

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

**October 21-22, 2013
Piñon Room, Sky City Casino Hotel
Pueblo of Acoma
and
New Mexico Women's Correctional Facility
Grants**

The fifth meeting of the Courts, Corrections and Justice Committee (CCJ) was called to order by Representative Gail Chasey, co-chair, on October 21, 2013 at 9:57 a.m. at the Sky City Casino Hotel at the Pueblo of Acoma.

Present

Rep. Gail Chasey, Co-Chair
Sen. Richard C. Martinez, Co-Chair
Rep. Eliseo Lee Alcon
Rep. Yvette Herrell (10/21)
Sen. Linda M. Lopez
Rep. Georgene Louis
Sen. Cisco McSorley
Rep. Jane E. Powdrell-Culbert
Rep. William "Bill" R. Rehm (10/21)
Sen. Sander Rue (10/22)
Rep. Mimi Stewart

Absent

Sen. Joseph Cervantes
Rep. Zachary J. Cook
Rep. Emily Kane
Sen. Lisa A. Torracco

Advisory Members

Sen. Jacob R. Candelaria (10/21)
Rep. Kelly K. Fajardo (10/21)
Rep. Miguel P. Garcia
Rep. Antonio "Moe" Maestas (10/21)
Sen. John Pinto
Rep. Patricia Roybal Caballero (10/21)
Rep. Sheryl Williams Stapleton

Rep. Phillip M. Archuleta
Sen. Craig W. Brandt
Rep. Cathrynn N. Brown
Rep. Brian F. Egolf, Jr.
Sen. Daniel A. Ivey-Soto
Sen. Bill B. O'Neill
Rep. Paul A. Pacheco
Sen. William H. Payne
Sen. Michael S. Sanchez

Guest Legislators

Rep. Alonzo Baldonado (10/21)
Rep. Debbie A. Rodella (10/21)

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

Staff

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

Monica Ewing, Staff Attorney, LCS

Cassandra Jones, Research Assistant, LCS

Guests

The guest list is in the meeting file.

Handouts

Handouts and other written testimony are located in the meeting file.

Monday, October 21

Representative Chasey requested that Representative Louis chair the meeting. Members of the committee introduced themselves.

Welcoming Statement and Presentation of Issues

Governor Gregg P. Shutiva, Pueblo of Acoma, welcomed the committee to Sky City Casino and the Pueblo of Acoma. He told the committee that with the revenue the pueblo generates from gaming, it employs approximately 500 people. The Pueblo of Acoma is currently the largest employer in Cibola County. The casino operates under a compact agreement and sends more than \$1 million in revenue-sharing payments to the state each year. The current compact will expire in 2015. Governor Shutiva told the committee that he is looking to the committee for support in the pueblo's efforts to arrive at a new compact. He told the committee that the Pueblo of Acoma contributed more than \$7 million to the Department of Transportation to construct a bridge off of the Interstate 40 exit. Governor Shutiva described the economic difficulties the pueblo has experienced during the recession. He told the committee that the community experiences high unemployment and that gaming revenues have dropped significantly, in no small part due to the impact of the opening of other casinos, including the Downs Racetrack and Casino in Albuquerque.

Governor Shutiva told the committee that, several years ago, the tribal council approved a master plan that calls for an industrial park with manufacturing as the anchor for jobs and business development, but the pueblo has been unable to attract businesses to the reservation. He told the committee that the pueblo has been in an ongoing legal battle with the Continental Divide Electric Cooperative regarding infringements, trespassing and rights of way. The cooperative refuses to provide service to new residences or businesses until the lawsuit is resolved. Governor Shutiva told the committee that the Pueblo of Acoma is in need of state support to bring better-paying jobs to the community and that the pueblo wishes to create sound and sustainable business development on its lands.

Governor Shutiva told the committee that many tribes have sophisticated judicial systems that meet the needs of the tribes. The Acoma Tribal Court was established approximately 35 years ago; it handles juvenile, traffic and civil cases and is a court of general jurisdiction limited only by federal limitations on tribal sovereignty. The tribal court has a full-time judge who oversees the court. The court also contracts with licensed attorneys to fill part-time positions as judges, prosecutors and defense attorneys. Court attorneys are also allowed to represent clients in civil cases involving child welfare and elderly or vulnerable adults and cases involving health and wellness. The pueblo also uses the traditional fiscale system, in which fiscales do not have formal police training and do not carry weapons, but they have an important role in peacekeeping, which requires the use of cultural knowledge to solve problems and conflicts. Fiscales serve as mediators during family disputes and assist clan elders in making decisions. The court has one probation officer who handles adult and juvenile cases and who had a caseload of 131 cases in 2012. The probation officer provides pretrial services, random alcohol and drug testing, oversight of house arrests, electronic monitoring and supervision of health and wellness cases. In 2000, the pueblo constructed a 24-bed adult detention facility to address the growing crime rate. The facility was constructed primarily using tribal funds. The federal Bureau of Indian Affairs has provided partial funding for operations since 2010.

Governor Shutiva emphasized that there needs to be greater collaboration among tribal and state courts and agencies as well as a way to ensure tribal sovereignty. He told the committee that, in some situations, the pueblo has had trouble getting tribal court orders recognized in state courts, particularly in situations involving child custody, child support and other disputes. He asked that the CCJ offer general support for increased cooperation among the various court systems. He told the committee that, sometimes, joint jurisdiction between state and tribal courts is necessary when cases on the same issue are filed in state and tribal forums. He also told the committee that there should be more cooperation when it comes to pretrial and probation oversight of defendants. Governor Shutiva said that more meaningful cooperation with the Children, Youth and Families Department would be helpful. He told the committee that the state does assist with child support and that the Human Services Department provides an attorney to help collect child support off of the reservation. The tribal social services agency also receives assistance with foster care.

Randall Collins, chief judge at the Pueblo of Acoma, told the committee that the tribal court is for the Acoma community and that it strives to provide equal justice under the law through due process and protection of the Pueblo of Acoma's tribal traditions and sovereignty, and sovereignty is promoted and protected by the court. Judge Collins told the committee that from September 2011 to September 2012, there were 113 civil filings and 237 civil hearings. Over the same period, there were 3,031 criminal filings, 717 criminal hearings, 76 juvenile filings and 78 juvenile hearings. Judge Collins told the committee that the court lacks resources and that federal budget cuts and an expanding workload have placed great strain on the tribal court system. Because of federal funding cuts, the courts have experienced a 50% reduction in personnel. The courts need increased legal representation for criminal and civil cases. Judge Collins told the committee that the recent court service improvements include improved

monitoring to reduce jail costs and ensure public safety. Diversion programs are used to reduce costs, improve compliance, help prevent other crimes, complement existing social programs and assist in helping members become a productive part of the community. Diversion programs used by the Pueblo of Acoma's tribal court include an adult wellness court and Project Venture, which addresses juveniles with high-risk behavior or truancy issues. Judge Collins told the committee that the Pueblo of Acoma is also working on reforming some of its laws.

Members of the committee asked questions about and discussed tribal jurisdiction, the population of the Pueblo of Acoma, the pueblo's health and wellness program, federal funding, tribal sheriffs, collaboration between tribal and state entities and diversion programs.

Termination of Parental Rights Bill

Representatives Louis and Baldonado and Professor Antoinette Sedillo Lopez of the University of New Mexico School of Law presented a bill to the committee, which Representative Louis said was heard during the past legislative session. Representative Louis introduced a witness, Kim Dixon, who told the committee that she became pregnant and had children as a result of rape, and she was later taken to court by her rapist over custody of the children. The children's biological father was charged with second degree criminal sexual penetration, but he was still granted unsupervised visitation with the children. Ms. Dixon told the committee that since the birth of her children, she has been forced to face her rapist 21 times, and she is very concerned about the safety of her children when they are with him. Representative Baldonado told the committee that the original bills, HB 508 and HB 38, had been discussed extensively, were changed to reflect that discussion and were combined into a committee substitute. Professor Sedillo Lopez told the committee that the process in this bill to terminate or suspend parental rights of a rapist would not be triggered unless the victim wished it. She told the committee that in the majority of cases, rapists do not attempt to communicate with their victims or be involved in a child's life, but this bill would protect the small number of women who are put in this situation. Representative Louis told the committee that a lot of input was considered when looking at this bill and that two options were considered for victims: (1) termination of parental rights; or (2) suspension of parental rights. This was done to protect children in cases where termination of rights might not be in a child's best interest.

Members of the committee asked questions about and discussed convictions for criminal sexual penetration, the length of time that victims would have to initiate this procedure, technical details of the bill, court presumptions in favor of joint custody, similar laws in other states, appeal processes proposed in the bill, criminal and civil burden of proof requirements, the evidentiary value of criminal convictions in civil cases and current protections in law.

Trauma and Victimization of Female Inmates

Dr. Betty Caponera, director of the New Mexico Interpersonal Violence Data Central Repository, and Linda Freeman, deputy director of the New Mexico Sentencing Commission (NMSC), made a presentation to the committee on abuse of female inmates in New Mexico. Dr. Caponera referred the committee to a report from the NMSC, "Prevalence of Adverse Childhood

Experience & Victimization among New Mexico's Female Inmate Population". She told the committee that the Interpersonal Violence Data Central Repository is charged with creating a report on sex crimes in New Mexico each year. The repository also creates a report on domestic violence. Dr. Caponera told the committee that the adverse childhood experience (ACE) questionnaire, developed in San Diego, looks at the relationship between adverse childhood experiences and specific health outcomes. Although the participants are educated and middle class, adverse experiences are common. Nearly 69% of females and 66% of males in the study had at least one ACE. As the number of ACEs increases, the risk of a variety of health problems also increases. Dr. Caponera told the committee that in 2010, she wrote a proposal to the Corrections Department (CD) to survey inmates and was given permission to do so. At the New Mexico Women's Correctional Facility (NMWCF), only 23 of 233 eligible inmates declined to participate in the survey. Dr. Caponera told the committee that three major observations came out of the study: (1) most of the inmates experienced multiple types of abuse or household dysfunction; (2) most of the inmates experienced these indicators multiple times; and (3) most of the inmates continued to experience these indicators into adulthood.

Ms. Freeman told the committee that as a result of the ACE study, many people use ACE indicators when comparing prevalence of abuse. Among comparable populations, women in New Mexico are more likely to experience emotional abuse. Ms. Freeman told the committee that almost all of the women that participated in the study reported experiencing some form of abuse at some point in their lives. She told the committee that only a small proportion of women sought help for the abuse they suffered; therefore, most of these women have not received the help they need to deal with the ramifications of the abuse they suffered. Over the years, the CD has created programs more specific to women. The findings of the report confirm the need to continue developing programs specifically designed for women as well as programming that considers the magnitude of untreated trauma.

Members of the committee asked questions about and discussed results of the study, ongoing studies, similarities between men and women regarding ACEs and policy consequences of the study.

Approval of Minutes

Upon a motion by Senator Lopez, seconded by Senator Martinez, the minutes of the September 2013 CCJ meeting were approved.

Criminal Justice Reform Subcommittee

Representative Chasey announced to the committee that the New Mexico Legislative Council approved a Criminal Justice Reform Subcommittee, and she directed the co-chairs of the CCJ to appoint eight members, including two members of each party in each chamber, in consultation with the speaker of the house of representatives and the president pro tempore of the senate. Representative Chasey told the committee that the co-chairs would propose the following members for the subcommittee: Representative Maestas and Senator Torracco as co-chairs;

Representatives Chasey, Fajardo and Powdrell-Culbert; and Senators McSorley, O'Neill and Rue.

Use of Solitary Confinement in New Mexico's Prisons

Steve Allen, American Civil Liberties Union of New Mexico (ACLU-NM), and Gail Evans of the New Mexico Center on Law and Poverty (NMCLP), discussed a just-published report from the ACLU-NM and the NMCLP regarding solitary confinement in prisons and jails in New Mexico. Ms. Evans told the committee that she has seen a change in prisons over the past couple of decades, and she provided anecdotal evidence. She has had clients in solitary confinement that have not had any human contact except for attorney visits. She stressed that prison reform, particularly regarding solitary confinement, should be a priority for New Mexico.

Ms. Evans told the committee that the report began as a request for information sent to eight jails around the state and to the CD. She told the committee that the information was often difficult to maintain because of the way that it is compiled. She said the CD estimates that 16% of its inmates are in solitary confinement at any given point in time. She said that the Metropolitan Detention Center in Albuquerque reported that it has about 300 people in solitary confinement at most times. Ms. Evans told the committee that each jail she contacted uses solitary confinement. Ms. Evans discussed policy changes regarding solitary confinement in states such as Maine, Mississippi and Illinois. She told the committee that it costs more to incarcerate maximum security prisoners and have prisoners in solitary confinement. A 2007 Arizona estimate shows that the annual cost of placing someone in a "supermax" facility was \$50,000, compared to \$20,000 for other prisoners. In Texas, it costs 45% more to house prisoners in solitary confinement than in conventional prison cells.

Mr. Allen said that the NMCLP and the ACLU-NM urge New Mexico to adopt the following reforms to the use of solitary confinement: increased transparency and oversight; limiting the length of solitary confinement to no more than 30 days; mandating that all prisoners be provided with mental, physical and social stimulation; and banning the use of solitary confinement for the mentally ill and children. Mr. Allen told the committee that he is excited that the CD has agreed to work with the Vera Institute to address solitary confinement in New Mexico.

Members of the committee asked questions about and discussed: solitary confinement in other states; the CD's work with the Vera Institute; costs of implementing certain recommendations and incarcerating individuals in solitary confinement; oversight of privately run prisons; lawsuits as a result of solitary confinement; and the impacts of solitary confinement on individuals.

Members of the committee requested that the New Mexico Association of Counties (NMAC) respond to the report and discuss solitary confinement in county jails. Grace Philips, attorney, NMAC, mentioned that she had only recently received the report. She told the committee that the NMAC standards for accreditation for county detention facilities address special-management housing and management of individuals with mental issues. She said that

the presentation had many factual inaccuracies. Ms. Philips emphasized that isolation, solitary confinement and segregation are terms that should not be used interchangeably. There are many reasons to segregate, many of which are for an inmate's protection rather than for discipline. The committee agreed to allow the CD and NMAC to respond to the report at the CCJ's November meeting.

Public Comment

Don Johnston identified himself as a convicted sex offender who had been held in solitary confinement. He described his experiences in solitary confinement to the committee.

Jim Brewster, general counsel for the CD, told the committee that the CD will provide a written response to the report and welcomes the opportunity to make a presentation to the committee on CD policies. He told the committee that the CD screens for mentally ill inmates and provides programs to inmates in segregation.

Report from the Judiciary: Unified Budget and Proposed Legislation

Petra Jimenez Maes, chief justice of the New Mexico Supreme Court, reminded the committee of the judiciary's relatively new budget process — the unified budget. She told the committee that the unified budget contains all of the budget requests from the judiciary for fiscal year (FY) 2015. The budget process begins with judicial entities presenting their proposed budgets during two full days of hearings in August to a budget committee. The budget committee then makes recommendations to the New Mexico Chief Judges Council, which deliberates and makes recommendations to the New Mexico Supreme Court. The New Mexico Supreme Court carefully reviews, edits and sets the budget. The judiciary is requesting a general fund increase of approximately \$10.8 million, which includes approximately \$1.8 million to cover Public Employees Retirement Association (PERA) and General Services Department rate increases. The total requested general fund appropriation is approximately \$158 million, or 2.55% of the projected total state spending for FY 2015. The chief justice referred the committee to the unified budget proposal book. The judiciary is requesting an increased budget to allow for an increase in the base budget, judicial compensation, five new judgeships, a drug court and PERA rate increases. Chief Justice Maes told the committee that the judiciary's highest priority is to improve funding for basic court operations.

Chief Justice Maes discussed judicial salaries and salary comparisons outside of the judiciary. She told the committee that the judiciary is requesting a 5% increase in judge salaries, still considerably less than the Judicial Compensation Commission recommended. She said that the First Judicial District needs 2.1 new judges, but the judiciary is requesting only one new judgeship. The Second Judicial District needs 5.14 new judges, only one of which has been requested. The Fifth Judicial District needs 2.05 new judges, only one of which has been requested. The Thirteenth Judicial District needs 3.61 new judges, one of which has been requested. The Dona Ana County Magistrate Court needs 2.5 new judges, only one of which has been requested in the unified budget.

Chief Justice Maes told the committee that the FY 2015 request allows for an increase in drug court funding of \$1.5 million. This increase is consistent with the three-year growth plan adopted by the New Mexico Supreme Court in July 2013. Chief Justice Maes discussed the benefits of drug courts.

Chief Justice Maes then discussed potential legislation for the 2014 session. She referred the committee to drafts of the bills. One bill would fund new judgeships in certain districts, another would remove a sunset on legislation that allows the courts to collect a magistrate court's operation fee when an offender commits a traffic offense and the third would allow the Administrative Office of the Courts (AOC) and the Traffic Safety Bureau (TSB) of the Department of Transportation, with the agreement of the New Mexico Finance Authority, to distribute annually to the AOC and TSB assets in the Metropolitan Court Bond Guarantee Fund that exceed 120% of the annual bond payments from the fund.

Members of the committee asked questions about and discussed the judiciary's unified budget, administrative support, funding for special courts, use of contract attorneys, judicial salaries, court leases, court renovations, judicial retirement requirements and the Judicial Compensation Commission.

Recess

The chair announced that the last presentation of the day, regarding SB 65 (2013), would be rescheduled for the November meeting. The committee recessed at 4:51 p.m.

Tuesday, October 22

Tour of the NMWCF

Committee members and staff toured the NMWCF and were given a presentation on the facility. Arlene Hickson, warden of the NMWCF, and staff at the facility discussed various programs. The Healing Hearts dog-training program has been in place at the NMWCF since August 2007. The program has adopted more than 275 dogs, and some of those dogs are now being used during therapy. Inmates must meet certain criteria to be assigned to the program, and the program is considered to be a full-time institutional job assignment for the inmates. Programs in segregation include education, work programming and recreation five days a week as well as bible studies and individual counseling. Mental health screenings are done for all inmates within 24 hours of admission and for any inmate in need of mental health services or psychiatric services. Clinical assessments are offered to all women who are prescribed or may need psychotropic medications. Seventy-seven percent of the inmates at the NMWCF are on psychotropic medication. The prison's mental health department also holds group and individual psychotherapy sessions, and it provides services for inmates prior to discharge. From 2011 to 2012, there was a 9% increase in the mental health caseload. The Therapeutic Behavioral Health Unit has been in operation for three years and includes a supportive-living environment for 10 high-risk female offenders who have exhibited self-injurious behaviors or borderline personality disorder traits. There have been 28 graduates of the program.

The Fitness Pod houses 21 individuals led by four facilitators and is populated by inmates that might benefit from proper diet and exercise. A variety of workouts and instruction on physical and mental health topics are provided. The goal is to increase health awareness, decrease chronic health medication costs and empower inmates to make better health decisions. The Residential Drug and Alcohol Program combines cognitive behavioral therapy, motivational interviewing and interactive journaling. This model has been operated successfully within the Federal Bureau of Prisons for a number of years. Education programs are offered to inmates, including adult basic education and vocational programming in Microsoft and veterinarian technician programs. Breaking Barriers is a nine-week course that includes several workshops and class discussions. The Success for Offenders After Release Program is an intensive job-skills program open to certain inmates. Participants complete intensive career assessment, exploration, goal-setting and education. P.S. I Love You is a program that provides inmates with a way to communicate with their children and grandchildren by recording an inmate reading a book aloud and sending the book and a video to the inmate's family.

The committee asked questions about and discussed: programs provided to inmates; mental health issues; educational services; inmates that are Medicaid-eligible; information provided to inmates regarding social services available after discharge; family visitations; computer training; prison demographics; inmate population growth; and gender-specific programming.

Adjournment

There being no further business before the committee, the fifth meeting of the CCJ for the 2013 interim adjourned at 1:21 p.m.