

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

**September 14-15, 2006
New Mexico State University Golf Course Club House
Las Cruces**

The fourth meeting of the Courts, Corrections and Justice Committee for the 2006 interim was called to order by Representative Joseph Cervantes, co-chair, and Senator Cisco McSorley, co-chair, on Thursday, September 14, 2006, at 10:34 a.m. at the University 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
Rep. Peter Wirth

Advisory Members

Sen. Mary Jane M. Garcia (September 15)
Rep. W. Ken Martinez
Rep. Jane E. Powdrell-Culbert
Rep. Bill Rehm

Absent

Rep. Gail Chasey
Sen. Lidio G. Rainaldi
Sen. H. Diane Snyder
Sen. Leonard Tsosie
Rep. Eric A. Youngberg

Sen. Ben D. Altamirano
Rep. Hector H. Balderas
Sen. Kent L. Cravens
Sen. John T.L. Grubestic
Sen. Clinton D. Harden, Jr.
Sen. Gay G. Kernan
Sen. Linda M. Lopez
Sen. Gerald Ortiz y Pino
Sen. William H. Payne
Sen. John C. Ryan
Sen. Michael S. Sanchez
Rep. Sheryl Williams Stapleton
Rep. Mimi Stewart
Rep. Thomas E. Swisstack
Sen. James G. Taylor

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

Staff

Maha Khoury
Evan Blackstone
Lindsey Bilovesky

Guests

The guest list is in the meeting file.

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

Thursday, September 14**Call to Order**

Senator McSorley and Representative Cervantes welcomed committee members and guests.

Welcoming Remarks

Dr. Michael V. Martin, president of New Mexico State University (NMSU), welcomed the committee to NMSU. He emphasized how proud he is of his students. He explained that NMSU has increased enrollment, completed a five-year capital plan in only two years and has been working diligently with the legislature.

Surface Owner Protection Act

Representative Andy Nunez introduced his version of the Surface Owner Protection Act. He wants tighter restrictions than the substitute bill of last session.

Alisa Ogden, president-elect of the New Mexico Cattle Growers Association (NMCGA), supports the bill as well. She described the new attitude that has been adopted by the NMCGA. This bill would require compensation for damages and for use of the land. It also extends the period of time that a surface owner and operator have to reach an agreement.

Bruce Baizel, staff attorney for the Oil and Gas Accountability Project, explained that this bill does not change the dominance of the mineral estate. He stated that access to minerals is an important part of the bill, but requiring notice and discussion prior to accessing minerals is necessary. Mr. Baizel would like to see a compromise between surface owners and operators.

Bob Gallagher, president of the New Mexico Oil and Gas Association (NMOGA), introduced his version of the Surface Owner Protection Act. Mr. Gallagher made it clear that this is the same bill that passed the house last session. He said that the NMOGA is the only agency of its kind to support a surface owner protection bill.

Raye Miller, Executive Committee member for NMOGA, said he thinks the bill is a compromise. It allows sufficient notice prior to a surface disturbance. It provides for cooperation with the land owner and compensation for damages. The operators also must post a bond if they cannot reach an agreement with the surface owner. However, the NMOGA will not pay for loss of use of the land, just the damages.

Senator McSorley and Representative Cervantes invited public comment. Committee members discussed possible solutions and asked questions of the panel.

New Mexico Women's Justice Project: Incarceration vs. Treatment and Other Issues

Maureen A. Sanders, president of the New Mexico Women's Justice Project (WJP), explained that she is frustrated with the New Mexico Corrections Department's (NMCD) and the Corrections Corporation of America's handling of services and programs for women at the newly opened Camino Nuevo facility in Albuquerque. She emphasized the lack of proper gender-specific programming at the facility, including the lack of education, parenting and substance abuse treatment programs. She also informed the committee of deficiencies in the facility's work release program. She emphasized that WJP's goal is to lower recidivism of women in the state and that correctional facilities in the state should implement gender-responsive training and programming. This includes training for all adult and juvenile correctional, probation and parole officials, private providers of service and drug court providers. Also, women need programming that fits their psychological, social and cultural needs.

Diane Wood, spokesperson for the WJP, explained the project's legislative funding and policy recommendations. Its recommendations include a full investigation of mental health and health services in correctional facilities, oversight of NMCD, contract management of privately run prisons and Population Control Commission sunrise legislation. The WJP also wants funding for halfway houses, substance abuse treatment and gender-responsive training. WJP also requested creating an Employment Barriers Task Force that would review employment opportunities with statutory and regulatory barriers for former felons and make recommendations.

Angie Vachio, vice president of the WJP, emphasized the extreme need for housing. Halfway houses and specialty complexes are needed because felons are restricted from living in public housing. This also negatively affects the children of such felons. Ms. Vachio said that children are eight times as likely to end up incarcerated if a parent is or was incarcerated and that WJP is trying to break this cycle.

Senator McSorley and Representative Cervantes invited public comment. Erma Sedillo, deputy secretary for operations for the NMCD, responded to Ms. Sanders' comments regarding the Camino Nuevo facility. She stated that the NMCD does have substance abuse programs in its facilities and that although there is not a substance abuse program in Camino Nuevo, the department is working on it. She also pointed out that there is a mental health treatment program in the Grants facility and that NMCD is working to improve the work release program at Camino Nuevo. Committee members discussed possible solutions and asked questions of the panel. Representative Cervantes asked for a letter from Irma Sedillo, the deputy secretary of NMCD, that states that any committee member could drop by for a tour of the facility and inspect records.

Senator Leavell made a motion to invite the Administrative Office of the Courts and the Department of Finance and Administration to the next meeting to explain how the SHARE System is being corrected. Senator Martinez seconded the motion and it was passed without opposition.

The committee recessed for lunch at 1:12 p.m. and reconvened at 2:00 p.m.

Judicial Standards Commission: Enforcing the Code of Judicial Conduct and Practicing Before the Commission

Chief Justice Richard C. Bosson, New Mexico Supreme Court, stated how important the Judicial Standards Commission's (JSC) work is in ensuring an independent and honorable judiciary in the state. James Noel, executive director for the JSC, described the inner workings of the JSC. Mr. Noel explained that the commission has jurisdiction to hear complaints concerning all judges in New Mexico. The JSC has the authority to request that the New Mexico Supreme Court discipline or censure a judge. David Smoak, chair of the JSC, described his experience as a layperson on the commission. He also gave a breakdown of the process flow chart. Justice Dan Sosa, Jr., a member of the JSC, analyzed his experiences with the commission.

Joleen K. Youngers, attorney, Almanzar and Youngers, P.A., described ways to improve the commission. Ms. Youngers said that many common themes have occurred such as intrusion, undue interference with the court system, narrowing the focus of the courts, causing damage to judges' reputations and forcing vindicated judges to pay for attorney fees and costs. She proposed that a voluntary peer council could screen which cases should be heard by the commission. Ms. Youngers stated her concern that the state is losing talented judges and that new, potentially talented judges are too fearful to run for office.

Lawrence R. White, attorney, Miller Stratvert, P.A., explained to the committee that he has serious doubts about the fairness of the JSC. The JSC interprets its own rules, does not get the benefit of minimal standards and it decides its own discovery issues as well. Mr. White's recommendation is to hire independent counsel for the commission that is completely separate from the staff that charges and investigates a judge.

Senator McSorley and Representative Cervantes invited public comment. Las Cruces Judge Locatelli described his experience with the JSC and expressed his concerns. Committee members discussed possible solutions and asked questions of the panel.

Border Security: Operation Safe Border

Tim Manning, homeland security advisor and the Office of Emergency Management director for the Department of Public Safety, explained the governor's declaration of emergency that was officially announced last year concerning New Mexico's border with Mexico. He also described Operation Jumpstart, which moved additional National Guard troops to the border area. Colonel James Morgan, New Mexico National Guard, further explained Operation Jumpstart. Taskforce Zia is made up of an additional 900 soldiers that provide direct support to border patrol agents.

Lieutenant Roman Jimenez, New Mexico State Police, stated that his department provides law enforcement services around the clock. Sheriff Todd Garrison, Dona Ana County Sheriff's Office, explained that his department uses Highway 9 and Highway 26 to look for illegal aliens and drug traffickers. Raymond Cobos, undersheriff for Luna County, said the money funded by the declaration of emergency was needed desperately. He said bodies were found in the desert and illegal immigrants were stealing from farmers and residents of the state. The money has helped to combat this.

Experience of Border Communities

Kathleen Erickson, Sisters of Mercy, and spokesperson for Desert Humanitarians, spoke about humane immigration reform. Ms. Erickson stated that border issues have their roots in

poverty issues. She stated that the United States is at least partially responsible for the poverty in Latin America. She stands against militarizing the border, and instead would like to change the typical conversation on border security. Elizabeth Camargo, program coordinator for the Border Network on Human Rights, spoke about the militarization of the border and how it has adversely affected border communities, increased crime and discouraged people from cooperating with law enforcement. She told stories of mistreatment of people by law enforcement simply because they were of Latin American descent.

Marcela Diaz, executive director of Somos Un Pueblo Unido, stated that people deserve civil rights and human rights regardless of their immigration status. She described how local law enforcement is illegally detaining people on a federal immigration and customs enforcement (ICE) hold by not following procedures and by holding people beyond their release date. Ms. Diaz stated that the federal government is not paying for the alleged ICE holds, either.

Senator McSorley and Representative Cervantes invited public comment. Committee members discussed possible solutions and asked questions of both the border security panel members and the human rights advocates.

Committee Business

A motion was made and seconded to approve the minutes of the August meeting. The minutes were approved without objection.

Recess

The committee recessed at 6:35 p.m.

Friday, September 15

Call to Order

Senator McSorley and Representative Cervantes reconvened the committee at 9:35 a.m. and welcomed members and guests.

Problems with Eyewitness Identification Testimony

Michael Stout, New Mexico Criminal Defense Lawyers Association, emphasized that mistaken identification by eyewitnesses is the leading cause of wrongful convictions in New Mexico. He introduced draft legislation to the committee that he thinks will reduce this problem. Mr. Stout explained that memory is afflicted before and after the identification, causing false certainty in some situations. The act would include provisions for: written description prior to a lineup, informing the eyewitness that the suspect may not be in the lineup, making the lineup a double-blind procedure and showing suspects sequentially, not simultaneously. Also, showups would be discouraged and the procedure must be recorded. First Judicial District Attorney Henry Valdez stated that many of the studies relied upon by the defense lawyers are not sound science. Senator McSorley directed staff from the New Mexico Sentencing Commission to study the science issue.

The co-chairs invited public comment. Committee members discussed possible solutions and asked questions.

The REAL ID Act of 2005: Requirements, Implementation and Options Available to States

Matt Sundeen, Transportation Program principal, National Conference of State Legislatures (NCSL), discussed implications and options for states regarding the REAL ID Act of 2005. The act, passed by the Congress in 2005 and signed by the president, imposes minimum standards for federal use of a driver's license or identification card. Pursuant to the act, after May 11, 2008, a federal agency may not accept a driver's license or identification card for "official purposes" unless the issuing state meets the requirements of the REAL ID Act. "Official purposes" may include boarding commercial aircraft and accessing federal courts and facilities. Congress charged the federal Department of Homeland Security (DHS) with promulgating standards and certifying states' compliance with the act.

Mr. Sundeen summarized the various requirements imposed by the REAL ID Act. The act requires states to implement minimum driver's license and identification card design requirements. A license or card must include, among other requirements, a person's full legal name, a digital photograph, address of principal residence and physical security features designed to prevent tampering, counterfeiting, duplication and fraud. The act also mandates that states verify a person's lawful status before issuing a license or identification card. In order to receive a license or card, a person must be a citizen or national of the United States or meet one of the eight categories of lawful immigrant status. Additionally, states must verify the validity and completeness of all documents presented by a person when applying for a license or card. This includes birth certificates, social security numbers and immigration documents. For purposes of a REAL ID-compliant license or card, the act prohibits states from accepting any foreign document other than an official passport. Mr. Sundeen also informed the committee about the REAL ID Act's data storage, retention and security requirements. For example, states must employ technology to capture digital images of identity source documents, subject all persons involved in issuing or producing licenses or cards to security clearance requirements and establish fraudulent document recognition training.

Mr. Sundeen went on to review some of the concerns and costs associated with the REAL ID Act's implementation. He stated that the verification of all documents presented by a person may be difficult and costly, that 11 states do not have lawful presence requirements for a license or card and that there are significant costs for new security requirements and training of motor vehicle agency employees. He also pointed out that there is a lack of federal funding to help states with implementation. Although the REAL ID Act authorizes DHS to make grants to assist states with implementation, there is no money in the current appropriations bill for that purpose. Mr. Sundeen told the committee of NCSL's resolution, recently adopted, that urges the federal government to fund the act or repeal it.

Finally, Mr. Sundeen discussed options for state legislatures. He said states could choose to comply or not comply with the act, make a symbolic gesture such as a resolution or memorial, create a task force, work on the act's known requirements or lobby Congress.

Kenneth Ortiz, director of the Motor Vehicle Division (MVD), Taxation and Revenue Department, reviewed for the committee the impact, cost and challenges for New Mexico presented by the REAL ID Act. According to MVD's estimates, compliance with the REAL ID Act will cost New Mexico \$13,053,000 in fiscal year 2008 and \$6,044,000 each year thereafter.

He clarified for the committee that the cost estimates may change when DHS promulgates regulations for the act in early 2007.

Mr. Ortiz explained that the act's minimum document requirements, particularly requiring a person's address of principal residence on the card or license, would severely impact MVD's ability to mask or create false addresses for undercover agents or persons in witness protection programs. The act's document verification requirements also present significant issues. Although MVD currently verifies a person's name, date of birth and social security number with the Social Security Administration, Mr. Ortiz stated that it is difficult to verify birth records. Currently, only about 40 percent of New Mexico's birth records are available for electronic verification. To comply with the REAL ID Act, the MVD also needs to build an all-driver database capable of exchanging driver's license information between states, including histories, citations and revocation history information. He also pointed out that MVD's system is one of the oldest in the nation and that the division will need to purchase the hardware, software and record retention capacity needed to store images of identity source documents.

Mr. Ortiz went on to discuss the estimated costs and various concerns with the REAL ID Act's security clearance requirements and legal presence requirements. MVD currently has a fraudulent document recognition training program for its employees engaged in the handling and issuance of licenses and cards, but additional employees and funding would be required to provide training to all state, municipal and private agent employees. Additionally, Mr. Ortiz highlighted, under New Mexico law, MVD currently issues licenses and cards regardless of a person's immigration status. Mr. Ortiz proposed creating a separate document such as a "driving permit" that would allow a foreign national to drive on New Mexico's roads but would not be recognized for purposes of the REAL ID Act.

Jim Harper, director of information policy studies for the Cato Institute, explained to the committee that the REAL ID Act calls on states to implement a national ID. He urged the committee not to comply with the REAL ID Act, regardless of whether the federal government provides funding to states for implementation. Mr. Harper stated that the uniform identification system imposed by the federal government has three major privacy consequences. First, the system helps to move forward surveillance of the public by making it easier to obtain and access identification data. Second, the system represents a major transfer of power from individuals to institutions of government. Lastly, it increases the risk of persons becoming victims of identity fraud because of the centralization of identification information.

Mr. Harper asked the committee to question what benefit the REAL ID Act has as a preventative measure against terrorism. He emphasized that the act misses the mark on this issue and fails to address the terrorist element of surprise. The REAL ID Act, Mr. Harper said, would raise the cost of getting false documents and increase the cost to a level where it becomes prohibitive for illegal immigrants to pay the price. He also pointed out that identification is not required to board a plane and a person can get secondary screening in lieu of showing identification.

Christopher Calabrese, counsel for the American Civil Liberties Union's (ACLU) Technology and Liberty Project, expressed the ACLU's opposition to the REAL ID Act. Mr. Calabrese explained that there will be dramatic costs to citizens if the act is implemented. He went on to discuss Alabama's experience with attempting to comply with the REAL ID Act's

requirement that names exactly match individuals' names as held by the Social Security Administration. In that case, Mr. Calabrese said, many citizens became panicked, worried they would lose their right to drive, waited in line for days and were angered by delays and fees they experienced. He emphasized that New Mexicans would experience the same nightmares, including higher fees, worse service at the MVD and bureaucratic hassles. Citizens will not call Congress in these situations, he stated, they will call and complain to state legislators.

Mr. Calabrese went on to summarize the ACLU's points of opposition to the REAL ID Act. The act's principal residential address requirement exposes victims of domestic violence. It also hits elderly New Mexicans the hardest, threatens privacy and freedom of movement, creates a "one-stop shop" for identity thieves and usurps states' rights. He urged the committee to reject compliance with the REAL ID Act and, that if enough states refuse to comply, it will create sufficient momentum for Congress to respond.

Tyler Moran, policy analyst for the National Immigration Law Center, discussed the problems presented by the REAL ID Act for immigrants. She pointed out that in 2003, New Mexico made a decision to issue driver's licenses to residents regardless of immigration status and that the REAL ID Act requirements exclude not only undocumented immigrants but also lawful immigrants. Ms. Moran informed the committee that it is hard for immigrants to prove their full legal name, and verification through a national database can take up to two weeks. She explained the different complexities of immigration status classifications and that the training for MVD employees will be complicated and ongoing.

Ms. Moran also highlighted for the committee some options the legislature may pursue in responding to the REAL ID Act. She stated the best option is not to implement the act since New Mexico has a progressive driver's license policy and it will become easier to get a passport than a license. Secondly, New Mexico may implement the act through a state identification card and not a license. However, that option would present significant costs because the state would have to maintain two database systems.

Committee members expressed their concern and discussed options. Some members urged that New Mexico not comply with the act.

Adjournment

The committee adjourned at 1:00 p.m.