

MINUTES
of the
FIFTH MEETING
of the
COURTS, CORRECTIONS AND JUSTICE COMMITTEE
October 15-16, 2007
Room 307, State Capitol
Santa Fe

The fifth meeting of the Courts, Corrections and Justice Committee for the 2007 interim was called to order by Representative Al Park and Senator Cisco McSorley, co-chairs, at 10:20 a.m. on Monday, October 15, 2007, in Room 307 of the State Capitol in Santa Fe, New Mexico.

Present

Rep. Al Park, Co-Chair
Sen. Cisco McSorley, Co-Chair
Sen. Rod Adair (10/15)
Rep. Thomas A. Anderson
Rep. Joseph Cervantes
Rep. Gail Chasey (10/16)
Sen. John T.L. Grubestic (10/15)
Sen. Richard C. Martinez
Sen. Lidio G. Rainaldi
Rep. William "Bill" R. Rehm
Rep. Thomas E. Swisstack (10/15)
Rep. Peter Wirth
Rep. Eric A. Youngberg

Advisory Members

Sen. Ben D. Altamirano (10/15)
Sen. Clinton D. Harden, Jr.
Rep. W. Ken Martinez
Rep. Jane E. Powdrell-Culbert
Sen. John C. Ryan
Rep. Sheryl Williams Stapleton
Sen. James G. Taylor (10/15)

Absent

Sen. Kent L. Cravens
Sen. Carroll H. Leavell
Rep. Antonio "Moe" Maestas

Rep. Elias Barela
Rep. Daniel R. Foley
Sen. Mary Jane M. Garcia
Sen. Gay G. Kernan
Sen. Linda M. Lopez
Sen. William H. Payne
Sen. Michael S. Sanchez
Rep. Mimi Stewart
Rep. Teresa A. Zanetti

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

Staff

Maha Khoury
Evan Blackstone
Aldis Philipbar

Guests

The guest list is in the meeting file.

Handouts

Copies of handouts are in the meeting file.

Monday, October 15

Senator McSorley began by reminding the committee members that they are all invited to attend the Economic and Rural Development Committee meeting on October 25 to discuss predatory lending.

Report from the New Mexico Sentencing Commission

Mike Hall, executive director, New Mexico Sentencing Commission (NMSC), began by introducing several University of New Mexico graduate students in the audience. He then discussed HB 738 that prevents access to juvenile information by the public. He quickly reviewed the Consolidated Offender Query Program, which allows law enforcement agencies to access information on offenders, including juveniles. He said the commission is currently working with the Children, Youth and Families Department (CYFD) to include abuse and neglect information as well. A demonstration of the program was set up in the back of the committee room and members were invited to view demonstrations.

Tony Ortiz, deputy director, NMSC, discussed the gender-specific programming project and the development of programs geared specifically toward women in order to have a higher success rate during parole and while on probation. Dan Cathy, NMSC, said that women come into the criminal justice system through certain pathways, usually through abuse experienced in childhood. He said that the corrections system can make an impact on these women through specific programs.

Paul Guerrin, Ph.D., discussed the bias-based policing project being developed. He stated that minorities are pulled over by police more often than whites and this may be due to several factors, including unconscious racism, outright racism, racial profiling and the presence of more police officers in minority areas. Mr. Guerrin said that 14 states currently collect data and require officers to fill out a form when a stop is conducted. He said that the commission looked at five methods of collecting data and chose the survey method. This method involves conducting surveys of the public and of police officers to find out about traffic stops. Mr. Guerrin went on to discuss the Controlled Release Program, which would allow nonviolent offenders to live in the community during the last six months of their sentence. He stated that 193 offenders would be eligible for controlled release next year.

Mr. Hall reviewed the commission's findings on the necessity and cost of diagnostic evaluations conducted by the Corrections Department. He said the NMSC is currently looking to see whether diagnostic evaluations could be conducted on an outpatient basis, saving time, money and beds. Linda Freeman, research scientist, discussed the Violence Against Women Act, and said that the current system is not recording the data needed to study this problem.

Mr. Ortiz discussed the workload study completed by the commission this year and said it worked closely with the judiciary, the district attorney's office and the Public Defender Department to obtain the data needed, and that the data can now be updated on a regular basis as the groundwork has been completed. The data will be useful in funding decisions. Ms. Freeman stated that this study was unique because it used all the staff in the various departments as opposed to taking a random sample of participants. Renada L. Peery, Legislative Finance Committee (LFC), expressed concerns with the study's methodology and discrepancies between attorneys with full caseloads and those with little or no caseloads.

The committee recessed for lunch at 12:39 p.m.

Juvenile Justice and Behavioral Health

Judge Barbara J. Vigil, First Judicial District, said she sees the poorest children with the most extreme behavioral health needs on a day-to-day basis in her courtroom. She said she is concerned with ValueOptions management because she has seen a drastic cut in services for the poor. She has also seen a decrease in mental health services for youth and the elimination of residential youth treatment centers. Judge Vigil has a deep concern over the corporate philosophy of ValueOptions because it is in direct conflict with the best interests of the children of New Mexico. She said that there is not one judge who feels ValueOptions is favorable for the poor and the decisions of judges are undermined when treatment ordered by a court is denied by ValueOptions. She said that the denial of mental health treatment will not only have an adverse effect on the individual, but on the community as a whole.

Roger Gillespie, director, Juvenile Justice Services, CYFD, said that mental health and substance abuse are the biggest problems affecting kids coming into CYFD. He said there are not enough behavioral health providers and it is difficult to find services in rural areas. He said that the CYFD is adding transitional living beds for independent and semi-independent living and that the CYFD is working with ValueOptions.

Carlos Gomez, ValueOptions, went over the different kinds of services offered by ValueOptions and its accessibility to providers and clients. He said that New Mexico needs to move more toward community-based care. Mr. Gomez said that ValueOptions is using 63% of its funding on out-of-home care and that it is looking for the least restrictive and most normal care for these children. He said that the sooner children's issues can be identified, the sooner behavioral health can be implemented.

Representative Thomas E. Swisstack, Bernalillo County Juvenile Detention director, said that there are 600,000 juveniles under age 18 in New Mexico, of which 5,000 are in the juvenile justice system. The largest juvenile detention center in the state processes 3,000 kids a year. Of the 1,500 that the detention center holds per year, one-half of them have a mental health diagnosis. Representative Swisstack stated that 38% of juveniles released from residential treatment facilities reoffended within six months whereas 18% of those who returned to homes reoffended. High-needs kids become high-risk because their problems are not dealt with initially. He said that the quality programs need to be expanded in the community.

Representative Swisstack indicated that the educational system should be used as a nucleus because it is the next most important group in a child's life after family.

Committee members asked questions of the panel, stated opinions and discussed alternatives and solutions.

On a motion made, seconded and approved, the committee unanimously approved the minutes of the September meeting.

Legislative Proposals from the Attorney General

Gary King, attorney general, introduced staff members and gave a brief overview of the Attorney General's Office proposed criminal law legislation. The legislation related to the following:

- revisions to the Family Violence Protection Act;
- uniform interstate enforcement of domestic violence protection orders;
- no polygraph tests for certain victims of sex offenses;
- HIV testing of alleged sex offenders;
- allow consecutive sentencing for felony-murder and the underlying felony;
- prohibit tampering with an ignition interlock device;
- include felony DWI in habitual offender law;
- lack of consent in certain sex offenses;
- include insurance fraud in the crime of racketeering;
- allow aggregation of false insurance claims to determine penalty;
- human trafficking update; and
- child abuse multidisciplinary teams.

The committee recessed at 5:30 p.m.

Tuesday, October 16

Report from the Judiciary

Judge James Wechsler, New Mexico Court of Appeals, discussed the judiciary's unified budget and stated that the judiciary looked at objective measures to come up with the budget. Judge Wechsler and Arthur Pepin, director, Administrative Office of the Courts (AOC), then reviewed the judiciary's budget priorities, including:

- adequate base budgets;
- staff and judicial salaries;
- new judgeships;
- new staff;
- children's initiatives;
- drug courts and mental health courts; and
- access to justice; court reporters; and court interpreters.

Judge Wechsler and Mr. Pepin went over legislation proposed by the judiciary. Chief

Justice Edward L. Chavez, New Mexico Supreme Court, discussed the judiciary's priorities and budget and, along with Justice Bosson, answered questions from the committee. The caseload study conducted by the AOC, reflecting the caseload of every judge across the state, was discussed by committee members, judges, justices and the AOC. New Mexico Court of Appeals Judge Bustamante discussed the status of the new court of appeals building in Albuquerque.

Fern Goodman, general counsel, AOC, stated that the AOC is trying to make sure every magistrate court is video capable, but it is having trouble finding funding. The goal is to have video equipment in every courtroom. The panel also stated that judges with small caseloads are being trained to assist judges with larger caseloads and that each judicial district has a designated "water judge". They also stated that the courts are required to provide interpreters for jury members and they received \$104,000 in capital outlay money to purchase equipment for translating. Judge placement depends on need, but is ultimately decided by the chief district judge. The discrepancy in resource allocation was also addressed. For example, Mr. Pepin stated that Bernalillo County needs 10 more judges, but the new judgeships were not requested because there is no available space for them.

Funding for Civil Legal Services

Chief Justice Chavez said that the legal needs of low-income families are not being met. New Mexico Legal Aid turns away 18,000 clients a year due to a lack of funding. A committee has been established to come up with creative ways of getting families legal representation. A pro bono committee has also been set up and various plans have been implemented to aid low-income families, but these efforts are not enough. Chief Justice Chavez said that \$8 million would be needed to meet the legal needs of the 18,000 who are not being represented.

John Arango, commissioner, Civil Legal Services Commission, stated that the commission requests that \$1.5 million be added to the \$2.5 million in recurring funds. He said that this will get the commission about half of the money needed to meet the legal needs of low-income families.

In response to questions from the committee, the panel said that the supreme court is reluctant to increase the legal fees of those who can afford it in order to pay for those who cannot. Chief Justice Chavez said that he is not a fan of immunity for pro bono lawyers because it takes away accountability. Instead, he favors enhanced training in areas that affect the poor, like housing, employment and consumer protection.

Probation Officers in Magistrate Court: Misdemeanor Compliance Program

Robert Corn, Chaves County magistrate, reviewed the Chaves County monthly probation report and said that the systems differ by court. Pat Casados, Los Alamos County magistrate, said that some counties have lots of resources, while others do not. She said that she would like to see funding that brings consistency across the state. Richard "Buzzy" Padilla, Santa Fe County magistrate, said that Santa Fe has compliance officers who supervise about 200 clients, mostly domestic violence cases. He emphasized that, with probation officers, it would be difficult to ensure that offenders are in compliance with their probation plan. Mr. Padilla said they are trying to increase funds in order to increase the compliance officer position. He said he hopes that the committee will support compliance officers in the state. Committee members asked questions of the panel.

There being no further business, the committee adjourned at 2:00 p.m.