

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

**September 30 - October 2, 2009**  
**NMSU Golf Course Clubhouse**  
**3000 Champions Drive**  
**Las Cruces**

The fourth meeting of the Courts, Corrections and Justice Committee was called to order at 10:10 a.m. by Senator Peter Wirth, co-chair, on Wednesday, September 30, 2009, at the New Mexico State University (NMSU) Golf Course Clubhouse in Las Cruces, New Mexico.

**Present**

Sen. Peter Wirth, Co-Chair  
Sen. Rod Adair  
Rep. Thomas A. Anderson  
Rep. Joseph Cervantes  
Rep. Gail Chasey  
Sen. Mary Jane M. Garcia  
Sen. Linda M. Lopez (Sept. 30, Oct. 1)  
Rep. Antonio "Moe" Maestas (Oct. 2)  
Rep. William "Bill" R. Rehm  
Rep. Mimi Stewart

**Absent**

Rep. Al Park, Co-Chair  
Rep. Zachary J. Cook  
Sen. Clinton D. Harden, Jr.  
Sen. Richard C. Martinez  
Sen. John C. Ryan

**Advisory Members**

Rep. Eliseo Lee Alcon  
Rep. Brian F. Egolf, Jr. (Sept. 30, Oct. 1)  
Rep. Dennis J. Kintigh (Sept. 30, Oct. 1)  
Sen. Carroll H. Leavell (Oct. 1-2)  
Sen. Cisco McSorley  
Rep. Bill B. O'Neill  
Rep. Jack E. Thomas  
Rep. Gloria C. Vaughn

Rep. Elias Barela  
Sen. Gay G. Kernan  
Rep. W. Ken Martinez  
Sen. William H. Payne  
Sen. Michael S. Sanchez  
Rep. Sheryl Williams Stapleton  
Sen. David Ulibarri

**Guest Legislators**

Rep. Nathan P. Cote (Oct. 1)  
Sen. Sander Rue (Oct. 2)

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

**Staff**

Maha Khoury  
Mark Harben

**Guests**

The guest list is in the meeting file.

**Handouts**

Copies of all handouts are in the meeting file.

**Wednesday, September 30****Call to Order**

Senator Wirth called the meeting to order at 10:10 a.m. He introduced Representative Cervantes and asked him to co-chair with him for the day. Senator Wirth then had committee members introduce themselves.

**Welcoming Remarks**

Manual Pacheco, interim president, NMSU, welcomed the committee to Las Cruces. He gave opening remarks and explained his personal background and described some of the work of NMSU that may be relevant to the Courts, Corrections and Justice Committee.

**Report on Court Visits**

Representative Stewart discussed her experience at the Second Judicial District Court during a visit to Judge Baca's courtroom. She recalled her visit and stated that she was impressed with how the judge had handled the cases he heard. Representative Stewart also visited the children's court, which she noted was not in very good physical shape. She discussed the various programs that the children's court and juvenile judicial system utilize.

Senator Wirth visited the magistrate court in Santa Fe, which he said he had not been to in a long time. He went to the new DWI court and viewed Judge Segura's courtroom. He also viewed the new computer and the information technology facility in Santa Fe.

Supreme Court Justice Charlie Daniels commented on the public defenders' system in the state.

**Homeowners' Associations**

Representative Stewart provided some background on previous legislation introduced to begin tackling some of the homeowners' association issues in the state.

Scott Varner, president, Towne Park Neighborhood Association, and former board member, Towne Park Homeowners Association, gave a presentation to the committee. He said that he chose to live in a community with covenants, expecting fair, uniform and legal management. He said that for 12 years, however, he has had to fight for those basic rights. Mr. Varner said that the attorney general and the city attorney could not help, so he had to go to the courts. He commented on the legal fees and expenses and stated that most homeowners are not willing or able to pay such large amounts of money to enforce basic rights.

Mr. Varner does not want to move and is financially restricted, having invested a lot of money in things, such as solar panels, in his home. He relayed personal experiences with his homeowners' association (HOA) regarding water conservation, dispute resolution, open meetings and issues of disclosure by the board. As an example, Mr. Varner discussed an HOA requirement to have sod and grass on homeowners' properties and what he has done to try and use "zero-scaping" at his home. He said that the playing field must be leveled to allow homeowners to exercise their rights against unfair and corrupt HOAs that have a great deal of money to fight against an individual homeowner.

Sharon Thomas, city councilor, District 6, Las Cruces, said that most of the HOAs in Las Cruces are operated by the developers. She introduced Linda Atwood to present to the committee.

Linda Atwood, said she is a member of a new HOA that has been created in the last couple of years. She said that she and the HOA have concerns regarding the laws, or lack thereof, to enforce covenants and to combat the developers who run the HOAs. Ms. Atwood said that developers typically run HOAs until every lot or home has been sold. This process can take many years and the actual homeowners are unable to control the HOAs.

Ms. Thomas told the committee that District 6 has met with Senator Stephen H. Fischmann and Representative Cervantes to develop legislation to deal with these issues; they have evaluated and consulted legislation from other states. Senator Fischmann sponsored Senate Bill 624, which was introduced last session, but did not make it out of committee.

Committee members commented on the issues, discussed policy options and asked questions of the panel.

### **Report from the Judiciary**

Chief Justice Edward L. Chavez, New Mexico Supreme Court, thanked the committee for inviting the panel to present before the committee. He introduced the members of the panel and told the committee about their backgrounds. Justice Chavez said that the courts system is a hardworking system and that, currently, there are only about 80 percent of the personnel needed to operate the system. He said that with the looming budget cuts, the judicial system had implemented its own hiring freeze, restrictions on travel and a cessation of pay increases. These measures were conducted to fight against budget cuts, which seem to have been relatively effective. Justice Chavez said that a magistrate court in Tatum was dissolved to save money. Despite these measures, furloughs appear to be a reality for the future. He also told the committee that maintenance agreements for equipment have been canceled, and programs have been cut to help with the underfunding. According to Justice Chavez, any cuts, even one percent, to the budget will result in furloughs.

Justice Daniels, New Mexico Supreme Court, told the committee that it should be proud of the judiciary system because it is extremely professional and resourceful for being so understaffed. He discussed the data about the budget and staffing shortfalls, but said that he understood the overall economic factors affecting the shortfalls. Instead of requesting all the

needed judgeships, he provided a list in the handout detailing which new judgeships are deemed essential.

Judge James J. Wechsler, New Mexico Court of Appeals, discussed the upcoming budget. He said that the budget for fiscal year 2011 is a flat budget and discussed how the judiciary has been scaling back its budgets prior to fiscal year 2011. Judge Wechsler said that if any more shaving of the budget occurs, the results will be catastrophic.

Arthur W. Pepin, director, Administrative Office of the Courts, introduced employees of the courts in the audience. He said that there have been extraordinary things accomplished in the judiciary, even with such anemic funding numbers. He discussed a discrepancy with photocopying charges, the expense of allowing credit card payments and other legislation proposed by the judiciary.

Committee members commented on the issues, discussed policy options and asked questions of the panel.

#### **Update on Resource Needs of the Judiciary, Public Defender and District Attorneys**

Tony Ortiz, executive director, New Mexico Sentencing Commission (NMSC), provided an update on the need of resources for the judiciary, public defender and district attorneys. He said that there was a program implemented to log the time judges, attorneys and staff worked and how long it took to complete cases. He said there was a participation level of over 90%. Mr. Ortiz discussed the study conducted by a third party evaluating staffing and resources shortfalls in the judiciary.

Hugh Dangler, chief public defender, told the committee that there would be a push to open a Gallup office. He said that the legislature allocated the money for it, so the office should be opened. Mr. Dangler said that fresh University of New Mexico (UNM) graduates have been hired to train as public defenders. Mr. Ortiz added that there is a concern regarding quality and communication between the various offices of district attorneys.

Committee members commented on the issues, discussed policy options and asked questions of the panel.

#### **Evaluation of DWI-Drug Courts**

Paul Guerin, Ph.D., senior research scientist, NMSC, discussed two completed studies. He said there were two tasks to be completed for each study: review the processes of how the courts operate and examine what the activities of the courts actually were. Dr. Guerin said that the DWI and drug courts do not have an automated system to collect all the data involved with the courts, including who had appeared before the courts, and there was not a program coordinator at the time. There now has been a coordinator put into place, and changes have been made.

Angela Peinado, statewide drug court program manager, Administrative Office of the Courts, said that since Dr. Guerin's studies have been completed, the Dona Ana DWI-Drug Court

has made great strides to improve and implement the study's recommendations. The court is willing to continue its attempts to improve.

Dr. Guerin commented on the Bernalillo County Metropolitan Court DWI-Drug Court study. He said the study was intended to better understand the effectiveness of the Bernalillo County Metropolitan Court DWI-Drug Court in graduating program participants and reducing the recidivism rates of participants. A report brief is located in the meeting files.

Committee members commented on the issues, discussed policy options and asked questions of the panel.

### **Public Comment**

The district public defender of the Third Judicial District Court and representatives from the juvenile and felony divisions of the public defender commented on the variety of their duties and the lack of resources for them to do their work. Similarly, the sixth judicial district attorney and representatives from the Raton, Mora and Ruidoso magistrates also commented on the lack of resources. Community activist Paul Barunda commented on the law enforcement and criminal justice systems.

### **Ethics Commission Subcommittee Meeting**

Ethics Commission Subcommittee members discussed several issues on creating a state ethics commission, including membership, appointment, standard of proof for proceeding with an investigation and for finding a violation, subpoena power and constitutionality.

### **Thursday, October 1**

Senator Wirth reconvened the meeting at 9:10 a.m.

### **Report from the Governor's Prison Reform Task Force and Corrections Department Reentry Efforts**

John Bigelow, chair, Prison Reform Task Force, discussed the continuing work of the task force. He said that the first report last year was still operative, and that this year's focus is on local involvement, including local government, community organizations and nonprofits, to assist in the reentry of prisoners. He went over the 11 recommendations made in the report.

Joe Williams, secretary of corrections, discussed community corrections and inmate work forces allowed to work outside of corrections facilities. He said that community corrections programs are more expensive to the budget than having inmates housed inside the corrections facilities. The department will not be able to expand with the economic shortfalls, but the operations of the system should still be able to go forward.

Bernie Lieving, L.M.S.W., Reentry and Reform Bureau, Corrections Department, told the committee about the risk and needs assessment process for inmates. In that process, the corrections system evaluates the inmate's background, such as education, history of violence, family background and mental health needs, to aid in the process of rehabilitation. There has

been an earmark through U.S. Senator Bingaman's office that will provide \$1 million for reentry and reform programs. It passed the senate and is awaiting a vote in the house. Mr. Lieving states that there is a need to cooperate with the community, the business community and organizations to facilitate reentry processes. An executive and reentry council has been created to work with local government and communities. In collaboration with UNM's Project ECHO, the department has also worked to increase education on health for inmates, including overall wellness and hepatitis C. The project has provided top-level expertise for inmates on infectious diseases and other health issues at no cost to the Corrections Department.

Committee members commented on the issues, discussed policy options and asked questions of the panel.

### **Committee Business**

The minutes of the previous meeting were adopted without opposition.

### **Report from the Corrections Department: Gangs in Prisons**

Secretary Williams introduced Dwayne Santistevan and Larry Flynn. Mr. Santistevan, Security Threat Intelligence Unit administrator, Corrections Department, said that since at least the 1970s there has been a gang issue in New Mexico's prison system. He discussed the history of prison gangs in New Mexico and various gangs that have formed in the last few years. He said that prison gangs, also known as security threat groups, have had such a negative and violent impact on the prison system that the Corrections Department and law enforcement officials have created intelligence units. These units are specifically designed to monitor and certify these groups as being a threat to the prison system as well as to communities. Mr. Santistevan said there have been two groups certified as security threat groups by the Corrections Department: Sindicato Nuevo México (SNM) and Los Carnales (LC). These two groups have developed a "blood feud" resulting in homicides, stabbings and segregations. He discussed strategies for combating security threat groups, including creation of the Security Threat Group Intelligence Force.

Larry Flynn, Security Threat Intelligence Unit manager, Corrections Department, discussed gang members currently on supervision in the five regions of probation and parole. He told the committee about the numbers of gang members in each region, which are indicated in the handout. Mr. Flynn explained the identification process, which includes: checking of records when individuals are released from custody; field calls to help identify new tattoos, colors, bandannas and other changes to indicate gang activity; and a close cooperation with other law enforcement agencies. He discussed how gang members are identified and how different law enforcement agencies collaborate to aid in this process. Mr. Flynn said that gang identification is not the only duty of the unit and that the unit also does warrant roundups; felony apprehensions; apprehensions of absconders; surveillance; assistance for probation and parole officers on high priority field calls; and assistance for local authorities at local events such as the New Mexico State Fair, Zozobra, Balloon Fiesta and Whole Enchilada Festival.

Committee members commented on the issues, discussed policy options and asked questions of the panel.

### **Female Inmate Issues Task Force (HM 3) (2008)**

Helen Carr, deputy director of Female Offender Services and chairperson of the task force, introduced the members of the panel to the committee. She discussed House Memorial 3, which was introduced by Representative Chasey. Ms. Carr discussed programs for female inmates, including visitation programs for the children of inmates. Arlene Hickson, warden of New Mexico Women's Correctional Facility, discussed current programs at the New Mexico Women's Correctional Facility. Christine Bodo, warden of Camino Nuevo Correctional Center, also discussed programs for female inmates and offenders at the facility. These programs are in the handout given by the task force.

Angie Vachio, Women's Justice Project, and executive director emeritus, PB & J Family Services, said one of the biggest changes in the last few years is the overall prison culture for women. She said that there is an effort to emphasize and accommodate the differences between male and female inmates in the prison system. Ms. Vachio said there has been a new approach instilling more respect and understanding in the prison culture for women inmates, along with a development of programs to deal with the children of female inmates. She said that the task force has recommendations, including: gender-specific parole criteria; a strengthening of the behavioral health collaborative; exploration and analysis of the uses of solitary confinement for women; reestablishment of the program that allowed inmate mothers to enroll their children in Medicaid; and an establishment of a work-release program.

Committee members commented on the issues, discussed policy options and asked questions of the panel.

### **Community Corrections and Controlled Release of Inmates; Earned Meritorious Deductions for Parolees**

Mr. Ortiz went over the NMSC's report on controlled release and good time for parolees. He discussed a possible pilot project for controlled release of female inmates. Secretary Williams stated that the Corrections Department must follow the rulings from the courts, and that it is ready to start working on a controlled release program pilot project for female inmates. The panelists responded to questions from committee members about private prisons and the guarantees of inmates promised to them in contracts.

Committee members commented on the issues, discussed policy options and asked questions of the panel.

### **Proposed Legislation from the Attorney General (Bill Drafts #4-15)**

Gary King, attorney general, discussed his proposed legislation for the upcoming regular session and his legislative priorities. He went over many of the bills with the committee and answered questions and discussed policy options with the committee. Please see the meeting file for the specific bill drafts.

### **Public Comment**

Mr. Barunda commented on probation and parole issues.

## **Tour of Southern New Mexico Correctional Facility**

The committee and members of the public toured the Southern New Mexico Correctional Facility until around 6:10 p.m.

### **Friday, October 2**

The meeting was reconvened at 8:40 a.m.

#### **Sex Offenders: Parole Board Hearings**

Ella Frank, executive director, Parole Board, said that everyone on the panel and their respective agencies and organizations are working together. She said that each person has a different vantage point, but the cooperation is necessary for success. Ms. Frank said that each sex offender faces a period of five to 20 years of probation and up to a lifetime of parole, instead of the typical one or two years for other types of offenders. A sex offender on parole supervision after five years of supervision must go to a hearing to evaluate the possibility of staying on parole or not, and thereafter, a hearing must be held every two and one-half years. Ms. Frank told the committee that right now there are very few of these parole hearings, but the future holds a much higher number of them. This increase will strain the resources and manpower of the parole board, as well as putting an overall burden on the Corrections Department.

Attorney General King commented on the impact that parole hearings will have on the Attorney General's Office (AGO). He said that initially, the AGO wanted to request \$500,000 to help fund the increased hearings, but realized that request could not be met. Attorney General King said that each hearing will require expert witnesses, which is budgeted at \$5,000 per hearing. He added that there is a proposed budget for \$1,000 per hearing for transcription, but attorney fees have not been accounted for. Attorney General King told the committee that the request for new money would easily amount to \$50,000.

Mr. Dangler told the committee that there is a concern that the hearing will appear as "window dressing", since the social pressure to keep sex offenders on parole is extremely strong. He discussed practical concerns and realities dealing with the idea of releasing a sex offender from parole. Mr. Dangler said that the Public Defender Department has never been involved in parole hearings or parole issues with sex offenders until now. He told the committee that this change would require the Public Defender Department to become more involved, and it does not have the resources. He mentioned that a cost-saving measure could be using an expert from the Department of Health and suggested that to ensure better efficiency, it would make more sense to have the parole determinations made at the front end of the process by a judge after the trial, when the lawyers involved have the facts and knowledge to argue the case. Both he and the attorney general agreed that their lawyers would spend much more time and expense on a case they have to review years later at the parole hearing.

Randall Cherry, former general counsel for the Sex Offender Management Board, NMSC, provided a history of this process for the committee. He told the committee that there are violent sexual predators that will remain dangerous to society all of their lives, and he discussed the Texas law that deals with such sex offenders. When sex offender registration was first implemented in New Mexico, there was an analysis for the evaluation of long-term versus

short-term supervision and registration. According to Mr. Cherry, New Mexico does not have adequate resources dedicated to this issue of evaluation. The new idea of five-years-to-life on parole will be extremely expensive but would become more feasible and efficient if it is determined in the beginning of the process.

Mr. Ortiz told the committee that it is useful to have solid numbers regarding the new proposals. He discussed qualifying offenses and told the committee that the NMSC does not have any experience with these hearings. Mr. Ortiz said that there will be eight hearings in 2010 and 2011, but there will be a very big increase after that.

### **GPS Monitoring of Sex Offenders**

Charlene Knipping, director, Probation and Parole Division, Corrections Department, reviewed the GPS monitoring process for sex offenders and said there is an ongoing change and rehabilitation effort for the sex offender population. She said that many states and agencies have hailed New Mexico as being a good model for practice and effectiveness for supervision.

Mr. Cherry told the committee that the Sex Offender Management Board has no jurisdiction over the GPS issue. He said there are studies that have shown that GPS has some value, but it is not a deterrent. What GPS does is help in the prosecution of new crimes in pinpointing where the sex offender was at the time and to provide a way for sex offenders accused of a new crime to prove their innocence.

Mr. Frank said that she would like to emphasize the good work that the Probation and Parole Division is doing, especially with having a heavy burden and a light budget. Ms. Frank discussed the physical and geographical limitations of GPS and its lack of availability in some areas. Indeed, many sex offenders are forced to remain incarcerated because they live in areas that do not have GPS capability, for example, on Navajo Nation land.

Committee members commented on the sex offender issues, discussed policy options and asked questions of the panel.

### **Proposed Legislation: Amendments to the Sex Offender Registration and Notification Act — Bill Draft #16**

Senator Rue said he is here as an advocate, not necessarily an expert. He said he would like legislation to modify the Sex Offender Registration and Notification Act. He said there would be a closing of some gaps in current legislation, such as residency issues, and it would add three more offenses, namely, predatory use of a computer, trafficking for sexual purposes and acts of conspiracy. Senator Rue said that the new legislation would provide law enforcement with better tools.

Robert W. Shilling, major, Law Enforcement Records Bureau chief, Department of Public Safety, told the committee that he believes this bill will tighten up current law and assist law enforcement.

Committee members commented on the issues, discussed policy options and asked questions of the panel.

### **Strengthening Families: Incarcerated Fathers Program**

Esther DeVall, Ph.D., Family and Consumer Sciences Department, College of Agricultural, Consumer and Environmental Sciences, NMSU, said it is important to work with fathers and children to prevent children from repeating a life of crime like their parents. Dr. DeVall said that better parenting will help children develop a better sense of self-control, and she cited a study that links the two. She said that hitting and yelling need to be substituted with nurturing and better parenting skills; often the fathers did not have a good family structure model to learn how to handle a child.

Trena Pollard, M.S., certified family life and parent educator, said that before one can connect with incarcerated fathers, there needs to be a connection with the facilities themselves. Ms. Pollard said there is a need to help the fathers understand the developmental processes and stages of their children, because often they do not actually see their children grow up. With the cooperation of the facilities, there has been a program implemented to allow visitation of fathers and children to help them stay connected with their families.

Dr. DeVall said the program has been in existence for three years. The goal for connecting 360 dads has been exceeded to more than 370, and there have been more than 900 children involved in the program, also exceeding initial goals. Dr. DeVall described the positive effects the program has provided the incarcerated fathers as well as the children, including the cessation of corporal punishment and an increase in life skills for all involved. She provided examples from the handouts and relayed quotes from fathers in the program.

Committee members commented on the issues, discussed policy options and asked questions of the panel.

### **Public Comment**

A representative from Citizens for Change and family members of sex offenders commented on the punitive and negative consequences on their lives of sex offender registration and notification laws. Melissa Hill, attorney, commented on how there currently is no way for a sex offender to get off the registry, and how there is no sanction for people who misuse registry information.

### **Adjournment**

The committee adjourned at 12:35 p.m.