Room 307, State Capitol.

Present

Rep. Al Park, Co-Chair
Sen. Peter Wirth, Co-Chair
Rep. Gail Chasey
Rep. Zachary J. Cook
Sen. Mary Jane M. Garcia
Rep. Nate Gentry
Sen. Clinton D. Harden, Jr.
Sen. Linda M. Lopez
Rep. Antonio "Moe" Maestas
Sen. Richard C. Martinez
Rep. William "Bill" R. Rehm
Rep. Mimi Stewart

Absent

Sen. Rod Adair
Rep. Joseph Cervantes
Rep. David L. Doyle
Sen. John C. Ryan

Advisory Members

Rep. Eliseo Lee Alcon
Rep. Thomas A. Anderson
Rep. Brian F. Egolf, Jr. (11/15)
Rep. Dennis J. Kintigh
Sen. Carroll H. Leavell (11/14)
Rep. W. Ken Martinez
Sen. Cisco McSorley
Rep. Bill B. O'Neill
Sen. Sander Rue
Rep. Sheryl Williams Stapleton
Rep. Richard D. Vigil (11/15)

Rep. Cathrynn N. Brown
Sen. William H. Payne
Sen. John Pinto
Sen. Michael S. Sanchez
Sen. David Ulibarri

Guest Legislator

Rep. Rick Miera (11/14)

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

Staff

Maha Khoury, Staff Attorney, Legislative Council Service (LCS)
Leslie Porter, Research Assistant, LCS

Guests

The guest list is in the meeting file.

Handouts

Copies of the handouts are in the meeting file.

Monday, November 14

Patients' Rights

Deborah and Melvin Martinez, Katie Martinez's parents, said that Katie was consistently misdiagnosed by emergency room medical staff and was sent home. Due to worsening conditions, Katie was admitted to intensive care, Ms. Martinez said, where she died while in the care of one of the locum tenens physician assistants, who performed surgery on her.

Dan Weaks, policy consultant, New Mexico Hospital Association (NMHA), admitted that the situation was tragic and informed the committee that all practicing physicians in New Mexico have the same credentials, regardless of whether they live in New Mexico or are locum tenens. He said the NMHA is willing to participate in the task force set forth in House Memorial 80 but informed the committee the NMHA has not been contacted by the New Mexico Health Policy Commission (NMHPC) to do so. He surmised that since the NMHPC's funding was drastically reduced, it was unable to convene the task force.

Lynn Hart, executive director, New Mexico Medical Board (NMMB), reiterated that locum tenens are licensed in the same manner as physicians who live in New Mexico. She said locum tenens endure a tedious process to obtain the full, unrestricted license issued by the NMMB. However, she said, the NMMB welcomes increased scrutiny. Responding to several inquiries, Ms. Hart said locum tenens work in private practices and in hospitals and explained that hospitals decide whether or not to inform patients that they are being treated by locum tenens.

Committee members expressed their concern and frustration that the task force, to date, has not convened. Kathy Love, the attorney who represented the Martinez family, said she has tried to convene the task force but felt it was inappropriate for her to do so. Ms. Love emphasized that Katie Martinez was treated by a locum tenens physician, who was not familiar with hospital procedures and therefore performed surgery in a room that did not reach code for that type of surgery. When complications occurred, the locum tenens physician was without the resources needed to save Katie. She said New Mexico needs a system to ensure hospital policies and procedures are reviewed and to ensure that locum tenens physicians are trained in those policies. She added that the Martinez family was active in Katie's care and was not informed that Katie was being treated by a locum tenens physician.

Members of the committee emphasized the critical need for locum tenens to serve in rural New Mexico.

HJM 17 Task Force Recommendations to Reduce the Number of People with Mental Health Disorders Who Are in Detention or Who Require Law Enforcement Intervention

Representative Miera explained that since New Mexico is lacking adequate mental health facilities, most individuals who have mental health issues are incarcerated, which is the worst place for them to receive ongoing care. He said that HJM 17 brought the correct people together to address the issue and he strongly believes in the suggestions that will be made in this presentation. He said legislation is not required at this point.

Alfonso Solis, chief of police, Roswell Police Department, offered an anecdote of his first, and near-death, encounter with a mentally ill individual. He stated that it is not the Corrections Department's (CD) mandate to provide long-term treatment for mental illnesses, but to stabilize it. He agreed that follow-up care is lacking.

Nils Rosenblum, M.D., psychiatrist, Crisis Intervention Team, Albuquerque Police Department, stated that there is a large group of people who are in need of treatment for mental illnesses. He said the lack of an adequate mental health care system has resulted in a greater cost to society, due to incarceration costs, for example. He told a story of a homeless man in Albuquerque who was often brought to jail, exacerbating his mental illnesses. Dr. Rosenblum told the committee that the police and social workers would separately work with the man, without any notable results. He said that once the police and the social workers cooperated, the man was admitted to a hospital and treated. This cooperation has resulted in the once-homeless man renting his own apartment, and this is an example of how the system can work. He stated that amending funding mechanisms is the key because services follow the incentives — and the incentives are currently out of line with reality.

Grace Phillips, attorney, New Mexico Association of Counties (NMAC), set forth the task force's guiding principles: develop peer-led and peer-driven services; provide least-restrictive environments; develop a crisis system to serve individuals with mental illness; develop trauma-informed, gender-specific, age-appropriate, culturally sensitive and language-appropriate mental health services, regardless of literacy; and have services available to all persons with serious mental illnesses, their families and their natural supports, regardless of age, socioeconomic or insured status. She went through the recommendations offered in the report.

Linda Roebuck Homer, CEO, Interagency Behavioral Health Purchasing Collaborative, said that HJM 17 has the support of the Behavioral Health Planning Council. She explained that Medicaid waivers add crisis services, such as respite and peer support, and this will alleviate pressure on emergency rooms because mental health issues tend to clog emergency rooms. She expressed support for a community plan.

Responding to an inquiry, Jeff Kingston, senior health administrator, Children, Youth and Families Department (CYFD), said that nationwide, respite care is the most requested service by families who have a child with a mental disorder. He said the program is funded by the CYFD and Medicaid.

Representative Miera said that the juvenile justice system should not be the best place for juveniles with mental disorders to receive mental health care, which it currently is. Dr. Rosenblum listed the hospitals around the state with mental health services and the beds, or lack thereof, available. Michael Hubert, consultant, Office of Consumer Affairs, Behavioral Health Services Division, Human Services Department, emphasized the need for collaboration when addressing the issue of how to deal with and treat the mentally ill. Dr. Susan Cave, psychologist,

responded to questions on Kendra's Law and stated that it cannot work without a whole network of services and treatment providers.

Responding to an inquiry, Ms. Roebuck Homer said that the effective use of community support can reduce hospital input of individuals with mental disorders by one-third but that if communities do not come together to help, this will not happen. Representative Miera said funding is an integral aspect, but the question is how to obtain it. He said if judges are provided with options on what they can order, the plan could take effect. Currently, the only option for judges is to place people with mental disorders who commit crimes in jail.

Members of the committee expressed their support for the recommendations and noted the lack of political will to enact them, due to the focus on conviction rates. Members observed that the state has lost sight of its commitment to serve the mentally ill and that a renewed commitment will carry a large price tag but will be less than current jail and corrections costs. Members also asked for points of clarification on terms used in the recommendations.

Committee members inquired about funding allocated to prevent mentally ill individuals from being in the criminal justice system. Representative Miera said county funding is available under the incarceration umbrella. Chief Solis informed the committee that sheriffs in counties lacking detention facilities are responsible for securing housing for these individuals. Ms. Phillips explained that the state currently has five mental health courts.

Committee members discussed several issues, including law enforcement agents faced with violent situations involving mentally ill individuals, Kendra's Law and the consolidation of existing services and cost savings.

Approval of Minutes

The minutes of the previous meeting were approved.

Update on the County Detention Facility Reimbursement Act

Linda Freeman, deputy director, New Mexico Sentencing Commission (NMSC), explained the 2007 act and how it categorizes the types of felony offenders into three groups: a dual supervision offender as someone who is serving a term of probation in addition to parole; a parolee as someone who is arrested for a parole violation; and a felony offender as someone who has been sentenced and who is waiting for transport to a correctional facility. Ms. Freeman explained that the act breaks the funding into two categories. The first 70% is distributed by the NMSC, based on a three-year rolling average of an annual survey of the number of felony offenders in each facility on June 30 of each year. She said the remaining 30% is for the counties and is distributed by the Local Government Division of the Department of Finance and Administration. She said funding began at a high of \$5.1 million and current funding is \$3.3 million. Ms. Freeman stated that the NMSC has entered into a contract with the NMAC to replicate the length-of-stay study in county facilities and look at how long individuals stay in county facilities pre- and post-trial, particularly individuals who are sent to state facilities.

Reducing the Burden on County Detention Facilities (HJM 4)

Tony Ortiz, director, NMSC, told the committee that the County Detention Facility Reimbursement Act arose due to research and data reported to the legislature about felony offenders. He discussed the length-of-stay study being conducted by the NMSC and said felony

offenders stay in county facilities an average of 19 days after sentencing before being transferred to a state corrections facility. Mr. Ortiz said the NMSC will also research mental health services in county facilities. He said the goal is to have preliminary findings in January 2012, prior to the legislative session, and to publish the report in June 2012.

Steven Kopleman, risk management director and general counsel, NMAC, said this issue has been a problem for 10 years or more. He said there has been \$21 million paid in liability claims dealing with detention centers within the past three and one-half years. He said counties spend \$220 million annually on detention operations. Mr. Kopleman said that part of the problem is the fiscal obligation on the counties. He gave an example of a contract that Doña Ana County has with a mental health hospital that costs \$700 a bed per night. He said felons are overflowing into the county systems, when they should be housed in the state system. He said that many individuals are brought into the system on probation violations and said that the counties incurred \$19 million last year for housing probation violators. Mr. Kopleman stated that probation violators are brought into the county system prior to seeing a judge and stay an average of two months, due to the court backlog. He discussed how people are jailed on petty misdemeanors and traffic violations. He offered an example of one municipal judge who found 500 warrants for unpaid traffic violations, resulting in the issuance of hundreds of bench warrants. He emphasized that this problem cannot be solved by the counties or by the legislature alone and that it is worsening annually.

Tom Swisstack, deputy county manager of public safety, Bernalillo County, clarified that what he will discuss is factual and should not be misinterpreted as complaining. He said 68% of the individuals in the Metropolitan Detention Center (MDC) have substance abuse and mental health issues, resulting in a longer stay. He said the MDC processes 40,000 cases a year. Mr. Swisstack reminded the committee that this growing epidemic is a shared responsibility. He offered the following figures for the MDC: a bed capacity of 2,235 is currently housing a population of 2,703, 793 of which are 364-day commitments, consisting of 574 felons and 219 misdemeanants, and around 375 prisoners have been awaiting adjudication for over a year. He said it costs Bernalillo County \$17 million a year to house the 364-day commitments. He said nonviolent offenders do not need to be incarcerated to be held accountable and suggested researching how the individuals housed for 364 days can be kept in the community to work while wearing ankle bracelets. He stated that enough memorials and studies have been conducted and it is time to make decisions, such as a pilot program to address issues in a controlled environment. He explained that the county is paying on a \$15 million settlement. Mr. Swisstack clarified that he is cognizant of political fallout and that the public needs to be provided a sense of coverage and safety, but he wonders what the public would say about another \$350 million complex being built.

Mr. Ortiz explained that the NMSC's role on this committee is to gather data and evidence. He said that the length-of-stay study collected data from the seven county detention facilities, representing more than two-thirds of the offenders in New Mexico. He explained that the study inquired about: how long the pre- and post-trial stays are; the highest charge an individual is booked for; how many individuals are staying in a county facility post-judgment and post-sentence; and how many individuals are transferred to the CD.

Arthur W. Pepin, director, Administrative Office of the Courts, stated that he shares the frustration expressed by other members of the task force because these issues are often discussed

and then forgotten. He explained that a big part of the problem is traffic offenses and reform is needed to keep most traffic offenders out of jail. He reminded the committee of legislation proposed by the judiciary to address part of this problem. He discussed how the task force is studying, with the NMAC, ways in which to reform the traffic citation system, and said it needs more time to look into the different parts of this issue. Another problem is that probation violators need to be processed more quickly, he said, rather than being housed in detention centers while awaiting hearings. He stated that Bernalillo County has alternatives to incarceration, such as work release and treatment programs for nonviolent offenders. Mr. Pepin reminded the committee that the courts have been leaders in automating systems and seeking alternatives to incarceration and that they have lost personnel and funding for problem-solving courts and are short on judges. He stated the importance of providing judges with options other than detention and discussed the possibility of changing the warrant enforcement unit in magistrate court to a collection agency.

Mr. Pepin went over the recommendations in the report, including filing judgment and sentences contemporaneously with the judges' issuance of the criminal sentence; restoring funding for problem-solving courts; sentencing all felons to the CD and not to local detention centers; probation violation programs; data-sharing among criminal justice agencies; competency evaluations; early plea programs; plea cutoff policies; active case flow management; decriminalization of traffic cases; phone reminders of court dates; and criminal e-filing. He said these proposals are for the short, medium, and long terms.

Committee members asked questions of the panel and discussed policy options. Committee and panel members discussed the points and recommendations in the report and other issues relating to the burden on county detention facilities.

Revisions to the Space Flight Informed Consent Act

Robert H. Desiderio, attorney, Sanchez Mowrer & Desiderio PC, and New Mexico counsel for Virgin Galactic, went over the proposed legislation and explained the changes made to the act and why they are needed. Tom Horan, lobbyist for Virgin Galactic, discussed what other states have done and how New Mexico needs to compete with other states. He explained how providing immunity and reducing liability exposure, as proposed by the changes, would bring manufacturing companies to the state.

Jim Gillman, New Mexico Trial Lawyers Association, stated that the federal legislation, found in 42 U.S.C. 1451, has no immunity provisions and that the purpose of the federal act is to allow states to take over some of the role and missions of the National Aeronautics and Space Administration. He stated that the original act was not meant for recreational spaceport use, but for science. He said the technology to be used for the spaceport is well-developed and there is no good reason for immunity.

Committee members asked for points of clarification in the bill draft and discussed the various levels of immunity from liability that could be established.

Secretary of Corrections: Welcome and Update

Gregg Marcantel, secretary of corrections, provided a brief history of his experience and education and introduced his staff. Representative Park extended his, and the committee's, support and thanked him for the golden key letter.

Members of the committee welcomed Secretary Marcantel and raised several issues to be addressed, such as: support for the crime lab; returning the New Mexico license plate industry to New Mexico; Dismas House; safety within the prisons; procurement for public and private prisons; parole; and progress on the request for proposals for health services.

Public Comment and Recess

There was no public comment. The committee recessed at 5:10 p.m.

Tuesday, November 15

D Senator Wirth reconvened the meeting at 9:15 a.m.

Consumer Lending Update

Gary King, attorney general of New Mexico (AG), showed a video to the committee about consumer lending, such as installment, payday and car title loans. The video depicted how many consumers were injured and felt defrauded by the industry. AG King briefly discussed two lawsuits his office filed in 2009 against consumer lending companies, based on substantive and procedural unconscionability and the Unfair Practices Act. These companies were charging yearly interest rates of 520% to 1,500%, and permanent injunctions will be entered in those cases. AG King suggested that the legislature should set a maximum interest rate and discussed how the industry avoids regulation. Karen Meyers, assistant AG and director, Consumer Protection Division, Office of the AG, explained procedural and substantive unconscionable practices and the legal bases for the lawsuits.

Committee members engaged in discussion with AG King and Ms. Meyers on various consumer lending issues and the legal bases for the lawsuits, including unconscionability, the Uniform Commercial Code and the Unfair Practices Act. Many members questioned why the AG was not proposing legislation on this issue and urged the AG to propose legislation to address this problem in the upcoming session.

Revisions to the Sale of Recycled Metals Act

Leo Baca, director, New Mexico legislative affairs, CenturyLink, Inc., explained why metal theft is a problem nationwide and in New Mexico. He said many entities are affected, including: state and local governments; law enforcement agencies; the telecommunications, electric, construction and oil and gas industries; property owners, such as Walmart; and others. He said each theft of a CenturyLink, Inc., copper cable costs \$7,000. He provided a monthly metal theft report map for the month of May 2011. He explained the multi-industry effort to improve the metal theft laws. Suggestions for improving the law included: titanium as a regulated material; allowing the metal recycler to photograph the seller and the materials; and requiring metal recyclers to be licensed.

Mike Sindelar, detective, San Juan County Sheriff's Office, said that metal is stolen whether or not it is nailed down and that metal theft is directly tied to the import and production of methamphetamine. He said the costs of metal theft are passed down to the consumer and that the potential exists for an impact on the gas supply system. He informed the committee that the best time to target the problem is at the point of sale. Detective Sindelar said most metal recyclers are honest dealers and do not buy stolen goods, but there are a few that consistently do.

Minda McGonagle, lobbyist, Responsible Metal Recyclers Initiative, explained that the initiative is a group of scrap recyclers whose intent is to provide a beneficial service to the state, based on ethics, sound business principles and being a good neighbor within the community. She said the unlawful businesses need to be known and said this legislation provides the tools for law enforcement to slow down the illegal business. She briefly discussed the database for reporting theft, in which individuals, companies and law enforcement agencies are involved.

Committee members discussed the bill draft and asked for clarification about the database; compliance; funding; action taken once theft has been reported; and the location of most metal theft. J. Dee Dennis, Jr., superintendent, Regulation and Licensing Department (RLD), and Mary Kay Root, deputy superintendent, RLD, were at the meeting and addressed questions by committee members.

Rights of Public Safety Employees

Carter Bundy, New Mexico legislative director, American Federation of State, County and Municipal Employees (AFSCME), went over the proposed legislation, which expands the Peace Officer's Employer-Employee Relations Act to include all public safety employees and provides more protections for the employee in an internal investigation proceeding. Mr. Bundy explained that these amendments will reduce problems that arise during internal investigations and will better protect employees' rights. Other persons supporting the bill included Steve Perkins, corrections officer at MDC, Karen Bates, probation and parole officer, Vanessa Rios, CD, and Sam Chavez, AFSCME representative. They discussed how public safety officers are different from other employees. Mr. Chavez stated that corrections officers need better protections. Mr. Bundy indicated that ideas for the changes in the law were taken from a Maryland law protecting corrections officers.

Members of the committee asked for points of clarification in the bill draft and discussed policy options.

Endorsement of Legislation

Committee members discussed and voted on legislation for endorsement. Bill drafts 1 through 9, 13 through 15 and 20 were endorsed.

In closing, Representative Park and Senator Wirth thanked committee members and committee staff. Senator Wirth congratulated Representative Park on his decision to run for the Public Regulation Commission. Committee members thanked the co-chairs for consistently respecting the times on the agenda and for their leadership, fairness and respect in running the committee.

Adjournment

There being no further business before the committee, the Courts, Corrections and Justice Committee adjourned for the interim at 12:25 p.m.