

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

**August 19-21, 2009
Red River, Angel Fire and Eagle Nest**

The third meeting of the Courts, Corrections and Justice Committee was called to order at 10:20 a.m. by Senator Peter Wirth, co-chair, on Wednesday, August 19, 2009, at the Red River Conference Center, Red River, New Mexico.

Present

Rep. Al Park, Co-Chair
Sen. Peter Wirth, Co-Chair
Sen. Rod Adair
Rep. Thomas A. Anderson
Rep. Joseph Cervantes
Rep. Gail Chasey
Sen. Mary Jane M. Garcia (8/20, 8/21)
Sen. Clinton D. Harden, Jr.
Sen. Linda M. Lopez (8/19)
Sen. Richard C. Martinez
Rep. William "Bill" R. Rehm
Rep. Mimi Stewart

Advisory Members

Rep. Elias Barela (8/19, 8/20)
Rep. Brian F. Egolf, Jr. (8/19, 8/20)
Rep. Dennis J. Kintigh (8/19, 8/20)
Sen. Carroll H. Leavell
Sen. Cisco McSorley (8/19)
Rep. Bill B. O'Neill
Sen. David Ulibarri (8/19, 8/20)
Rep. Gloria C. Vaughn

Guest Legislators

Rep. Ernest H. Chavez (8/20)
Rep. Debbie A. Rodella (8/19)
Rep. Luciano "Lucky" Varela (8/19)

Absent

Rep. Zachary J. Cook
Rep. Antonio "Moe" Maestas
Sen. John C. Ryan

Rep. Eliseo Lee Alcon
Sen. Gay G. Kernan
Rep. W. Ken Martinez
Sen. William H. Payne
Sen. Michael S. Sanchez
Rep. Sheryl Williams Stapleton
Rep. Jack E. Thomas

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

Staff

Maha Khoury
Kate Ferlic (8/19)
Mark Harben

Guests

The guest list is in the meeting file.

Handouts

Copies of all handouts are in the meeting file.

Wednesday, August 19

Senator Wirth called the meeting to order at 10:20 a.m. The members of the committee introduced themselves.

Welcoming Remarks

Linda Calhoun, mayor of Red River, welcomed the committee to Red River. She introduced the municipal judge, town marshal and town administrator. Mayor Calhoun provided an update on the town's police force, stating that it is now at full force and has laptops in law enforcement vehicles. She also discussed several education programs in Red River, including bicycle safety and traffic safety programs. Mayor Calhoun told the committee that Red River has 480 residents and explained that the area's economy is based on tourism.

Approval of Minutes

The minutes of the committee's previous meeting were approved.

Report on Court Visits

Senator Martinez provided a report on his visit to the First Judicial District Court. He discussed delays in hearings and said the old system has been updated recently, eliminating the problems the court previously had with those delays. He said the only problem he saw was the vacant position of a child support officer, who had been let go recently.

Senator Adair discussed his visit to the magistrate courts in Ruidoso, Carrizozo and Chaves County. He said he heard a lot about security. Chaves County had good security but there was none in Lincoln County. He sat through 20 criminal cases, and only one person had private counsel; the rest had a public defender. Senator Adair said that almost every traffic case was deferred. He told the committee about the Odyssey program, saying that everyone there is extremely excited about it.

Representative O'Neill told the committee about his visit to the Bernalillo County Metropolitan Court. He said that one-third of all cases in the state go through that court. Representative O'Neill said that the court maintains high levels of security, including barring cell phones and having many cameras in place. He also said the courts rely heavily on video conferencing, but the judges said that they would like to see people in person.

Retired Public Employees Returning to Work (HB 616)

Representative Varela provided background on HB 616 on "double-dipping", which passed both houses of the legislature in the 2009 session but was vetoed by the governor.

Terry Slattery, executive director, Public Employees Retirement Association (PERA), discussed the PERA's stance on this issue. He said the PERA supports the provision of HB 616 that provides a 12-month break in service for PERA retirees before being eligible to return to work for a PERA affiliate; this is different from the 90-day break-in-service requirement in place now. Mr. Slattery stated that the PERA has a consensus that it does not want to be involved in determining critical need exemptions. The board also agreed that case-by-case determinations by employers are ripe for abuse.

Carter Bundy, political and legislative director for the American Federation of State, County and Municipal Employees (AFCSME) New Mexico, said he believes that a negative impact on morale and adverse effects on employee training arise with the current double-dipping issues. He said that there are in between 1,000 to 1,200 double-dippers working for the state, many of whom are in the highest paid positions, which puts an even bigger strain on the state budget. Mr. Bundy said that these costly cases are extremely precarious now because the state is facing budget shortfalls, employee pay cuts and even potential layoffs. He provided statistics on the high cost of the double-dippers for the PERA and the state. Mr. Bundy said that the number one priority should be to maintain the solvency of the PERA fund.

Sandra K. Perez, director, State Personnel Office, said that a task force has only recently been assembled to address the problems of return-to-work protocols. She said the task force is composed of a variety of people, including elected officials and employees of state organizations and agencies.

Elizabeth Glenn, director of the Civil Division of the Attorney General's Office, discussed the legal ramifications of the legislation and possible challenges by existing double-dippers. Chris Bowman of the PERA stated that the Judicial Retirement Act requires that a person's pension be suspended upon return to work for a public employer, but there is an elected official exception.

Committee members commented on the issues, discussed policy options and asked questions of the panel.

Working Lunch

Revisions to the Liquor Control Act (SB 512)

Julie Ann Meade, deputy superintendent, Regulation and Licensing Department (RLD), discussed SB 512. She went through some of the bill's highlights, including: allowing local law enforcement officials the same authority given to officials from the Special Investigations Division (SID) of the Department of Public Safety to enter a liquor license establishment and enforce Liquor Control Act violations; allowing liquor license establishments to remain open until 3:00 a.m. and serve food, but cease service of alcohol at the regulated time of 2:00 a.m.; and redefining "public nuisance" and removing the fourth degree felony for servers who sell/serve alcoholic beverages to minors, except in certain situations. Ms. Meade said that from the onset, it made no logical sense to combine all aspects of the legislation into one bill; she said she believes the few areas with merit were used to sneak through the bad elements of the legislation.

Ms. Meade also discussed Governor Richardson's latest proposal on DWI legislation for the 2010 legislative session. In that proposal, there is a three-day mandatory jail time provision for first time offenders; increased jail time for second DWI offenses and felony conviction for third time offenses; elimination of pleading down of DWI offenses to non-DWI offenses; and second-degree murder charges if a fatality is incurred from a DWI accident. Gary Tomada, director, Alcohol and Gaming Division, RLD, discussed the bill with Ms. Meade and was open to questions.

Committee members commented on the issues, discussed policy options and asked questions of the panel.

Predatory Lending Task Force and Proposed Legislation

William Verant, director, Financial Institutions Division, RLD, provided an overview of small loan businesses. He said that there are 574 small loan licensees in New Mexico, but at the end of 2008 there were 615. In 1995, however, there were only just a few more than 200 companies in New Mexico, without any payday or title loan companies. According to Mr. Verant, there were more than 52,000 payday loans this year through July 31. He said that the number of payday lenders has dropped significantly since the inception of the payday loan laws.

Eric Vasquez, senior policy analyst for the Office of the Lieutenant Governor, provided a background for the reasons the lieutenant governor had assembled the task force. He said that some payday loan lenders have begun to issue loans under the Bank Installment Loan Act of 1959. Mr. Vasquez said that the attorney general and lieutenant governor collaborated to draft a bill to regulate car title loans, but that the bill did not meet with success. Immediately after the session, according to Mr. Vasquez, the lieutenant governor decided to create a task force to analyze the entire small loan industry. Two pieces of legislation came out of the task force: a bill capping fees and interest and another bill mandating a database for certain loans.

Mr. Verant and Mr. Vasquez went over the bills for the committee. Mr. Verant advised that a database is critical for making good policy decisions in the future and that the cost of maintaining the database would be a negligible fee passed on to the consumer. For example, the database fee for a payday loan would be \$.50 for every \$100.

Committee members commented on the legislation, asked questions and discussed policy options.

Public Comment

Karen Meyers, Consumer Protection Division, Attorney General's Office, discussed small loan businesses. She said the Attorney General's Office supports the database bill because it will help create a more complete understanding of the industry. She said that most of the small loan businesses, while having offices in New Mexico, are headquartered out of state; thus, the major profits and income do not end up in New Mexico. Ms. Meyers provided materials to the committee and went over a sampling of consumer complaints and types of loans, and she informed the committee of a lawsuit filed by the attorney general. Committee members commented, asked questions and discussed policy options.

The committee recessed at 4:55 p.m.

Thursday, August 20

Joint Meeting with the Water and Natural Resources Committee

The minutes for this joint meeting day are included in the Water and Natural Resources Committee minutes for its August 20-21, 2009 meeting.

Friday August 21

The committee attended a breakfast hosted by the village of Eagle Nest with the mayor of Eagle Nest, the mayor of Angel Fire and the village administrator of Eagle Nest. Thereafter, the committee toured the Eagle Nest Reintegration Center (ENRC) from 9:50 a.m. to 10:30 a.m., then Senator Wirth called the meeting to order at 10:31 a.m.

Dorian Dodson, secretary of the Children, Youth and Families Department (CYFD), thanked the committee for coming to the ENRC and invited the committee to the J. Paul Taylor Juvenile Detention Center in the future. Secretary Dodson stated that the continuum of services is important because it allows the children to work with the community. It is cost-effective and a good strategy for success. The Cambiar New Mexico initiative model, according to Secretary Dodson, is a very successful framework for the state.

David Martinez, director, youth and family services, CYFD, said that recent research indicates that detention is not the best option for lower level, nonviolent juvenile offenders. Indeed, some research shows that prior commitment is a greater predictor of getting locked into the system than family issues, gang membership or carrying a weapon. The CYFD's detention

reform efforts aim to eliminate inappropriate or unnecessary use of secure detention while maintaining community safety and court appearance rates and minimizing the incident of delinquent behavior. The CYFD aims to assist youth involved in the juvenile justice system through implementation of effective community-based programming and by providing youth with opportunities to help them develop into healthy, productive adults. The CYFD's juvenile probation officers play a vital role in supervising the youth and providing case management services, according to Mr. Martinez.

Mr. Martinez discussed the Risk Assessment Instrument (RAI) used by the CYFD to assist in determining whether a youth should be placed into detention. The RAI is a tool that considers public safety, juvenile offenses, prior delinquency and family/community resources to assist in determining detention placement. The process has become more centralized, which has resulted in more consistent decision-making statewide. Mr. Martinez also explained the new direction the CYFD is taking with juvenile community corrections emphasizing a treatment team approach based on a client's individual needs. Mr. Martinez told the committee that the core services will include family support services, education programs, life skills, facility transition services, job preparation and case management services.

Deborah Pritchard, director of the Juvenile Justice Division, CYFD, provided an overview of how Cambiar New Mexico is beginning to work in the juvenile detention facilities. She said the Cambiar model is based on the successful Missouri model, holds youth accountable for their actions and ensures client, staff and public safety. According to Ms. Pritchard, services are provided to clients in dorms, or "pods", similar to a group home or college campus setting, and youth care specialists now develop more intensive relationships with the youth. When the model was applied in New Mexico, there was a decline in disciplinary incident reports. She said that outreach from the Missouri Youth Services Institute is currently on-site at the Youth Diagnostic and Development Center/Camino campus assisting juvenile justice managers, as well as helping the CYFD evaluate and revise the organizational structure within secure juvenile facilities. Ms. Pritchard also touched upon the Juvenile Public Safety Advisory Board and discussed the challenges being faced, including: moving from a correctional facility approach to a rehabilitation unit approach; addressing issues surrounding those clients with significant behavioral health needs and issues; increasing educational requirements for facility staff; addressing employee turnover; and addressing staff resistance to embracing the new model. Ms. Pritchard discussed client demographics and the new changes at the J. Paul Taylor Juvenile Detention Center.

Secretary Dodson briefly discussed the recommendations from the New Mexico Juvenile Justice Commission and said that the report and recommendations are very good.

The committee commented on the testimony and handouts, asked questions and discussed policy options.

Public Comment

Tony Ortiz, executive director, New Mexico Sentencing Commission, advised the

committee of a new state court case, *State vs. Rudy B.*, in which the court, following a line of federal cases, held that the determination made by a judge on whether a youthful offender should be subject to juvenile or adult sanctions must now be made by a jury. This decision may impact the Jury and Witness Fee Fund. Mr. Ortiz said that in FY 2008, 160 motions for adult sanctions were filed, and of those, 103 were found to be subject to juvenile sanctions, 32 were dismissed and only nine were granted. There are 16 motions still pending.

The committee adjourned at 12:35 p.m.