

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

**July 14, 2011
Youth Diagnostic and Development Center Auditorium
4000 Edith Boulevard NE
Albuquerque**

**July 15, 2011
Children, Youth and Families Department
Protective Services Office
1031 Lambertson Place NE
Albuquerque**

The second meeting of the Courts, Corrections and Justice Committee was called to order by Representative Al Park, co-chair, on July 14, 2011 at 10:10 a.m. at the Youth Diagnostic and Development Center Auditorium in Albuquerque.

Present

Sen. Peter Wirth, Co-Chair
Rep. Al Park, Co-Chair (July 14)
Sen. Rod Adair (July 15)
Rep. Gail Chasey
Sen. Mary Jane M. Garcia (July 14)
Rep. Nate Gentry
Sen. Clinton D. Harden, Jr.
Sen. Linda M. Lopez
Sen. Richard C. Martinez
Rep. William "Bill" R. Rehm
Sen. John C. Ryan (July 15)

Absent

Rep. Joseph Cervantes
Rep. Zachary J. Cook
Rep. David L. Doyle
Rep. Antonio "Moe" Maestas
Rep. Mimi Stewart

Advisory Members

Rep. Eliseo Lee Alcon
Rep. Thomas A. Anderson
Rep. Brian F. Egolf, Jr. (July 14)
Rep. Dennis J. Kintigh
Rep. W. Ken Martinez
Sen. Cisco McSorley
Rep. Bill B. O'Neill
Sen. Sander Rue
Rep. Sheryl Williams Stapleton
Sen. David Ulibarri (July 15)
Rep. Richard D. Vigil (July 15)

Rep. Cathrynn N. Brown
Sen. Carroll H. Leavell
Sen. William H. Payne
Sen. John Pinto
Sen. Michael S. Sanchez

Guest Legislator

Rep. Debbie A. Rodella (July 15)

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

Staff

Maha Khoury, Staff Attorney, Legislative Council Service (LCS)

Alise Rudio, Staff Attorney (July 14), LCS

Douglas Carver, Staff Attorney (July 15), LCS

Leslie Porter, Research Assistant, LCS

Guests

The guest list is in the meeting file.

Handouts

Handouts and written testimony are in the meeting file.

Thursday, July 14

Welcome and Introductions

Representative Park welcomed committee members and guests and requested that committee members introduce themselves to the audience.

Approval of Minutes

The minutes of the previous meeting were approved by the committee.

Update on Cambiar New Mexico: Juvenile Supervision, Facilities and Programming

Yolanda Berumen-Deines, secretary, Children, Youth and Families Department (CYFD), expressed her excitement about the meeting being held at the Youth Diagnostic and Development Center (YDDC) and about the tour of the facility. She discussed the continued implementation and progress of Cambiar New Mexico. Secretary Berumen-Deines explained the philosophy of the CYFD's juvenile justice programs and said that they provide a continuum of services from the time a youth enters the system until the youth re-enters society. She noted that her administration has evaluated the Cambiar model and has decided to continue using it. She said that the CYFD has worked closely with the Missouri Youth Services Institute to improve sustainability efforts. She stated that Cambiar immersion training was completed for all of the units in Camino Nuevo and the YDDC in April 2011, and she assured the committee that new staff members will also receive the training.

Secretary Berumen-Deines said that internal audits will be conducted annually, or more often as needed, and she discussed facility trends. She said that the trend of admissions to juvenile facilities is stable, and she noted that 70 percent of the youths who are committed to a secure facility are age 17 or older. She stated that her administration's current initiatives include providing governance and accountability to ensure that safety and security policies are followed,

maintaining a continuous recruitment process for youth care specialists and re-establishing an internal quality assurance program. Regarding future initiatives, the secretary said that her administration is working closely with the behavioral health community to develop services that divert youths from incarceration.

Edna Reyes-Wilson, Ph.D., deputy secretary, CYFD, added that she looks forward to seeing the model grow and evolve into something that provides true rehabilitation.

Pablo Sedillo III, director, Juvenile Justice Services, CYFD, expressed his strong belief in ensuring the safety of the staff and children. He discussed Cambiar and the importance of enhancing the program. He said it is critical to make contact with a youth and then keep track of that youth while the youth is in the system. He said that it is Juvenile Justice Services' job to rehabilitate children before sending them back into society. This can only be accomplished through a treatment-oriented system in which life skills are taught, and that system is in place to promote that goal.

Peter Cubra, an attorney representing the American Civil Liberties Union (ACLU), briefly discussed his background and his involvement with representing children in the juvenile justice system. He said that the juvenile justice system was in terrible shape in 2003, especially the former New Mexico boys' school in Springer. He stated that medical services in the youth facilities across the state are grossly inadequate and that no good grievance system is in place. He said that after litigation and settlements, the situation has improved, and medical care at Camino Nuevo and the YDDC has gone from deplorable to decent and mental health care has significantly improved. He said that there are still areas that need attention, such as a reliable quality assurance system and severe staff vacancies, especially in the mental health area. He said that the CYFD needs to discipline staff members who do not treat youths well or support the Cambiar principles. Finally, he discussed litigation issues that remain and the progress being made. He expressed his respect for the current administration. Secretary Berumen-Deines noted that the CYFD and the ACLU recently had a productive meeting and gave Mr. Cubra her assurance that she takes seriously the agreements made between the CYFD and the ACLU.

Monique Sambrano told the committee about how her family was hit by tragedy twice due to juveniles who committed two murders. She stated that she feels 13-year-olds who commit murder should be prosecuted as adults to the full extent of the law. A copy of her testimony is in the meeting file.

Members of the committee expressed their support of the implementation and principles of Cambiar New Mexico and for the new administration. Committee members asked questions and discussed policy options on various topics, including the internal audit data; anticipated increase of youths in juvenile facilities; comparison of the old and new treatment and rehabilitation methods; solitary confinement; quality of health services in juvenile detention facilities; foster care; and staffing.

Tours of the YDDC and Camino Nuevo

Committee members, staff members and members of the public toured both facilities, asked questions and spoke with many of the youths detained in the facilities.

Teen Court: Alternative Sentencing for Juveniles

Alice Sealey, program manager, Teen Court of Santa Fe County (TCSF), explained that there are 20 teen courts across the state and that the objective of teen court is to keep teenagers out of the juvenile justice system. She said that teen courts are alternative sentencing courts that allow teenagers who admit to guilt to complete a voluntary program in exchange for keeping their records clean.

Jennifer Romero, program coordinator, TCSF, explained that in teen court, teenagers are sentenced by a teen jury. She emphasized that teen court does not determine guilt or innocence but is for sentencing only. She said that the program is available for eligible teenagers with misdemeanor offenses who are referred to teen court by magistrate or municipal courts, juvenile probation and parole, public schools and children's court. Teen volunteers from local high schools act as attorneys. Examples of teen court sentencing include substance abuse programs, parent involvement programs, smoking cessation programs, community service and a graffiti clean-up project. She added that part of the teen court funding comes from DWI prevention money, so every teenager goes through a DWI prevention program.

Ms. Romero said that the TCSF conducted a recidivism study in 2011 to assess the efficacy of the program and capture the demographic and socioeconomic profile of teenagers who complete teen court. The study received a 28 percent response rate, and the results showed that the recidivism rate is 15 percent. In the demographic and socioeconomic profile, 66 percent of first-time offenders are males, 69 percent of first-time offenders are Hispanic and 81 percent of offenders complete their high school education after completing the teen court program.

Ms. Sealey noted that the teen court is funded through fees, DWI funds and state, county and city appropriations. She told the committee that teen court is open to any legislator who would like to visit.

The committee asked questions of the panel, made comments and discussed policy options.

Public Comment

David R. Schmidt, director, New Mexico Council on Crime and Delinquency, stated that teen courts began in the 1960s, and communities have learned their many pitfalls, such as giving a teenager the ability to sentence another teen and allowing teen courts to take on more serious crimes, such as DWI. He said that a state fund has been created to operate them, yet guidelines are lacking. Finally, he expressed concern that teen courts have evolved into quasi-judicial establishments.

Mr. Cubra, speaking as a citizen, said that the results of Cambiar New Mexico will not be seen for a while because the program is still being implemented throughout the state. He emphasized that he is a strong supporter of Cambiar and its methodology. In the past, violent

youths have been contained by violence and threats of violence, the opposite of what adults want to show to children. He said better results are achieved when youths are taught to face each other as humans, to make themselves accountable and to instill values in each other.

Recess

The committee recessed at 4:45 p.m.

Friday, July 15

The meeting was reconvened by Senator Wirth at 9:05 a.m. Due to the highly publicized nature of the first topic on the day's agenda, Senator Wirth suggested that public comment be taken after the first presentation.

Comparison of Voter Registration and Motor Vehicle Division Records

Secretary of State Dianna J. Duran thanked the committee for inviting her, and she introduced members of her staff: Thomas Dow, general counsel; Bobbi Shearer, director, Bureau of Elections; and Ken Ortiz, chief of staff. Secretary of State Duran said that she hopes to clear up misunderstandings surrounding her investigation of voter files. She emphasized that it is her obligation and responsibility to ensure that her office has the most accurate voter file in the state and to verify and ensure that everything in the database is accurate. She explained that in January, her office became aware of the issue of verification of voter data and that federal law gives the secretary of state the authority to verify the voter registration data with the Motor Vehicle Division (MVD) of the Taxation and Revenue Department and the federal Social Security Administration (SSA). Secretary of State Duran noted that while the press has reported that she had launched an investigation of voter fraud, she never stated that she was investigating voter fraud. Secretary of State Duran emphasized repeatedly that this is a verification process and that her responsibility as secretary of state is to assure the accuracy and integrity of the voter files.

Senator Wirth allowed public comment after Secretary of State Duran's opening remarks. Dick Mason from the League of Women Voters stated that the league is concerned about unsubstantiated statements regarding voter fraud, which statements undermine public confidence in the voting process, and about the lack of transparency in the process, particularly that the Office of the Secretary of State has not revealed the files being investigated or the information used to justify an investigation of certain voter files.

Sheryl Nichols of the New Mexico County Clerks Affiliate said that the county clerks do not believe that there is widespread error or fraud in the voter files and are willing to assist the secretary of state.

Steven Allen, executive director, Common Cause New Mexico, noted the problems with alleging that undocumented individuals have been voting in New Mexico elections.

Lissa Knudsen, director of public policy for the New Mexico ACLU, said that the lack of transparency in this process is her organization's biggest concern, specifically the redacting of information from documents that have been provided.

Sterling Fluharty stated that the United States Census Bureau conducts a survey of national voters in which it asks about registered voters. He said that New Mexico has not always done the best job with keeping the voting roles clean or accurate and that with the latest census data, there are 20 precincts in Bernalillo County in which there appear to be more registered voters than the actual number of eligible voters.

Another member of the public stated that there had been many studies showing voter fraud.

Paul Stokes of United Voters of New Mexico stated that it is important to ensure that files are accurate, and he is concerned that the information would be used for partisan purposes. He is also worried that the investigation is a precursor to a voter identification law.

Members of the committee asked about the process that was used to compare the voter data with MVD and SSA records and what would be done with the individuals whose names do not match either database. Secretary of State Duran responded that the federal Help America Vote Act of 2002 gives her office the authority to compare the entire voter registration database. She described the steps taken by her office. First, the name, social security number and date of birth of voters in the voter registration database were compared with the MVD's database because, as Mr. Ortiz clarified, every driver's license applicant with a social security number is matched with SSA records to confirm identification of that person. Second, if the information was not verified by comparison against the MVD database, it was compared with information at the SSA. If the voter information did not match either MVD or SSA records, then it was sent to the Department of Public Safety (DPS) for investigation. Secretary of State Duran stated that 5.5 percent of the voter database, around 64,000 voter records, were sent to the DPS for investigation. She categorized the records that did not match into three groups: clerical errors; invalid social security numbers; and names and dates of birth that did not match valid social security numbers. Secretary of State Duran stated that her office does not have the authority to remove anyone from the voter files, and she assured the committee that no one in her office will be doing this.

Committee members asked for clarification as to why all 33 county clerks believe that there are no errors in the files. Ms. Nichols responded that there are probably clerical errors but not voter fraud. Discussion ensued among the members, the panel and the public about whether the names of the individuals who cannot be matched to the MVD or SSA databases should be published. Mr. Mason expressed his desire for the League of Women Voters to have access to the files so it may conduct an investigation of its own. Ms. Knudsen of the ACLU would like the files so that the ACLU can ensure that a particular group is not being targeted and to gain the public's trust. Secretary of State Duran explained the process that contributed to the bloated voter files, including a confirmation mailing that should have been conducted in 2007 but was not. Secretary of State Duran said her office is currently aiming to conduct the confirmation mailing every October, and she added that the next purge of the files will not be until 2013.

Members of the committee expressed concern that the investigation appears to be a criminal, not an administrative, investigation because files have been turned over to the DPS. Concern was also expressed that the secretary of state does not have the authority to involve the DPS but is required by law to turn over such investigations to the attorney general or the appropriate district attorney. Another question was raised as to whether it is a violation of law to turn over social security numbers to the DPS without the authority to divulge those numbers. Mr. Dow explained that when criminal activity might be involved, any district attorney would want a law enforcement agency to conduct the investigation. He added that the DPS has the technical knowledge and expertise to sort through the data and detect specific problems. He stated that the investigation is potentially or partially criminal, but conclusive evidence will not be revealed until the investigation is over.

Some members questioned why the county clerks were not involved in this process from the beginning, as they are local and closer to the voters and can more readily identify errors in the voter files. The response was that the DPS is trained for this type of work, and inconsistent data are not something that county clerks necessarily could fix.

Certain members of the committee noted that there is a perception of widespread voter fraud in the state and that it is important for public confidence that the voter files be accurate. Secretary of State Duran was commended for her efforts and diligence in assuring that voter files are reliable and for minimizing any inaccuracy or fraud in the system. The point was made that the committee had scheduled three separate presentations about potential voter fraud, and the persons who alleged the existence of voter fraud did not attend the meetings.

Certain members of the committee conveyed their constituents' fears that the secretary of state is conducting a wide-ranging criminal investigation. These constituents are particularly worried that they could face charges or go to jail if, for some reason, their names are wrong in the voter rolls. The point was made that social security numbers may be problematic for older residents and that there are people in New Mexico who were never assigned a social security number.

When asked about the costs of this investigation, Secretary of State Duran responded that employee hours dedicated to the investigation have not been compiled but that her office and the DPS have determined that no extra money will be needed.

Elections: Reporting of Independent Expenditure and Update on Public Financing

Josephine Porter of the League of Women Voters of New Mexico and Mr. Allen gave a presentation on two draft bills concerning elections. Ms. Porter discussed the issue of independent expenditures. She noted that the federal courts have severely restricted what state governments can do to limit independent expenditures but that they have strongly endorsed disclosure requirements. She noted that the Campaign Reporting Act does not distinguish between independent expenditures and party committees. Ms. Porter emphasized that it is important that any legislation be carefully drafted so that there is no chilling or intimidating effect on constitutionally protected speech. Mr. Allen noted that the Campaign Reporting Act

does a good job of asking elected officials to disclose their finances, but it does not do a good job requiring disclosure from independent groups.

With respect to public financing, the committee discussed the recent decision by the United States Supreme Court in *Arizona Free Enterprise v. FEC*, which invalidated a public financing scheme in Arizona similar to one in New Mexico. Ms. Porter stated that public financing of elections provides support to average citizens and small business owners in making an impact on the election system by allowing maximum participation in the democratic process. She added that when an individual is running for office, public financing allows that individual to express ideas free of the perception of undue influence by large donors. Their discussion elaborated on two memoranda provided to the committee by Common Cause New Mexico.

When asked what would happen if no action were taken on these issues, Mr. Allen responded that the state does not currently have a functional Campaign Reporting Act and that the state would go into an election with no transparency requirement for independent expenditures. Regarding public financing, he noted that there is no additional money for the 2010 election cycle. When asked about proposed fixes for the *Citizens United* case, Mr. Allen stated that there have been attempts to pass federal legislation requiring additional disclosure. Members of the committee also inquired about the current public financing system in New Mexico, and Secretary of State Duran and Mr. Dow participated in this discussion. There was general agreement that, given the proximity of the 2012 elections, if changes are needed, they should be considered in the pending special session of the legislature.

Adjournment

There being no further business before the committee, the second meeting of the Courts, Corrections and Justice Committee adjourned at 12:50 p.m.