

CIVIL RIGHTS COMMISSION

November 13, 2020

Via Go to Meeting

1. CALL TO ORDER

The first meeting of the Civil Rights Commission called to order at 2:05 pm by Richard Bosson, Chair of the Civil Rights Commission. The meeting was held via GoToMeeting due to the current restrictions.

2. ROLL CALL

Roll call indicated the presence of a quorum as follows:

Commission Members Present:

Richard Bosson, Chair
Mark Baker, Vice Chair
Denise Torres
Zackeree Kelin
Senator Steve Neville
Victor J. Rodriguez
Judge Stan Whitaker
Gerald Byers
Kim Stewart

Members Excused:

Others Present:

Raul Burciaga, Legislative Council Service
Alexandra Smith, Counsel to the Commission
Abby Bannon-Schneebeck, Law Student Intern
Jacques Chouinard, Law Student Intern

Chair Bosson explained that this could be the last meeting. The report is in draft form and that is what they will work on today. The deadline is November 15, 2020 as stated in HB5. It should be finalized before Thanksgiving to be heard by the interested Committees.

3. APPROVAL OF AGENDA

With all members in agreement the agenda was passed unanimously by voice vote.

4. APPROVAL OF MINUTES

With all members in agreement the minutes were passed unanimously by voice vote.

5. DISCUSSION OF STATUTE OF LIMITATIONS FOR A CIVIL RIGHTS ACT

Ms. Smith researched in Federal Civil Rights Laws and New Mexico Laws. For the Sec.1983 actions, the federal courts borrow from state personal injury statutes. In New Mexico, it is three years. She recommends adopting the same. The other issue is in New Mexico the law for minors and people who are incapacitated is that they are given a year after they reach the age of majority or until their incapacity lifts to bring the lawsuit. They could add a reference to how that the same rule applies. That statute is 37-1-10. Similarly, there is a statute for childhood sexual abuse that allows time to bring allegations forward. That statute is 37-1-30 which explains the dates they can bring cases.

She recommends they add reference to both statutes for minors and those bringing sexual abuse cases.

Mr. Rodriguez asked what the justification for addressing minors is in this context. Is it for cases involving education?

Ms. Smith explained it could mean that, and that is how the law treats minors in the 1983 cases.

Mr. Kelin explained it may also come in to play when a child is incarcerated or in CYFD custody. It would protect those claims when they become an adult.

All members approved of the suggestions.

Judge Whitaker suggests they consider changing it to be in the body of the act to prevent any modifications of the other statutes.

Ms. Smith stated the text can be added easily for the minors however the text for the sexual abuse clause will be more difficult. She will add them both.

Mr. Kelin stated they can consider the abatement issue. An action would not abate with the death of the public official.

6. DISCUSSION OF LAW ENFORCEMENT ACADEMY RECOMMENDATIONS

Chair Bosson stated the Law Enforcement Academy (LEA) Director was here for discussion. They agreed to add some recommendations in the report to get more resources for police training.

Mr. Kelin stated it is clear there needs to be some restructuring at the LEA. They are administratively attached to Department of Public Safety (DPS), it was clear they do not have the authority to enforce discipline. It was striking that the Director stated that many actions could go

unanswered with the lack of power to enforce the regulations they have. It hurts the victims and the chances of prosecution, there is not a database to track misconduct. Funding has been short for them and they do not have anyone to fill IPRA requests. There is support from the Commission to make changes. She is a great director [of the LEA] and she just does not have the resources.

Mr. Rodriguez stated there was an email with a lot information that he and Sherriff Stewart had thoughts on. One recommendation was to separate LEA from DPS. Most state entities that deal with training and standards is one thing. They need to meet more frequently. Four times a year is not enough. They have a very long back log on cases. Perhaps they need to add more membership to the Board. Perhaps they need to add a phycologist and dispatcher. The LEA licenses dispatchers. Being separated they are limited with information and compliance investigators and prosecutors which would relieve the Attorney General's Office who only has one prosecutor.

Mr. Rodriguez stated they cannot sanction officers and agencies that do not comply with disciplinary referrals. Realistically they have been pending for years. The court there has a 6 month rule they should have the same and preserve due process. Good moral character and being specific on what they want. A database would be helpful to stop people from bouncing from agency to agency. They want to make sure they are well funded.

Sherriff Stewart believes that LEA, if it is strengthened and had teeth with agencies, they will see a great improvement with policies and procedures. She walked into an agency that had not updated their policies since 2001. She believes they will see a lot more improvement come from these suggestions than any of the other recommendations the Commission has made.

Mr. Baker is happy to help give teeth to the LEA and give them resources. However, the level of detail they are going into is very specific. It is important that they look at it, and he suggests they include an appendix and leave it general for funding without getting into detail on positions of board members. He would be more comfortable in letting the legislature determine the specific details. He is unsure on how to evaluate those.

Judge Whitaker would like to know Senator Neville's suggestion.

Senator Neville states this is not their specific charge in the statute. However, it could be useful. They will need to get credible sponsors to help them and it would be more useful than the other recommendations. If they can resolve issues with the bad actors, they can accomplish more.

Ms. Torres is in favor of the LEA issues and recommendations but says it should not be part of the act.

Senator Neville stated it would not be proper to be part of the act.

Mr. Burciaga stated you do need be careful to add separate provisions.

Ms. Stewart stated they are merely suggestions. There is a lack of knowledge as to how things work. She prefers to leave in the specificity of their recommendations.

Chair Bosson stated it should be in the report. Perhaps they can work out the degree of specificity.

Mr. Rodriguez stated the degree of specificity on the recommendations came from the testimony of the LEA Director. This is a downfall because they have not had more discussion as a Commission about it.

Mr. Baker stated they opened it up to anyone who wanted to have a presenter. If it is the will of the Commission to include it all he is fine with that.

Mr. Kelin suggests they leave the four bullet points and leave the recommendations in the appendix. They do not have to take the position to endorse it or not, but they recommend they review it.

Chair Bosson stated there is a consensus to proceed.

Ms. Smith stated she also added the IPRA section to the draft bill that requires agencies to keep the settlement information. At one point they were to keep them confidential for six months.

Mr. Byers asked if the desire is to retain the complaint and settlement and make it available for public inspection. That involves the IPRA that is being used to no end to create an issue for public entities when responding. Some agencies have come under scrutiny and it is draining their budget. Other than transparency what would be the purpose of the IPRA requirement be?

Ms. Smith stated the thought was just transparency.

Mr. Byers stated he is not sure if they are being duplicative.

Mr. Baker stated the benefit is to have the agencies compile it and if they get sued it tells them to keep their ducks in a row. It is a matter of housekeeping.

Mr. Byers says as he understands it, this would push agencies toward a better record keeping with the goal of transparency and better service to the public.

Ms. Smith believes this would make it easier for them to keep track of these issues. This would not be a separate cause of action.

All members approved of the IPRA clause being part of the bill.

7. DISCUSSION OF COMMISSION'S REPORT

Chair Bosson stated the report was sent out to all members. One part has exhibits and appendices. Mr. Baker developed an executive summary. It is their goal to submit it at the end of next week.

Mr. Rodriguez asked if in the majority report can they show that they did not all agree on some of the issues. Ms. Smith stated she could change that.

Mr. Rodriguez wondered if absolute immunity was under consideration along with qualified immunity. Under this it states a public body is an agency who receives public funding. If a judge or prosecutor sues under this, do they receive absolute immunity?

Chair Bosson stated in his career he has worked on that before. Judges, District Attorneys, Legislators have absolute immunity. It should not affect it. There would not be a cross reference.

Mr. Rodriguez stated this same notion was used when they created qualified immunity. It can give the impression of a double standard.

Mr. Baker said the difference would be that the nature of their positions is different. In their roles they are covered so they aren't sued for a reason like a judge handled someone's case wrong in court. For a prosecutor it is a different function. They are different where they come in to play. There are not same problems that are present with qualified immunity.

Mr. Kelin stated they are not taking out the qualified immunity recommendation in the New Mexico Civil Rights Act.

Mr. Rodriguez stated they have to discuss caps.

Chair Bosson stated that came up in the discussion that was not specific.

Mr. Rodriguez stated it was brought up at a previous meeting.

Ms. Stewart recalls it being brought up and perhaps it should be addressed. The caps had not been changed in many years.

Mr. Rodriguez wanted to get Senator Neville's thoughts on the caps.

Senator Neville explained if there is not any control it encompasses all public officials. He is concerned what it would do to the smallest entities. They may want to discuss it, under the tort claims act.

Chair Bosson stated the matter of excess coverage came up. If they capped it at \$2 million dollars it would help. That would be an option he would propose to the Legislators.

Senator Neville asked if that amount would cover punitive damages and attorney's fees or are they separate.

Chair Bosson reminded them that punitive damages were voted down from the Commission.

Ms. Torres stated caps need to be looked at since it has not been changed in a long time.

Chair Bosson stated the legislators have options and that is one.

Mr. Byers agrees with that recommendation.

Senator Neville states they need to specify in the report there are ramifications for the smaller entities who cannot afford it.

Mr. Rodriguez asked if it would include attorney's fees or is that separate from the cap.

Senator Neville stated it should include everything, there should be a marker to determine what they are paying for.

Ms. Torres explained they recommended compensatory, attorney's fees, damages, and no punitive damages. The fact is that without punitive damages there are limits. All others have to be proved.

Mr. Baker explained he is fine with including a cap as a possible option for the legislature, but to say they strongly encourage it he does not agree. He suggests they place it in as a reference.

Ms. Torres suggested this be part of the dissenting report.

Mr. Kelin suggested they keep them separate. One covers injuries and the other is for costs of bringing a lawsuit. The legislature can consider that, if they mention it in the cost section it is fine but not in a final recommendation.

Senator Neville stated with some more analysis they can consider caps in two phases.

Chair Bosson suggested they mention a cap from what they heard from testimony.

MOTION: Mr. Baker moved to add a reference in appendix six under costs and insurance in the majority report that indicates if the concerns of the re-insurance costs are established that a cap be considered by the Legislature as a possible solution. Mr. Kelin seconds and added that this is because they have not had a robust discussion about numbers.

VOTE: All members were in agreement.

Ms. Smith asked for feedback on Commissioner Kelin's suggestion on including a the section in the report explaining the process the commission went through.

Ms. Stewart stated that the vote at the last meeting was not recorded and the public was not able to see it. Can they include what the questions were and the vote outcome in the report?

Ms. Smith stated the vote was reflected in the minutes.
Chair Bosson stated he has heard the same concern.

Mr. Burciaga explained the meeting was recorded and it was frozen and buffered. It did not seem that it affected everyone, the end of the meeting was not captured. There were issues with the Go to Meeting platform. The vote is reflected in the minutes.

Mr. Rodriguez asked if the Chair would ask the members if, since their original vote, anyone has had a change of heart. There has been some public comment.

Chair Bosson asked all members if their vote remained the same. All members stated their votes are the same.

Ms. Smith asked how they would like to include the public comment in the report.

Judge Whitaker stated he appreciated the spreadsheet with the public comment, it was helpful.

Ms. Smith stated they can add to the spreadsheet as well.

Judge Whitaker stated the comments and spreadsheet should be included.

Mr. Rodriguez and Ms. Stewart agreed. Ms. Stewart stated it was a reflection of the population they reached.

Mr. Baker suggested they add a hyperlink with the chart and the spreadsheet.

Mr. Burciaga asked if they publish the comments will it include their name?

Chair Bosson explained, yes it will, but since it was public, it does not present a problem.

Mr. Rodriguez asked if they could add the hyperlink and make reference on the report to make the comments available.

Mr. Kelin is curious about when the dissenting report will come out.

Senator Neville stated they will meet Monday to finalize the report.

Mr. Rodriguez stated once they get a good understanding of the report, they can get the dissenting report.

9. OTHER BUSINESS AND NEXT MEETING AGENDA

The Commission will keep November 20, 2020 open if another meeting is needed at the call of the Chair.

10. NEXT MEETING

With all business concluded the meeting was adjourned at 3:35 p.m.

Signed and approved:

/s/ Justice Richard C. Bosson (ret.)

Justice Bosson, Chair