

(not approved)

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

**November 15-17, 2006
Room 311, State Capitol**

The sixth meeting of the Courts, Corrections and Justice Committee for the 2006 interim was called to order by Senator Cisco McSorley, co-chair, on Wednesday, November 15, 2006, at 10:10 a.m. in Room 311 at the State Capitol in Santa Fe.

Present

Rep. Joseph Cervantes, Co-Chair
Sen. Cisco McSorley, Co-Chair
Sen. Rod Adair
Rep. Thomas A. Anderson
Rep. Gail Chasey (November 17)
Sen. Carroll H. Leavell (November 15, 17)
Sen. Richard C. Martinez (November 16, 17)
Rep. Al Park (November 15, 16)
Sen. Lidio G. Rainaldi
Sen. H. Diane Snyder (November 16)
Rep. Peter Wirth
Rep. Eric A. Youngberg

Absent

Sen. Leonard Tsosie

Advisory Members

Rep. Hector H. Balderas (November 16)
Sen. Mary Jane M. Garcia (November 16, 17)
Sen. John T.L. Grubestic
Sen. Gay G. Kernan
Sen. Linda M. Lopez (November 16)
Rep. W. Ken Martinez (November 16)
Sen. John C. Ryan
Sen. Michael S. Sanchez (November 16)
Rep. Sheryl Williams Stapleton (November 16, 17)
Rep. Mimi Stewart

Sen. Ben D. Altamirano
Sen. Kent L. Cravens
Sen. Clinton D. Harden, Jr.
Sen. Gerald Ortiz y Pino
Sen. William H. Payne
Rep. Jane E. Powdrell-Culbert
Rep. Bill Rehm
Rep. Thomas E. Swisstack
Sen. James G. Taylor

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

Staff

Maha Khoury
Evan Blackstone

Lindsey Bilovesky

Guests

The guest list is in the meeting file.

Copies of all handouts and written testimony are in the meeting file.

Wednesday, November 15

Call to Order

Senator McSorley, co-chair, welcomed committee members and guests. He announced that Representative Justine Fox-Young was invited to testify on voter fraud, but will not attend, and read excerpts of her testimony on voter fraud earlier this year. He invited public comment and several members of the public described personal experiences with voting and voiced opinions.

Elections: Deposits for Recounts

Ernie Marquez, Bureau of Elections director, explained that the state canvass will be completed on Friday. Mr. Marquez said there were no outstanding election problems with paper ballots and that recounts are becoming expensive. Monetary deposits are required by the official requesting the recount, but if the official still winds up losing, the fees are hardly ever recovered. Mr. Marquez suggested increasing the initial deposit for a recount and toughening the statute that requires officials to pay.

Senator McSorley invited public comment. Several members of the public made suggestions. Committee members asked questions and clarified issues.

Elections: Voting Machine Audit Procedures

Paul Stokes, United Voters of New Mexico coordinator, discussed draft legislation that would audit, at random, several voting machines by recounting the votes and comparing them against the original count. If the audit indicates that an error has occurred, further sampling would take place. Mr. Stokes said that the voting process needs this type of oversight because voting machines are susceptible to mechanical and programming errors as well as manipulation. He suggested how the hand count should be orchestrated, and gave examples of efficient processes in other states.

Representative Cervantes invited public comment and several members of the public responded. Committee members asked questions and clarified issues.

Elections: Election Day Registration

Steve Fetig, Verified Voting New Mexico spokesperson, discussed draft legislation concerning the implementation of election day registration with committee members. The proposed bill would allow citizens in their proper precinct to both register and vote on election day. Citizens in the correct county, but in an incorrect precinct, would register and be offered a provisional ballot to vote. Mr. Fetig explained that the entire process would be done on paper, just as states such as Maine, Minnesota and Wisconsin have done for more than 30 years.

Senator McSorley invited public comment and many audience members spoke in favor of election day registration. Committee members clarified issues and asked questions of the speaker. The committee recessed for lunch at 12:30 p.m. and reconvened at 1:40 p.m.

Separation of Powers: Legislation and Rulemaking

Michael Browde, University of New Mexico School of Law professor, provided a historical perspective and discussed federal and state law concerning separation of powers and the line between legislation and agency rulemaking. Mr. Browde stated that all administrative agencies are creatures of statute and their mission is defined by the legislature. Legislation that is too general or too specific in granting rulemaking authority can be problematic. It is best to give the agencies sufficient standards and intelligible principles to work with. He discussed the nondelegation doctrine and its historical evolution in the federal system and talked about the scientific advancement and specialization that mandates more delegation of rulemaking authority in specialized areas. Representative Cervantes invited public comment and a discussion ensued between committee members and members of the public.

Use of Eminent Domain

J.D. Bullington and John Salazar, co-chairs of the Governor's Task Force on the Responsible Use of Eminent Domain, explained the recommendations made by the majority of the task force's members. The three current acts relating to eminent domain were studied and the task force recommends repeal of the Urban Development Law and the Community Development Law as they are either repetitive or no longer used. All necessary laws are included in the Metropolitan Redevelopment Code. Mr. Salazar and Mr. Bullington discussed specific task force recommendations, particularly the vote to remove the power of eminent domain. They discussed with committee members suggested language and changes to statute.

Bill Fulginiti, member of the task force, presented the minority report of the task force. He discussed procedural protections and also agreed with tightening up language requiring land to be "slum" or "blighted". He emphasized that it is necessary to maintain the power of eminent domain to be used as a last resort. Mr. Fulginiti also touched on the *Kelo* decision and stated how other states look to New Mexico as a model state in terms of eminent domain laws.

Former Lieutenant Governor Walter Bradley discussed his support for removing the power of eminent domain and stated his view of the abuse of that power by some local governments such as Rio Rancho, Albuquerque and Farmington. Committee and panel members discussed issues and proposed changes to the law.

Administrative Procedures Reform

T.J. Trujillo, lobbyist, described the Regulatory Justice Coalition that has formed to revise New Mexico's administrative procedures. He explained the current and varied status of New Mexico's administrative procedures. Administrative hearings and procedures have grown extensively and have become difficult to navigate for the average citizen and business owner. The process and rules are not transparent and accountability is minimal. There is also a lack of uniformity as the Administrative Procedures Act applies only rarely. Problems and obstacles with the current system were identified and other states' codes are being studied to help develop

best practices for New Mexico. Mr. Trujillo told the committee to expect legislation addressing these problems in the 2007 legislative session. Committee members asked questions and clarified issues.

Recess

The committee recessed at 5:00 p.m.

Thursday, November 16

Senator McSorley, co-chair, and Representative Cervantes, co-chair, reconvened the committee at 9:10 a.m. and welcomed members and guests.

Report and Recommendations from the Governor's Task Force on Ethics Reform

Former Governor Garrey Carruthers and Suellyn Scarnecchia, co-chairs of the task force, went over membership and the general goals of the task force. Governor Carruthers described the precarious political situation of legislative salaries and stated that the task force recommends a legislative expense account as a compromise. Such a change would require a constitutional amendment and would reduce lobbyist support of legislative activities.

Dean Scarnecchia explained the task force's recommendation to create a State Ethics Commission that would confidentially investigate allegations of unethical conduct. She also relayed the recommendation of limiting gifts to legislators and a cap on gifts from lobbyists. Dean Scarnecchia also discussed the recommendation to limit campaign contributions and discussed the recommendation to change the state treasurer and state auditor from elected positions to governor-appointed positions that require qualifications for both positions. Dean Scarnecchia and Governor Carruthers discussed publicly financed campaigns for statewide elections and the trend of other states.

Committee co-chairs invited public comment and several members of the public voiced their opinions and answered questions. Committee members discussed and clarified issues with the co-chairs of the task force and members of the public.

Committee Business

Committee members voted unanimously to approve the minutes from the two previous meetings.

Governor's Legislative Proposals

John Wheeler, chief counsel for the Department of Public Safety, introduced seven pieces of draft legislation recommended by the governor. The first bill's intent is to exclude serious offenders from eligibility for lump-sum meritorious deduction awards. James Brewster, chief deputy general counsel for the Corrections Department, answered questions about the bill. Mr. Wheeler described the next piece of legislation, which would increase the alteration of the basic sentence when a firearm is used in the commission of a noncapital felony. Mr. Wheeler then discussed the next piece of legislation to provide for lifetime parole for some sex offenders and to create the crime of aggravated criminal sexual penetration. Sandra Gardner, domestic

violence coordinator, described the domestic violence legislative drafts providing for graduated penalties and a substitute address for victims. Herman Silva, drug czar, explained the two bills on gang violence, one for recruitment penalties and the other to enhance sentences. He also discussed other initiatives such as a revolving fund for graffiti cleanup.

Committee members asked questions and clarified issues. Senator Sanchez requested a list of treatment providers and costs per client for the domestic violence bills. He also asked for a commitment to add an appropriation to pay for treatment. The committee recessed for lunch at 12:37 p.m. and reconvened at 2:15 p.m.

Uniform Law Commission

John P. Burton, uniform law commissioner, presented draft legislation to the committee. Mr. Burton's first bill seeks to prevent crooked agents from damaging a student athlete's eligibility by giving the athlete inappropriate gifts. The next bill provides for simple amendments to the Uniform Trust Code. Mr. Burton described the real property electronic recording bill as the most benign bill that simply allows county clerks to accept documents by fax or email attachment and allows for computerized records. The next bill amends limited partnership laws by providing a more flexible and stable basis for the organization of such partnerships. Mr. Burton's last bill was a uniform parentage bill that would facilitate modern methods for testing parentage.

Committee members asked questions and clarified issues with the draft legislation.

Mediation Procedures Act

David Levin, court alternatives director for the Second Judicial District, and Jocelyn Jores, Albuquerque's assistant city attorney, discussed draft legislation creating the Mediation Procedures Act. Mr. Levin explained that the use of mediation to resolve disputes is dramatically increasing and confidentiality laws are needed to protect communications. Mr. Levin described the contents of the bill, including the agreement to mediate and confidentiality exceptions.

The act would not require mediators to testify in court, but there would be some limited exceptions.

Committee members clarified issues and asked questions of the panel.

Children's Mental Health and Developmental Disabilities Act Revisions

Dorian Dodson, Children, Youth and Families Department secretary-designate, presented draft legislation to the committee regarding revisions to the Children's Mental Health and Developmental Disabilities Act. The overarching theme of the amendments is to allow all children receiving mental health services to have basic rights regardless of the setting, with greater protection provided to children dependent on their corresponding level of protection.

Committee members asked questions and clarified issues regarding the amendments.

Report from the Governor's Commission of the Welfare of Children of Jailed and Incarcerated Parents

Angie Vachio, co-chair of the commission, discussed two draft bills formulated from the recommendations of the commission. One is to enact a statute that would prohibit dependent children to be left unattended after a parent's or guardian's arrest, providing training and protocol for police to recognize children in these situations, establishing community-based child resource advocates who will work as a link between children and incarcerated parents and contact visitation between children and their jailed parent or guardian. Ms. Vachio also touched on the cost of such programs.

Committee members asked questions, clarified issues and discussed possible solutions.

Recess

The committee recessed at 5:00 p.m.

Friday, November 17

Senator McSorley, co-chair, and Representative Cervantes, co-chair, reconvened the committee at 9:20 a.m. and welcomed members and guests.

Creating a Public Defender Commission

Homer Robinson, New Mexico Coalition for Justice project manager, explained the need to create a Public Defender Commission to oversee the Public Defender Department. Judge Henry Quintero, Sixth Judicial District, discussed the growing need for public defenders that is not being met because salaries are too low. Judge Quintero said his district has not attracted any full-time employees and all the public defenders are contract workers. He said many of them are only working for a couple of years' experience before going into private practice. Jacqueline Robbins, former chief public defender, described her experience in the public defender system. She emphasized her support of the proposed bill and offered suggestions to make the system function better.

Emmet Bondurant, Georgia Public Defender Standards Commission chair, recognized that the public defender system is a growing problem. He has been developing solutions since 1964. Georgia officials decided a Public Defender Commission would be the best solution. Mr. Bondurant described the Georgia commission to the committee. It is made up of appointed members by the governor, the lieutenant governor, the speaker of the house, and the senate pro tempore. When it began, it was funded primarily by the counties; however, the state is now appropriating \$40 million to the program. Revenue was created from a \$15.00 court filing fee and from fees on DWI and traffic fines. Mr. Bondurant's goal is to encourage career public defenders.

Representative Cervantes invited public comment and several members of the public spoke to the committee. Committee members discussed the composition of the commission in the proposed bill draft and requested that it be more bipartisan, as that would give it more

credibility. Panel members agreed and said they would amend the proposed draft to reflect that suggestion.

Contract Attorney Fees in Death Penalty Cases

Melissa Hill, New Mexico Criminal Defense Lawyers Association, Indigent Defense Committee co-chair, discussed a bill draft concerning compensation for public defender contract attorneys handling death penalty cases. Currently, contract employees are receiving radically low compensation for representing clients eligible for the death penalty. Ms. Hill explained that if a contract attorney spends the average required amount of hours on a death penalty case, the compensation would amount to about \$12.25 per hour. A commensurate attorney fielding the same case makes an average of \$125 per hour. Ms. Hill said an appropriation of \$800,000 would remedy this problem.

Committee members asked questions and clarified issues. Several members of the public spoke in support of the proposed bill.

School Zone Clarification in the Controlled Substances Act

Bennett Baur, New Mexico Criminal Defense Lawyers Association Legislative Committee co-chair, explained a small amendment to the Controlled Substances Act. This amendment is due to an oversight last session when the Senate Judiciary Committee excluded private property around a school zone from the enhanced penalty provision in the trafficking statute but forgot to do it in the distribution statute. Committee members asked questions and clarified issues. Several members of the public spoke in support of the proposed bill.

Qui Tam Legislative Proposal

Frances Williams, Region 7 Housing Authority commissioner, described the corruption she witnessed taking place in the Region 7 Housing Authority. Ms. Williams explained that there is no legislation in place that protects someone who exposes corruption. Ms. Williams discussed her personal story with the committee. She noticed there was a problem and tried to correct it by sending letters to the governor and alerting the press. Due to these actions, she was removed from her position and ostracized. Ms. Williams wants to prevent this from happening to someone else.

Maureen Sanders, qui tam attorney, described the qui tam legislative proposal. Qui tam is an abbreviation for the latin saying "he who sues on behalf of himself and the king". This legislation would allow a private individual to bring a lawsuit on behalf of the state for false claims against the state and, if successful, the individual can collect a percentage of the damages awarded. Ms. Sanders stated that the proposed legislation would probably not protect people in Ms. Williams' situation, but would provide protection against retaliation by employers.

Committee members sought public comment, asked questions and clarified issues.

Juvenile Continuum Grant Fund

Representative Jeannette O. Wallace and Representative Jim R. Trujillo proposed a bill that would create a Juvenile Continuum Grant Fund to help fund juvenile justice continuums

around the state. The federal government is cutting funding that is badly needed by these successful grassroots programs. The bill repeals the Regional Juvenile Services Act that has funded these programs in the past but that is outdated. This bill is simply an update to reflect the reality of the types of programs operating around the state. Representative Trujillo said this bill would appropriate \$1 million to fund these continuum programs. Judge Barbara Vigil joined the panel and a discussion ensued with committee members about the appropriation. Members agreed that the appropriation should be increased to \$2 million.

Senator McSorley invited public comment and members asked questions and clarified issues.

Proposals of Insurance Fraud Penalties

Phyllis Bowman, New Mexico Insurance Fraud Bureau assistant prosecutor, and Morris Chavez, Insurance Division spokesperson, discussed draft legislation with the committee. The two proposed bills address criminal penalties for insurance fraud. One bill allows for a six-month aggregation of false insurance claims to determine penalties to toughen the penalty for those who make small but repeated false claims. The second bill expands the crime of racketeering to include false insurance claims. Ms. Bowman explained that this would allow people who maliciously commit insurance fraud to be formally charged with racketeering.

Representative Cervantes invited public comment and committee members asked questions of the panel and clarified issues.

Medical Marijuana

Reena Szczepanski, Drug Policy Alliance New Mexico director, presented a draft bill that would allow the use of medical marijuana for the treatment of certain conditions. The Department of Health would regulate and coordinate the program. An identification card would be issued with the legal amount that an eligible person is allowed to possess for treatment. Ms. Szczepanski emphasized that this is not an attempt to legalize marijuana. Eleven other states have passed similar bills. Ms. Szczepanski stated that the message that would be sent to children in this state would be one of compassion.

Theshia Naidoo, Office of Legal Affairs, Drug Policy Alliance staff attorney, emphasized that this proposed law would not interfere with federal law. State police powers allow states to decriminalize and limit the scope and reach of activities.

Committee members asked questions and clarified issues. Some members strongly support this issue, while others strongly oppose it.

Review of Proposed Legislation

A motion was made to endorse the 33 bills listed and provided in full in binders to committee members and individually to the public. All 33 bills were endorsed by the committee with Senator Rainaldi objecting to the endorsement of the medical marijuana and election day registration bills.

Committee members discussed sponsorship of the bills and assigned sponsors to most of the bills endorsed.

Co-Chairs Cervantes and McSorley thanked everyone for a very productive and enlightening interim. Committee members made comments and suggestions and discussed which prisons to visit next year, including the Santa Fe prison, Camino Nuevo, the Guadalupe County prison and the J.P. Taylor facility. The co-chairs invited public comment and several members of the public had questions about legislation.

Adjournment

The committee adjourned at 1:10 p.m.