

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

**October 9-10, 2012
Room 307, State Capitol
Santa Fe**

The fourth meeting of the Courts, Corrections and Justice Committee was called to order by Senator Peter Wirth, co-chair, on October 9, 2012 at 9:50 a.m. in Room 307 of the State Capitol.

Present

Rep. Al Park, Co-Chair
Sen. Peter Wirth, Co-Chair
Rep. Joseph Cervantes
Rep. Gail Chasey
Sen. Mary Jane M. Garcia
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. Zachary J. Cook
Rep. David L. Doyle
Rep. Nate Gentry
Sen. John C. Ryan

Advisory Members

Rep. Eliseo Lee Alcon
Rep. Thomas A. Anderson
Rep. Dennis J. Kintigh
Sen. Cisco McSorley
Rep. Bill B. O'Neill
Sen. John Pinto
Sen. Sander Rue
Rep. Sheryl Williams Stapleton
Rep. Richard D. Vigil (9/10)

Rep. Cathrynn N. Brown
Sen. Lisa K. Curtis
Rep. Brian F. Egolf, Jr.
Sen. Carroll H. Leavell
Rep. W. Ken Martinez
Sen. William H. Payne
Sen. Michael S. Sanchez
Sen. David Ulibarri

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

Staff

Maha Khoury, Legislative Council Service (LCS)
Cassandra Jones, LCS
Elizabeth Katz, LCS

Guests

The guest list is in the meeting file.

Handouts

Handouts and other written testimony are in the meeting file.

Tuesday, October 9

Call to Order

Senator Wirth welcomed the committee and the audience.

Report from the Judiciary: Unified Budget and Proposed Legislation

Petra Jimenez Maes, chief justice of the New Mexico Supreme Court, told the committee that New Mexico courts have continued to implement new technologies, including a case management system that will be fully implemented in all of New Mexico's magistrate and district courts by December 2012. She said that the courts will be asking for a three percent increase to court base budgets in order to fill critical vacant positions, upgrade systems, address security needs, reinstate maintenance contracts and keep up with increasing costs for supplies and equipment. The court will also request adequate funding for technology and a five percent increase in compensation for court employees. The chief justice told the committee that 23 new judges are needed based on the courts' workloads, but the judiciary is requesting only nine.

Arthur W. Pepin, director of the Administrative Office of the Courts, referred the committee to a comprehensive list of court budget requests. Mr. Pepin also referred the committee to draft legislation that the judiciary is requesting for the 2013 session. He told the committee that the judiciary is recommending legislation to change requirements regarding eligibility for election or appointment to the office of metropolitan court judge to make them consistent with constitutional requirements for supreme court justices, allow retired peace officers to return to work as court security personnel without suspension of retirement benefits, allow sitting magistrates in districts with a population over 200,000 to run for election as long as there is no break in service, clarify several sections of law, provide a penalty assessment for certain Motor Vehicle Code violations and make courts responsible for traffic citation penalty assessments.

Members of the committee discussed, among other things, the decrease in the judicial budget over the last several years, the importance of adequately funding the judiciary, the need for additional judges and the proposed legislation.

Length of Stay in Detention Facilities: A Profile of Seven Counties

The New Mexico Sentencing Commission (NMSC) presented a report to the committee regarding the length of stay in detention facilities in certain counties in New Mexico. The NMSC explained that in 2004, the New Mexico Association of Counties (NMAC) contracted with the NMSC to conduct a study to estimate the cost of housing arrestees charged with felonies in New Mexico detention facilities. Fiscal impact was the primary focus of the 2004 study, but a secondary report was produced that analyzed the length of stay for arrestees held on felony

charges in six New Mexico detention facilities. In 2011, the NMAC once again contracted with the NMSC to update the length-of-stay study. In the 2011 study, the NMSC looked at arrestees charged with misdemeanor charges as well as those with felony charges.

Linda Freeman, deputy director of the NMSC, told the committee that the study does not measure daily turnover but, instead, looks at a single day to determine how long each arrestee was in custody from booking to release. Ms. Freeman told the committee that the sample consisted of 5,109 arrestees. Of those, 24.4 percent were younger than 25, 34.5 percent were between 25 and 34 and 41.1 percent were 35 or older. Men comprised 83.7 percent of the sample population. Over 66 percent of the arrestees, those awaiting trial, were in custody for 147 days. The median length of stay for those who only spent time sentenced was 163 days. The median length of stay for those who spent sentenced and unsentenced time was 228 days.

Members of the committee discussed several issues with the panel, including the average length of stay for various offenses, the reporting of crime statistics, data collection for the study and the length of time arrestees served unsentenced and after sentencing.

Approval of Minutes

Members of the committee voted unanimously to approve the minutes of the second and third committee meetings for the 2012 interim.

Legislative Proposals from the Attorney General

Gary King, attorney general, presented the committee with drafts of legislation proposed for the 2013 session. The attorney general discussed the need to modernize certain statutes and to change the statute of limitations for certain crimes. He discussed the need for legislation to prohibit texting while driving, to address mortgage foreclosure issues and to clarify the burglary statutes. He also discussed the REAL ID Act and the possible consequences for individuals who carry New Mexico-issued identification cards. The attorney general discussed the implementation of a wage theft task force that deals with time-sheet fraud, employers forcing employees to work overtime without proper payment, employees working off the clock, etc. The task force is considering potential legislation to propose to the legislature. The attorney general also discussed Medicaid fraud, domestic violence issues, government accountability issues and border protection issues.

Members of the committee and the attorney general discussed, among other things, foreclosure issues, potential legislation, the REAL ID Act, magistrate judgeships and rules of evidence.

Proposed Changes to the Children's Code

Yolanda Berumen-Deines, secretary of children, youth and families, discussed changes to the Children's Code that the Children, Youth and Families Department (CYFD) is proposing. The secretary discussed expanding the purpose of the delinquency code to include reducing disproportionate minority contact, lowering the number of adjudications necessary to be deemed a youthful offender, implementing dual or blended sentencing in order to fully implement the

Cambiar model, cleaning up statutory language in order to account for antiquated terms and requiring evaluations in certain circumstances. The secretary told the committee that the CYFD is requesting an expansion of approximately \$2.6 million to establish a 24-bed secure facility in southeast New Mexico to open around October 2013. The secretary said that throughout fiscal year 2012, the Juvenile Justice Division of the CYFD operated at or above capacity, and the CYFD projects that the population in secure facilities will grow by 38 clients over a five-year period. The expansion request also includes an additional 50 full-time-equivalents to provide security, education, behavioral health and other services. Secretary Berumen-Deines told the committee that the expansion is in line with the facility master plan developed three years ago and is also consistent with the Cambiar model.

The secretary gave the committee an update on juvenile justice services. She told the committee that the CYFD is in its fifth year of implementing the Cambiar model. She said that improvements resulting from the Cambiar model include a decrease in facility assaults, a decrease in unit population, multidisciplinary unit teams and intensive, ongoing peer culture group interaction.

The secretary proposed certain changes to the Abuse and Neglect Act, including adding sex offender registration as an aggravating circumstance, a change that is required for federal Child Abuse Prevention and Treatment Act state grants; clarifying that foster children may only be placed in a licensed placement; safeguarding the rights of young adults who are in need of guardianship; allowing any party to file a motion for open adoption and clarifying that a motion for open adoption mediation should only be filed when appropriate; adding a new confidentiality section; clarifying that the CYFD has the authority to conduct abuse and neglect investigations in facilities; allowing law enforcement to conduct a criminal background check on prospective foster parents when a child is initially being removed from parents; and increasing criminal penalties for crimes against children.

David R. Schmidt, executive director of the New Mexico Council on Crime and Delinquency, told the committee that a bill amending the Children's Code should have input from all stakeholders. He emphasized the importance of involving entities other than the CYFD when considering changes to the code. He expressed opposition to several proposed changes, including lowering the number of felony adjudications necessary to be deemed a youthful offender, certain evaluation changes and dual-sentencing models. He expressed support for some proposed changes, including clarifying certain statutes and modernizing the code with gentler language. Mr. Schmidt stressed the importance of including the Corrections Department because of the effect some statutory changes would have. Mr. Schmidt also referred the committee to a letter from Mr. Pepin to Secretary Berumen-Deines, dated July 27, 2012, regarding judicial opposition to some of the CYFD-proposed changes to the Children's Code.

Members of the committee discussed, among other things, amenability hearings, proposed changes to the Children's Code, disproportionate minority contact issues, implementation of the Cambiar model and dual sentencing.

Recess

The committee recessed at 4:55 p.m.

Wednesday, October 10

Uniform Law Commission: Proposed Legislation

Jack Burton, uniform law commissioner, presented the committee with legislation proposed by the Uniform Law Commission for the 2013 session. Mr. Burton proposed legislation to allow an owner of real estate to pass property simply and directly to a beneficiary upon an owner's death. The property would pass by means of a recorded transfer on death deed. Although there is current law that accomplishes this, the bill would fill in certain gaps in the law. Fletcher R. Catron, of Catron, Catron & Pottow, P.A., answered questions from the committee about the proposed legislation.

Mr. Burton also discussed proposed legislation changing provisions in the Uniform Commercial Code and a third bill that would require attorneys to inform defendants of the collateral consequences of conviction. He told the committee that this bill has been enacted in one state and has been introduced in five other states.

Members of the committee asked questions and received answers from Mr. Burton and Mr. Fletcher. The committee discussed the proposed legislation.

Public Improvement District (PID): Mariposa Development

Chris Anderson, vice president of development for Mesa del Sol, described several PIDs that have been successful. Randy Traynor, lobbyist for the New Mexico Home Builders Association, told the committee that current PID legislation was signed into law in 2001. He said that PIDs are primarily utilized in financing infrastructure for development of residential projects, master-planned communities or substantial commercial development and redevelopment. PIDs can also be used to finance on- and off-site infrastructure. The Public Improvement District Act provides for three methods to finance improvements: general obligation bonds, special levy bonds and use charges. PID bonds are the sole obligation of the PID issuing the bonds. PIDs constitute a political subdivision of the State of New Mexico and are separate from the local public body. Mr. Traynor told the committee that some local governments have enacted local ordinances related to PIDs to address issues such as a developer's professional experience and the types of public infrastructure to be financed by the PID. Local governing bodies are required to adopt a resolution approving a petition before a PID can be formed. PIDs are governed by a board of directors that generally exists separate from the local government. The board is required to meet annually and determine the necessary rates of a levy or tax. Mr. Traynor told the committee that the Mariposa PID issued general obligation bonds with no mill levy cap, which left property owners with a potentially unlimited increase in taxes, and the developers failed to undertake a contractual obligation to pay any revenue shortfalls. Mr. Traynor stressed that PIDs are a good financing tool, but the law needs to be amended to prevent this from occurring again.

Karen Myers, director of the Consumer Protection Division of the Attorney General's Office (AGO), told the committee that property owners in the Mariposa PID contacted the AGO after the Mariposa failure became public. The AGO has met with a representative group as well as many other homeowners in the district to discuss the issue. The AGO has proceeded with an investigation to determine if violations took place. Ms. Meyers told the committee that the AGO is not taking a position on PIDs as a financing tool.

Members of the committee asked questions and received answers from the presenters. Committee members discussed restrictions on PID legislation, government approval for PIDs, the usefulness of PIDs, local government involvement in PIDs, responsibilities that belong to political subdivisions of the state and other issues associated with PIDs.

Independent Redistricting Commissions

Mary G. Wilson, immediate past president of the League of Women Voters of the United States, told the committee that the League of Women Voters supports the creation of a redistricting commission to assist in the process used every decennium to redistrict the New Mexico Legislature and the U.S. congressional districts in the state. She said that the use of a redistricting commission will result in districts that are fair and more representative of the interests of the people rather than the interests of incumbent legislators. Ms. Wilson told the committee that several other states have independent commissions that vary in size from five to 14 members. These states have placed various restrictions on members of the commission and often offer other criteria than those established in the state and federal constitutions and the federal Voting Rights Act of 1965 that should be considered when redistricting.

Richard Mason, leadership team member of the League of Women Voters of New Mexico, told the committee that the league believes that New Mexico needs to reform its redistricting system. He told the committee that in 2001, a special session of the legislature that cost \$700,000 developed a redistricting map that was vetoed by Governor Gary Johnson. The redistricting map was redrawn by the New Mexico Supreme Court in 2002, costing taxpayers millions of dollars. Again in 2011, Governor Susana Martinez vetoed several redistricting bills, which led to a number of lawsuits. The Associated Press estimated the total cost of the 2012 New Mexico redistricting at \$8 million. Mr. Mason discussed the impact that redistricting has on the democratic process and said that it undermines citizens' confidence in the political process.

Members of the committee asked questions and discussed issues with the panel relating to redistricting and the politics involved. Members of the committee discussed recent controversies in states with redistricting commissions, political issues involved in the redistricting process, concerns regarding elected officials versus appointed commissioners in the redistricting process and other possible benefits and consequences of an independent redistricting commission.

Prosecutions for Leaving Child in a Hot Car

Robert P. "Rick" Tedrow, Eleventh Judicial District attorney, Division I, reminded the committee that he cannot make any comments about specific prosecutions. Mr. Tedrow discussed the importance of determining intent and risk when a child is left in a hot car. He stressed the importance of allowing the judicial branch discretion when determining cases of this nature. He told the committee that in some cases, a child is left in a car as a result of negligence, but in others it is just a mistake. Vincent J. Ward of Freedman Boyd Hollander and the New Mexico Criminal Defense Lawyers Association told the committee that education is one of the most important things that can be done to address the issue of leaving children in cars. He told the committee that a federal program from the U.S. Department of Transportation has focused on public awareness and education.

Members of the committee discussed, among other things, possible prevention efforts, technological solutions to the problem of leaving children in cars, the role the judiciary plays in these cases and the importance of differentiating between a mistake and neglect.

Adjournment

There being no further business before the committee, the fourth meeting of the Courts, Corrections and Justice Committee for the 2012 interim adjourned at 1:20 p.m.