

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

**September 21-22, 2005  
NMSU Golf Course Club House  
Las Cruces**

The fourth meeting of the Courts, Corrections and Justice Committee for the 2005 interim was called to order on Wednesday, September 21, 2005, at the NMSU Golf Course Club House in Las Cruces.

**PRESENT**

Rep. Joseph Cervantes, Co-Chair  
Sen. Cisco McSorley, Co-Chair  
Sen. Rod Adair  
Rep. Thomas A. Anderson  
Sen. Carroll H. Leavell  
Sen. Richard C. Martinez  
Rep. Al Park  
Sen. Lidio G. Rainaldi  
Rep. Eric A. Youngberg

**ABSENT**

Rep. Gail Chasey  
Sen. H. Diane Snyder  
Sen. Leonard Tsosie  
Rep. Peter Wirth

**Advisory Members**

Rep. Hector H. Balderas (September 22)  
Sen. Mary Jane M. Garcia  
Rep. W. Ken Martinez  
Rep. Mimi Stewart (September 21)  
Sen. James G. Taylor

Sen. Ben D. Altamirano  
Sen. Kent L. Cravens  
Sen. John T.L. Grubestic  
Sen. Clinton D. Harden, Jr.  
Sen. Gay G. Kernan  
Sen. Gerald Ortiz y Pino  
Rep. Greg Payne  
Sen. William H. Payne  
Rep. Jane E. Powdrell-Culbert  
Sen. John C. Ryan  
Sen. Michael S. Sanchez  
Rep. Sheryl Williams Stapleton  
Rep. Thomas E. Swisstack

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

**Staff**

Maha Khoury  
Evan Blackstone  
Raul Burciaga  
Sarah Salazar

## **Guests**

The guest list is in the meeting file.

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

## **Wednesday, September 21**

Representative Cervantes, co-chair, and Senator McSorley, co-chair, welcomed committee members and guests and called the meeting to order at 10:25 a.m.

Dr. William Flores, provost, New Mexico State University (NMSU), welcomed the committee and thanked it for its continued support. He said that NMSU is moving forward with improvements throughout the university through state funding and bonds.

## **DWI: Statistical Trends, Agency Programs, Problems and Recommendations**

Rachel O'Conner, DWI coordinator for the governor, and Michael Sandoval, Traffic Safety Bureau, briefed the committee on DWI statistical trends in New Mexico, program highlights and how the state is working on lowering DWI rates. Ms. O'Conner informed the committee that the number of alcohol-involved crashes is down nine percent from 2003 to 2004 and that there has been a rise in arrests by the state police. The number of alcohol-related fatalities did rise from 2003 to 2004; however, this was because there were crashes where multiple people in the same vehicle were killed.

Ms. O'Conner reviewed state agency programs that are involved in tackling the DWI problem. The traffic Safety Bureau of the Department of Transportation is the lead agency in these efforts. These programs include a five county project law enforcement program; a mobile strike unit that focuses on sales of liquor to intoxicated persons and minors; "superblitzes"; and the possibility of a liquor control task force whose primary goal is to look at ways to tighten regulations concerning selling to minors. She also discussed drunkbusters, a toll-free hotline to report drunk drivers that will be operational in October 2005. The bureau is involved in various public awareness programs, the courts are helping and the Alcohol and Gaming Division is getting involved.

Ms. O'Conner stated that the future holds better treatment options and that the governor is emphasizing the need for implementation of the San Juan model that would make treatment and jail time mandatory for second and subsequent DWI offenders. Ms. O'Conner informed the committee that the National Highway Transportation Safety Administration has declared New Mexico a national model on DWI legislation and will be reporting routinely to Congress. She concluded her presentation by discussing the latest improvements made to make the hearing process less burdensome on law enforcement officers.

## **Tracking DWI Offenders in the Motor Vehicle Division (MVD)**

Ken Ortiz, director of the MVD, Taxation and Revenue Department, presented an overview of the administrative hearing process that takes place in the division when a person is arrested for DWI. He reviewed the procedural steps for license revocation and the time periods involved. He discussed the number of consent hearings held by his division, including those that were sustained or rescinded. Mr. Ortiz expressed his hopes to reach 100 percent compliance rates and stated that the MVD has signed a lease with the Bernalillo County Metropolitan Court

with the aim of expediting the administrative hearing process. Mr. Ortiz also summarized the recent statutory changes concerning driver's license revocations and ignition interlock licenses. As of September 13, 2005, the MVD has issued 5,412 ignition interlock licenses. He mentioned the MVD is working hard to make improvements in the process.

### **Ignition Interlock Demonstration**

Sean Parnes from Adobe Interlock demonstrated to the committee how an ignition interlock device works. He claimed the device sold by his company is the most precise and accurate on the market.

### **Mental Health Issues in the Criminal Justice System**

Peter Cubra discussed mental health issues in the state and emphasized that New Mexico is failing to provide adequate resources for psychiatric and mental health care. There are large numbers of incarcerated persons who are mentally ill. Mentally ill defendants many times remain incarcerated for up to three to four years before getting to trial. Mr. Cubra stated that existing law is not being implemented because funding for treatment guardians is not provided. The Developmental Disabilities Planning Council needs more resources for treatment guardians. Mentally ill people also require intensive case managers. Mr. Cubra suggested that Value Options provide outpatient services for the mentally ill. Mr. Cubra urged the passage of the pre-release benefits bill introduced last session by Representative Mimi Stewart.

Bianca Martinez, mental health services bureau chief, NM Corrections Department (NMCD), gave the committee an overview of the issues surrounding mental health in the nation and the state. She emphasized that the prison systems are not properly equipped to handle mentally ill inmates, and it costs a lot more money to care for inmates in prison than at state hospitals. Ms. Martinez explained the various bureaus within the NMCD and their functions. She continued by stating the number of prisoners currently receiving mental health treatment. She concluded her presentation by speaking about the Mental Health Treatment Center, built in 2003, that is at or above capacity and requires expansion.

Ron Gurley, advocate for the mentally ill, discussed the need to keep mentally ill patients out of prisons and the need for jail diversion programs for the mentally ill. Other concerns he raised were abolishing the guilty but insane verdicts; providing public defenders with more social workers; and establishing a blue ribbon task force to study the Mental Health Code.

During questions and comments from the committee, members expressed concern over these issues and stated that something needs to be done to meet the needs of mentally ill inmates, whether it be more treatment centers or more psychologists.

### **Interim Report on the Dona Ana County Court Consolidation Study**

The Honorable Robert E. Robles, chief judge, Third Judicial District Court, updated the committee on the status of a study on the feasibility of creating a consolidated court system in Dona Ana County. As directed by a statute passed by the legislature in 2005, a consolidation study committee consisting of 15 members is currently examining Dona Ana County's court system and evaluating the viability of a metropolitan court system. The committee is considering this issue in the context of certain areas suggested by the chief justice of the New Mexico Supreme Court, which include the administrative structure of combined courts,

employment and a facility. The study should be concluded in November or December and will be reported to this committee.

### **Overview of Substance Abuse Issues in New Mexico**

Herman Silva, substance abuse coordinator for the governor, reported to the committee on current illegal drug problems in New Mexico, including drug overdose deaths, treatment, repeat offenders, arrest rates and drug seizures. He reported that the number of people dying from drug overdoses decreased between 2003 and 2004. According to Mr. Silva, there are 122 drug treatment facilities statewide, including both private entities and governmental agencies that provide services. He also reviewed how the drug courts and law enforcement agencies are handling the substance abuse issue in New Mexico.

### **Tour of John Paul Taylor Center**

Committee members, staff and guests toured the John Paul Taylor Center.

The committee recessed at 4:35 p.m.

## **Thursday, September 22**

### **Funding for the Criminal Justice System and Update on Judicial Compensation**

The Honorable Richard C. Bosson, chief justice of the New Mexico Supreme Court, reported to the committee on the status of a study by the Criminal Justice Task Force on the New Mexico criminal justice system. The study will give detailed data on the need to address funding priorities of all three branches of the criminal justice system, the courts, the public defender and the district attorneys. Justice Bosson informed the committee that the task force has concluded that the criminal defense system and the Public Defender Department is where the most urgent needs exist. He stated that the legislature can most likely expect a significant proposal from the Public Defender Department in the upcoming session that may include funding for additional employees and increased funding for contract public defenders. Justice Bosson emphasized the need to safeguard the right to a fair trial since without this right the criminal justice system would unravel. He also summarized the progress of the Judicial Compensation Commission, its recently appointed members and its mission. He recognized Representative W. Ken Martinez and Senator Michael S. Sanchez for their contributions.

### **Water Adjudication Process: Development of Court Rules**

The Honorable Jerald A. Valentine, Third Judicial District Court judge, informed the committee that New Mexico courts have no court rules that specifically address problems concerning the adjudication of stream waters in New Mexico. Currently there are five pending adjudications in New Mexico courts and stream water adjudications benefit those water users. At Judge Valentine's request, the Supreme Court established an ad hoc committee to study water litigation and stream adjudication in New Mexico. A judicial subcommittee has been appointed to draft proposed rules and then submit them for review to the ad hoc committee. Judge Valentine said that he believes the committee is nearing completion of a draft of stream system adjudication rules that he hopes will expedite stream adjudications.

### **Sunshine Laws, the First Amendment and the Press**

James M. Dines, attorney, Dines and Gross, Jim Lawitz, editor, Las Cruces Sun News, Ken Walz, editor, Albuquerque Journal, Robert Johnson, director, Foundation for Open Government, and Frank Thayer, Journalism and Mass Communications Department head, NMSU, discussed with the committee the topic of open government and the press.

Mr. Dines expressed his view to the committee that one of the fabrics that keep democracies together is transparency in government. Although many individuals in government are willing to be open, Mr. Dines stated that unfortunately there are many who also prefer secrecy. Issues such as rolling polls and executive privilege continue to create difficulties to public access. Mr. Dines informed the committee that over \$200,000 in taxpayer money has gone to attorney fees in cases where the government refused to allow public access to government documents and the courts ordered such access. Mr. Dines recommended stronger enforcement of the Open Meetings Act and criminal penalties for violations of the Inspection of Public Records Act.

During the question and comment period, committee members raised concerns about who determines what the public is allowed to know. They also questioned if there are adequate safeguards in New Mexico to protect journalists from going to jail.

### **Residence Requirements for Law Enforcement Officers**

Jaime Chavez, NMSU chief of police, and Charles Franco, undersheriff of Dona Ana County, urged the committee to support statutory changes to the requirements that peace officers be New Mexico citizens and deputy sheriffs be qualified to vote in New Mexico. They told the committee that the residency requirements are archaic and put a burden on departments pursuing manpower near New Mexico's border with Texas. Texas does not have the same requirement and Texas departments are recruiting New Mexico residents.

### **Public Comment**

Members of the public spoke on the lack of funding for public defender contracts and the need to repeal residence requirements for law enforcement officers.

### **Adjournment**

The committee adjourned at 1:00 p.m.