

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

**November 19-20, 2007  
Room 307, State Capitol  
Santa Fe**

**(not approved)**

The sixth meeting of the courts, corrections and justice committee (CCJ) was called to order by Senator Cisco McSorley, co-chair, at approximately 10:15 a.m. on Monday, November 19, 2007, in room 307 of the state capitol in Santa Fe, New Mexico.

**Present**

Sen. Cisco McSorley, Co-Chair  
Rep. Al Park, Co-Chair  
Sen. Rod Adair (11/20)  
Rep. Thomas A. Anderson  
Rep. Gail Chasey  
Sen. John T.L. Grubestic  
Sen. Carroll H. Leavell  
Rep. Antonio "Moe" Maestas  
Sen. Richard C. Martinez  
Sen. Lidio G. Rainaldi  
Rep. William "Bill" R. Rehm  
Rep. Peter Wirth

**Absent**

Rep. Joseph Cervantes  
Sen. Kent L. Cravens  
Rep. Eric A. Youngberg

**Advisory Members**

Rep. Daniel R. Foley  
Sen. Clinton D. Harden, Jr.  
Sen. Linda M. Lopez (11/20)  
Rep. Jane E. Powdrell-Culbert  
Sen. John C. Ryan  
Rep. Sheryl Williams Stapleton  
Rep. Mimi Stewart  
Rep. Thomas E. Swisstack

Sen. Ben D. Altamirano  
Rep. Elias Barela  
Sen. Mary Jane M. Garcia  
Sen. Gay G. Kernan  
Rep. W. Ken Martinez  
Sen. William H. Payne  
Sen. Michael S. Sanchez  
Sen. James G. Taylor  
Rep. Teresa A. Zanetti

(Attendance dates are noted for members not present both days.)

**Staff**

Maha Khoury  
Evan Blackstone  
Aldis Philipbar

### **Guest List**

The guest list is in the meeting file.

### **Monday, November 19**

#### **Two Strikes, Three Strikes and Habitual Offender Laws**

Senator Ryan and Representative Justine Fox-Young presented a bill to the committee that was introduced at the last legislative session and that amends the current three-strikes legislation. Representative Fox-Young gave the example of a man who commits three murders but is not captured under the current three-strikes legislation because he pleads to lesser charges and upon his release kills two more people. She said that this bill focuses on a small population of people.

Henry Valdez, first judicial district attorney, said that currently, no one at the corrections department is serving a life sentence under the three-strikes law. The law was enacted in 1994 so it is likely that not enough time has passed for someone to have completed serving the sentences for two strikes and committed a third strike. He said there have been more prosecutions under the two-strikes provision for serious sex offenses and that the amendment to the habitual offender law four years ago, which gives some discretion to judges, has been well received. Mark Donatelli, New Mexico criminal defense lawyers association, said that the three-strikes law was enacted to punish those who repeatedly cause great bodily harm to others, that it was intended to have a narrow focus and that this bill changes the intent of the three-strikes law. He noted that punishment for crimes that do not seriously injure people already exist and that other enhancements are available. He pointed out that prosecutors do not use enhancements that are currently available and that laws like this eliminate judicial discretion and put it in the hands of prosecutors. Susan Burgess Farrell, attorney for the public defender's office, added that charges that involve battery or aggravated assault on peace officers most often involve people who are mentally ill and that there are enhancements built into the system for violent crimes and for habitual offenders who commit violent crimes. She also stated that this legislation takes discretion away from judges.

Committee members were concerned as to the fiscal impact of the bill. The panel addressed the questions and concerns of the committee.

#### **Approval of Minutes**

On a motion made by Senator Martinez and seconded by Senator Leavell, the minutes of the fifth meeting of the CCJ were unanimously approved.

## **Public Employment Barriers for Convicted Felons**

Betty Sparrow Doris, secretary of workforce solutions, began by introducing members of the task force. She said that convicts face a myriad of barriers when seeking employment. The task force put together a survey that was distributed to cabinet secretaries and agency heads with hiring authority. The survey requested a variety of information, including a list of occupations, whether background checks were conducted, job restrictions and a description of the hiring process. The survey also asked whether the department worked with any state or federal prisons to employ convicts or if it would be willing to employ convicts. The results were discussed at a public meeting. The task force made several recommendations in dealing with this and other issues regarding employment for convicted felons.

There was a discussion with the committee. Among the concerns was the inability of business owners to get a tax credit for hiring an ex-convict. A report on states with good reintroduction programs for ex-convicts was also requested. There was also discussion involving background checks and the presumption of sufficient rehabilitation in the Criminal Offenders Employment Act. Ms. Doris stated that there is an inconsistency across the state about what is involved in background checks and that the law is being applied inconsistently.

Ms. Doris and other members of the task force addressed the questions and concerns of the committee.

## **Uniform Law Commission: Proposed Legislation**

John Burton, uniform law commissioner, discussed the uniform bills proposed by the uniform law commission. The first was the Uniform Prudent Management of Institutional Funds Act, which provides guidelines for management, investment and expenditures of endowment funds held by charitable institutions. Another bill was the Uniform Debt Management Services Act, which provides guidance and regulation to the debt counseling industry. A third bill was the Uniform Emergency Volunteer Health Practitioners Act, which allows state governments to give reciprocity to other states' licensees on emergency services providers so that covered individuals may provide services without meeting the disaster state's licensing requirements. A fourth bill was the Uniform Child Abduction Prevention Act, which provides the courts with guidelines to follow during custody disputes and divorce proceedings, to help identify families at risk for abductions and to provide methods to prevent abductions. A fifth bill was the Uniform Interstate Enforcement of Domestic Violence Protection Orders Act, which establishes uniform procedures that will enable courts to recognize and enforce valid domestic protection orders issued in other jurisdictions. Finally, the Uniform Foreign-Country Money Judgements Recognition Act revises the Uniform Foreign Money Judgements Recognition Act of 1962 by clarifying its provisions and correcting problems created by the interpretation of provisions of the act by the courts over the years since its promulgation. Mr. Burton indicated that the Uniform Parentage Act and the Uniform Athlete Agents Act, previously endorsed by the committee, were also in the members' binders.

Mr. Burton then addressed the questions and concerns of committee members.

### **Proposed Mother-Child Treatment Center**

Deanna Archuleta, Bernalillo county commissioner, discussed the women and children's residential project proposed by Bernalillo county. She stated that transitional housing for women in recovery and their children allows for the reestablishment of the mother-child bond. She said that it is a better use of funding because there are fewer people who re-offend. She presented the committee with a memorial to support funding for the project. The full project will cost an estimated \$23 million. The initial phase will cost \$9 million. She also added that the treatment center is not a court-ordered facility and that women may self-admit.

Angie Vachio, president, women's justice project, said that many women are incarcerated for drugs. She said that the treatment center can give children hope by reuniting them with their mothers. Ms. Vachio said that the treatment center is a preventive step before crime or incarceration, not just a place to go after incarceration.

John Dantes, deputy county manager for public safety, Bernalillo county, said that the facility will serve 125-150 women with children. He said that the center speaks directly to public safety and costs only one-third of the cost of incarceration.

The panel then addressed the questions and concerns of the committee.

### **Alleged Sexual Assaults at Camino Nuevo**

Ms. Vachio said that the women's justice project had received complaints from both inmates and staff of sexual assaults at Camino Nuevo. She said that the policies are not being adhered to and that sexual assault creates an environment without trust.

Maureen Sanders, attorney, women's justice project, said that four women have come forward as victims of sexual assault and that there may be as many as six more. She said that three of the women were sent back to the women's facility in Grants and the fourth was taken off of the work-release program. There is no one at Camino Nuevo to advocate for women, and there has been no attempt to humanize the environment. She said the women who are eligible for work release are not being allowed to participate and that the women's justice project has been denied access to Camino Nuevo. She added that Camino Nuevo, which is supposed to be a level one and two facility, is being run like a high-security facility.

Nancy Carr, corrections department, discussed the various programs offered to women at Camino Nuevo. In response to the claim that the women who reported sexual assault were transferred to Grants, Ms. Carr said that two of the women were transferred prior to the assaults being made known. Joe Williams, secretary of corrections, addressed the committee on what the department does and has done to address these and other issues relating to female inmates.

Senator McSorley and Representative Rehm visited Camino Nuevo prior to the meeting, and they discussed their impressions of the facility. Representative Rehm said that he looked at the visitors log and noticed that there were many medical and educational entries. He said that the facility was well staffed and that the nurse in the infirmary could not name one piece of

equipment the facility needed but did not have. He said that there were 19 computers for 30 inmates. Cleaning the facility was a chore for the inmates and there were also 40 jobs at the tortilla factory and 24 jobs with the forest service that were available through the work-release program. He said that when he asked the women where they would rather be, they responded that they would rather be at Camino Nuevo than in Grants because of the available programs.

Senator McSorley agreed with Representative Rehm, but added his own observations. He said that the guards had no gender-specific training and that the warden had no experience overseeing a women's facility. Senator McSorley said he never saw any of the inmates outside, despite the beautiful weather. He said that the women were not allowed to leave the pod, even though the warden said that they were allowed outside. He said that there was no way for the women to find jobs before release because there was no internet service available. He also said that the warden offered to take them into a pod where a woman was showering and they declined and felt a little embarrassed at the suggestion. The women are forced to change in front of male guards because they are not allowed to cover the windows in their cells. He said that the women in the facility had not been served one piece of fresh fruit and that the medical facility looked good, but was not able to accommodate mental health issues. He also added that the forest service only pays the women \$1.00 per hour whereas the tortilla factory pays minimum wage.

A discussion ensued between committee members, representatives from the women's justice project, the corrections department and Ed Mahr, lobbyist for corrections corporation of America, the private contractor that operates Camino Nuevo.

### **Governor's Legislative Proposals**

John Wheeler, crime policy advisor to the governor, reviewed some of the governor's crime package for the upcoming session. The first two bills related to gang activity, providing criminal penalties for recruiting others to join a gang and enhancing the basic sentence for crimes committed in furtherance of gang activity. Other bills modified the Antiterrorism Act and increased the firearm enhancement when a firearm is used in the commission of a noncapital felony. The final two bills related to domestic violence.

Sharon Pino, domestic violence czar for the governor, discussed the two domestic violence bills in greater detail. One bill would increase penalties for repeat offenders of domestic violence and would make third offenses against intimate partners a fourth degree felony. The next bill would allow referrals and voluntary participation in domestic violence offender programs and would change the name of a fund. Three victims of domestic violence addressed the committee and spoke about their experiences. A discussion with the panel and members of the committee followed.

### **Services to Families of Murder Victims**

Representative Chasey presented a bill that would provide reparation awards to children of murder victims and services to family members of murder victims.

### **Public Defender Commission**

Phyllis Subin, former chief public defender, and Homer Robinson, project manager, New Mexico Coalition for Justice, presented a bill that creates the public defender commission. Ms. Subin said that the goal of the bill is to protect the criminal justice system and eliminate any possible conflicts of interest. John Bigelow, chief public defender, said that the operating budget for the public defender department has risen by 44 percent over the past few years. He said that the budget request this year is the largest percentage increase he has seen. The department wants 80 new employees. He thanked the legislature for having been responsive to the department's budget requests.

The panel then addressed the questions and concerns of the committee.

### **Opiate Addiction Treatment Pilot Project**

Representative Stewart and Reena Szczepanski, director, drug policy alliance New Mexico, presented a bill that would create a pilot project for opiate addiction treatment of female inmates. This project would provide two years of focused anti-addiction medication assisted therapy to 50 women inmates with a chronic history of narcotic addiction who are approaching release and then are released back into the community. Steve Vaughn, medical director, corrections department, said that the corrections department supports the bill.

The committee recessed at 5:40 p.m.

## **Tuesday, November 20**

### **Report from the Governor's Task Force on Ethics Reform**

Stuart Bluestone, task force member and chief deputy attorney general, Matt Brix, task force member and policy director, center for civic policy, and Norman Thayer, task force member and attorney, presented the recommendations of the governor's task force to the committee. Mr. Brix discussed public financing of elections, contribution limits, reporting requirements and increased government transparency. He said that one of the primary goals of the task force was to address adverse effects of money on the political process. He said that 45 states have campaign contribution limits, but New Mexico has none. There are five entities that can make contributions and only three that can accept them: political parties, political candidates and political action committees (PAC). The task force recommends placing a \$2,300 limit on contributions to individuals, \$5,000 to PACs and \$10,000 to political parties per election year. Mr. Bluestone discussed legislative compensation issues, possible constitutional amendments and how to reduce legislative reliance on lobbyists. Mr. Thayer spoke about the proposed ethics commission that would be confidential and provide education to public officials as well as investigate ethics violations. It would have jurisdiction over the Governmental Conduct Act and five other acts.

The panel addressed questions and concerns from committee members.

### **Ethics Reform Proposals from the Attorney General**

Attorney General Gary King presented six bills to the committee. The first bill would allow the attorney general to investigate and prosecute crimes committed by officers of the executive and judicial branches and the second bill requires the state auditor to report any violations within the executive or judicial branches to the attorney general. The third bill increases penalties for various offenses within state government. The fourth bill tolls the statute of limitations for commencing prosecution on certain criminal violations until the alleged violation is reported to the attorney general. The fifth bill enacts the Whistleblower Protection Act and prohibits retaliatory action by employers. The final bill amends the Governmental Conduct Act to include public officers and employees of all political subdivisions of the state. Attorney General King said that these bills provide the tools the attorney general's office needs to deal with ethics offenses.

### **Title Insurance: Rate Regulation Reform and Negligence in Title Searches**

Ben R. Lujan, chair, public regulation commission (PRC), Jason Marks, vice chair, PRC, and Morris Chaves, superintendent of insurance, PRC, presented the results of the task force study conducted pursuant to House Memorial 80 (2007). The memorial requests that the PRC convene a task force to investigate the practices of the real estate title insurance industry and make recommendations to improve consumer protection, education and awareness. The task force included members from the attorney general's office, consumer advocates, title insurance agents and underwriters and real estate brokers. It has had three meetings to date. It has analyzed claims paid and denied by the title insurance industry. Superintendent Chavez ordered that title insurance rates be reduced by 6.3 percent, which order was challenged and is now on appeal. The panel recommended language to the committee to address issues relating to negligence in title searches that is not covered by the insurance policy. New Mexico's statute is unusual, and many states allow negligence suits. Panel members believe the recommended language takes the considerations of the consumer as well as the industry into account. They also recommended that price and value competition be allowed to develop within a protective, regulatory framework.

The panel then addressed the questions and concerns of the committee.

### **Committee Endorsement of Proposed Legislation**

On a motion made by Representative Park and seconded by Senator Grubestic, the committee voted to endorse 24 pieces of legislation. Senator Rainaldi objected to the endorsement of the bill that would create the public defender commission.

### **Federal Requirements for CDL Licenses**

Kenneth Ortiz, director, motor vehicle division, taxation and revenue department, and Javier Lopez, assistant general counsel, department of transportation, presented a bill that relates to commercial driver's licenses. The bill eliminates test waiver authority, makes the definition of a conviction uniform throughout the motor vehicle code and makes uniform the penalties for improperly licensed drivers of commercial vehicles. Mr. Ortiz discussed several changes made to the bill and said that it would be on the governor's call for the session.

There being no further business, the committee adjourned at 1:45 p.m.

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