

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

**October 16-17, 2014  
Dona Ana Community College  
East Campus Branch  
Las Cruces**

The fifth meeting of the Courts, Corrections and Justice Committee (CCJ) was called to order by Senator Richard C. Martinez, co-chair, on October 16, 2014 at 9:40 a.m. at the Dona Ana Community College East Campus Branch in Las Cruces.

**Present**

Rep. Gail Chasey, Co-Chair (10/16)  
Sen. Richard C. Martinez, Co-Chair  
Rep. Eliseo Lee Alcon  
Sen. Joseph Cervantes (10/16)  
Rep. Yvette Herrell (10/16)  
Sen. Linda M. Lopez (10/16)  
Rep. Georgene Louis  
Rep. Jane E. Powdrell-Culbert  
Rep. Mimi Stewart

**Advisory Members**

Rep. Phillip M. Archuleta  
Sen. Daniel A. Ivey-Soto (10/16)  
Sen. John Pinto  
Rep. Patricia Roybal Caballero

**Absent**

Rep. Zachary J. Cook  
Rep. Emily Kane  
Sen. Cisco McSorley  
Rep. William "Bill" R. Rehm  
Sen. Sander Rue  
Sen. Lisa A. Torracco

Sen. Craig W. Brandt  
Rep. Cathrynn N. Brown  
Sen. Jacob R. Candelaria  
Rep. Brian F. Egolf, Jr.  
Rep. Kelly K. Fajardo  
Rep. Miguel P. Garcia  
Rep. Antonio "Moe" Maestas  
Sen. Bill B. O'Neill  
Rep. Paul A. Pacheco  
Sen. William H. Payne  
Sen. Michael S. Sanchez  
Rep. Sheryl Williams Stapleton

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

**Staff**

Douglas Carver, Staff Attorney, Legislative Council Service (LCS)  
Caela Baker, Staff Attorney, LCS

**Guests**

The guest list is in the meeting file.

**Handouts**

Handouts are in the meeting file and are posted at [www.nmlegis.gov](http://www.nmlegis.gov).

**Thursday, October 16****Welcoming Remarks**

Monica Torres, Ph.D., interim vice president for academic affairs, Dona Ana Community College (DACC), welcomed members of the CCJ. Dr. Torres stated that DACC has the fifth-largest enrollment of any higher institution in New Mexico, with more than 9,000 students.

Dr. Torres stated that DACC has a different mission and focus than the main campus of New Mexico State University (NMSU). The mission statement of DACC is to be "a responsive and accessible learning-centered community college that provides educational opportunities to a diverse community of learners in support of workforce and economic development". Dr. Torres provided an overview of the DACC campuses and the specialties and programs offered at each campus. She indicated that DACC works closely with the public high schools to offer dual credit courses. DACC offers 41 associate degrees and 15 certificate programs.

Dr. Torres discussed criminal justice and law enforcement programs offered at DACC and indicated that there is interest in developing a law enforcement academy. She indicated that DACC is accredited by the Higher Learning Commission. This accreditation is based on the academic rigor of courses offered at DACC, the culture of assessment of student learning, strong student support services and sound policies and practices in financial operations.

Dr. Torres explained that DACC is trying to develop evidence-based recruitment programs; increase retention and graduation; and articulate a pathway from DACC to NMSU.

Members of the committee asked questions about:

- ▶ the emergency medical technician program offered at DACC;
- ▶ the proposed law enforcement academy; and
- ▶ the dual credit program offered at public high schools.

**Introductions by Committee Members**

Members of the committee introduced themselves.

## **Judiciary's Unified Budget and Proposed Legislation**

### Judiciary's Unified Budget

Barbara Vigil, chief justice of the New Mexico Supreme Court, and Arthur W. Pepin, director, Administrative Office of the Courts (AOC), introduced themselves. Mr. Pepin acknowledged Fernando Macias, chief judge of the Third Judicial District Court, and Joel Cano, magistrate judge, Dona Ana Magistrate Court, who were present in the audience.

Chief Justice Vigil stated that the judiciary is requesting an increase of \$14,656,300 for fiscal year (FY) 2016. Included in the request is a base budget increase for the courts of \$3,790,900 and a base budget increase of \$6,646,000 for the AOC.

Mr. Pepin presented the AOC's FY 2016 detailed budget request, which is available online at [www.nmlegis.gov](http://www.nmlegis.gov). Mr. Pepin identified the following seven funding priorities:

1. an increase of \$10,436,900 in the base budgets for the judiciary and AOC;
2. AOC statewide programs — magistrate courts; the Jury and Witness Fee Fund; language access; and funding for court-appointed attorneys;
3. court safety and security;
4. critical personnel additions;
5. problem-solving courts;
6. two new judgeships and related staff; and
7. salary increases for judges and staff that are consistent with any across-the-board increases for other state employees.

Regarding priority item number three, Chief Justice Vigil stressed the need for additional security in court facilities in rural areas. Mr. Pepin stated that priority item number four relates to the need for more information technology employees at the AOC to keep up with the increasing use of technology and electronic documents.

Judge Macias stated that judges throughout the state are carrying overwhelming caseloads, and budget increases are necessary to ensure efficient processing of cases. Judge Macias indicated that priority item number six includes a request for an additional judgeship for the Children's Court in the Third Judicial District.

Chief Justice Vigil stated that funding for priority item number seven would support an across-the-board compensation increase that is consistent with increases for other state employees. She indicated that the judiciary has formed a group to study pay equality and to ensure that judicial employees are being paid fairly. She further indicated that judicial compensation is at the lowest level in the country and that next year, the judiciary may approach the CCJ with a plan to ensure that judges receive regular salary increases; however, that plan is not being proposed this year.

In response to a question from a committee member, Mr. Pepin indicated that the AOC would like to increase the pay for some of the lowest-paid employees, such as court clerks.

Statewide, there are approximately 520 "Court Clerk II" employees, and the average pay for that position is a little over \$15.00 per hour.

A member of the committee inquired about pay for court interpreters and indicated that some interpreters were reporting delays in receiving payment. Mr. Pepin indicated that interpreters should now be receiving on-time payment. The member asked whether court interpreters are employees or independent contractors. Mr. Pepin responded that the majority of interpreters are contractors, but some are employees.

A member of the committee asked whether New Mexico should have specialized water courts. Chief Justice Vigil acknowledged that some people have expressed concern that the current water adjudication process is not working. She added, however, that a comprehensive study has changed the way water cases are being processed. Now, one judge — Judge James J. Wechsler — does all of the water adjudications, and this arrangement has worked well. Chief Justice Vigil indicated that the New Mexico Supreme Court is still considering whether additional changes need to be made.

#### AOC Proposed Legislation

Mr. Pepin presented seven proposed bills and one proposed memorial for consideration by the committee. The bills are posted online at [www.nmlegis.gov](http://www.nmlegis.gov) and concern the following topics:

- ▶ judgeships in the second and third district courts;
- ▶ municipal appeals to the New Mexico Supreme Court;
- ▶ time limitations relating to executing civil judgments entered by magistrate courts;
- ▶ creating a Language Access Fund that is separate from the Jury and Witness Fee Fund;
- ▶ statutory duties of the AOC director;
- ▶ credits against fines and fees for time served in county jails; and
- ▶ authorizing the use of a sliding-fee scale for alternative dispute resolution programs.

The proposed memorial would explore the possibility of magistrate courts employing compliance personnel and operating compliance programs.

#### Senate Joint Memorial (SJM) 26

Mr. Pepin reported the findings of a study that was conducted pursuant to SJM 26, which was adopted during the 2014 regular session. SJM 26 requires the AOC to "study equity in awarding child support and how child support payments are calculated". Mr. Pepin stated that the result of the study was a finding that child support guidelines are being equitably applied. Members of the committee discussed:

- ▶ policy reasons behind not linking child support to visitation; and
- ▶ how the amount of child support is determined and how it is collected.

A document containing the findings of the study is posted at [www.nmlegis.gov](http://www.nmlegis.gov).

### **Update from the Public Defender Commission (PDC)**

Michael Stout, chair, PDC, introduced Lee Hood and PDC member Jess Lilley. He also acknowledged the presence of Barbara Mandel, president of the New Mexico Criminal Defense Lawyers Association. Mr. Stout stated that the 11 members on the PDC are volunteers and that there is no budget for the PDC.

Mr. Stout indicated that the PDC is charged with selecting a chief public defender and setting standards for representation. He explained that the current standards for representation are effective as of May 2, 2014 and that contract public defenders are required to follow these standards as well.

Mr. Stout stated that flat fees for contract attorneys are unethical and inappropriate and that a rate of \$85.00 per hour for contract public defenders is being proposed. Mr. Stout distributed a handout, which is posted at [www.nmlegis.gov](http://www.nmlegis.gov), containing a statement of the principles for representation.

Mr. Stout stated that the PDC recently submitted a \$96 million budget request to the Legislative Finance Committee. He explained that the budget request was formed not by looking at budget requests in years past, but by looking at what is required to enable public defenders to meet the standards required for representation and to provide competent representation. A member of the CCJ requested that the PDC forward an electronic copy of the budget documents to LCS staff so that staff can distribute the documents to all members of the CCJ.

### **Storefront Small Lending in New Mexico**

Karen Meyers, Consumer Protection Division, Office of the Attorney General, and Bob Hearn, Tierra del Sol Housing Corporation, presented statistics on and examples of high-cost lending in New Mexico.

Ms. Meyers told the CCJ that in 2007, the United States Department of Defense (DOD) adopted a 36 percent interest rate cap for military personnel and families. She stated, however, that lenders have continued to use loopholes in the law to issue high-cost loans to military personnel and families by structuring loans that fall just outside of the DOD protections. Ms. Meyers told the CCJ that on September 26, 2014, the DOD proposed new regulations expanding the protections limiting interest rates at 36 percent in the extension of credit for small-dollar loans to the military.

Ms. Meyers stated that 80 percent of lenders are out-of-state companies. She discussed the various types of consumer loans that are used in New Mexico, including payday loans, installment loans, car title loans and refund anticipation loans. Ms. Meyers explained that lenders often encourage refinancing and increasing the amount borrowed, thus extending indebtedness. She explained that a consumer's need to borrow repeatedly and refinance loans are indicative of an inability to repay and lax underwriting standards. She further stated that the lack of meaningful underwriting or consideration of ability to repay loans reveals that the focus is on

the ability of the lender to continue collecting payments, and this pushes borrowers further into a debt cycle.

Ms. Meyers discussed a recent case in which the New Mexico Supreme Court said that the Unfair Practices Act prohibits economic exploitation and that the particular loans at issue in that case were unconscionable.

Ms. Meyers stated that based on a study by the University of New Mexico, 86 percent of the public supports an interest and fee cap of 36 percent. She added that 20 states already have interest and fee caps equal to or less than 36 percent.

A member of the CCJ asked whether there are alternative loan products for consumers who are confronted with emergency situations and need quick cash. Ms. Meyers stated that in states that have restricted interest rates on small loans, in some cases there has been expanded access to credit unions. Mr. Hearn added that special programs, such as Tierra Del Sol Housing Corporation, which is an affordable-housing company, and special credit unions can help people who may not otherwise be able to borrow money from a traditional financial institution. In addition, educational programs and awareness campaigns are needed so that people have a better understanding of predatory lending practices.

### **Processing of Rape Kits by New Mexico Law Enforcement**

Connie Monahan, New Mexico Coalition of Sexual Assault Programs, John Krebsbach, director, Albuquerque Police Department Crime Laboratory and Scientific Evidence Division, and Donna Richmond, La Piñon Rape Crisis Center, introduced themselves.

Ms. Monahan explained that there is a backlog in processing sexual assault examination kits. She indicated that the backlog is due to the lack of any increase in funding or resources for processing these kits. At the same time, there has been an increase in the availability of programs for sexual assault victims and an increase in reporting by sexual assault victims.

Ms. Monahan presented statistics on the prevalence of sexual assault in New Mexico. These statistics are included on the handout that is posted at [www.nmlegis.gov](http://www.nmlegis.gov). She indicated that successful efforts in other states to reduce or eliminate the backlog in processing sexual assault examination kits have included increased funding, a multidisciplinary team effort to plan and implement changes, victim involvement and, in some cases, legislation mandating action.

Ms. Monahan identified a number of advantages to processing the backlog of sexual assault examination kits, but she indicated that potential impacts on the victim should also be considered. Some considerations might include the length of time that has passed since the crime occurred, the impact on the healing process that reopening the cases may cause and whether or not the victim is able to participate in the process.

Ms. Monahan presented a number of recommendations that should be included in any potential legislation. The recommendations are to:

- ▶ empower victims as the decision-makers for processing and prosecuting rape cases;
- ▶ link victims to resources;
- ▶ define what constitutes a "backlog";
- ▶ create a triage system for prioritizing the analysis of kits;
- ▶ provide for a multidisciplinary coordinated response; and
- ▶ increase funding for responders.

Ms. Richmond stressed that funding for processing kits, as well as funding for victim advocate programs, is needed.

Upon questioning from the CCJ, Mr. Krebsbach indicated that there is a backlog of approximately 3,300 kits in Bernalillo County. He explained that cases receiving first priority are homicide cases with unknown offenders, followed by cases that are going to trial. Mr. Krebsbach stated that a plan is being implemented to prioritize the backlog of "no-suspect" cases from the past 10 years.

Mr. Krebsbach indicated that hiring and retaining qualified forensic DNA analysts has been challenging, and that factor has contributed to the backlog. In some instances, cases have been sent to private vendors for processing, but then the district attorneys must pay the cost of bringing analysts to testify at trial.

Members of the CCJ expressed concern about the backlog for processing these kits and the lack of funding for laboratories to process the kits.

### **New Mexico Sentencing Commission (NMSC) Motor Transportation Report**

The following people introduced themselves:

- ▶ Tony Ortiz, director, NMSC;
- ▶ Dan Cathey, senior researcher, Institute for Social Research, University of New Mexico;
- ▶ Gregory J. Fouratt, secretary of public safety; and
- ▶ Pete Kassetas, chief, New Mexico State Police.

Mr. Ortiz presented the "New Mexico Motor Transportation Division Safety Staffing Study: Report in Brief". He discussed the methodology and indicated that the study examined current staffing levels versus appropriate staffing levels for state police and motor transportation police.

Mr. Ortiz noted that, according to the study, the Motor Transportation Division (MTD) of the Department of Public Safety requires a staff of 243 persons; however, the MTD currently has a staff of only 98 persons. Additionally, only 1.3 percent of approximately six million commercial vehicles are inspected. Forty additional officers are needed to perform safety and

inspection tasks, and 41 additional officers are needed for taxation and revenue work. Mr. Ortiz indicated that according to a 2013 study by the Legislative Finance Committee, a large number of commercial vehicles are evading the weight distance tax by circumventing the state ports of entry.

Mr. Ortiz told the CCJ that between April 24, 2014 and May 8, 2014, the NMSC staff observed truck traffic for six hours at three sample locations. Of the 337 trucks observed, 175 (52 percent) were in the database maintained by the Taxation and Revenue Department (TRD), 162 (48 percent) were not in the TRD database and 48 could not be identified sufficiently to search in the TRD database.

Secretary Fouratt indicated that the DPS agrees with the findings of the report presented by Mr. Ortiz and stated that the report validates the existing understanding that the MTD is significantly understaffed. Secretary Fouratt indicated that insufficient staffing levels inhibit the ability of staff members to patrol properly and to conduct safety and inspection tasks. He further stated that southeastern New Mexico has been especially affected by low staffing levels. Finally, he indicated that due to the low staffing levels, highly qualified safety inspectors are spending nearly all of their time selling permits when they could be performing safety inspections.

Chief Kassetas discussed compensation levels for MTD and state police officers and echoed concerns about staffing levels.

### **NMSC Prison Population Forecast**

Mr. Ortiz presented the "New Mexico Prison Population Forecast: FY 2015-FY 2024". He indicated that the primary theme of the report is the same this year as last year. The male prison population has been stable for about seven years, and male inmates constitute approximately 90 percent of the prison population in New Mexico.

On the other hand, the female prison population is climbing very fast. The sole facility for female inmates is in Grants, New Mexico, and has an operating capacity of 706 beds. Last month, the prison population at the Grants facility was 743 inmates, which is well beyond capacity. The increase in the female prison population is due to an increase in the number of violent crimes being committed by women and a shift in the area of drug offenses — women are now being convicted of trafficking more frequently than the less serious charge of possession.

Mr. Ortiz indicated that New Mexico has seen an increase in populations at juvenile detention facilities, county jails and prisons. He stated that New Mexico is among only a handful of other states where the adult jail population exceeds the state prison population.

### **Child Protection Registry**

Eric Langheinrich, chief executive officer, Unspam Technologies, Inc., and Evelyn Everton, vice president of government affairs, Unspam Technologies, Inc., discussed legislation that has been introduced in other states to establish a child protection registry (CPR). Two states

— Utah and Michigan — have enacted such laws. Under CPR laws, persons can register contact points, including email addresses, mobile phone numbers, instant messaging and social networking identifications and fax numbers, to which children have access. The CPR laws are intended to protect children from receiving solicitations for alcohol, tobacco, pornography, gambling and other items or services that marketers are prohibited from selling or sending to children.

Mr. Langheinrich indicated that registering a contact point in the CPR is free, and marketers are required to pay a small fee to check each entry on their sending list against the registry. The fees collected are used to pay for the administration of the program. Contact points registered in the CPR are encrypted and stored as 32-character codes. A marketer's list is then converted to the code and compared against the encrypted list stored in the registry. Mr. Langheinrich indicated that this process protects the privacy of contact points registered in the CPR.

Mr. Langheinrich discussed some of the reasons that establishing a CPR would protect children in the state, and he presented statistics concerning marketing to children.

Members of the CCJ asked questions and discussed the funding mechanism for a CPR, penalties for noncompliance and measures that can be taken to ensure privacy and security of the data contained in the CPR.

### **State Workers' Compensation System Challenges**

Darin A. Childers, director, Workers' Compensation Administration (WCA), Thomas Dow, deputy director, WCA, and Kevin McGinley, chair, Advisory Council on Workers' Compensation and Occupational Disease Disablement, introduced themselves.

Mr. Childers discussed the mission of the WCA, the role of the Advisory Council on Workers' Compensation and Occupational Disease Disablement and challenges faced by the WCA. He indicated that there is a lack of clarity in the law, and the system depends on clarity in the law so that claims can be paid predictably and consistently without WCA involvement. Additionally, he indicated that incentives that encourage return-to-work and discourage reliance on compensation benefits have been eroded.

Mr. Childers discussed several legislative opportunities, including clarifying:

- ▶ what happens in the event that drugs or alcohol cause an on-the-job injury;
- ▶ limitations on payment for temporary disability; and
- ▶ standards and outcomes when an employer offers an injured employee work.

Members encouraged the WCA to draft concrete legislative proposals for consideration by the legislature.

**Recess**

The committee recessed at 5:06 p.m.

**Friday, October 17****Tour of the Dona Ana County Detention Center**

Members of the CCJ toured the Dona Ana County Detention Center.

**Adjournment**

There being no further business before the committee, the fifth meeting of the CCJ adjourned at 11:35 a.m.