

**NEW MEXICO CRIMINAL SENTENCING COMMISSION**  
*Full Commission Meeting Minutes*

**Wyndham Garden Hotel**  
**Albuquerque, NM**

**September 12, 2003**  
**9:00 AM**

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**Commission members attending:**

Joseph E. Caldwell, Chair, appointed by the Governor  
Cindy Aragon, appointed by the President of the State Bar Association  
Lawrence Barreras, representing Mary-Dale Bolson, Secretary of Children, Youth & Families Department  
John Bigelow, Chief Public Defender  
Billy Blackburn, Vice-Chair, appointed by the Senate President Pro-Tempore  
Bob Cleavall, appointed by the Speaker of the House  
Nick D'Angelo, representing Joe R. Williams, Secretary of Corrections  
Mark Donatelli, appointed by the Speaker of the House  
Roger Hatcher, appointed by the Association of Counties  
Gina Maestas, appointed by the Supreme Court  
Honorable Lynn Pickard, appointed by the Chief Judge of the Court of Appeals  
Honorable Daniel Ramczyk, appointed by the Governor  
David Schmidt, appointed by the Senate President Pro-Tempore  
Martin Suazo, appointed by the Senate President Pro-Tempore

**Commission members represented by**

**proxy:**

April Land, representing Dean Suellyn Scarnecchia, UNM School of Law; proxy to David Schmidt  
Lemuel Martinez, District Attorneys Association; proxy to Joe Arite  
Honorable John Pope, appointed by the District Court Judges Association;  
Marie Saenz, representing John Denko, Secretary, Department of Public Safety; Paul Cook

**Commission members not in**

**attendance:**

Michael Cox, representing Attorney General Patricia Madrid  
Constance Keegan, appointed by the Supreme Court  
Antonio Ortega, appointed by the Speaker of the House  
Honorable Jerry Ritter, appointed by the District Court Judges Association  
Maggie Toulouse, appointed by the Governor

**Visitors:**

Veronica Chavez-Neuman  
Heather Mann  
Bob Martinez  
Chris J. Valdez, NMSP  
Diane Wood

**Staff attending:**

Michael Hall, Executive Director  
Claudia McKay  
Karen Ochsankehl, Admin Assistant  
Colby Phillips

Chair Joe Caldwell called the meeting to order at 9:23 AM. Before proceeding he announced that a student from the University of New Mexico would like to film the Commission meeting. This student is putting together a documentary about sexual assault. The making of the video was precipitated by the rape and murder of the young girl at the Sunshine Theater in Albuquerque. The documentary should be done by August 2004. Chair Caldwell stated that since this was a public meeting, he would allow filming, unless the commission members had to break into an executive session. If that occurred, the student would be temporarily excused. The rest of the Commission agreed.

Chair Caldwell asked for approval of the minutes of the last meeting. ***John Bigelow made a motion to approve the minutes with one correction. He noted that he was present at the meeting even though he is not listed as such. Motion seconded and accepted by consensus.***

Chair Caldwell gave the chair's report highlighting the following:

- 1) National Association of Sentencing Commissions (NASC) Conference in Seattle. He learned two interesting items:
  - State vs. National – Almost uniform on both sides that a national sentencing commission was not the way to proceed.
  - Most states are in anguish with regard to budget cuts and what they have to do with corrections. Most states are going to do what New Mexico has been doing for years (e.g., criminal code and keeping in prison who should be there and letting go who can be released).

The NMSC has agreed to host the next annual NASC Conference in either Santa Fe or Taos. This will be a great opportunity for every commission member to go to the conference at a low cost. The NMSC can also invite the Governor to be a keynote speaker. The registration fee will cover all expenses, so NMSC will not need extra funds to host this event.

- 2) The NMSC was asked to do a presentation before the Interim Legislative Corrections Oversight Committee on August 20 in Santa Rosa. Many commission members attended the meeting and shared their individual perspectives.
- 3) Chair Caldwell would like to schedule a meeting with the Governor.
- 4) Chair Caldwell welcomed Judge Ramczyk, one of NMSC's newest members.

Michael Hall added that seven pieces of legislation came from the Governor's office yesterday. The proposed legislation will be put before the Corrections Oversight Committee next Friday by the Governor's office. It contains two important items: 1) an amendment to NMSC's enabling legislation that would form a brand new commission that would focus solely on sexual offender issues; and 2) additional funds may be welcome. Anything NMSC would like to change should be proposed in the coming week.

The last page of the packet contains the Sentencing Reform Committee's recommendations relating to any proposed legislation, particularly sex offender parole issues.

Mr. Hall has been working with Dr. Paul Steele of the Statistical Analysis Center (SAC). Dr. Steele will be applying for a \$50,000 federal grant. NMSC can also apply for a SEARCH grant, which will give \$20,000 for technical assistance. Colby Phillips recently compiled a research overview entitled "Sex Offender Treatment Approaches and Programs." It covers sex offender treatment programs that positively affect public safety. It starts at a broad level and then narrows to state by state. It is a working draft and Mr. Phillips would appreciate hearing comments. Chair Caldwell encouraged the Commission to review and give comments right away.

Mr. Hall had two more items:

- 1) CJIMT – Has been meeting with them. They are putting together a Justice Portal and would like to list NMSC on their web site. NMSC may become a voting member in the future.
- 2) LFC – NMSC will appear before the Legislative Finance Committee on October 14th. All commission members are encouraged to attend and participate just as they did for the COJ meeting. Mr. Hall requested that Chair Caldwell make a similar presentation to the one he made at the COJ meeting. He agreed.

#### Juvenile Committee

Bob Cleavall gave the Juvenile Committee report. The Juvenile Committee plans to study and make recommendations with regard to changes to the Juvenile Code. They also plan to study the truancy initiative the Governor is putting together. On August 1, they toured the YDDC. There will be no September meeting. Lawrence Barreras invited the committee to tour the Boys' School in Springer. It would be about a two-hour meeting. He would also like to have a guest speaker such as Peter Cubra or Janet (gender-based programming from women's justice project). Other suggestions were Anne Murray, a speaker from mental health, someone from CYFD regarding policies on sex offenders, or someone from the medical center regarding juvenile treatment for sex offenders. It was determined to go on Friday, October 10, and to cancel the October 14 meeting that had previously been set up at CYFD.

***A motion was made to approve the report. It was seconded and approved by consensus.***

#### Legislative Committee

Mr. Suazo gave the Legislative Committee report. The Legislative Committee has drawn up a mission statement and would like to bring it to the Commission for approval. Senator Griego attended the last committee meeting and spoke about Ignition Interlock and the direction the legislature sees itself going. On October 14, the committee plans to break down the DWI legislation into Pass/Don't Pass recommendations. The Legislative

Committee passed a resolution to add sex offender programs. The research overview done by Mr. Phillips was a result of an action taken during the last Legislative Committee meeting. Sex offender issues overlap with the Sentencing Reform Committee, but the Legislative Committee is willing to work with that committee or through the Executive Committee. The next meeting will be on October 14. It will be three hours with a working lunch.

Chair Caldwell acknowledged the overlap with regard to the sex offender issue and insisted that the committees use the telephone, email or whatever it takes to keep coordinated on the issue.

***A motion was made to accept the report. It was seconded and adopted by consensus.***

#### Data Committee

Mr. Hall delivered the Data Committee report in Michael Cox's absence. The entire Data Committee meeting was devoted to Barb Tombs, now director of the Minnesota Sentencing Commission. She spent three hours instructing the committee on gathering data. The biggest hole in New Mexico is that it has no consistent tracking number. New Mexico needs a personal identifier. It also needs a uniform Judgment and Sentence form. These two items are foundational to help track data. The committee needs to develop an inventory of what is currently being done in New Mexico. When the committee is ready for the next step, Ms. Tombs is willing to come for another visit. The next Data Committee meeting will be September 26.

***Martin Suazo made a motion to accept the Data Committee report. It was seconded and approved.***

#### Sentencing Reform Committee

Nick D'Angelo gave the Sentencing Reform Committee report. The committee met last week. The Governor's office has asked the Sentencing Commission to analyze some proposed legislation regarding sex offenders. Instead of coming up with a specific piece of legislation, the committee decided to try to come to a consensus regarding concepts and general parameters. A recommendation from the Sentencing Reform Committee was drafted regarding parole for sex offenders and is being brought before the full commission to see if it would support the statements.

After some discussion, ***a motion was made to accept the report and to consider the recommendation. It was seconded and approved by consensus.***

Chair Caldwell expressed his concern about being crunched for time; however, the Commission needs to decide what to do with the legislation being presented, as the NMSC has been empowered by statute to handle. Chair Caldwell had the commission take a break at about 11:00 in order to read through the proposed legislation and to meet in committees. The commission reconvened at 11:50.

***Dave Schmidt made a motion to meet as a committee as a whole in order to determine a response to the legislation. It was seconded and approved.***

Chair Caldwell requested feedback from reviewing the legislation and committee recommendations. Mr. Schmidt had concerns about Megan's Law. He does not want it to apply to juveniles and would like the definition of a sex offender to include "a person eighteen years of age and older."

***After some discussion, a motion was made to accept the Sentencing Reform Committee's recommendations in their entirety. It failed. Another motion was made that the NMSC send a letter to the Governor and legislature stating that the NMSC has concerns because of the impact. It recommends a study beforehand, but if they are going to consider passing legislation without a study, the NMSC recommends the following...(and the following will be what the commission agrees upon of the committee recommendations). The motion was seconded. One member declined. Motion passed.***

Judge Pickard will write the letter for Chair Caldwell and send it to him for review and signing.

Referring back to the recommendations of the Sentencing Reform Committee, Chair Caldwell asked for a motion on the first item. Someone noted that "SJC" should be "HJC" in the first sentence.

***A motion was made to accept Item 1 with an amendment to change 1c to "second degree." Also, it was requested to add "18 or older" after "person" for the definition of sex offender. The motion was accepted by consensus.***

Since item two dealt with the parole board, of which Ms. Aragon is a member, she abstained from voting.

***Judge Pickard made a motion to accept 2, 3, and 4. Gina Maestas requested to add "d) treatment that has been received" and "e) risk assessment" to Item 3. Mark Donatelli requested to add "by a statutory scheme" after the word "implemented" on Item 3. He also requested to add to Item 3 "If going to do this, must have full-time non-volunteer professional parole board." Accepted by consensus.***

The Commission could not come to a consensus with regard to burden of proof. Mr. Hall requested that Mr. Phillips research the issue of burden of proof.

***Judge Pickard made a motion to accept Items 6 through 8. It was adopted by consensus.***

Chair Caldwell encouraged the Sentencing Reform Committee and the Legislative Committee to work together and with Colby, by email, etc., in order to come up with recommendations before the COJ meeting.

The next meeting will be on Thursday, October 23, in the CYFD Conference Room, PERA Building, in Santa Fe.

Roger Hatcher has concerns about the county jails. They have 80 people over capacity - 70+ are from out of state and it is costing over \$75,000 per month. Chair Caldwell asked for input from the Commission. He encouraged Mr. Hatcher to bring this issue up with the Association of Counties.

As to additional committee memberships and voting rights, Chair Caldwell decided to leave that up to the discretion of the committee chairs. As to receiving a per diem and mileage, a Commission member must be a committee member or be specifically asked to attend a committee meeting in order to receive it.

***A motion was made to adjourn. It passed.***

The meeting ended at 1:30 PM.