

NEW MEXICO CRIMINAL SENTENCING COMMISSION
Full Commission Meeting Minutes

Wyndham Garden Hotel
Albuquerque, NM

September 12, 2003
9:00 AM

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.

**New Mexico Sentencing Commission
Full Commission**

January 9, 2004
Beginning at 9:00 AM.

NM State Archives
Santa Fe, NM

Commission Members Attending:

John Bigelow
Bob Cleavall
Michael Cox (Designee for Patricia Madrid)
Nick D'Angelo (Designee for Joe R. Williams)
Roger Hatcher
April Land (Designee for Suellyn Scarnecchia)
Tom Lyon (Designee for John Denko)
Gina Maestas
Antonio Ortega
Lynn Pickard
Martin Suazo
Maggie Toulouse
Henry Valdez (Designee for Lemuel Martinez)

Commission Members with Proxy:

Cindy Aragon, Proxy to Lynn Pickard
Mary-Dale Bolson, Proxy to Bob Cleavall
Connie Keegan, Proxy to John Bigelow
Dave Schmidt, Proxy to Bob Cleavall

CALL TO ORDER:

Michael Hall called the meeting to order, as he had just received a phone call from Chair Caldwell who was having car trouble and would not be able to attend the meeting.

ISSUE/OUTCOME:

Motion needed for someone to chair the meeting in Chair Caldwell's stead.

OUTCOMES INCLUDE:

MOTION – for Judge Pickard to chair the meeting.

Commission Members Absent:

Joe Caldwell, Chair
Billy Blackburn
Mark Donatelli
John Pope
Daniel Ramczyk
Jerry Ritter

Guests Attending:

Tasia Young, NM Assoc. of Counties

NMSC Staff Attending:

Michael Hall
Heather Mann
Claudia McKay
Chris Miller
Karen Ochsankohl
Colby Phillips

YES - UNANIMOUS

NEXT ISSUE/OUTCOME:

Approval of minutes from October 23, 2003, meeting.

OUTCOMES INCLUDE:

MOTION – to approve minutes from the last meeting.

YES – UNANIMOUS

NEXT ISSUE/OUTCOME:

Executive Staff Report:

The Legislative Committee would like to be given the authority to speak for the commission as a whole during the legislative session.

MOTION – that the Legislative Committee be given authority to speak for the commission as a whole during the legislative session.

YES – UNANIMOUS

Discussion of options for additional appropriation to fund Sex Offender Management Board. Currently asking for \$104K for remaining fiscal year as well as \$250K for next fiscal year. The Department of Finance and Administration (DFA) and the Legislative Finance Committee (LFC) want to combine the two appropriations into one and make it a 2-year appropriation (17 months). Currently, the University of New Mexico (UNM) charges 20% overhead cost. The additional \$250K would be an additional \$50K per year to UNM. UNM won't waive the 20% unless the additional money is put into a special account. There was concern that if this additional amount is put into a separate line item, it may not stay there. If it is put into the base budget, it most likely will remain there. The third option would be to keep the additional money on the state side and use it to hire term state employees. This would be an administrative hassle and NMSC would have to maintain two sets of books.

MOTION – to approve option three pending a meeting with UNM, if cannot do the first option without overhead.

YES – UNANIMOUS

Colby Phillips gave an update regarding hosting the next National Association of Sentencing Commissions Conference. It will be at the Hotel Santa Fe, August 15-17, 2004. Currently the NASC program committee has been planning logistics, such as hotel and catering. Please contact Mr. Phillips if you would like to help in some way or have ideas about the agenda.

Mr. Phillips has also been looking into unlimited teleconferencing for \$99/month. We would be given a unique 800# and pin for every meeting. More details later. For the rest of this month, conference calls will be handled as usual.

NEXT ISSUE/OUTCOME:

Juvenile Committee Report: Committee has not met since last full commission meeting. Peter Cubra will be a guest speaker at the next Juvenile Committee meeting. Art Murphy has replaced Lawrence Barreras. Mr. Murphy could not attend this meeting but he plans to discuss juvenile justice issues at the next full commission meeting. The governor would like to see legislative changes regarding statewide curfew and truancy issues.

NEXT ISSUE/OUTCOME:

Legislative Committee Report: Two motions were passed at the last committee meeting and would like the full commission to decide. The first motion dealt with proposed gross receipts tax legislation. The second dealt with legislation that would define a state prisoner and mandate and appropriate funds for the extradition, transportation and housing of state prisoners.

MOTION – that the Commission endorse and support legislation regarding an optional 1/16 gross receipts tax increase.

PASSED – By Majority

MOTION – that the Commission support the counties on legislation that would mirror HB556 with an appropriation. Seconded.

AMENDMENT – that the definition of state prisoner be expanded that proposes people treated as state prisoners also be treated as state prisoners for good time when in county jails.

Vote on Amendment:

FAILED – By Majority

Vote on original Motion:

PASSED – By Majority

MOTION – to accept the Legislative Committee’s mission statement. Seconded.

YES – UNANIMOUS

Other items: Looked over a template planning to use for the legislative session. Approved in principle. Discussed working with the Association of Counties on certain bills. Also discussing doing research for Association of Counties for about \$5,000.

MOTION – that the Commission support an appropriation for HB308 that covers transportation and extradition of state prisoners.

YES – UNANIMOUS

The Legislative Committee plans to meet every Tuesday morning during the legislative session at 10 AM in the Administrative Office of the Courts' Conference Room.

NEXT ISSUE/OUTCOME:

Data Committee Report: Have put together a template that will be used in-house. Will submit analysis in regular format to DFA/LFC during the legislative session. CJIMT's status is tenuous.

MOTION – that the Commission support funding CJIMT until the project is finished.

YES - UNANIMOUS

NEXT ISSUE/OUTCOME:

Sentencing Reform Committee Report: Had meeting in Silver City at Western New Mexico University. Wanted to get input from members of the public. Four people attended from the public – a local magistrate judge, a district attorney and two police officers. VERA provided three presenters – Dan Wilhelm, Mark Bergstrom and Rob Lubitz. Would like to bring Mr. Lubitz back as a consultant; however, he is extremely busy. Would like to come up with a work plan and statement of goals using the NMSC's statutory duties as a framework. Will contact VERA in order to obtain a facilitator. Plan to meet the same day as the SOMB, the last Thursday of the month.

NEXT ISSUE/OUTCOME:

SOMB Update: Officially does not take effect until February 5. Had an organization meeting and unofficially approved Judge Vigil as chair. The first official meeting will be the last Thursday of the month, February 26, at PERA.

NEXT ISSUE/OUTCOME:

A BJA Grant is available for \$200,000. January 31 is the filing deadline. It fits into the SOMB. If apply, will do in conjunction with ISR.

Comment: Legislature gets upset when agencies force its hand and ask it to foot the bill after the federal funds run out. Response: It would be a flow through for the treatment of sex offenders.

Comment: Will the proposal include administrative costs? Response: Yes

QUESTION: Is anyone opposed to this idea?

NO – UNANIMOUS

Recommendation to include the good time issue as an item on the next agenda. It was determined to put on the Legislative Committee's agenda first.

SCHEDULE MEETINGS

The full commission would like to meet on the last Friday of the month on the following dates for 2004 - April 30, July 30, and Oct 29. They will start at 9 AM and be held in Corrections auditorium.

The Legislative Committee plans to meet on a 6 to 8 week schedule after the session is over.

The Sentencing Reform and SOMB want to meet monthly because of taking on such a big set of duties. The SOMB is mandated to meet 8 times per year.

The Juvenile Committee plans to meet every 6 to 8 weeks.

MOTION – to adjourn.

YES – UNANIMOUS

Meeting adjourned.

**New Mexico Sentencing Commission
Full Commission Meeting Minutes**

April 30, 2004

9:00 AM

New Mexico Corrections, Santa Fe, NM

Commission Members Present	Commission Members Absent	Guests	NMSC Staff
Joe Caldwell, Chair	Billy Blackburn	Bob Martinez	Michael Hall
Cindy Aragon	Mary-Dale Bolson	Nick D'Angelo	Heather Mann
John Bigelow	John Denko		Claudia Armijo
Bob Cleavall	Mark Donatelli		Colby Phillips
Michael Cox	Constance Keegan		Julie Frendle
Lt. Rick Anglada for Major Scott Ford	Patricia Madrid		
Roger Hatcher	Art Murphy		
April Land	Antonio Ortega		
Gina Maestas	John Pope		
Lemuel Martinez	Daniel Ramczyk		
Lynn Pickard	Suellyn Scarnecchia		
Jerry Ritter	Maggie Toulouse		
Dave Schmidt			
Martin Suazo			
Joe Williams			

Meeting called to order by Joe Caldwell at 9:10 a.m.

Minutes of last meeting were approved with the changed spelling of principal to principle.

There was a complaint regarding the lack of timeliness of the minutes. Mike Hall stated that this would be resolved. The NMSC staff will get the minutes to the prospective committee chairs for approval within a week following the meeting. Following chair approval, the minutes will be immediately sent to the prospective committee members.

NMSC staff gave an update on NMSC administration:

- Mike has successfully reduced the UNM overhead costs to a flat rate of \$60,000.00, which is approximately 9% as opposed to the usual UNM rate of 20%.
- Colby Phillips will be leaving NMSC. His last day will be May 7th.
- Julie Frendle has been hired as Program Coordinator.
- Tony Ortiz has been hired as Staff Attorney and will officially start May 3rd.
- Paul Guerin has been hired for approximately 12 hours per week and Linda Freeman for 8-10 hours per week starting July 1st to work on data.
- We now have an office for NMSC staff in Santa Fe.
- NASC national convention will be in Santa Fe August 16th – 17th with registration and a reception the evening of August 15th.
 - Governor Richardson has been invited to be the Key Note Speaker.

- Registration is \$225.00 per person. If you are an employee of the state and the state can pay for your registration it would be helpful. If the state is unable to pay your registration, NMSC will pay the registration.
- Mike talked with Joe Williams and John Bigelow about a Virtual Private Network and is asking for the help and support of the other agency heads in NMSC granting NMSC private access.
- Budget is ready and will be presented later in the meeting.

Committee Reports:

Legislative Committee – Martin Suazo, Chairman

- Met every Tuesday during the 2004 legislative session.
- Looked at over 100 bills, tabled a few. The committee was asked for its opinions and the opinions were valued.
- Motion was made and passed to accept the committee's report.
- The Governor signed five pieces of legislation and the Commission had influence over all of them.
- Future actions – committee will not meet again until August or September unless something arises requiring the attention of the committee.

Executive Committee – Joe Caldwell, Chairman

- Wanted to define the roles of each committee. There is a lot of overlap between the committees. Some of the committees will be meeting back to back to save time and per diem expenses.
- The Sentencing Reform Committee has identified tasks that need to be undertaken. After reviewing it was determined that everything cannot be done by the next legislative session. It was decided to extend the deadlines to target the next long legislative session.
- Joe Caldwell suggested that there is a need to present to the Governor to determine his wants. John Bigelow said we should table this for six months until we know who will be Governor in January. Joe Williams suggested taking interim items to Governor's staff in case the Governor wants to call a special session to deal with criminal justice issues.
- Mike Cox said we need a timetable with steps and dates in final form by April or May to show the governor before the next legislative session.

Juvenile Committee – Bob Cleavall, Chairman

- Committee wants to take a good look and rewrite the statutes.
- Peter Cubra was brought in to give a presentation on his findings in the juvenile corrections facilities. Peter Cubra referred to studies by Eric Trupin, PhD, University of Washington. A request has been made to Secretary Bolson for a presentation of Dr. Trupin's report.
- Rick Sandoval, Director of the Juvenile Parole Board, presented to the Juvenile Committee some of the problems they are experiencing. The Juvenile Parole Board staff is just not able to do the work that needs to be done with only three board members.

- David Schmidt - There are only three Juvenile Parole Board members. They are reimbursed only for their time in the hearings, not for prep time. Committee will be making recommendations on this issue.
- Bob Martinez –Parole Board hears over 300 cases per year. The Board needs to be expanded to nine members and to be paid for prep time. This is a volunteer board and while they can't be paid large salaries we should support greater prep time pay and reimbursement.
- Heather Mann is putting together information on what similar states are doing.
- Juvenile Parole Board has extended an invitation to the commission members to attend Juvenile Parole Board hearings. You can call the NMSC office to schedule a time.
- Motion made and passed to accept the Juvenile Report.

Data Committee – Mike Cox

- After surveying for the best computer model, the committee decided to use the Prophet Model and to hire Dr. Jim Austin. Dr. Austin will teach some of the NMSC staff to run the data in-house. This model will be able to be used for juvenile data once the adult data is running properly. The cost will be \$15,000. The Department of Corrections is currently using this model and they may help fund the NMSC project. Paul Guerin and Linda Freeman will work on this project.
- CJIMT wants NMSC to take it over. There is a great deal of overlap. Gina Maestes said they wouldn't want it to happen until the next session. Mike Hall said that the next session is in August and that NMSC will need to get it into the budget. Judge Pickard made a motion to support CJIMT becoming NMSC. Joe Caldwell said now we have to write a data regulation. Tony Ortiz will begin working on regulations to retrieve criminal justice data from state, county, and local government agencies. Martin Suazo expressed concern that we move ahead with proper funding, he wants to attach some numbers without causing financial strain. Joe Caldwell said that we could only do this with funding. John Bigelow asked if the information is there why do we need to bring them over? Reply was that they have years of effort on standardizing data consistency and the web portal. There is a 70% overlap of the two committees but not 100% overlap. There is some talk of the Chief Information Officers' office taking this over. Joe Caldwell stated that this is something that we need to be more vocal about.
- Motion was made and approved to accept the Data Committee Report.

Sentencing Reform Committee – Joe Williams, Chairman, had Nick D'Angelo give the report.

- Committee has met three times.
- The committee has hired Thom Allena to facilitate the meetings. Have written statements for Vision and Mission. The members agreed upon prioritized goals.
- VERA has presented an overview of sentencing.
- Have had guest speakers from Kansas, Utah, and New Hampshire.
- Anomaly sub-committee is working to identify existing statutes considered to be anomalies. Current focus is on the Equitable Theft Bill. It is important for the

Sentencing Reform Committee to make a mark to not just propose legislation but to get it passed. This is why they choose to start with non-controversial issues.

- Motion was made and approved to accept the Sentencing Reform Committee report.

Sex Offender Management Board – Judge Michael Vigil, Chairman

- Committee met four times.
- Formed sub-committee to develop the Mission and Vision which was later adopted by the entire committee
- Presentations in the meetings include 1) what other states are doing 2) Matt Martinez spoke on sex offenders 3) Donita Goodin spoke on juvenile offenders 4) Treatment workgroup will present a tool in May.
- Guidelines and Survey group want information on what other states are doing. They want to put standards into place on training and trainers.
- There will be two polygraphers from Colorado doing a half-day presentation held May 27th from 10AM – 2 PM at the NM Corrections. Everyone is invited and lunch will be provided.
- The Colorado Sex Offender Management Board will pay expenses for two SOMB members to travel to Colorado to tour and learn more about the Colorado SOMB, facilities, and programs.
- Motion was made and approved to accept the SOMB report.

Executive Committee – Joe Caldwell, Chairman

- The Sentencing Reform Committee has identified tasks that need to be undertaken. After reviewing, it was determined that everything cannot be done by the next legislative session. It was decided to extend the deadlines to target the next long legislative session.
- Joe Caldwell suggested there is a need to present to the Governor to determine his wants. John Bigelow said we should table this for six months until we know who will be Governor in January. Joe Williams suggested taking interim items to Governor's staff in case the Governor wants to call a special session to deal with corrections issues.
- Mike Cox said we need a timetable with steps and dates in final form by April or May to show the governor before the next legislative session.

The Commission went into executive session for approximately 20 minutes to discuss staff salaries and the NMSC budget.

NMSC Fiscal 2005 Budget

- Motion was made and passed to approve the budget with two conditions: 1) for the numbers to be more real 2) budget matters are to be brought to the appointed budget sub-committee in the future. Sub-committee members are: Gina Maestas, Joe Caldwell, and Bob Cleavall.

Miscellaneous

- Cindy Aragon requested position descriptions for each NMSC employee.
- David Schmidt asked if help is needed for the NASC conference. He said that the larger agencies could provide one to two employees to help with registration and such.
- In preparation for the Corrections Oversight Hearings, we will be invited to present. Each Chair should give a report on their committee.

Next meeting

- July 23rd to be held at 9 a.m. at the New Mexico Bar Association in Albuquerque.
- Joe Caldwell would like the Committee Chairs to discuss when meetings can be held in other areas of the state to discuss these issues.

Motion was made and passed to adjourn the meeting. Meeting ended at 12:07 p.m.

NEW MEXICO SENTENCING COMMISSION
FULL COMMISSION

July 23, 2004
MINUTES

State Bar of NM
5121 Masthead NE
Albuquerque, NM
9:00 AM

Commission Members Present	Commission Members Absent	Others	NMSC Staff
Joe Caldwell, Chair	Constance Keegan	Steven Johnson	Claudia Armijo
Cindy Aragon	Honorable Daniel Ramczyk	Troy Rodgers	Michael Hall
John Bigelow	Maggie Toulouse	Anne Guriss	Julie Frenkle
Billy Blackburn	Joe Williams	Bob Martinez	Paul Guerin
Martin Suazo(+ for Ortega)	Antonio Ortega	Sara Koplik	Karen Ochsankohl
Bob Cleavall			Tony Ortiz
Michael Cox(for P.Madrid)			Jake Garrison
David Schmidt			Linda Freeman
Mark Donatelli			
Major Scott Ford (for Denko)			
Roger Hatcher			
Honorable Jerry Ritter			
April Land			
Gina Maestas			
Lemuel Martinez			
Art Murphy (for Bolson)			
Honorable John Pope			
Honorable Lynn Pickard			

Meeting called to order at 9:10AM

- I. **Motion to approve April’s meeting.** Motion passed with changes regarding cut and paste error in draft– repeated.

II. Committee Reports:

SOMB – Claudia Armijo

Three members of the Sex Offender Management Board went to Colorado to meet with that state's Sex Offenders Management Board. Colorado is in the process of developing a plan to address city and county ordinances that restrict the number of sex offenders who can live in one dwelling. One facility has what is called a "shared living arrangement" and that facility is finding this arrangement, under certain specific circumstances can be successful. A study was conducted in Colorado which concluded that when a sex offender returns to his pre-conviction family and old environment, it is not the best type of support for the offender and therefore, as he re-enters the same old environment, he is more likely to re-offend and is less successful in treatment. Additionally, the SOMB members learned about a fee Colorado charges its convicted sex offenders. It is called a sex offender surcharge and 25% of the money received from the surcharge, which is imposed by the sentencing court, goes to the SOMB. The money is used for a number of things including trainings for treatment providers, which are held throughout the state and are offered at no charge to treatment providers. This helps ensure that providers receive the proper training so that they can meet the state's treatment provider standards.

The Treatment Workgroup - developed an audit tool that has been mailed to all known New Mexico treatment providers. Tentatively a provider meeting has been scheduled for August 20th.

Dr. David Lisak, a nationally recognized expert on sex offenders, will be presenting to the SOMB. The meeting is tentatively set for August 25th. Dr Lisak has helped other states set up their SOMB's and has given continued guidance and assistance to many of those boards..

The Guidelines Workgroup - Is currently looking at proposed legislation to amend New Mexico's Sex Offender Registration and Notification Act so as to bring New Mexico into federal compliance. New Mexico receives a ten percent reduction in its federal grant money each year as a result of being non-compliant with the provisions of the Jacob Wetterling Crimes Against Children and Sexually Violent Offender Registration Act. Two expert, certified polygraphist from Colorado presented on the issue of post-conviction polygraphy testing during a special meeting of the SOMB on May 27th. The components in violation are: 1) New Mexico does not currently require the registration of juvenile sex offenders 2) New Mexico needs to provide for lifetime registration for certain "sexually violent predators" and twenty year registration for other offenders. (PLEASE NOTE - after this meeting, it was determined that there is no federal mandate to require the current 10 year registration to be changed to 20 years).

Judge Michael Vigil, Chair of the SOMB has requested Town Hall meetings in fiscal 2006. Michael Hall will address this concerning the budget.

A meeting schedule will be posted on the web site. Below are the meetings currently scheduled:

July 27th and 28th Sex offender trainings provided on a first come basis by the Corrections Department.

August 15th - All day meeting is scheduled to hear from the victims in the morning and from the offenders in the afternoon.

August 20th – Treatment Provider meeting.
August 25th - Dr. David Lisak presents to the board.
September 30th - Voting meeting, 1:30 PM at Corrections.

A motion was made to accept the SOMB report. Results - Motion dropped. After discussion it was decided that committee reports need not be approved. In the future the committee will be thanked for its report.

A request was made for voting items to be listed on the agenda in the future.

Sentencing Reform Committee-John Bigelow

John Bigelow has replaced Joe Williams as chair of the Sentencing Reform Committee (SRC). John Bigelow advised the NMSC that he is also serving as chair of the Supreme Court Criminal Justice Task Force. The task force is working on recommendations concerning resource needs for the criminal justice system. Mr. Bigelow noted that it would be beneficial if NMSC staff could attend future meetings of the task force. Those meetings are scheduled for August 13th and September 24th and both meetings will be held in the Supreme Court chambers in Santa Fe.

John Bigelow then provided an overview of three legislative proposals that had been adopted by the SRC, pursuant to recommendations made by the anomaly sub-committee. The legislative proposals are meant to address current anomalies in criminal sentencing statutes. If approved by the NMSC, the legislative proposals will be introduced during the 2005 legislative session. Mr. Bigelow reminded the NMSC of the SRC's long-term goal to review and revise New Mexico sentencing law in preparation for the 2007 legislative session. Mr. Bigelow then asked Tony Ortiz to describe the three legislative proposals in greater detail.

At the outset of his remarks, Mr. Ortiz provided a brief summary of a recent U.S. Supreme Court decision, Blakely v. Washington. He noted that the decision is based on the Sixth Amendment right to a jury trial and prohibits a judge from imposing an upward departure from the effective maximum sentence for an offense if the departure is based on a fact, other than a prior conviction, determined by the judge. Any facts used as a basis for an upward departure must be proved to a jury beyond a reasonable doubt, unless the defendant stipulates to the facts. Mr. Ortiz advised that early commentaries have indicated that the Blakely decision will have its greatest impact on states with sentencing guidelines and the federal sentencing guidelines. There was a brief discussion among commission members of New Mexico statutes that may be implicated by Blakely. Mr. Ortiz also noted that the agenda for the national association of sentencing commissions, which is being hosted by the NMSC in Santa Fe, has been revised so that a substantial portion of the agenda can be devoted to analysis and discussion of Blakely.

Tony Ortiz then provided the commission with an overview of the equitable theft bill. He noted that the proposal is based upon similar bills that have been introduced in prior legislative sessions and, most specifically, a bill introduced by Representative Ken

Martinez during the 2003 legislative session. Mr. Ortiz stated that sections regarding graffiti, forgery and arson have been added to the current proposal. He also indicated that a statutory section regarding processing fees in worthless check cases, which had been included in an early version of the current bill, has been removed and will be presented to a commission as a separate proposal. Mr. Ortiz noted that the core principle for the equitable theft bill is the creation of fair, uniform sanctions for a range of property offenses. The threshold amounts for sanctions have not been amended in many years and the effect of inflation on those amounts is addressed in the bill.

Following a discussion among commission members concerning the equitable theft bill, there was a motion to amend the statutory section regarding forgery. The motion proposed an amendment to indicate that when forgery is committed and there is no quantifiable value, the penalty is a petty misdemeanor. The motion passed unanimously.

Next, a motion was offered to increase the monetary “break-point” between a petty misdemeanor and a misdemeanor from \$100 to \$250. Following a discussion among commission members, the motion was passed. There were three no votes (Martin Suazo, Lemuel Martinez and Cindy Aragon) and two abstentions (Gina Maestas and Judge Jerry Ritter).

Next, a motion was offered to adopt the bill, as amended by the commission. The motion passed, with one no vote (Lemuel Martinez).

Tony Ortiz then provided the commission with an overview of the earned meritorious deduction bill. Currently, the earned meritorious deduction statute lists offenses that qualify as serious violent offenses. While “generic” assault and battery offenses are included in the list, similar assault and battery offenses committed against a household member are not included in the list. The bill amends the statute to add the assault and battery against a household member offenses to the list of serious violent offenses.

The commission discussed the provisions of the bill and also discussed the possibility of a Blakely issue concerning the earned meritorious deduction statute. Currently, the statute includes a list of “discretionary” offenses that can be elevated to a serious violent offense upon a finding that the nature of the offense and the resultant harm are such that the court finds the offense to be a serious violent offense. There was a discussion regarding whether such a judicial fact-finding has the practical effect of increasing a sentence in violation of the holding in Blakely. The commission decided that it was premature to address an issue that may not affect the earned meritorious deduction statute. A motion was offered to adopt the bill as drafted and the motion passed with two no votes (Mark Donatelli and Mark Donatelli exercising Billy Blackburn’s proxy).

Tony Ortiz then provided the commission with an overview of the worthless check processing fee bill. He noted that the processing fee bill had been merged with the equitable theft bill at one time. Now, however, the processing fee bill is presented as a separate measure. Much like the equitable theft bill, this measure addresses the effect of inflation on amounts that have not been amended in several years. The commission

discussed the bill and the disposition of the processing fees into a fund that pays for training for district attorneys. A motion was offered to adopt the bill as drafted and the motion passed with three no votes (April Land, Mark Donatelli and Mark Donatelli exercising Billy Blackburn's proxy) and two abstentions (Lemuel Martinez and Judge Jerry Ritter).

Tony Ortiz advised the commission that the equitable theft bill, as amended by the commission, the earned meritorious deduction bill and the worthless check processing fee bill will be presented to the interim legislative corrections oversight and justice committee later in the summer.

Next, the commission discussed whether to formally support the operation of drug courts in New Mexico. There was discussion concerning the costs for operating drug courts and studies regarding recidivism rates for drug courts. After the discussion, a motion was offered to prepare an NMSC letter of support that requests:

- 1) continued funding for drug courts;
- 2) expanded funding for drug courts, including funding for the early release program administered by the corrections department; and
- 3) funding for evaluation of drug court operations, including monitoring of recidivism rates for people who participate in drug court programs.

The motion passed, with one abstention (Judge Jerry Ritter).

Juvenile Committee – Bob Cleavall

The committee is focusing on truancy issues due to the new law which became effective July 1, 2004. The majority of JJAC's money is going to truancy officers, there are over 4,000 elementary students with truancy issues. By law, schools now have to take attendance and report absences. Parents will be held accountable for their truant children. Bob reported that the FINS (Families in Need of Supervision) statute continues to be an unfunded mandate. The committee is looking at is the juvenile parole process in NM and how we can make this a better system and a process that works. Rick Sandoval, executive director of the Juvenile Parole Board will be making a presentation on their needs. The Juvenile Committee is also working on ways to increase the juvenile parole process to support parole board members, \$12,000 per parole board member is being looked at. The parole board member from Las Cruces currently has to pay her own hotel expenses. There will be a committee meeting August 26th to look at some of these issues.

Michael Hall stated that the new version of the NMSC Juvenile Program Inventory is finished and should be published in late August or early September.

Bob Cleavall reported that Roswell Magistrate Judge Corn attended the last juvenile committee meeting and expressed concern with the problems the magistrates are having with minors who violate traffic laws then fail to show in court or pay. The courts have little recourse or power to enforce the penalty. There was discussion at the juvenile committee about booting the minor's car.

There was an expression of concern that juvenile committee is meeting and making recommendations without it passing the full commission. Michael Hall stated that no formal recommendations would be made until after the Full Commission meets in October. Bob Cleavall stated that it's not as much of a recommendation as it is putting out the information. Michael Hall stated there is a Children's Task Force with four committee members on it. Dave Schmidt represents the Full Commission on this committee.

Michael Hall reported that he has been appointed to the YDDC Advisory Board.

Data Committee – Michael Cox.

Action item - CJIMT has expressed an interest to come under the NMSC umbrella:

VI. CJIMT Update – Michael Hall/Steve Johnson

Michael reported that as of 3:00 pm yesterday the CJIMT board voted to come under NMSC. The Commission needs to vote on this. It will be a multi-agency request. There will be a lot of administrative and budget work for the NMSC staff. CJIMT wants to remain as an independent, stand-alone agency. Steve Johnson and his staff will stay at their current location. The CJIMT server is currently located at Corrections and will remain there. Michael Hall asked for permission to add this to the NMSC budgeting processing. He stated that even though the players are the same, CJIMT works on day-to-day data and NMSC does research. The Governor needs to know that this is mission critical. There was discussion regarding: CJIMT would continue operate independently; NMSC would request budget for NMSC administrative assistants; concern regarding the impact to the NMSC budget and time commitments of the NMSC staff; this could eliminate the need to have a Data Committee; if NMSC doesn't absorb CJIMT, NMSC will still have to take over the work of data sharing. Mike Hall was asked for his recommendation whether to do this or not – Mike said yes, contingent upon adequate funding.

A motion was made to approve CJIMT to come under NMSC. Results – motion passed unanimously.

Michael Cox stated that we need information from the Corrections database. It was proposed to data committee that the NMSC staff take this project on.

A motion made to allow the NMSC staff to provide technical assistance to obtain this information. Results – motion passed unanimously.

III. Chair's Report – tabled

IV. Executive Staff Report – tabled

V. Miscellaneous Item

A. Preparation for Corrections Oversight Legislative Hearings – tabled

FY05 Budget Update – Michael Hall

Michael Hall reported that NMSC is mandated to ask for a flat budget of money. Discussion followed: whether to ask additional money even though we are not allowed to do that in the budget documents; to ask the Governor directly for additional money. It was decided that NMSC would request a flat budget and request additional money. It was decided that Michael Hall would write a letter requesting additional money.

Approval of FY06 Strategic Plan & Budget – Michael Hall

A motion was made to approve the FY06 Strategic Plan. Results – motion passed unanimously.

Suggested Next Meeting Date – October 15th

Next meeting will be October 15th, at the State Bar at 9 AM. It will be an all day meeting in order to prepare for the Corrections Oversight Legislative hearing. Lunch will be included.

A request was made for Michael Hall to provide a written report on the agenda items not covered in today's meeting.

Michael Hall expressed a thank you to Karen Ochsankehl who will be leaving mid-August. Jake Garrison, law student working this summer at NMSC was introduced. Garrison is working on Parole Board Guidelines - this will also assist when the SOMB drafts guidelines for sex offenders. Paul Guerin and Linda Freeman were introduced. Paul Guerin reported that the data protocols are rapidly moving forward.

Michael Hall requested permission from the Commission to change Tony Ortiz's and Claudia Armijo's titles to "Assistant Directors." This will not change their classifications or increase salaries; it will give them more creditability. The Commission decided on the title "Deputy Director."

There was a request for a calendar listing meeting dates and the dates of the COJ meetings. A calendar of all the committee meetings will be posted to the NMSC web site and emailed to all members and visitors.

Michael Hall reported that the NASC conference is coming up and if you haven't registered please do so.

VII. *A motion was made to adjourn.* Results – motion passed unanimously.

Meeting adjourned at 12:20 PM.

NEW MEXICO SENTENCING COMMISSION
FULL COMMISSION
October 8, 2004
MINUTES

New Mexico Correction Department
 Highway 14,
 Santa Fe, New Mexico
 10:00 AM

Commission Members Present	Commission Members Absent	Others	NMSC Staff
Joe Caldwell, Chair	Constance Keegan		Claudia Armijo
Cindy Aragon	Honorable Daniel Ramczyk		Michael Hall
John Bigelow	Maggie Toulouse		Randall Cherry
Billy Blackburn	Joe Williams		Paul Guerin
Martin Suazo(+ for Ortega)	Antonio Ortega		LaDonna LaRan
Bob Cleavall			Tony Ortiz
Michael Cox(for P.Madrid)			
David Schmidt			
Mark Donatelli			
Major Scott Ford (for Denko)			
Roger Hatcher			
Honorable Jerry Ritter			
April Land			
Gina Maestas			
Lemuel Martinez			
Art Murphy (for Bolson)			
Honorable John Pope			
Honorable Lynn Pickard			
Nick D'Angelo (for Joe R. Williams)			

Welcome: Joe Caldwell, Chair called the meeting to order at 10:05 and welcomed the NMSC members and guests.

Approval of minutes from the July 23, 2004 meeting. The minutes from the July 23, 2004 meeting were adopted unanimously.
Report regarding action taken by the Supreme Court Criminal Justice Task Force-Proposal to have the New Mexico Sentencing Commission Manage a “Case-Weight” Study for Public Defenders, District Attorneys and the Courts: John Bigelow.

*See letter of approval for the Supreme Court. John’s report tracks with the prior letter mentioned.

The Supreme Court recommended that an appropriation bill be introduced during the 2005 legislative session. The COJ interium committee's support needs to be sought. The financial appropriations should be run through the New Mexico Sentencing Commission. An appropriation amount between \$250,000 and \$500,00 is needed. Request that the COJ study that amount.

MOTION: New Mexico Sentencing Commission approves the Supreme Courts recommendations and will present to the COJ a proposal that legislation be introduced in 2005 session in an amount to conduct a case weight study for NMPD, DA's and Courts. Money would need to be built in for administrative costs to New Mexico Sentencing Commission. Agencies would also need to participate very closely.

New Mexico Sentencing Commission voted unanimously to support this motion.

STAFF REPORT:

(See items on the agenda)

Good-bye to Claudia Armijo and hello to Randall Cherry.

I. Committee Reports:

Report from the Sentencing Reform Committee: John Bigelow

The Sentencing Reform Committee supports the concept of drug courts in New Mexico. A letter for funding support has been drafted by John Bigelow. In the July meeting a motion for an early release program was adopted. There is a list of drug courts that cooperate with this program. There cannot be official drug courts until a general appropriation act is passed. There is a public safety issue involved that no one will go out in public until they go through this treatment.

MOTION: A motion was made to _____

New Mexico Sentencing Commission approved this motion unanimously.

Report from the SOMB – Claudia Armijo:

Claudia Armijo referred to the work of the treatment and guidelines groups.

Re: Polygraph

See Judge Vigil's letter for SOMB's recommendations. The use of polygraph for sex offenders is not recommended in the treatment setting.

Proposed Legislation:

(.152410.1)

MOTION: Motion was made to add the Secretary of Department of Public Service to the SOMB board.

New Mexico Sentencing Commission voted unanimously to pass this motion.

There was a discussion by NMSC members about taking SOMB out from under the approval /disapproval process of the NMSC.

MOTION: Motion was made to disapprove the idea of reorganizing SOMB from under NMSC.

New Mexico Sentencing Commission voted unanimously to pass this motion.

Sex Offender Surcharge Act

There is a proposal to institute a surcharge thus offsetting some of the costs of monitoring and treating sex offenders. The act would be patterned on Colorado's law. The charges would range from \$150-\$3,000 and a sliding scale could be considered, particularly for juveniles. It would be

collected by the state treasurer and assessed by _____? It was analyzed and found that sex offenders do better in treatment when they are attached fiscally to their crime. It is more costly to rehab a sex offender than other offenders. We lose approximately \$350,000 in each grant cycle in Megan's law now. There was discussion regarding the merits of this proposal, data to sport effectiveness of Sex Offender surcharge in Colorado and how it is tied to felonies?

MOTION; A motion was made to approve the Sex Offender surcharge in concept.

New Mexico Sentencing Commission voted 4 in favor and 14 opposed. Not in favor of this motion at this time.

Amendments to the Registration Act.

MOTION: A motion was made to put the words "conditional discharge" back into the definition of conviction.

New Mexico Sentencing Commission voted 5 in favor, 13 opposed and 1 abstained.

MOTION: A motion was made to exempt the words "conditional discharge: from the definition of conviction., and should include everything except an unconditional discharge and includes a deferred sentence..

New Mexico Sentencing Commission adopted this motion by consensus.

MOTION: A motion was made to approve all SOMB recommendations necessary to be in compliance with federal law.

New Mexico Sentencing Commission voted 10 approved (with Chairman Caldwell as the tie breaker) 9 opposed and 1 abstained.

MOTION: A motion was made to remove the words "secondary school" from the definition of "institution of higher education"

New Mexico Sentencing Commission approved this motion unanimously.

MOTION: A motion was made to add the word "tribal" to cover facilities or detention facilities on page 3 of the Registration Act.

New Mexico Sentencing Commission approved this motion unanimously. t

Report from the Data Committee-Michael Cox

Data Committee does not have any items that need action at this time.

Paul Guerin reports that the committee is in the process of getting more data from various departs, for instance AOC and negotiating with DPS, CYFD, DA (has already agreed to give data once on line). Data committee is in process of verifying data, the quality of the date and the trends of that data.

Report from the Juvenile Committee-Tony Ortiz

Draft #3 of the Conduction of Juvenile Parole Hearings is close to being finished and may be on the agenda for the next full commission meeting. The Committee is studying the problem of juvenile's traffic violations , thier failures to appear in court, ignoring warrants, and the possibility of utilizing immobilization devices to create an accountability program.. There is a Children's

Court Task force report being compiled. There is a recent release of the 2004 Juvenile Inventory Report. Mike Hall has recently joined the YDDC advisory board.

Report from the Legislative Committee-MartinSuzo

The AOC room has been booked for every Tuesday of the Legislative session. It is expected that the number of bills to be reviewed will be doubled.

PLAN FOR NEXT MEETING:

The next meeting of the NSC will be held on Friday, January 7, 2004. The meeting will be held at the State Records and Archives Building in Santa Fe.

ADJOURN: The meeting adjourned at 3:10 pm

NEW MEXICO SENTENCING COMMISSION
FULL COMMISSION
MINUTES

January 14, 2005

9:00 AM New Mexico Corrections Department Highway 14 Santa Fe, NM

Commission Members Present	Commission Members Absent	Others	NMSC Staff
Joe Caldwell, Chair		Tasia Young	Michael Hall
Cindy Aragon		Donald Montoya	Tony Ortiz
John Bigelow		Rita Franken	Randall Cherry
	Billy Blackburn (proxy to Mark Donatelli)	Chrstina Salcido	Nancy Gettings
Art Murphy (rep. Mary Dale Bolson)		Yvonne Rivera	Julie Frendle
Bob Cleavall		Ella Frank	Meghan Maes
Michael Cox (rep. Patricia Madrid)		Honorable Michael Vigil	Paul Guerin
	Major Scott Ford (rep. John Denko)	Kelly Waterfall	Linda Freeman
Mark Donatelli		George Drake	
		Charlene Knipfing	
Roger Hatcher		Reena Szc zepanski	
	Constance Keegan	John Wheeler	
April Land (rep. Suellyn Scarnecchia)		Regina Chacon	
Gina Maestas		Delores Bainbridge	
Henry Valdez (rep. Lemuel Martinez)		Marie Sanchez-Gagne	
		Margaret McLean	
	Antonio Ortega	Sheila Lewis	
Honorable Lynn Pickard			
Honorable John Pope			
	Honorable Daniel Ramczyk		
	Honorable Jerry Ritter (proxy to John Pope)		
	David Schmidt (proxy to Mark Donatelli)		
Martin Suazo			
Maggie Toulouse			
Nick D'Angelo (rep. Joe Williams)			

I. Welcome and call to order. John Bigelow called the meeting to order at 9:10 a.m. Chairman Caldwell joined the meeting shortly thereafter.

II. Approval of minutes for the October 8, 2004 meeting. The minutes were approved unanimously.

III. Update on a proposal to have the New Mexico Sentencing Commission manage a workload measurement study for the Public Defender Department, the District Attorneys and the Courts. Mike Hall advised the commission that the interim legislative Corrections Oversight, Courts and Justice Committee has endorsed an appropriations bill (\$450,000) to fund a workload measurement study. Sentencing commission staff will prepare and publish a request for proposals (RFP) to conduct the study. John Bigelow, Victoria Bransford and Louise Baca will assist sentencing commission staff with preparation of the RFP. The RFP will be contingent upon receipt of funding during the 2005 legislative session. Consequently, if funding is provided, the procedures for securing a vendor to perform the study will already be underway.

IV. Staff Report. Mike Hall reported that budget projections for the sentencing commission are up-to-date and that the commission is operating in the black.

Next, Mr. Hall stated that the sentencing commission is now a voting member of the Criminal Justice Information Management Team (CJIMT). Additionally, language will be proposed for inclusion in the General Appropriation Act to designate the sentencing commission as the lead administrative agency for the CJIMT.

Mr. Hall then briefed the commission on the interim legislative Corrections Oversight, Courts and Justice Committee meeting that took place on December 1-2, 2004. He noted that proposals developed by the Sex Offender Management Board and the sentencing commission have been endorsed by the legislative committee. A summary of the all actions taken by the legislative committee is set forth in a memorandum prepared by commission staff.

Next, Paul Guerin summarized the contents of the earned meritorious deduction report for fiscal year 2004. Copies of the report have been distributed pursuant to the statutory directive set forth in Section 31-18-15 NMSA 1978. Mr. Guerin told the commission that approximately 800 hours were needed to manually gather good time figuring sheets and to enter the data set forth on those sheets.

Following the earned meritorious deduction report, commission members had an extended discussion regarding the impact of "truth-in-sentencing" laws, enacted in 1999, on the state inmate population. Those "truth-in-sentencing" provisions require that serious violent offenders serve not less than 85% of their sentence. The commission member's discussion included the following statements and questions:

--The governor has publicly stated that he does not want to build new correctional facilities.

--Serious violent offenders now represent a larger percentage of the total inmate population, which may necessitate re-classification of existing facilities and beds.

--The "truth-in-sentencing" law may be driving the continuing increase in New Mexico's inmate population.

--The corrections department will introduce legislation during the 2005 session that proposes to amend Section 33-2-34 NMSA 1978 in a manner that would allow inmates to earn deductions from their sentence during the 60-day diagnostic period.

--Whether it is good public policy for the state to incarcerate offenders, including serious violent offenders, once those offenders reach a certain age. Some studies indicate a direct correlation between increased age of male inmates (and decreased testosterone production) and reduced criminal activity.

Motion: The New Mexico Sentencing Commission directs staff to work with the Corrections Department on gathering data necessary to study the impact of "truth-in-sentencing" laws, enacted in 1999, on the state inmate population. The data and an impact statement should be developed as soon as practicable.

The motion was adopted unanimously.

Next, Linda Freeman briefed the commission on a report produced by the New Mexico Sentencing Commission for the New Mexico Association of Counties, entitled "The Cost of Housing Arrestees Held on Felony Charges: A Profile of Six New Mexico Detention Centers". Ms. Freeman summarized the contents of the report, which will be finalized in two to three weeks. She indicated that the report will categorize detainees in the following manner:

- 1) convicted felons awaiting transport to a state facility;
- 2) probation and parole violators sentenced to detention facilities;
- 3) convicted felons sentenced to detention facilities; and
- 4) unsentenced probation and parole violators.

Finally, Ms. Freeman indicated each category will also have an accompanying cost estimate. She noted that the New Mexico Association of Counties intends to use the report to support an effort to pass county detention reform legislation and to receive reimbursement from the state. When the report is finalized, Ms. Freeman will ensure that a copy of the report is e-mailed to all commission members and posted to the New Mexico Sentencing Commission web site.

Following Ms. Freeman's presentation, there was a discussion among commission members regarding the importance of having an appropriation accompany any proposed legislation concerning county detention reform. Additionally, commission members noted the need to identify the cost of criminal justice legislation.

Motion: The New Mexico Sentencing Commission requests that the legislative committee of the sentencing commission, when data is available, take into account the costs of proposed criminal justice legislation.

The motion was adopted unanimously.

Report Regarding Salaries and Retention Issues for Adult Probation and Parole Officers. Charlene Knipfing, Director of the Adult Probation and Parole Division, and George Drake, Deputy Director of the Adult Probation and Parole Division, briefed the commission regarding challenges facing the division. Ms. Knipfing stated that low salaries has dramatically affected her ability to recruit and retain probation and parole officers (PPO). As a result, she has a significant number of vacant positions in her division. Ms. Knipfing stated that pursuant to national standards a “safe” caseload for a PPO should be no more than sixty-five cases. Currently, the average caseload for a New Mexico PPO is one hundred and two cases.

Ms. Knipfing also noted that intensive supervision programs have been discontinued throughout the state, with the exception of Bernalillo county. The programs have been discontinued because there is a statutory mandate that a PPO managing an intensive supervision caseload can have no more than twenty cases. Due to the number of PPO vacancies, all available officers are needed to manage the more than thirteen thousand probationers and parolees who are actively supervised.

Mr. Drake advised the commission that the Adult Probation and Parole Division cannot provide adequate supervision as currently staffed. He noted that the following initiatives have contributed to the rapid growth of probation and parole caseloads:

- 1) population control initiatives undertaken by the corrections department to “free-up” prison beds, including a technical violators program that diverts probationers and parolees from returning to prison; and
- 2) the increased use of an early plea program that diverts offenders from incarceration.

Report from the Sex Offender Management Board. Judge Michael Vigil stated that the Sex Offender Management Board (SOMB) recommended additional changes to the Sex Offender Registration and Notification Act (SORNA). He stated that the proposed changes were prompted following review of an earlier bill draft by the U.S. Department of Justice, the interim legislative Corrections Oversight, Courts and Justice Committee (COJ) and the New Mexico Sentencing Commission (NMSC).

Judge Vigil asked John Wheeler to explain the changes suggested by the U.S. Department of Justice. Mr. Wheeler noted that the previous SORNA draft had been sent to the U.S. Department of Justice (DOJ) for review to determine if the SORNA draft was in compliance with federal law and regulations. Following DOJ review, Mr. Wheeler recommended revisions to the definition of “institution of higher education”, revisions to the definition of “employment”, and amending SORNA to make it mandatory, not discretionary, that the Department of Public Safety manage the web site concerning convicted sex offenders.

Next, Judge Vigil asked Randall Cherry to summarize proposed changes to the SORNA draft prompted by presentations to the COJ and NMSC. Mr. Cherry described the proposed changes as follows:

- 1) addition of a preemption clause;
- 2) exemption of “conditional discharges” from the definition of “conviction”;
- 3) clarification of the definition of “registration requirements”;
- 4) addition of “tribal convictions” for sex offenses;
- 5) removing proposed liability for a sex offender’s guardian or custodian when a sex offender is punished for registration violations;
- 6) removing “negligence” as a proposed basis of prosecution with regard to registration violations;
- 7) increasing the penalty from a fourth to a third degree felony for second and subsequent registration violations;
- 8) treating multiple registration violations as a single violation;
- 9) clarifying that SORNA convictions not be used for the purposes of the habitual offender statute; and
- 10) increasing the penalty from a misdemeanor to a fourth degree felony for failing to notify officials when a sex offender moves to another state.

Motion: The New Mexico Sentencing Commission accepts the proposed changes to the SORNA bill draft in their entirety.

The motion was adopted by consensus.

Next, Randall Cherry and Donald Montoya provided the commission with information regarding a proposed appropriation bill to expand the operating capacity of the Sex Offender Treatment Program (STOP) in Las Vegas. The requested appropriation amount is \$659,000.

Motion: The New Mexico Sentencing Commission supports a proposed appropriation bill to expand the operating capacity of the STOP program.

The motion was adopted by consensus.

Next, Randall Cherry briefed the commission regarding a proposed bill to authorize designees for certain SOMB members (attorney general and cabinet secretaries).

Motion: The New Mexico Sentencing Commission supports a proposed bill to authorize designees for certain SOMB members.

The motion was adopted by consensus.

Report from the Sentencing Reform Committee. John Bigelow advised the commission that the sentencing reform committee has developed and endorsed a legislative proposal to amend state law regarding an upward departure from a basic sentence based upon a finding of aggravating circumstances (See Section 31-18-15.1 NMSA 1978). Mr. Bigelow indicated that the amendments are necessary in light of the U.S. Supreme Court decision in *Blakely v. Washington* and a New Mexico Court of Appeals decision, *State v. Frawley*. *Blakely* and *Frawley* require that any fact that increases the penalty for a crime beyond the prescribed statutory maximum must be submitted to a jury and proven beyond a reasonable doubt.

Motion: The New Mexico Sentencing Commission supports a proposed bill that amends state law in a manner that brings the law into compliance with the U.S. Supreme Court decision in *Blakely v. Washington*.

The motion was adopted by consensus.

Next, Tony Ortiz advised the commission that the interim legislative Corrections Oversight, Courts and Justice Committee had agreed to sponsor legislative proposals developed by the sentencing reform committee and endorsed by the commission. Those proposals include the “equitable theft” bill, a bill that increases processing fees in worthless check cases and a bill that adds certain domestic violence offenses to the list of serious violent offenses set forth in the earned meritorious deduction statute. The chairs of the legislative committee will assign sponsors for the bills.

Next, Reena Szczepanski, Director of the New Mexico Drug Policy Alliance, summarized a legislative proposal developed by the alliance. Entitled the “Strengthening Families Act”, the proposal diverts non-violent drug possession offenders to supervised probation and community-based treatment programs. She noted that California and Arizona have adopted similar programs for these types of offenders.

Following a discussion by commission members, the proposal was tabled. The commission asked the legislative committee of the sentencing commission to further analyze the proposal following its introduction during the 2005 legislative session.

Report from the Juvenile Committee. Bob Cleavall advised the commission that the juvenile committee has endorsed in principle a bill developed by Children’s Code Task Force that proposes changes to the Children’s Code, including changes to the delinquency article of that code. He noted that several members of the juvenile committee, including Michael Martinez, April Land and Dave Schmidt, also served on the Children’s Code Task Force. Mr. Cleavall also noted that Senator Michael Sanchez will be the primary sponsor of the bill.

Motion: The New Mexico Sentencing Commission supports a proposed bill developed by the Children’s Code Task Force that amends the Children’s Code, including proposed amendments to the delinquency article of that code.

During the ensuing discussion, it was determined that summaries of the proposed changes to the Children's Code had been sent to commission members, but the actual bill was not yet available. It was explained that the actual bill was still being prepared by the Legislative Council Service. Some commission members noted that they had concerns about timelines proposed by the task force regarding conduct of preliminary investigations and filing of delinquency petitions. In the absence of an actual draft bill and the concerns about the proposed timelines, a revised motion was offered.

Revised motion: The New Mexico Sentencing Commission requests that the legislative committee of the sentencing commission analyze the proposal developed by the Children's Code Task Force following its introduction during the 2005 legislative session.

The motion was adopted by consensus.

Next, Bob Cleavall briefed the commission concerning a proposal endorsed by the juvenile committee that addresses juveniles who ignore traffic citations. He explained that the issue had been presented to the juvenile committee by magistrate judge Robert Corn from Chavez county. In brief, the proposal would provide municipal, magistrate or metropolitan courts with authority to immobilize a motor vehicle driven by a juvenile offender who fails to pay fines owed for traffic violations. Local law enforcement agencies would be required to provide the devices. During the ensuing discussion, concerns were raised about the cost of the devices to offenders and the expense incurred by law enforcement agencies in providing the devices.

Motion: The New Mexico Sentencing Commission requests that the legislative committee of the commission analyze the proposal concerning use of immobilization devices following its introduction during the 2005 legislative session.

The motion was adopted by consensus.

Finally, Bob Cleavall advised the commission of the juvenile committee's plans for the 2005 interim. He indicated that a primary topic for the juvenile committee will be an analysis of the need for a "Sequoyah" type facility and accompanying services for violent, mentally ill adolescent females.

Report from the Data Committee. Tony Ortiz, speaking on behalf of Michael Cox, introduced Professor Tim Wadsworth to the commission members. Mr. Ortiz indicated that Professor Wadsworth had made a presentation to the data committee concerning a proposed evaluation of meditation workshops offered in prisons and jails throughout New Mexico.

Professor Wadsworth then briefed the full commission concerning his interest in conducting an evaluation of the meditation workshops. He noted his interest in whether the workshops have a favorable impact on recidivism rates. He also noted that he wanted

to collaborate with the sentencing commission because the commission has access to data that would facilitate his evaluation.

During the ensuing discussion among commission members, it was suggested that, in addition to Professor Wadsworth's specific request for assistance the sentencing commission should collaborate with the University of New Mexico Department of Sociology on research projects when possible.

Motion: The New Mexico Sentencing Commission supports the general principle of collaborating with the University of New Mexico Department of Sociology on research projects when possible.

The motion was adopted by consensus.

Next, Dr. Paul Guerin asked the commission to authorize a collaboration between the sentencing commission and one of his graduate students on a research project being developed by the graduate student. Dr. Guerin stated that the student, Cindy Torres, proposes to research personal histories of female inmates in New Mexico. It was noted that Dr. Guerin's request was already addressed by the motion that had just been adopted by the commission. Finally, the commission members asked that the research projects contemplated by Professor Wadsworth and Cindy Torres be subject to commission approval prior to final publication.

Tony Ortiz then summarized a data collection rule developed and adopted by the data committee. He noted that, as a practical matter, the sentencing commission is now receiving data from the judiciary, the department of public safety, the children, youth and families department and the corrections department. Mr. Ortiz stated that a purpose of developing a data collection rule is to standardize the practice and procedures attendant to collection of data by the sentencing commission.

Motion: The New Mexico Sentencing Commission approves the proposed data collection rule as currently drafted and requests that the proposed rule be prepared for public comment.

The motion was adopted by consensus.

Report from the Legislative Committee. Martin Suazo stated that the legislative committee will review and vote on criminal and juvenile justice measures introduced during the 2005 legislative session. He noted that the committee is scheduled to have its initial meeting at 10:00 a.m. on January 25, 2005, in the conference room at the administrative office of the courts. Subsequently, the legislative committee will meet every Tuesday at 10:00 a.m. in the same conference room.

Mr. Suazo indicated that the membership of the legislative committee is still fluid and that he will work with Chairman Caldwell and Mike Hall to finalize a membership roster.

Finally, Mr. Suazo stated that Judge Michael Vigil, John Bigelow and Lemuel Martinez will constitute a SOMB sub-committee for the purpose of making recommendations to the legislative committee on bills and issues concerning sex offenders.

Plan for Next Meeting. The next meeting of the New Mexico Sentencing Commission will be held on May 20, 2005.

Adjourn. The meeting adjourned at 2:30 p.m.

NEW MEXICO SENTENCING COMMISSION
FULL COMMISSION
MINUTES

May 20, 2005

9:30 AM

State Records Center and Archives

Santa Fe, NM

Commission Members Present	Commission Members Absent	Others	NMSC Staff
Joe Caldwell, Chair		Judge Michael Vigil	Michael Hall
Cindy Aragon		Renada Peery	Tony Ortiz
John Bigelow		Elizabeth Romero Eoff	Randall Cherry
	Billy Blackburn (proxy to Mark Donatelli)	Diane Wood	Julie Frendle
	Mary-Dale Bolson	Banyat Adipat	LaDonna Laran
Bob Cleavall		Anita Cordova	Meghan Maes
Michael Cox (rep. Patricia Madrid)		Tasia Young	Jake Garrison
Major Scott Ford (rep. John Denko)			Paul Guerin
Mark Donatelli			Linda Freeman
	Roger Hatcher		
	Constance Keegan (proxy to Dave Schmidt)		
April Land (rep. Suellyn Scarnecchia)			
Gina Maestas			
Lemuel Martinez			
	Antonio Ortega		
Honorable Lynn Pickard			
	Honorable John Pope (proxy to Lynn Pickard)		
Angie Vachio			
Honorable Jerry Ritter			
David Schmidt			
Martin Suazo			
	Maggie Toulouse		
Nick D'Angelo (rep. Joe Williams)			

I. Welcome and call to order. Chairman Joe Caldwell welcomed commission members and guests. He called the meeting to order at 9:45 a.m.

II. Approval of minutes for the January 14, 2005 meeting. The minutes were approved unanimously.

III. Staff Report.

Summary of the 2005 Legislative Session: Mike Hall and Tony Ortiz summarized the disposition of initiatives developed by the New Mexico Sentencing Commission (NMSC) and the Sex Offender Management Board (SOMB).

New Mexico Sentencing Commission Initiatives

Equitable theft (HB 514, Rep. Balderas)

This bill passed the SPAC, but died in the SJC.

Jury determination of aggravating circumstances...a/k/a “Blakely fix”

(HB 694, Rep. Balderas)

This bill passed the SPAC, but died in the SJC.

Worthless check processing fees (SB 232, Sen. M. Sanchez)

This bill passed the HTRC, but died in the HJC.

Domestic violence offenses added to the list of “serious violent offenses” in the EMD statute (SB 63, Sen. M.J. Garcia)

This bill passed the HCPAC, but died in the HJC.

General Appropriation Act (HB2)

The final version of HB 2 was signed by the Governor on March 17, 2005.

It includes:

--funding for the NMSC base budget (\$606,000)

--funding for the workload measurement study for the public defender department, the district attorneys and the courts (\$200,000)

--funding for the Criminal Justice Information Management Team (\$250,000)

Sex Offender Management Board/New Mexico Sentencing Commission Initiatives

Sex Offender Registration and Notification Act (HJC/Sub/HB 165, Rep. Balderas)

This bill was signed by the Governor.

Secretary of DPS added to the SOMB and representation by designees authorized

(HB 103, Rep. Park)

This bill was signed by the Governor.

Additional funding for the sex offender treatment program (STOP) in Las Vegas

(HB 924, Rep. Vigil & SB 968, Sen. Campos)

These bills died in HAFB and SFB, respectively and funding for the proposed program expansion was not included in HB 2 or SB 190.

Tony Ortiz then summarized significant criminal and juvenile justice bills that were signed by the governor. A summary of NMSC positions on criminal and juvenile justice bills is also set forth in the final version of the NMSC's tracking list that was used by the Legislative Committee during the 2005 Legislative Session.

Next, there was a general discussion concerning the NMSC-developed bills which did not pass. Chairman Caldwell noted that later in the meeting, during the report from the Sentencing Reform Committee, there would be a discussion of "next steps" for the commission.

NMSC Budget Update: Mike Hall briefed the NMSC on budget items that were decided during the 2005 Legislative Session. The NMSC operating budget for FY06 is flat, in the amount of \$606,000. The NMSC received a \$200,000 appropriation to perform a workload measurement study for the public defender department, the district attorneys and the courts. It was noted that this amount is significantly less than the amount requested to perform the workload measurement study. Finally, Mr. Hall advised the committee that the NMSC received a \$250,000 appropriation to fund the operations of the Judicial Information Sharing Council (JISC).

Update on the Judicial Information Sharing Council: Mike Hall told the committee that the NMSC is now the lead agency and the administrative home for JISC. The \$250,000 appropriation for JISC operations will pass through the NMSC, but the account will be kept separate from other NMSC accounts. Mr. Hall then introduced Banyat Adipat, who will serve as the Program Manager for JISC.

Update on the Workload Measurement Study for the Public Defender Department, District Attorneys and the Courts: A Request for Proposals has been issued for the workload measurement study and the NMSC has received responses. The responses exceed the appropriated amount (\$200,000) by a significant margin. Additional funding sources will be pursued.

Update Regarding the Impact of "Truth-in-Sentencing Laws" on the State Inmate Population: Mike Hall stated that a written request for the necessary data has been sent to the New Mexico Corrections Department. We are waiting to receive the data set.

Planning for a NMSC Town Hall Meeting: Mike Hall advised the commission that staff is planning a Town Hall for September or October. Following a discussion among commission members, staff was instructed to gather additional information before selecting a specific location and date for the Town Hall.

IV. Report from the Sex Offender Management Board. Judge Michael Vigil advised the commission that the Sex Offender Management Board (SOMB) has established priorities for the upcoming year. Those priorities include:

- creating licensing criteria for treatment providers;
- developing guidelines for supervision of sex offenders placed on probation and parole;
- developing a risk assessment tool for sex offenders;
- seeking money for expanded operation of the sex offender treatment program (STOP) in Las Vegas; and
- developing a procedure for sex offenders to petition for removal of personal information posted on the web site maintained by the Department of Public Safety.

During the general discussion that followed, the following topics were noted:

- the New Mexico Corrections Department has increased the number of treatment beds for sex offenders committed to the department; and
- the need for additional funding of treatment services for sex offenders. Beginning July 1, 2005, Value Options will serve as the sole entity to manage all treatment dollars in New Mexico. We should ask them to make a presentation at a future commission meeting.

V. Report from the Legislative Committee. Martin Suazo advised the NMSC that the Legislative Committee reviewed nearly 200 bills and memorials during the 2005 legislative session. Chairman Suazo noted the use of the NMSC tracking list during the committee meetings. He stated that the tracking list helped the committee to organize their discussions and maintain a record of committee actions.

Chairman Suazo then initiated a discussion regarding representation on the Legislative Committee. He indicated that he was concerned about: 1) increasing membership numbers for the committee; 2) inconsistent use of designees by *ex officio* members; and 3) the widespread use of proxies by members unable to attend meetings.

Subsequently, there was a discussion among committee members regarding those three issues. Following that discussion, Joe Caldwell indicated that, prior to the 2006 legislative session, he will ask commission members to consider their level of interest in serving on the Legislative Committee.

The following motion was offered with regard to *ex officio* members and the use of proxies.

Motion: The New Mexico Sentencing Commission: 1) requests that *ex officio* members of the NMSC make consistent use of designees when the members are unable to attend Legislative Committee meetings; and 2) removes the use of proxies from other NMSC members (not *ex officio* members) who miss two Legislative Committee meetings during a 30-day session or three Legislative Committee meetings during a 60-day session.

The motion was adopted by consensus.

VI. Report from the Sentencing Reform Committee. John Bigelow summarized a discussion conducted by the Sentencing Reform Committee (SRC) during its meeting on April 12, 2005. He noted that the “Equitable Theft” proposal (HB 514), which failed to pass during the 2005 legislative session, had been developed and supported by the SRC and NMSC as an important first step towards reforming sentencing statutes in New Mexico. He also noted the SRC’s long-term goal to develop a comprehensive sentencing reform initiative for the 2007 legislative session. In light of the failure to secure legislative approval for HB 514, the SRC re-examined its plans for sentencing reform. The SRC members discussed the following topics:

--Does the sentencing commission currently have sufficient data to support sentencing reform efforts? We need a clear picture of how the New Mexico criminal justice system is operating right now.

--If sentencing reform is pursued, should those efforts take the form of proposed legislation, proposed judicial rules or the development of presumptive sentences maintained by the commission itself?

--Any sentencing reform effort will require full participation by representatives of law enforcement agencies and district attorneys.

--Any sentencing reform effort will require a public education component. Of particular importance will be the need to fully illustrate the costs of incarceration.

--Does the sentencing commission have sufficient access to data in order to produce fiscal impact reports when criminal justice bills are introduced during legislative sessions?

--Should the immediate priority for the sentencing commission be:

- 1) the development of proposed sentencing reforms; or
- 2) the publication of a report that identifies current sentencing practices, reports on the expense of operating a criminal justice system and identifies components of the criminal justice system that require immediate attention?

John Bigelow stated that the SRC decided to pursue the publication of a report and to make that recommendation to the NMSC. The NMSC adopted the SRC’s decision to publish a report and asked staff to prepare a draft of the report for review and discussion at the next commission meeting.

Next, there was a discussion concerning whether to seek re-introduction of the sentencing reform bills that failed to pass during 2005 Legislative Session. It was noted that the 2006 Legislative Session will be a 30-day or “short” session focused on fiscal matters. It will be necessary to approach the governor’s office and ask that the sentencing measures be included in the Governor’s proclamation for the 2006 Legislative Session.

Motion: The New Mexico Sentencing Commission will ask the Governor’s office to consider placing the sentencing reform bills (Equitable Theft, Worthless Check Processing Fees, Earned Meritorious Deductions and the “Blakely” fix) on his Proclamation for the 2006 Legislative Session. NMSC staff will review the Equitable Theft bill to ensure there are no provisions in that bill that have the effect of increasing penalties.

The motion was adopted, with one “no” vote (Lemuel Martinez).

VII. Report from the Data Committee. Michael Cox advised the NMSC that the Data Committee will play an integral role in crafting a data report for the commission. He stated that members of the Data Committee will help NMSC staff with the collection of the information needed to produce the report.

Next, Paul Guerin summarized the contents of a draft “Sentencing Patterns” report that he and Nalani Quinn have been preparing. Mr. Guerin noted that there are some elements of the underlying data that he wants to discuss with officials from the Corrections Department before the report is finalized.

Finally, Mike Hall told the NMSC that, if possible, he would like to arrange a demonstration for commission members of the Offender Query Project developed by JISC. Mr. Hall stated that the Offender Query Project will be a valuable tool for many people who work in the criminal justice system and he would like to raise awareness of its existence and utility.

VIII. Report from the Juvenile Committee. Bob Cleavall stated that the Juvenile Committee has been working with the Juvenile Justice Advisory Committee and the Women’s Justice Project on gender specific issues in the juvenile justice system. He noted that, nationally and locally, there has been an increase in the number of females referred into the system.

Chairman Cleavall stated that the Juvenile Committee has a specific interest in the development of a secure, residential treatment program for female offenders with mental health issues. He noted that such a program for females currently does not exist in New Mexico. The Sequoyah Adolescent Treatment Facility in Albuquerque serves males only.

Finally, Chairman Cleavall advised NMSC members that the Annie E. Casey Foundation and the Children, Youth and Families Department will host a conference on juvenile justice issues later in the summer. The conference will take place on July 28-29, 2005 in Albuquerque.

New Business: Mike Hall called the members attention to a letter drafted by Maggie Toulouse. In her letter, Maggie expressed concerns about a proposal before the United States Senate to eliminate or divert funding from the crime victims fund which is established in the federal Victims of Crime Act (VOCA). Ms. Toulouse asked the NMSC to take a position against eliminating or diverting the VOCA funding and to express that position in a letter to Senator Pete Domenici. Senator Domenici sits on the Commerce, Justice and Science Subcommittee of the Senate Appropriations Committee. That subcommittee will play an important role in reviewing the proposal to eliminate or divert VOCA funding.

Motion: The New Mexico Sentencing Commission directs staff to draft a letter to Senator Pete Domenici asking him to take a position against a proposal to eliminate or divert VOCA funding.

The motion was adopted by consensus.

IX. Plan for Next Meetings. The next meeting of the New Mexico Sentencing Commission will be held on August 26, 2005.

X. Adjourn. The meeting adjourned at 12:50 p.m.

NEW MEXICO SENTENCING COMMISSION
FULL COMMISSION
MINUTES

August 26, 2005

9:30 a.m. - State Records Center and Archives - 1205 Camino Carlos Rey - Santa Fe, NM

Commission Members Present	Commission Members Absent	Others	NMSC Staff
Joe Caldwell, Chair		Diane Wood	Michael Hall
	Billy Blackburn, Vice Chair (proxy to Mark Donatelli)	Barry Roberts	Tony Ortiz
	Cindy Aragon (proxy to Bob Cleavall)	John Wheeler	Randall Cherry
John Bigelow		Judy Arcenarco	Paul Guerin
	Bill Gregoricus		Linda Freeman
Bob Cleavall			Nancy Gettings
Major Scott Ford			Julie Frendle
Mark Donatelli			Nalani Quinn
Roger Hatcher			Meghan Maes
	Constance Keegan		
Michael Cox			
Gina Maestas			
Henry Valdez			
	Antonio Ortega		
Honorable Lynn Pickard			
	Honorable John Pope (proxy to Lynn Pickard)		
Honorable Jerry Ritter			
Elizabeth Rapaport			
David Schmidt			
	Martin Suazo (proxy to John Bigelow)		
	Maggie Toulouse		
	Angie Vachio		
	Joe Williams/Nick D' Angelo		

Welcome and call to order. Joe Caldwell, Chair, called the meeting to order at 9:45 a.m.

Approval of minutes for the May 20, 2005 meeting. The minutes were approved unanimously.

Staff Report. Michael Hall reported that the proposed NMSC FY07 budget has been prepared and submitted. The submission includes a multi-agency request that will allow the Justice Information Sharing Council (JISC) to operate under a separate budget. Mr. Hall pointed out that the proposed NMSC budget increased from \$606,800 to \$685,925 to

account for: 1) cost of living increases that have not been factored into the budget in previous years; 2) the cost of the UNM audit ; and 3) making Randall Cherry's position full-time. Mr. Hall stated that he also would like to secure funds so that Paul Guerin and Linda Freeman can perform additional research for the Sentencing Commission.

Motion: A motion was made to approve the proposed NMSC FY07 budget. The motion was adopted unanimously.

Mr. Hall then presented a copy of the letter sent to Senator Domenici regarding VOCA funding. He stated that he has not received any acknowledgement on this letter. Chairman Caldwell asked staff to determine the status of VOCA funding in Congress.

Mr. Hall then provided an update regarding JISC. He stated that Banyat Adipat, JISC Project Manager, has been working with the Acoma, Laguna and Zuni pueblos on a data sharing arrangement.

Next, Mr. Hall advised the commission members that the NMSC completed thirteen research reports in FY05. The NMSC is required, as a performance measure, to complete nine reports each fiscal year.

Next, Linda Freeman briefed the members on a report prepared for the New Mexico Association of Counties. The report addresses the length of stay in county jails for arrestees held on felony charges. Mike Hall advised the members that the New Mexico Association of Counties has been very pleased with the reports prepared for them by the NMSC and that the counties have agreed to pay us for additional research. Mr. Hall reported that the NMSC web site has received more than 200 hits on the "length of stay" report and that the report was referenced in the Albuquerque Journal.

Julie Frendle then provided an update on the workload measurement study for the public defender department, the district attorneys and the courts. Currently, staff is exploring the possibility of contracting with the National Center for State Courts (NCSC) to perform the study for the courts and the public defender department. We have asked the NCSC to consider a subcontract with the American Prosecutors Research Institute (APRI) to perform the study for the district attorneys.

The ensuing discussion among committee members included the following points:

- 1) the methodology for conducting the study includes the appointment of an Advisory Group that will have representatives from the public defender department, criminal defense bar, district attorneys and the courts;
- 2) the district attorneys are insistent that only APRI has the expertise to perform the study for the district attorneys;
- 3) representatives of the criminal defense bar are concerned that the NCSC does not possess sufficient expertise regarding public defender operations; and
- 4) a concern that the initial appropriation (\$200,000) to perform the workload measurement study will revert if a contract is not executed to perform the study.

Motion: A motion was made to direct NMSC staff to move forward with efforts to execute a contract with the NCSC for the workload measurement study. The motion was adopted by consensus.

Motion: A motion was made to authorize NMSC staff to seek additional funding for the workload measurement study (\$152,000) from the legislature during the 2006 session. The additional funding is needed to make-up the shortfall between the amount initially appropriated and the contract price. The motion was adopted by consensus.

Next, Tony Ortiz reported on the impact of truth-in-sentencing laws on the state inmate population. He noted that the enactment of truth-in-sentencing in 1999 is a contributing factor to increases in the state inmate population. Mr. Ortiz referenced graphs prepared for the New Mexico Corrections Department (NMCD) by Jim Austin and Associates, which project inmate population increases through the year 2015 due to truth-in-sentencing. Mr. Ortiz noted that the draft NMSC Data Report, to be discussed later in the meeting, includes recommendations for slowing down the projected inmate population growth.

Tony Ortiz then summarized several legislative proposals that are being developed for possible introduction during the 2006 legislative session. He noted that the "Equitable Theft" proposal has been revised in accordance with amendments placed on the bill by the Senate Public Affairs Committee late in the 2005 session. The proposed "Blakely fix" has been redrafted and includes a technical amendment placed on it by the House Judiciary Committee during the 2005 session.

Mr. Ortiz then summarized the provisions of a proposal to amend the law regarding earned meritorious deductions for inmate. The proposal merges the provisions of four bills that were introduced during the 2005 legislative session:

- SB 63 (developed by the Sentencing Commission) (elevates certain assault and battery offenses against household members to "serious violent offender" status)

- SB 599 (developed by the Corrections Department) (streamlines administrative authority to award, forfeit and restore EMDs)

- SB 600 (developed by the Corrections Department) (increases the number of maximum EMD's from 8 to 30 per month for non-violent offenders confined for parole revocation...when the revocation is not based on absconding or commission of a new felony)

- SB 601 (developed by the Corrections Department) (clarifies that award of EMD's to parolees is available to offenders serving parole on July 1, 2004 or who begin serving parole after that date).

In addition to those provisions, Mr. Ortiz described a proposed amendment that would authorize award of EMD's to nonviolent offenders during the first sixty days of receipt by the Corrections Department.

Motion: A motion was made to present the legislative proposals to the Governor's Office and request messages so that the bills may be deemed germane during the 30-day

legislative session in 2006. Prior to presenting the EMD proposal to the Governor's Office, NMSC staff will contact the NMCD and determine if the department is supportive of the proposed amendment regarding award of EMD's to nonviolent offenders during the first sixty days of receipt by the department. The motion was adapted by consensus.

Tony Ortiz briefly reported on the National Association of Sentencing Commission conference held in Washington D.C. He stated that measures similar to the NMSC-proposed "Blakely fix" were passed by seven other states during legislative sessions held in 2005. Randall Cherry reported that other states are also concerned about burgeoning inmate populations. For example, the state of Alabama has twice as many inmates as available prison beds.

Julie Frenkle provided an update on the NMSC Town Hall meeting scheduled for October 28, 2005 at Highlands University in Las Vegas, NM. She outlined the agenda for the Town Hall and described the process for issuing invitations. Mike Hall requested that each NMSC committee chair plan to attend the Town Hall. Chairman Caldwell requested that officials from Taos County be invited.

Report from the Sentencing Reform Committee: John Bigelow, Chair, reported that the Sentencing Reform Committee (SRC) had received a comprehensive briefing from Nick D'Angelo regarding the NMCD's basis for requesting additional prison beds for male and female inmates. Chairman Bigelow stated that the SRC accepted Corrections analysis of the need for additional beds. However, he also noted that the draft NMSC Data Report raises issues about NMCD's plan to place male inmates in a proposed new facility in Union county. The draft Data Report also sets forth recommendations for slowing down the growth of the inmate population. During the ensuing discussion, concerns were raised that the NMCD has not and does not plan to use available alternatives to incarceration.

Report from the Juvenile Committee: Bob Cleavall, Chair, reported that the Juvenile Committee is holding meetings at juvenile facilities throughout the state. He noted that the juvenile committee has met twice since the last full commission meeting, at the Bernalillo County Juvenile Detention Center (BCJDC) and in the community of Taos. During the meeting at BCJDC, the committee heard from Tom Swisstack, who is the director of the center and a state representative. The committee also heard from Paula Schaefer on gender specific issues in the juvenile justice system. During the committee meeting in Taos, the committee heard from Thom Allena and Judge Peggy Nelson on the use of restorative justice as an alternative to traditional judicial models. Dr. Ken Martinez and Dr. George Davis also briefed the committee on evolving plans for a secure, residential treatment program for female juvenile offenders with unique psychiatric needs.

Motion: A motion was made for the NMSC to support the concept of establishing a secure, residential treatment program for female juvenile offenders with unique psychiatric needs. Additionally, it was noted that development of a residential treatment

program should be supplemented by community-based services so that a continuum of support is available. The motion was adopted by consensus.

Report from the Data Committee: Michael Cox, Chair, presented the draft 2005 NMSC Data Report. Tony Ortiz provided specifics about the methodology used to construct the report and highlights featured in the component pieces of the report. Mr. Ortiz noted that the draft report will be presented to the Legislative Finance Committee and the Corrections Oversight, Justice and Courts Committee. The report will also be discussed at the NMSC Town Hall meeting. The report will remain a fluid document until it is finalized just prior to the 2006 legislative session.

Next, Paul Guerin summarized a draft report entitled, "A Preliminary Analysis of Sentencing Patterns in New Mexico". He called particular attention to aspects of the report, including sentencing patterns analyzed by race, gender and judicial districts. During the ensuing discussion, it was noted that the draft report, based upon data from the New Mexico Corrections Department, did not include instances when an offender was placed on probation. Consequently, the report is actually an analysis of sentencing patterns for offenders who are committed to prison.

Mr. Guerin then noted that he is working on a similar report that will analyze arrest patterns in New Mexico. The report will be based upon data gathered by the New Mexico Department of Public Safety. He noted that law enforcement agencies in New Mexico (municipal, county, tribal, et cetera) are not required to report arrest information to the Department of Public Safety. Apparently, New Mexico is one of a small number of states that does not have a system for gathering statewide arrest information. It was suggested that this issue should be noted in the "Law Enforcement" section of the 2005 NMSC Data Report.

Report of the Sex Offender Management Board: Michael Vigil, Chair, summarized recent issues addressed by the Sex Offender Management Board (SOMB). Randall Cherry provided specifics regarding work on probation and parole guidelines for sex offenders. Mr. Cherry also indicated that the SOMB is again supporting an appropriation to expand the operation of the sex offender treatment program in Las Vegas, New Mexico. Next, John Wheeler summarized components of proposed sex offender legislation that is being developed by the Governor's Office. The legislative proposal will be formally presented to the SOMB at a future meeting of that body. The proposal, at this point in time, includes: 1) life imprisonment for a new offense of aggravated criminal sexual penetration; 2) the possibility of lifetime parole supervision for certain sex offenders; and 3) authority for the adult parole board to extend parole terms for certain sex offenders. During the ensuing discussion, it was noted that increased periods of probation and parole will place additional duties upon an agency that it already understaffed.

Report from the Legislative Committee: Michael Hall gave the report for Martin Suazo, Chair. Mr. Hall relayed the chair's concern that gradual increases in the membership of the legislative committee has made that group too large to operate

efficiently. Chairman Suazo has asked Chairman Caldwell to review the membership of the legislative committee and attempt to reduce the number of members to ten or twelve. Chairman Caldwell stated that he will conduct a review and he asked current members to contact him via e-mail to indicate their interest in continuing to serve on the legislative committee. Finally, Mr. Hall noted that he will make arrangements with the Administrative Office of the Courts (AOC) to conduct legislative committee meetings in the AOC conference room during the 2006 legislative session.

Plan for next meeting: The next meeting will be held on January 13, 2006. The meeting will begin at 9:30 a.m. at a location to be determined by staff.

Adjourn: The meeting adjourned at 3:30 p.m.

NEW MEXICO SENTENCING COMMISSION
FULL COMMISSION
MINUTES

January 13, 2006

9:30 a.m. – John Brown Juvenile Justice Center – Albuquerque, NM

Commission Members Present	Commission Members Absent	Others	NMSC Staff
Joe Caldwell, Chair		John Wheeler	Michael Hall
	Billy Blackburn, Vice Chair (proxy to Angie Vachil)	Regina Chacone	Tony Ortiz
	Cindy Aragon (proxy to Bob Cleavall)	George Davis	Randall Cherry
John Bigelow		Tom Swisstack	Julie Frendle
	Bill Gregoricus		Linda Freeman
Bob Cleavall			Chris Miller
Major Scott Ford			Jonathon Ochsankel
	Mark Donatelli		LaDonna LaRan
Roger Hatcher			Banyat Adipat
	Constance Keegan		
Michael Cox			
Gina Maestas			
Lemuel Martinez			
	Antonio Ortega (proxy to Martin Suazo)		
Honorable Lynn Pickard			
Honorable John Pope			
Honorable Jerry Ritter			
	Elizabeth Rapaport		
	David Schmidt		
Martin Suazo			
Melissa Stephenson			
Angie Vachio			
	Joe Williams/Nick D'Angelo		

- I. **Welcome:** Joe Caldwell, Chair, called the meeting to order at 9:35 a.m. Chairman Caldwell introduced new member, Melissa Stephenson.
- II. **Approval of minutes for the August 26, 2005 meeting.** The minutes were approved by consensus.
- III. **Staff Report:** Mike Hall reported on the accomplishments of the NMSC for 2005:
 - The staff completed eleven separate reports in the first six months of the year which is the requirement for the entire year. Chairman Caldwell called attention to the reports and basis of the reports.

- NMSC has two bills on the Governor's call.
- The results of the external audit were excellent, there were zero audit findings. As a general rule, small agencies generally have problems with their audits. NMSC met or exceeded all of its annual requirements. Our requirement on the web site is 90,000 hits per month and the actual is well over that figure. Juvenile officers utilize our web site almost hourly to look for facilities to put the juveniles.
- We were thanked by many analysts during the legislative session for our report of how we voted on each bill.
- Mr. Hall took the opportunity to compliment LaDonna LaRan on the great job that she is doing as NMSC Budget Analyst and to report that we are currently just under 50% of our budget. The LFC has recommended that the JISC budget go into the NMSC budget. This is significant because it will put the NMSC total budget at just over one million. The JISC monies will be tracked separately.
- The First Annual Town Hall meeting which was held in December at Highlands University in Las Vegas, N.M. He reported that that it was a really good first session. The morning was an overview of the criminal and juvenile justice system and the afternoon was broken into more specific sessions. Mr. Hall pointed out the display boards that were created for the meeting. Chairman Caldwell added his thoughts that the Town Hall meeting was very good.
- Chairman Caldwell pointed out that NMSC was able to successfully negotiate a better rate with UNM.

Tony Ortiz gave an update on the Workload Measurement Study. This study was requested by the Supreme Court Justice Task Force Committee. He reported that as of this week we now have a signed contract. Senator Levell is going to introduce a bill to cover the rest of the costs of the study. One of the members reported that the Governor is very excited about this study and is supportive that this will be the first of such studies. Mr. Ortiz reported that Roger Bargas has been very involved in this and that the Criminal Defense lawyers will have a seat on the advisory board of the study.

Mr. Hall reported that he and Mr. Ortiz will be working hard to see that the NMSC bills will be introduced early in the legislative session. **The bills to be presented are: Tony, could you please fill this in?**

IV. **Report from the Sex Offender Management Board:** Randall Cherry reported that the Guidelines Workgroup has been working on surveying and that a draft of the guidelines will be put into final form and presented for a vote during the March Full Commission meeting. This group is also putting together the associated costs. He reported that resources in NM are concentrated in the metro areas and that Sex Offenders are in all areas of that state making it important to cover the rural areas also.

Mr. Cherry reported that the Treatment Workgroup has been working on assessment tools. These tools are to assess the risks of moving sex offenders to parole. This group is hoping to present the following during the March meeting:

- Juvenile
- Adult
- Concentrating of what sex offenders can do to get off the registration

Mr. Cherry stated that they will be focusing on treatment for both offenders and victims. He stated that they have reviewed the Governor's package on sex offenders. John Wheeler shared more details on this.

Next Mr. Cherry stated that the provisions the SOMB agreed to support are:

- 1) Creation of new crime – CBS. Beyond first degree. Victims under nine years old instead of 13 years old.
- 2) Or done with a depraved mind or intent to kill
- 3) Or commits a first degree CSP and continues to be a threat to the community
- 4) Crime carries lifetime sentence. Top crime will be aggravated criminal sexual penetration
- 5) Recommending lifetime parole (now 20 year parole)

Motion – A motion was made to support the concept to strengthen CSP, understanding that there may be further issues. Concept is supported based upon the elements described by John Wheeler, that victims under nine years old, or that commit first degree and support the lifetime parole, with the understanding that there may be changes made. Motion passed with 8 pro votes, 8 opposed votes, 2 abstain votes and the chair voting in favor. Mike Hall and Tony Ortiz will present as “NMSC supports in favor with a 9 to 8 vote.”

After considerable discussion another motion was made:

Motion – A motion was made to direct the NMSC staff to report to the legislature that it was an evenly divided vote. Motion failed.

Motion – A motion was made to support fully funding the STOP program which brings it to full capacity of 24 beds. Motion passed by consensus.

- V. Report from the Juvenile Committee:** Bob Cleavall reported that the committee met in November and discussed legislation to be presented at the 2006 Session. He reported that the committee is looking at Camp Sierra Blanca. Mr. Caldwell stated that we have very little support in juvenile justice even though this is the year of the child. He then reported that there has been discussion on the salary level for juvenile probation officers. Mr. Cleavall stated that gender specific treatment is the number one issue for the juvenile committee.

Tom Swisstack recognized the diversity of the NMSC Board and said that he would like to see the integrity continue. He reported that Dr. George Davis is working on mental health facilities for kids. His group is working on options for judges. He is recommending that the legislature fund the regular detention bill and is asking for funding to be reoccurring. Mr. Swisstack reported that they are moving toward regionalization of facilities. Some of the issues are:

- Making a plan for children who are in institutions that will be closing.
- We spend a substantial amount of money on adult issues and very little money on juvenile issues. Resources are not pooled, an infrastructure needs to be in place.

Dr George Davis gave some background of female juvenile treatment issues. He stated that there are about 30 girls in the system now with at least 50% of them coming from a hospital or treatment center. That the girls have a higher degree of mental health issues and more complications than the boys do. He also stated that the outcome of the girls is worse than that of the boys. He stated that the real issue with all juveniles is reintegration, getting them back into the community with some skills to survive there. This requires social, functional, family and education issues.

Motion – A motion was made for NMSC to support and endorse any program to treat and educate gender specific treatment programs. Motion passed by consensus.

- VI. Report from the Sentencing Reform Committee:** John Bigelow asked John Wheeler to report on the Governor's package. Mr. Wheeler summarized:

- Create a substitute _____
- Enhancement for domestic violence – set minimum
- 2 gang bills – recruitment, to punish recruitment.
- Sex offender
- Registry of meth offender property
- Fix glitches in drug free school zone, adding meth to trafficking – degree felony.
- Animal something - Bob Swartz's dog
- Child abuser registry

Motion – A motion was made to support the Governor's proposal to fund three million dollars for counties undertaking programs like the San Juan County project. Motion passed by consensus.

John Bigelow reported that Gail Evans and others are proposing, and have presented, to the Supreme Court Task Force Committee, to create/appoint the Director of Public Defenders.

Next Mr. Bigelow reported that the Sentencing Reform breakout session during the Town Hall meeting resulted in interesting discussion. He asked participants in discussion if any laws on books should be removed. They answered no. He then asked if any penalties on books should be removed. This was also given a no response. There was further discussion that the legislative process shouldn't enact new legislation without knowing how something was going to be funded. It was suggested that the SRC propose legislation on this

Mr. Bigelow then stated that the expected results of the Workload Measurement Study should address the needs of the public defenders and the defense.

Tony Ortiz reported that the NMSC Data report will be presented to the legislators on Monday. He stated that each component has factoids in the left hand column that are highlighted. He stated that he hopes that this will start information, with facts, flowing. Mr. Ortiz pointed out that actually costs of running criminal and juvenile programs in NM are in the report. NMSC plans to replicate this information on a yearly basis therefore we will be able to identify trends in on-going years.

Please check this to make sure that I got the motion correct. I got confused here but my notes are in the 2nd highlighted paragraph.

- o **Motion** - A motion was made to support the Governors' proposal to fund three million dollars for counties undertaking programs like the San Juan County project. Motion passed by consensus.

Data report – written and will be presented to legislatures on Mon. Each component has factoids in left hand column that are highlighted. Hope that this will start information, with facts, flowing. How much is actually costs running criminal and juv justice program in NM. Plan to reciprocate info on a yearly basis. Be able to see trends in on-going years.

JB – will be able to provide legislature with “real” information. He thinks it's a good idea for NMSC to take a position on _____. The commission recommends that _____ (printed on handout).

Motion -

Passed by consensus.

VII. Report from the Data Committee and the Justice Information Sharing

Council: Michael Cox reported that this is the year of the Data Committee. He stated that this is the first time a global report, the Data Report, has been attempted and he feels that the report will become the bible for legislatures. He then reported on the EMD report. Mr. Cox stated that the addition of JISC and the value of getting information on a real time basis. Tony Ortiz reported that Dave Abby

requested a projected rate of inmates being up for release which we were able to provide in about two weeks time due to us having the data.

Below are my notes, is there anything here that I have missed?

Banyat Adipat, JISC Project Manager, was introduced.

60 day EMD report - real answers in a reasonable amount of time. Hoping to turn these out on a regular basis. Additional of JISC and ability to do this stuff on a real-time basis. Now data comm. Will be able to answer questions from the legislature. TO – dave abby asked to and rc for a projected rate of inmates being up for release. MH – this report is the corner-turn. Report was turned around in 2 weeks due to us having the data.

Introduced Banyat. Combination of JISC and Data Comm is a wonderful marriage. AODA is now going to give us access to their data. In next few months the consolidated ... inquiry will be used throughout the system.

JISC just got the certification of the

JC – charged in is to adopt a regulation of has to go through a state regulation approval process.

- VIII. **Report from the Legislative Committee:** Martin Suazo stated that the size of the legislative committee has been discussed in previous meetings. The committee needs to be decreased in size. He reported that last year four bills were introduced during the session and that none of them went through. He said that we will re-strategize getting these bills through this year. Mr. Suazo stated that the NMSC staff has put together a great form to track the bills during the session.

Mr. Suazo stated that the legislative committee will meet on Tuesdays during the session with the exception of the January 23rd meeting which is on a Monday.

Chair Caldwell stated that everyone did a great job last year and the NMSC tried to make sure that every group was represented on the legislative committee. He stated that everyone has the ability to present to the legislative committee, that the meetings are open and anyone can attend even if they don't have a vote.

- IX. **Plan for next meeting:** It was suggested that our next meeting be a retreat held the end of April or early May in Taos – May 5th was suggested.

Chair Caldwell stated that the Town Hall meeting was great and that we would plan for additional Town Hall meetings during the retreat.

- X. **Adjourn:** The meeting adjourned at 12:23 p.m.

NEW MEXICO SENTENCING COMMISSION
FULL COMMISSION
MINUTES

April 27, 2006

9:15 a.m. – San Geronimo Lodge – Taos, NM

Commission Members Present	Commission Members Absent	Others	NMSC Staff
Joe Caldwell, Chair		Sheila Lewis	Michael Hall
	Billy Blackburn, Vice Chair (proxy to Mark Donatelli)	Regina Chacon	Tony Ortiz
	Cindy Aragon	Louise Tracy	Randall Cherry
John Bigelow		Melissa Hill	Julie Frenkle
	Dorian Dodson, Acting Secretary for CYFD	Barbara Dua	Nancy Gettings
	Bob Cleavall	Thom Allena	Paul Guerin
Paul Cook (rep. John Denko)		Jennifer Stone	LaDonna LaRan
Mark Donatelli		Liz Romero-Eoff	Banyat Adipat
Roger Hatcher		Barb Tombs	
	Constance Keegan	Jim Vincent	
	Michael Cox (rep. Patricia Madrid)	Honorable Michael Vigil	
	Gina Maestas (proxy to Lynn Pickard)	Mike Mier	
	Lemuel Martinez	Ada Pecos Melton	
Antonio Ortega		John Wheeler	
Honorable Lynn Pickard		Fran Bunker	
	Honorable John Pope		
Honorable Jerry Ritter			
Elizabeth Rapaport (rep. Suellyn Scarnecchia)			
	David Schmidt		
Martin Suazo			
Melissa Stephenson			
	Angie Vachio		
	Nick D'Angelo (rep. Joe Williams)		

Welcome. Joe Caldwell, Chair, called the meeting to order at 9:15 a.m. Chairman Caldwell welcomed everyone to the meeting and the ensuing New Mexico Sentencing Commission (NMSC) Retreat. He noted that the theme of the NMSC Retreat is “Balancing the Pragmatic with the Ideal”.

Approval of minutes for the January 13, 2006 meeting. The minutes were approved by consensus.

Staff Report. Michael Hall briefed the commission members on the following:

- David Abbey, Director of the Legislative Finance Committee (LFC), sent a letter to Mike Hall that thanked the NMSC for its research and other efforts during the 2006 Legislative Session.
- The number of hits on the NMSC web site has increased dramatically during the past six months. Mr. Hall attributes the increase to Google searches that yield hits on NMSC reports.
- Larry Barker, investigative television reporter, recently pressured the NMSC for release of Corrections Department data used by the NMSC to produce the annual earned meritorious deductions report. Mr. Hall denied the request and explained to Barker that the NMSC does have authority to release data provided to it by other agencies.
- CYFD has requested the NMSC's assistance with creating an expanded Juvenile Resource Directory. The first step, already completed, involves merging the NMSC Directory with a separate directory maintained by CYFD. The second step will involve the collection of information regarding juvenile resources provided by tribes.
- NMSC staff recently met with LFC staff regarding county jail issues. Subsequent to that meeting, NMSC staff was invited to participate in a formal LFC hearing regarding those issues. The LFC hearing is scheduled for May 16, 2006, in Carlsbad, New Mexico.
- Budget Status report: The FY 2007 operating budget must be delivered to LFC and DFA by May 1, 2006. During the recent legislative session, the NMSC received funding to make the SOMB staff attorney position a full-time position and received \$6,000 for the expense of an external audit conducted in 2005. Unfortunately, a funding request for the Justice Information Sharing Council (JISC) was not successful. However, language was inserted in the 2006 General Appropriations Act to authorize expenditure of FY06 JISC money through the end of FY07. Mr. Hall has had conversations with LFC and DFA staff regarding funding for JISC in FY 08.

Next, Tony Ortiz provided an update on the workload measurement study for the public defender department, district attorneys and the judiciary. On April 19, 2006, the Advisory Committee for the study met with staff from the National Center for State Courts (NCSC) and the American Prosecutors Research Institute (APRI). The NCSC and APRI staff explained the methodology that will be employed for the study and the chronology of events that will culminate in the projected completion of the study (June 2007). On April 20, 2006, individual work groups for the public defender department, district attorneys and the judiciary convened. Training for participants in the time study will take place this summer. It is anticipated that the time study (case-related events and non-case related events) will be conducted in September or October.

Information regarding the Kellogg Foundation and Restorative Justice Programs in New Mexico. Thom Allena briefed the members on a potential Kellogg Foundation initiative.

He stated that representatives of the foundation are interested in funding restorative justice programs for juvenile offenders in New Mexico. He noted that, if implemented, the programs would include training protocols, practice standards and community readiness assessments. He also noted that enabling legislation for the programs may be necessary. Following a discussion by commission members of restorative justice principles, Mr. Allena stated his intent to gather more information from the Kellogg Foundation and make a formal presentation on the initiative to the NMSC's Juvenile Committee.

Report from the Legislative Committee. Martin Suazo, Chair, thanked Michael Hall and NMSC staff for their efforts during the 2006 Legislative Session. Chairman Suazo noted that two bills developed by the NMSC were signed into law: 1) HB 80 (equitable schedule of sanctions for property offenses); and 2) SB 21 (revisions to the statute regarding earned meritorious deductions for state inmates). He also reported that the Sex Offender Treatment Program (STOP) in Las Vegas, New Mexico, received funding that will allow the program to operate additional treatment beds. This initiative was supported by the SOMB and the NMSC. Chairman Suazo then reported that the NMSC bill tracking document was very helpful during Legislative Committee meetings. He noted that the bill tracking document was widely distributed to legislators and legislative staff during the session.

Report from the Juvenile Committee. Tony Ortiz stated that the Juvenile Committee met on March 7, 2006, and devoted the entire meeting to an analysis and discussion of the recent agreement between the American Civil Liberties Union and the Children, Youth and Families Department. It was noted that the agreement, which is four years in duration, will be a roadmap for juvenile justice services in the state during that time period. The next meeting of the Juvenile Committee is scheduled for May 26, 2006 and Dorian Dodson, Acting Secretary of CYFD, will address the committee at that meeting. The committee members want to hear from her about the ACLU-CYFD agreement and initiatives she has planned for the department. Next, Mr. Ortiz reported that the committee plans to visit Camp Sierra Blanca this summer. A new vendor (Civigenics) is now operating that facility and recent renovations to the physical plant have been completed. Finally, Mr. Ortiz briefed the members on a secure, residential treatment program for girls with psychiatric issues. The program will accept its initial residents on May 2, 2006.

Report from the Sex Offender Management Board. Judge Michael Vigil, chairman, reported that thanks to additional funding for FY2007, the STOP program (located at the Institute for Behavioral Health, Las Vegas, NM) will increase the number of treatment beds by 10 this year. This will increase the total capacity to 24. According to reports, it is possible that a program graduate recently recidivated. The report remains unconfirmed. If true, it will be the first confirmed case of recidivism for a STOP program graduate. On this issue, Randall Cherry reported that STOP Program Director, Donald Montoya, is currently working with the Sentencing Commission to conduct a formal recidivism study of the program. Dr. Paul Guerin, Institute for Social Research, will supervise the study design and implementation and will seek approval for the study from the University of New Mexico review board.

Chairman Vigil stated that Board members are currently reviewing proposed adult supervision guidelines. The Board will formally vote on the draft proposal before the end of July. The adult treatment workgroup continues its efforts to develop proposed treatment guidelines. The workgroup is currently reviewing guidelines adopted by the Association for the Treatment of Sexual Abusers (ATSA). The workgroup believes that the ATSA guidelines offer a good basic model, but will require significant revisions to meet the needs of New Mexico.

The juvenile workgroup continues its work on development of treatment guidelines. Chairman Vigil explained that juvenile treatment guidelines present a difficult issue. The Board wishes to adopt evidence-based guidelines and evaluation instruments, but unlike the adult population, research on juveniles is extremely limited. Recent research by Barbara Schwartz, *et. al.*, however, may lead to an evidence-based evaluation tool in the very near future. The workgroup will continued its work and will recommend guidelines consistent with the best available research. The juvenile workgroup will continue its work on juvenile supervision guidelines as well.

On more general matters, Chairman Vigil noted that the Board is currently reviewing specific issues regarding voyeurism and the Board believes that a bill is forthcoming from the Office of the Governor. He also noted that the Board would like to add members from both the education and tribal areas. Finally, Chairman Vigil reported that the Board is concerned that probation and parole agreements for juveniles vary significantly between jurisdictions. This unnecessarily complicates the jobs of the various juvenile probation and parole officers involved, and leads to inconsistent treatment of juveniles. The Board will attempt to coordinate with the various interested parties to adopt a model that will have universal application to the extent practicable.

Report from the Sentencing Reform Committee. John Bigelow, Chair, reported that the committee has identified a list of initiatives for review and development during the 2006 interim legislative session:

- investigate methods to expedite procedures for probation violators (also, Paul Guerin will make a presentation to the Supreme Court Criminal Justice Task Force on this topic);
- consider re-introduction of proposed amendments to Section 31-18-15.1 NMSA [see HB 694 (2005)], regarding alteration of a basic sentence based upon a finding of aggravating circumstances. There is no longer "constitutional urgency" to adopt these amendments [see *State v. Lopez* (NM Supreme Court)], but several committee members want to have a policy discussion on this topic.
- consider proposed amendments to Section 30-36-5 NMSA 1978, regarding penalties for worthless checks, that were removed from HB 80 (2006). Additionally, consider repeal of the section of law regarding worthless check processing fees and replace that revenue stream with an annual general fund appropriation for the DA's training fund. (There was not a representative for the DA's at the SRC meeting on 3-30-06).

- gather information on the current system used for DNA collection and analysis. Several committee members expressed concerns about delays in the existing system and the impact of the new law (effective January 1, 2007) regarding collection of DNA samples from some felony arrestees.
- consider a proposal based upon a statute in Virginia, which requires that an appropriation accompany any proposal to increase existing criminal penalties or create a new criminal offense.
- review state inmate population forecasts and plans for correctional facilities, and examine (existing and proposed) alternatives to incarceration that could be used to slow inmate population growth.

Mr. Bigelow stated that the next Sentencing Reform Committee meeting will be held on May 25, 2006 at the NMSC offices.

Report from the Data Committee and the Justice Information Sharing Council.

Mike Hall reported on the NMSC Data Committee and JISC. NMSC is building up its database of agency data. Paul Guerin and Mike Hall recently obtained approval from JIFFY (the Judiciary's information technology oversight group) and NMSC will now get a dispositional data set. This is a large step forward for the NMSC; it will allow us to better report sentencing patterns, inclusive of probation and alternative sentences.

NMSC has again exceeded its legislative performance measure for publishing reports, thanks in large part to the work of Paul Guerin and Linda Freeman. The Juvenile Inventory was expanded this year and published on CD ROM. Staff is updating the NMSC Adult Directory and working on a prototype Tribal Juvenile Justice Directory. The NMSC Charge Code Table is in the process of being updated. Tony Ortiz wrote a white paper on *Blakely v. Washington* that was published in the Federal Sentencing Reporter.

Banyat is working with the Department of Public Safety to pull out warrant data and add this to the COQ in an effort to help prevent another "Astorga" situation. JISC is also working on gathering tribal data information, thus making New Mexico the first state in the nation to integrate tribal information with state information. Banyat then demonstrated the Consolidated Offender Query (COQ) program. Due to ongoing development and limited bandwidth, the COQ is currently available to a limited number of law enforcement officials. Over the next year, the JISC will develop a formal policy regarding who is able to access the COQ and their level of access.

Plan for next meeting: The next meeting will be held on August 18, 2006 at the State Bar facility in Albuquerque.

Adjourn: The NMSC meeting adjourned at 12:15 p.m.

NEW MEXICO SENTENCING COMMISSION
FULL COMMISSION
MINUTES

August 18, 2006

9:30 a.m. – State Bar Center – Albuquerque, NM

Commission Members Present	Commission Members Absent	Others	NMSC Staff
Joe Caldwell, Chair		Diane Wood	Michael Hall
Billy Blackburn		Scott Sandlin	Tony Ortiz
	Cindy Aragon	Robert Desidario	Randall Cherry
John Bigelow		John Brennan	LaDonna LaRan
Roger Gillespie (rep. Dorian Dodson)		Rick Pendrey	Banyat Adipat
Bob Cleavall		Barri Roberts	Jonathon Ochsankehl
Inspector Scott Ford		Rick Melton	Julie Frendle
	Mark Donatelli (proxy to Billy Blackburn)	John Wheeler	Linda Freeman
	Roger Hatcher (proxy to Scott Ford)	Tasia Young	
	Arthur Pepin (proxy to Judge Pickard)	Judy Arciniaco	
	Michael Cox	Renada Peery-Galon	
	Gina Maestas (proxy to Judge Pickard)	Kathleen MacRae	
Lemuel Martinez			
	Antonio Ortega (Proxy to Martin Suazo)		
Judge Lynn Pickard			
Judge John Pope			
Judge Jerry Ritter			
	Elizabeth Rapaport		
David Schmidt			
Martin Suazo			
Melissa Stephenson			
	Angie Vachio (proxy to Dave Schmidt)		
	Nick D'Angelo		

Welcome. Joe Caldwell, Chair, called the meeting to order at 9:35 a.m.

Approval of minutes of the April 27 2006 meeting. The minutes were approved by consensus.

Staff Report.

NMSC FY08 Strategic Plan. Michael Hall reported on two major changes to the FY08 NMSC Strategic Plan: 1) a list of specific duties and projects which comply with the statutory duties of the NMSC and the SOMB; and 2) a list of recent NMSC publications and accomplishments.

Motion: A motion was made to approve the NMSC strategic plan. The motion was approved by consensus.

NMSC FY08 Budget Request. Michael Hall reported that the NMSC FY08 budget request is flat, except for: 1) a request for \$50,000 to address cost of living increases that have not been funded in previous fiscal years; and 2) \$350,000 to fully fund the operations of the Justice Information Sharing Council, which is now a component of the NMSC.

Motion: A motion was made to approve the NMSC FY08 budget request. The motion was approved by consensus.

Workload Measurement Study for the Public Defender Department, District Attorneys and the Courts. Tony Ortiz reported that the Advisory Group for the study met yesterday (8/17/06). The purpose of the meeting was to brief the Advisory Group on the considerable work already performed in preparation for data collection from the three agencies. The Advisory Group reached agreement on important aspects of the data collection component of the study, including case types and a six-week data collection period. While recognizing the different missions performed by the three agencies, it is necessary to have as much comparability as possible during data collection. It is believed that this is the first instance of a workload measurement study being performed simultaneously in a state for the Public Defender Department, District Attorneys and the Courts. It was suggested that a subsequent workload measurement study could be performed for other criminal justice agencies, including the probation and parole division of the corrections department.

Contract with the New Mexico Association of Counties (NMAC) Regarding Felony Offenders Incarcerated in County Detention Facilities. Tony Ortiz reported that during a meeting held in Carlsbad in May, the Legislative Finance Committee asked NMSC staff to assist the NMAC with development of a legislative proposal to reimburse counties for the expense of housing felony offenders in county detention facilities. The NMSC has a small contract with the NMAC to continue collection of data from county jails regarding felony offenders and to develop a legislative proposal. This is the third year that the NMSC has performed such data collection. A discussion draft is nearly ready for review by NMAC officials. It was noted that while NMSC staff is assisting with development of the legislative proposal, this is not an NMSC bill.

Summary of the Governor's Crime Package for the 2007 Legislative Session. John Wheeler briefed commission members on the Governor's crime package for the 2007 Legislative Session:

--Two domestic violence bills that have introduced in previous sessions: 1) provision of substitute addresses for victims of domestic violence; and 2) graduated penalties for domestic violence offenders.

--Two gang-related bills that have been introduced in previous sessions: 1) penalties for recruitment of gang members; and 2) enhanced penalties for gang-related criminal activity.

--Two methamphetamine-related bills regarding registration of methamphetamine-impacted properties and remediation of properties used for methamphetamine production.

--A sex offender proposal similar to a bill introduced during the 2006 Legislative Session.

--A proposed increase in the enhancements provided for crimes committed with a firearm.

--A proposal to eliminate the availability of "lump-sum" earned meritorious deductions to serious violent offenders.

Summary of National Association of State Sentencing Commissions (NASSC) Meeting (August 6-8). Randall Cherry reported on presentations he attended during the NASSC conference held in Philadelphia. He noted the following:

--Savings realized by using treatment programs as an alternative to incarceration range from \$1.33 to \$39.00 per day. Every day that an offender does not re-offend equals reduced costs.

--A poll conducted in 2006 indicates that a majority of the public does not understand that crime rates have dropped in recent years. A majority of those polled believes we are too lenient on criminals. Yet, those polled support rehabilitation efforts and are supportive of treatment programs as an alternative to incarceration.

--A sex offender treatment program in Canada reported very favorable recidivism rates for offenders who participated in the program during a 5-year period. The rate of recidivism was reported as 14%.

Proposed Study on the Costs of Capital Felony Sentencing. Tony Ortiz reported that NMSC staff had been contacted by Kathleen MacRae, Director for the Coalition to Repeal the Death Penalty, for a possible study by the NMSC regarding the costs of capital felony sentencing in New Mexico. NMSC has the research capability to do this. It was noted that this will not be a NMSC bill, and that the Coalition will lobby the legislature for money to conduct such a study.

During the ensuing discussion among commission members, the following points were made:

-the proposed cost study does not require the NMSC to support or oppose capital felony sentencing.

-if the NMSC performs a research study for a special interest group, it might compromise the credibility of the NMSC and open the door for future requests by other special interest groups.

-it would be more appropriate to do such a study if the NMSC is asked by the legislature to do the study.

Motion: A motion was made that, if asked, NMSC staff shall advise the legislature that the NMSC does possess the technical expertise to conduct a cost study regarding capital felony sentencing in New Mexico. A substitute motion was offered to table the original motion. The substitute motion failed. Next, there was a vote on the original motion. That motion also failed.

Following additional discussion, NMSC staff was directed to respond to all research requests by special interest groups in the following manner: If asked by the legislature to conduct a research study for a special interest group, the NMSC will conduct the research if it possesses the technical expertise to do so and if an adequate level of funding is provided to perform the research.

Overview of the Second Chance Program. Former District Court Judge John Brennan briefed the commission members on the Second Chance Center. The Second Chance Center is a secure, long-term treatment facility for offenders with substance abuse problems. The center is scheduled to open on September 5, 2006 and will initially be staffed to provide treatment to 200 offenders. Offenders referred to the program will participate in a full-time treatment program that emphasizes detoxification and educational services for offenders. The center will be located in a former jail facility in Albuquerque and will accept referrals from judges throughout the state.

Proposed Expansion of the New Mexico Sentencing Commission's Membership. Tony Ortiz reported that during the NMSC retreat in April 2006, there was a discussion about whether to expand the membership of the NMSC. During the retreat, it was suggested that the Secretary of Public Education and a Tribal representative be added to the membership of the NMSC. Mr. Ortiz also mentioned that he had been contacted by Judge Judy Nakamura, who requested that a representative for Bernalillo County Metropolitan Court be added to the membership of the NMSC. During the ensuing discussion among commission members, the following points were made:

-the enabling legislation for the NMSC currently provides for representation by a Native American attorney appointed by the state bar.

-the enabling legislation for the NMSC currently provides for representation by members appointed by the Chief Justice of the Supreme Court.

Motion: A motion was made that a bill draft be prepared to add the Secretary of Public Education to the membership of the NMSC. The motion was adopted.

Hearing on a Proposed Rule Regarding Collection and Analysis of Criminal and Juvenile Justice Data by the New Mexico Sentencing Commission. At this time, Chairman Caldwell conducted a public hearing on a Proposed Rule Regarding Collection and Analysis of Criminal and Juvenile Justice Data by the New Mexico Sentencing Commission. The hearing was recorded. The Chair stated that the proposed rule had previously been approved by the NMSC Data Committee and by the full Commission at an earlier meeting. Since that earlier meeting, NMSC staff has attended mandatory training sessions offered by the New Mexico Commission of Public Records. Staff has re-formatted the proposed rule in accordance with rules published by the Commission of Public Records. Moreover, proper notice of this hearing has been published. Chairman Caldwell asked if anyone in attendance wished to comment on the proposed rule. No public comment was offered.

Motion: A motion was made to approve the proposed rule and to direct staff to make final arrangements for publication of the rule in the New Mexico Administrative Code. The motion was adopted by consensus.

Report from the Juvenile Committee. Bob Cleavall, Chair of the Juvenile Committee, briefed the commission members. He introduced Roger Gillespie, the newly-appointed Director of Juvenile Justice Services for the Children, Youth and Families Department. Next, Chairman Cleavall announced that the next meeting of the NMSC Juvenile Committee will be held at Camp Sierra Blanca, which is located near Ruidoso. Chairman Cleavall also indicated that Dave Schmidt may bring proposed revisions to the Children's Mental Health and Developmental Disabilities Act to the committee for its consideration. Judge Jerry Ritter expressed his thanks to the Juvenile Committee for scheduling the meeting at Camp Sierra Blanca and for holding meetings at juvenile facilities throughout the state.

Report from the Sentencing Reform Committee. John Bigelow, Chair of the Sentencing Reform Committee, briefed the commission members. Chairman Bigelow reported that the SRC adopted a motion to table consideration of proposed changes to the "worthless check" statute. Susana Martinez polled her District Attorney colleagues and reported to the SRC that they were opposed to the proposed changes. Many of the District Attorneys expressed to Susana that they viewed withdrawal of the proposed changes to the worthless check statute (from the original version of House Bill 80, regarding equitable sanctions for property offenses) as consideration for the District Attorneys not opposing House Bill 80. Next, Mr. Bigelow reported that the SRC adopted a motion to table consideration of proposed changes to the "aggravating circumstances" statute. He noted that the SRC discussed *State v. Lopez* (NM Supreme Court), which upheld the constitutionality of the statute despite *Blakely* and its progeny (U.S. Supreme Court). Also, the SRC members were advised that there is a sharp split of opinion among state Supreme Courts (Washington, California, New Mexico, Tennessee, New Jersey) regarding the application of *Blakely* to state sentencing schemes. The likelihood is great that the U.S. Supreme Court will have to further clarify their position in light of this split of opinion in state appellate courts. Finally, Mr. Bigelow reported that the SRC adopted a motion to present a discussion draft to the full commission for consideration. The discussion draft, which emulates a Virginia statute enacted in 2000, requires that an appropriation accompany any criminal justice bill that will result in an increase in periods of imprisonment in adult correctional facilities. Mr. Bigelow summarized the SRC deliberations concerning the discussion draft.

Motion: A motion was made to adopt the discussion draft as developed by the Sentencing Reform Committee. The motion was adopted.

Report from the Sex Offender Management Board. Randall Cherry reported, in Judge Vigil's absence, that the SOMB is making good progress on probation and parole guidelines for sex offenders. Those guidelines will soon be finalized by the SOMB and presented to the NMSC for its review at the next commission meeting. Mr. Cherry also reported that the SOMB is close to finalizing a risk and needs assessment tool for sex offenders. Next, Mr. Cherry reported that the SOMB is considering a legislative proposal that would add a representative from the Office of Indian Affairs and the Secretary of Public Education to the membership of the SOMB. Finally, Mr. Cherry reported that administrators for the Sex Offender Treatment Program (STOP) in Las Vegas have asked NMSC researchers to study recidivism rates for STOP graduates. Randall Cherry and Paul Guerin will follow-up on this request. Finally, Mike Hall reported that Randall Cherry recently became one of only two non-treatment professional members of the Association for the Treatment of Sexual Abusers (ATSA). ATSA is a national organization whose members are primarily clinicians and researchers who provide treatment services to the sex offender population.

Report from the Data Committee and JISC. Mike Hall reported, in Michael Cox's absence, that NMSC data-collection capabilities continue to expand. The NMSC will soon receive 5 years of disposition data from the Judiciary. The NMSC has agreed not to reveal sentencing patterns of individual judges. Next, Mr. Hall reported that the annual NMSC "earned meritorious deduction" study is underway and will be delivered in November 2006. Mr. Hall also reported that the NMSC Charge Code Table has been completely revised and is now fully integrated into the District Attorney's data base. The NMSC is in dialogue with the Department of Public Safety and the Judiciary to use the NMSC Charge Code Table universally.

JISC – The JISC servers had been stationed at the New Mexico Corrections Department and they have recently been moved to the General Service Department. The Consolidated Offender Query (COQ) program is now running 3 to 5 times faster and contains more complete offender information. One hundred twenty-five State Police officers are now using the COQ program. Mike Hall noted that he and Banyat Adipat will continue to demo the COQ program to criminal justice agencies throughout the state in an effort to illustrate its value and to build support for full funding for JISC in FY08.

Report from the Legislative Committee. Martin Suazo, Chairman of the Legislative Committee, reported that the Legislative Committee will meet each Tuesday during the 2007 legislative session in the conference room for the Administrative Office of the Courts. The meetings will convene at 10:00 a.m.

Next meeting. The next NMSC meeting will be held on December 8, 2006, in Santa Fe. The meeting will begin at 9:30 a.m. The location of the meeting will be determined by staff.

Adjourn. The meeting adjourned at 12:15 p.m.

NEW MEXICO SENTENCING COMMISSION
FULL COMMISSION
MINUTES

December 8, 2006

NM Library, Archives and Records Center
1205 Camino Carlos Rey
Santa Fe

9:30 a.m.

Commission Members Present	Commission Members Absent	Others	NMSC Staff
Joe Caldwell, Chair		Ted Lovato	Michael Hall
	Billy Blackburn		Tony Ortiz
Cindy Aragon			Randall Cherry
John Bigelow			LaDonna LaRan
Roger Gillespie			Paul Guerin
Bob Cleavall			Linda Freeman
Inspector Scott Ford			Julie Frendle
	Mark Donatelli		Banyat Adipat
	Roger Hatcher		
Arthur Pepin			
Michael Cox			
	Gina Maestas (proxy to Judge Pickard)		
Lemuel Martinez			
	Antonio Ortega (proxy to Martin Suazo)		
Judge Lynn Pickard			
Judge John Pope			
Judge Jerry Ritter			
April Land			
David Schmidt			
Martin Suazo			
Melissa Stephenson			
	Angie Vachio (proxy to Dave Schmidt)		
Jim Brewster			

Welcome. John Bigelow, Acting Chair, called the meeting to order at 9:40 a.m. He advised the members that Chairman Caldwell would arrive shortly.

Approval of minutes for the August 18, 2006 meeting. The minutes were approved by consensus.

Report from the Data Committee and the Justice Information Sharing Council.

Michael Cox, Chair of the Data Committee, reported that the Uniform Charge Code Table, maintained by the NMSC, will now be used by the Judiciary and District Attorneys.

A Charge Code Table working group has been formed and the members of that group will oversee ongoing refinements to the table.

Next, Mr. Cox reported that the Data Committee has developed a legislative proposal to establish a uniform crime reporting system in New Mexico. The Data Committee has worked with officials from the Department of Public Safety on the legislation. Under the proposal, the department will act as the central repository for the collection, maintenance and analysis of crime incident activity in New Mexico. New Mexico is one of three states that does not have such a law.

Motion: A motion was made to endorse the uniform crime reporting legislation developed by the Data Committee. The motion was adopted by consensus.

Finally, Mr. Cox reported that the annual NMSC report regarding Earned Meritorious Deductions for State Inmates has been completed for FY 2006. He thanked Paul Guerin, Linda Freeman and other NMSC staff for their work on the report. Tony Ortiz noted that electronic copies of the report have been transmitted to the secretary of corrections, all New Mexico criminal court judges, the administrative office of the district attorneys and the chief public defender.

Mike Hall, Chair of the Justice Information Sharing Council, advised the commission members that the Consolidated Offender Query program is being made available to a growing number of users in the criminal justice system. He also noted that Banyat Adipat has demonstrated the COQ program to law enforcement officials, district attorneys and staff in the Governor's office.

Report from the Juvenile Committee. Bob Cleavall, Chair of the Juvenile Committee, advised the commission members that the Juvenile Committee has been involved in ongoing meetings regarding the possible location of a juvenile justice facility or juvenile justice programming in Las Vegas, NM. He noted that several legislators, elected officials from Las Vegas, and representatives from Children, Youth and Families and the Department of Health have also attended the meetings.

Next, Chairman Cleavall briefed the members on discussions regarding a legislative proposal to provide notification to schools when a juvenile is arrested for a sex offense. Randall Cherry, Bob Cleavall and David Schmidt have been meeting with staff from the Lt. Governor's Office regarding this legislative proposal. During those meetings, the following issues were noted:

- 1) notification based upon an arrest for a sex offense raises constitutional concerns; and
- 2) it may be more appropriate to provide notification to schools when a juvenile is adjudicated as a "youthful offender" for commission of a sex offense.

A legislative proposal to provide notification to schools upon an arrest for a sex offense has not been drafted at this time. If a legislative proposal is developed and introduced during the 2007 legislative session, the Legislative Committee of the NM Sentencing Commission will review the proposal.

Chairman Cleavall then summarized testimony provided to the Juvenile Committee by Bill O'Neill, Executive Director of the Juvenile Parole Board. Mr. O'Neill told the Juvenile Committee that the success of recent reform efforts to reduce the number of children in secure detention facilities has raised concerns for the Juvenile Parole Board. Specifically, children who now receive one-year commitments to secure facilities tend to be high-risk and high-needs juvenile offenders. When those children receive a one-year commitment, current state law mandates release on parole after nine months. He feels that the mandatory parole can be a disservice to some of those children, who are not yet ready to return safely to their homes and communities. The committee members discussed possible changes to the current law, including: 1) removal of the mandatory parole; 2) implementing a mechanism for extending the period of commitment; or 3) providing for a longer term of commitment and a longer parole term. This issue will be discussed further during a Juvenile Committee meeting scheduled for January 5, 2007 at the NMSC's office in Albuquerque.

Finally, Chairman Cleavall summarized proposals discussed during the 2006 interim that are supported by the Juvenile Committee:

- 1) a memorial regarding ignition interlocks for juvenile DWI offenders;
- 2) a special appropriation to provide programming for children of incarcerated parents;
- 3) creation of a juvenile continuum grant fund, accompanied by a special appropriation to provide \$2 million for juvenile services statewide;
- 4) a bill to prohibit posting of arrest information regarding juvenile offenders on web sites maintained by state agencies; and
- 5) a bill to provide consistent language regarding truancy in the Compulsory School Attendance Act and the Families In Need of Services Act .

Mike Hall and Tony Ortiz will advise the members of the Legislative Committee for the NMSC that these proposals are supported by the Juvenile Committee.

Report from the Sex Offender Management Board. Randall Cherry began a briefing on proposed probation and parole supervision guidelines for sex offenders, prepared by the SOMB. However, several commission members had not received the guidelines via e-mail prior to the commission meeting. Chairman Caldwell stated that he did not feel comfortable voting on the proposed guidelines at this time. Consequently, the proposed guidelines will be reviewed and acted upon at the next NMSC meeting. Before the conversation closed, Jim Brewster reminded the commission members that if the guidelines are implemented, the Probation and Parole Division will require an additional seventeen officers.

Next, there was a discussion regarding a legislative proposal developed by the SOMB to add the Secretary of Public Education and the Secretary of Indian Affairs to the membership of the SOMB. The following issues were raised:

- 1) the addition of two more members may upset the balance of the current membership; and

- 2) the federal Adam Walsh legislation has provisions regarding registration of juvenile sex offenders and how tribes will proceed with registration of sex offenders.

Motion: A motion was made to endorse the legislative proposal developed by the SOMB that adds the Secretary of Public Education and the Secretary of Indian Affairs to the membership of the SOMB. The motion was approved by a 10-8 vote.

Report from the Sentencing Reform Committee. John Bigelow, Chair of the Sentencing Reform Committee, briefed the commission members. He stated that the SRC received testimony from John Krebsbach (APD crime lab) regarding efforts to implement the provisions of "Katie's Law", which requires that persons 18 years of age or older provide a DNA sample at booking when they are arrested for certain felony offenses. Mr. Krebsbach and his staff have developed a new DNA collection kit, published a list of qualifying felony offenses, provided training to jail employees throughout the state, and assisted the jails with necessary computer upgrades. Katie's Law goes into effect on January 1, 2007.

Next, Chairman Bigelow summarized a briefing provided to the SRC by Jim Brewster concerning inmate population issues and plans for expanding the number of corrections beds in the state. The male population is at 97% of operational capacity and the female population is at 85% of operational capacity. The opening of Camino Nuevo has eased population pressures for female inmates. Population forecasts indicate an annual 3% increase in the total inmate population for the next several years. With regard to the proposed new prison in Clayton, groundbreaking is scheduled for September 2007 and construction should be completed by March 2008. Clayton will be a level 3 facility and programming will be similar to that offered at the Santa Rosa and Hobbs facilities. By the end of 2006, Springer will be "transitioned" to an adult facility. A total of 220 Level 1 and Level 2 inmates will be housed at Springer. The Corrections Population Control Commission has held a series of meetings. No inmates have been released, but the NM Corrections Department is supportive of a bill to: 1) remove the sunset clause from the enabling legislation for the commission; and 2) amend the enabling legislation so that the Secretary of Corrections is no longer the chair of the commission.

Next, Chairman Bigelow noted that the "Virginia" bill developed by the NMSC has received an endorsement from the interim legislative Courts, Corrections and Justice Committee.

Finally, Chairman Bigelow noted that Judge Lynn Pickard convened a meeting of a sub-committee that gleaned standards from the LEAA document. Judge Pickard asked Tony Ortiz to produce a draft document based upon those standards for further review by the SRC.

Report from the Legislative Committee. Martin Suazo, Chair of the Legislative Committee, stated that the committee will meet every Tuesday during the legislative session, beginning on January 23, 2007. All legislative committee meetings will be held in the conference room at the Administrative Office of the Courts and will begin at 10:00 a.m.

Mike Hall advised the commission members that NMSC staff will continue to contract with New Mexico Legislative Reports and will use that data base to generate a document that illustrates NMSC Legislative Committee actions on bills introduced during the 2007 legislative session.

Staff Report:

-Update on the NMSC Budget. Mike Hall reported that the NMSC had a clean audit. He gave special recognition to LaDonna LaRan, who manages the budget for the NMSC. Mr. Hall then reported that expenditures for FY 07 are right on schedule. Finally, Mr. Hall advised the members that our DFA analyst will support the full budget request submitted by the NMSC.

-Summary of the final Courts, Corrections and Justice Committee meeting for the 2006 interim. Tony Ortiz noted that he prepared a memorandum regarding legislative proposals supported by the CCJ committee. The memo includes the names of assigned sponsors. The memo has been provided to commission members via e-mail.

As requested by the co-chairs of the CCJ committee, Tony Ortiz provided that committee with a memorandum regarding a proposed "Reliable Eyewitness Identification Act". A copy of that memorandum is enclosed in the NMSC member's files.

-Update on workload study for the Public Defender Department, District Attorneys and the Judiciary. Tony Ortiz advised the members that the data collection period, six weeks in duration, has been completed for all three entities involved in the study. Participation rates during the data collection period were very high, with one exception. Only thirty-two contract attorneys, who provide legal services to the Public Defender Department, participated in the study. More than one hundred attorneys provide contract legal services to the Public Defender Department. Now that data collection has been completed, work groups for the three entities will convene to assess the data and consider qualitative adjustments, if needed.

-Update on "felony offender" draft legislation developed for the New Mexico Association of Counties. Tony Ortiz noted that the CCJ committee endorsed this legislation, which establishes a mechanism to reimburse counties for the costs of incarcerating felony offenders.

Finally, Tony Ortiz reported that NMSC staff had been contacted by Renada Peery, our analyst at the Legislative Finance Committee. Ms. Peery asked if we could "refresh" a report done previously regarding the number of state inmates eligible for controlled, early release. Paul Guerin has completed work on the report and it has been provided to the LFC.

Next meeting. The next NMSC meeting will be held on April 20, 2007. The time and location for the meeting will be determined. **(Please note that the meeting date was recently changed to May 11, 2007).**

Adjourn. The meeting adjourned at 11:45 a.m.

NEW MEXICO SENTENCING COMMISSION
FULL COMMISSION
MINUTES

May 11, 2007

9:30 a.m.
State Bar of NM Professional Development Center
5121 Masthead NE
Albuquerque, NM

Commission Members Present	Commission Members Absent	Others	NMSC Staff
Joe Caldwell, Chair			Michael Hall
	Billy Blackburn, Vice Chair (proxy to David Schmidt)	Charlene Knipfing	Tony Ortiz
Cindy Aragon		David Jablonski	Randall Cherry
John Bigelow		Sandra Evehart	Linda Freeman
Bob Cleavall		Renada Peery-Galon	Julie Frendle
Inspector Scott Ford		Judy Arciniaco	
Roger Gillespie (rep. Dorian Dodson)		Ella Frank	
	Mark Donatelli		
		Veronica Garcia, Ph. D. (Dr. Garcia, Sec. of PED, will become a member of the NMSC on July 1, 2007)	
Julie Meade (rep. Gary King)			
Gina Maestas			
Lemuel Martinez			
	Arthur Pepin (proxy to Gina Maestas)		
Lynn Pickard			
	John Pope (proxy to Lynn Pickard)		
Jerry Ritter			
April Land			
David Schmidt			
Melissa Stephenson			
Martin Suazo			
Angie Vachio			
Michael Vigil			
Kent Waller			
Nick D'Angelo (rep. Joe Williams)			

Welcome. Lynn Pickard, Acting Chair, called the meeting to order at 9:30 a.m. Dr. Veronica Garcia, Secretary of the Public Education Department, was recognized and welcomed by the Chair. Dr. Garcia will officially become a member of the New Mexico Sentencing Commission on July 1, 2007 [see HB 60 (2007)]. Sheriff Kent Waller and Michael Vigil were also introduced as new members recently appointed to the NMSC.

Approval of Minutes from the December 8, 2006 meeting. The minutes were approved by consensus.

Staff Report:

- **Summary of the 2007 Legislative Session.** Tony Ortiz summarized sentencing laws enacted during the 2007 legislative session and signed into law by the governor.

SB 10 (2007) amended Section 30-18-9 NMSA 1978 to provide criminal penalties for a new offense known as “cockfighting”. Upon a first conviction for cockfighting, a person is guilty of a petty misdemeanor. Upon a second conviction for cockfighting, a person is guilty of a misdemeanor. Upon a third or subsequent conviction for cockfighting, a person is guilty of a fourth degree felony.

CS/SB 528 & 439 (2007) amended Section 30-9-11 NMSA 1978 to create a new offense known as “aggravated criminal sexual penetration”. Upon a conviction for aggravated criminal sexual penetration, a person is guilty of a first degree felony for aggravated criminal sexual penetration and sentenced to life imprisonment (eligible for parole after serving 30 years). Revisions were also made to statutory sections regarding terms of probation or parole for certain sex offenders.

CS/SB 735 (2007) amended Section 30-37-3.2 NMSA 1978 and renamed the offense (“child solicitation by computer”) formerly found at that citation. The new offense is known as “child solicitation by electronic communication device”. The penalties set forth in Section 30-37-3.2 NMSA 1978 for child solicitation by electronic communication device are as follows:

“B. Whoever commits child solicitation by electronic communication device is guilty of a:

(1) fourth degree felony if the child is at least thirteen but under sixteen years of age; or

(2) third degree felony if the child is under thirteen years of age.

C. Whoever commits child solicitation by electronic communication device and also appears for, attends or is present at a meeting that the person arranged pursuant to the solicitation is guilty of a:

(1) third degree felony if the child is at least thirteen but under sixteen years of age; or

(2) second degree felony if the child is under thirteen years of age.”

SB 1106 (2007) created a new offense known as “criminal sexual communication with a child”. Whoever commits criminal sexual communication with a child is guilty of a fourth degree felony.

CS/SB 1207 (2007) created a new criminal offense known as “voyeurism”. The penalties for voyeurism are as follows:

“B. Whoever commits voyeurism is guilty of a misdemeanor, except if the victim is less than eighteen years of age, the offender is guilty of a fourth degree felony.”

Other legislative measures of interest were summarized and their eventual disposition noted:

HB 296 (NMSC-developed bill) established a process for production of detailed fiscal impact statements by the NMSC for criminal sentencing legislation. This measure passed the House and Senate, but was pocket-vetoed by the Governor.

HB 272 and SB 194 proposed changes to the Corrections Population Control Act. Both measures were pocket-vetoed by the Governor. As a result of the vetoes, the corrections population control commission’s duties will now be assumed by the secretary of corrections.

HB 508 (NMSC-developed bill) established a uniform crime reporting system. This measure was signed by the Governor.

HB 316 created the County Detention Facility Reimbursement Act. This measure was signed by the Governor. \$5.0 million dollars was

appropriated in HB 2 to flow through the formula established in the act to reimburse counties for the cost of housing felony offenders.

- **Workload Measurement Study for the Judiciary, District Attorneys and the Public Defender Department.** Tony Ortiz reported that work on this project remains on schedule. A draft report will be delivered to the NMSC by May 22, 2007. Following edits by the NMSC, a final report is expected by mid-June 2007. Arrangements have been made for a presentation of the report to the Legislative Finance Committee in July 2007. Mr. Ortiz noted that despite a number of efforts to encourage involvement in the workload study by attorneys who contract with the Public Defender Department, there was an extremely low participation rate for those attorneys. Due to the low participation rate, contract public defenders will not be included in the report. The draft recommendation for the public defender department is approximately 41 additional staff attorneys and 45 additional staff members. The draft recommendation for the judiciary is approximately 7 additional magistrate judges, 4 additional Bernalillo county metropolitan court judges and 24 additional judicial positions for the district courts. The draft recommendations for the district attorneys will be finalized soon.

- **NMSC Budget.** Michael Hall reported that we are nearing the end of FY07 and we should come down to the end of the year right on target. For FY08, we received the \$819,000 base operating budget that we requested. Additionally, the NMSC received a \$50,000 appropriation to conduct a study of biased based policing and a \$50,000 appropriation to conduct a gender specific probation and parole study. The NMSC has also applied for a federal grant (\$295,000) to further enhance the Consolidated Offender Query Program (COQ). The FY09 NMSC Strategic Plan is due in September 2007. Mr. Hall reported that he will do the first cut on a Strategic Plan and send it to Chairman Caldwell and the chairs of the respective committees for their review and input. He stated that for FY09, he intends to request a flat budget plus salary increases, unless he is directed to do otherwise.

Report from the Legislative Committee. Martin Suazo, Chair, reported that the Legislative Committee met every Tuesday during the 2007 Legislative Session. He thanked the committee members for their nearly perfect attendance at meetings. The Legislative Committee reviewed all criminal and juvenile justice bills introduced during the session and acted on 295 of them. A suggestion was made that additional information be provided to explain the actions taken by the committee on bills.

Report from the Juvenile Committee: Bob Cleavall, Chair, summarized juvenile justice-related measures enacted during the 2007 Legislative Session:

-HB 21: Creates the juvenile continuum grant fund. \$2.0 million appropriation to the fund is in HB 2 (p. 160).

-HB 271: Establishes procedures to ensure child safety upon the arrest of a parent or guardian.

-HB 517: Amends the purpose section of the Delinquency Article of the Children's Code to encourage the use of "best practices" in developing juvenile justice policies.

-HB 637: Re-codifies the Children's Mental Health and Developmental Disabilities Act.

-HB 738: Limits disclosure on a public access web site maintained by a state or local agency regarding arrests, delinquency proceedings and social records relating to a child.

-HB 1024: Establishes procedures for law enforcement agencies regarding runaway children.

-SB 471: Requires fingerprinting and background checks for volunteers or staff members at juvenile justice facilities.

-CS/SB 528 and 439: Creates a new crime of aggravated criminal sexual penetration (child is less than nine years of age and crime committed with intent to kill or with a depraved mind regardless of human life).

-CS/SB 611 (aka "Junior"): Appropriates \$70,000 to CYFD for the continued operation of the New Mexico juvenile justice commission.

-CS/SB 735: Creates a new criminal offense known as child solicitation by electronic communication device.

-SB 1106: Creates a new criminal offense known as criminal sexual communication with a child.

-CS/SB 1207: Creates a new criminal offense known as voyeurism. The penalty is enhanced when the victim is less than 18 years of age.

-HJM 40 and SJM 36: Requests that CYFD and PED study truancy and delinquency issues.

The Juvenile Committee has already set its schedule of meetings for the 2007 interim. The meetings will be conducted at juvenile facilities throughout the State. Meetings are planned for the Sequoyah Adolescent Treatment Center (Albuquerque), the J. Paul Taylor Detention Center (Las Cruces), the Eagle Nest Reintegration Center and the Area One Facility (Springer). Chairman Cleavall stressed that everyone is welcome to attend these meetings. He stated that meetings have been well-attended by committee meetings and that there is always a significant number of guests at the meetings.

Report from the Sex Offender Management Board: Randall Cherry, staff attorney for the SOMB, reported that the next meeting of the SOMB will be held on June 14, 2007. The meeting will be held at the NM Corrections Department administrative offices in Santa Fe and will convene at 1:30 p.m. At that meeting, the SOMB will determine its priorities for the 2007 interim. Mr. Cherry noted that the SOMB has already agreed to consider the issue of whether offenders should be allowed to petition for removal from the sex offender registry. Also, in response to a request from the Legislature (see HM 71), the SOMB will study the appropriateness of including aggravated stalking, when the victim is less than 16 years of age, as a sex offense subject to the provisions of the Sex Offender Registration and Notification Act.

Next, Mr. Cherry summarized the proposed standards and guidelines for sex offenders on probation and parole. He explained that the SOMB was required by statute to develop the guidelines. The SOMB developed the proposed guidelines based upon the best practices known to the Board at this time. He stated that the SOMB recognizes that the guidelines will likely evolve as the science and experience in the sex offender management field continues to mature. He also noted that the SOMB recognizes that the New Mexico Corrections Department does not currently possess the resources to implement the guidelines. However, the SOMB believes that its statutory mandate was to present the Legislature and the Governor with the best system that it could devise. The SOMB could then revise the guidelines to be less ambitious if so directed, or could work with all of the relevant parties on implementation as resources become available.

After extensive discussion, Commission members reached a consensus that they supported the guidelines in concept. However, some members had significant concerns about specific issues in the proposed guidelines. The issues included:

- 1) whether the definition of "sex offender" in the guidelines was too broad;
- 2) whether the guidelines would apply to sex offenders who reside on Indian land;
- 3) whether limitations on sex offenders' access to their families was too rigid;
- 4) requisite qualifications for polygraph examiners who conduct tests on sex offenders; and
- 5) the cost of implementing the proposed guidelines.

A motion was made to approve the SOMB's proposed Standards and Guidelines for Sex Offenders on Probation and Parole, contingent upon provision of adequate funding to implement the guidelines.

The motion failed (12 opposed and 10 supported).

A new motion was made to generally support the SOMB's proposed Standards and Guidelines for Sex Offenders on Probation and Parole, and to request that the SOMB further revise the guidelines to address the issues raised by Commission members.

The motion was adopted by consensus.

Report from the Sentencing Reform Committee: John Bigelow, Chair, reported that the SRC is reviewing sentencing standards set forth in the LEAA document. He reported that Tony Ortiz has produced an initial draft memorandum that incorporates principles set forth in the LEAA sentencing standards. Next, Chairman Bigelow reported that the SRC will work on the following issues during the 2007 interim:

- 1) in the aftermath of Cunningham v. California, a recent U. S. Supreme Court decision that affirms the holding of Blakely, the committee will review possible statutory revisions to address the holding in those cases (placing sentence-elevating fact-finding within the judge's province violates a defendant's right to trial by jury). When this issue is reviewed by the committee, Steve Suttle from the Attorney General's Office will be invited to participate in the meeting.
- 2) possible revisions to the statute regarding earned meritorious deductions for state inmates. Currently, the statute does not address deductions for: 1) serious youthful offenders convicted for murder in the first degree who are sentenced to a term less than life imprisonment; and 2) instances when an offender is convicted for attempt, conspiracy or solicitation to commit a "serious violent offense". It was noted that there is an appellate court case that directly addresses the second issue.
- 3) continue to develop the draft memorandum based upon sentencing standards in the LEAA document.
- 4) continue to support and follow-up on the findings and recommendations set forth in the NMSC workload study for the Judiciary, District Attorneys and the Public Defender Department.

5) continue to work on the “Virginia” bill (HB 296) (2007) that was pocket-vetoed by the Governor subsequent to the 2007 legislative session.

6) review and discuss Double Jeopardy issues.

A request was made that the NMSC staff e-mail to the commission members the draft memorandum based upon sentencing standards in the LEAA document.

Report from the Data Committee and the Justice Information Sharing

Council: Michael Hall, provided the report for the Data Committee and the Justice Information Sharing Council. He noted that the Data Committee and JISC have overlapping representation that both work on complex data-sharing issues. Mr. Hall then reported that Banyat Adipat, the JISC Program Manager, continues to make progress in his efforts to integrate criminal justice data maintained by tribes and the state. Next, Mr. Hall reported that there are now approximately 1,500 people authorized to use the Consolidated Offender Query (COQ) maintained by JISC. He noted that an alert has been added to the COQ to indicate when an individual has been ordered to place an ignition interlock device in his vehicle. Next, Mr. Hall summarized research reports assigned to the Sentencing Commission during the 2007 legislative session:

HJM61 (Rep. Swisstack) Requests the New Mexico Sentencing Commission to research issues related to providing adult probation and parole services to offenders in New Mexico, including adult probation and parole officer caseloads, vacant positions, officer retention rates and salary levels.

HM68 (Rep. Swisstack) Requests the New Mexico Sentencing Commission to study and make recommendations for community services and programs that support offender rehabilitation and reintegration into New Mexico communities. Also requests study and recommendations for programs and services that might reduce recidivism rates, and provide support for early release for nonviolent offenders.

HM71 (Reps. Jimmie Hall and Al Park) Requests the New Mexico Sentencing Commission to study the appropriateness of including aggravated stalking, when the victim is less than 16 years old, as a sex offense subject to the Sex Offender Registration and Notification Act.

HB527 (Rep. Chasey) NMSC will receive \$50K to study gender-specific probation and parole models and survey existing participants on probation and parole on the effectiveness of current programs and their ability to re-enter society. Funding was approved in SB 611.

HB942 (Rep. Powdrell-Culbert) NMSC will receive \$50K to conduct a study of biased-based policing. Funding was approved in SB 611.

Mr. Hall then described ongoing research projects that the Sentencing Commission is working on:

- NMSC will publish the annual report regarding meritorious deductions earned by state inmates;
- a recidivism study regarding individuals who have completed the Sex Offender Treatment Program in Las Vegas.
- annual research regarding the cost of housing felony offenders in county detention facilities [see HB 316 (2007)].
- An ongoing analysis of data sets provided to the Sentencing Commission by DPS, CYFD, the AODA and AOC .
- an update of a DWI study published by the Sentencing Commission five years ago.
- a study of domestic violence cases. This study is funded by a federal VOWA grant.
- the annual update of the Juvenile Justice Program Inventory.
- the annual update of Criminal Justice Resource Directory.
- NMSC will annually apply case weights determined in the Workload Measurement Study to “refresh” the resource needs for the judiciary, district attorneys and the public defender department.

Mr. Hall then asked the NMSC if a formal vote by the NMSC is needed when the NMSC is asked to undertake unfunded research projects. The NMSC recommended that the Data Committee make these decisions.

Plan for next meeting. The next meeting will be held on August 3, 2007. The location for the meeting will be determined.

Adjourn. The meeting adjourned at 12:05 p.m.

NEW MEXICO SENTENCING COMMISSION
FULL COMMISSION
August 3, 2007
MINUTES
9:30 a.m.

State Bar of NM Professional Development Center, 5121 Masthead NE, Abq., NM

Commission Members Present	Commission Members Absent	Others	NMSC Staff
Joe Caldwell, Chair			Michael Hall
Billy Blackburn		Ranada Perry-Galon	Randall Cherry
	Cindy Aragon – proxy to Angie Vachio	Bill O’Neil	Julie Frendle
John Bigelow – by teleconference			Nancy Gettings
	Bob Cleavall – proxy to John Bigelow		Paul Guerin
	John Denko/Scott Ford		Jonathan Ochsankehl
	Dorian Dodson/Roger Gillispie		Tony Ortiz
	Mark Donatelli – proxy to Billy Blackburn or David Schmidt		
	Veronica Garcia		
Steve Suttle attending for Gary King			
Gina Maestas			
Clint Wellborn			
Arthur Pepin			
Lynn Pickard			
	John Pope – proxy to Jerry Ritter		
Jerry Ritter			
April Land attending for Suellyn Scarnecchia			
David Schmidt			
Melissa Stephenson			
Martin Suazo			
Angie Vachio			
	Michael Vigil		
Kent Waller			
	Joe Williams/Nick D’Angelo		

Welcome. Joe Caldwell, Chair, called the meeting to order at 9:30 a.m. Steve Suttle was introduced and will be replacing Michael Cox to represent the Attorney General’s Office.

Approval of Minutes from the May 11, 2007 meeting. The minutes were approved by consensus.

Staff Report:

- **Proposed NMSC Operating Budget for FY09.** Michael Hall presented the FY09 Operating Budget. He stated that this is the first year that we have asked for a flat budget and it is exactly the same as last years' budget with the total budget being \$848,000. Mr. Hall will be going to the LFC and DFA to ask for a cost of living increase. The NMSC doesn't receive cost of living increases due to being housed at UNM and UNM doesn't give it to us because the NMSC is a special agency account for UNM.

Motion: A motion was made to adopt the FY09 Operating Budget. Motion passed by consensus.

- **Proposed NMSC Strategic Plan.** Michael Hall presented the FY09 Strategic Plan. Mr. Hall stated that he has completely has rewritten the strategic plan. The question was raised if the NMSC will have the funds to complete all of this work since a flat budget was requested. Mr. Hall stated that some of the projects are independently funded. Mr. Hall went on to state that the NMSC performance measures will change and that the web site hits will no longer be a performance measure. He stated that the web site hits have leveled off to about 400,000 per month and that 80% of the hits are to the Adult and Juvenile Directories and that the JISC web site gets over a 100,000 per month hits now. Members of the NMSC recognized how far the NMSC has come in the last few years and thanked the staff for their dedication.

Motion: A motion was made to adopt the FY09 Strategic Plan. Motion passed by consensus.

- **HB738 – relating to juveniles: providing that information concerning arrests, delinquency proceedings and social records relating to a child not be disclosed on a public access web site maintained by a state of local agency.** Tony Ortiz reported on this matter and stated that the Courts have issued a companion piece to this. Arthur Pepin reported that felony offenders that are juveniles have been removed from the courts web site and state. This Act was made retroactive to anyone who was sentenced as a juvenile and all of this information was removed from web sites. It was reported that the JISC Consolidated Offender Query (COQ) has a limited audience that can access this information.
- **Workload Measurement Study for the Judiciary, District Attorneys and the Public Defender Department.** Mr. Ortiz reported on the recently completed study. The NMSC shared the report during the LFC hearing in Ruidoso. Mr. Ortiz stated that the report was done on schedule at a fair price and will have an on-going value for the next 4-5 years. Copies of the report have been distributed to the LFC and DFA as well as to many others. The Executive Summary of the report is posted on the front page of the NMSC web site. Mr.

Ortiz reported that the contracted experts, APRI and NMSC were thrilled at the level of participation from the three entities studied, that the participation was way beyond the expectations and that this should give the report even report even more creditability.

Mr. Ortiz stated that we are close to getting the FY07 data and will have it to Renada Perry in the next 3-4 weeks. Chairman Caldwell asked how we're going to sell the report. Mr. Ortiz replied that the reports are it into the hands of the people who need to have it. There was discussion regarding doing a press release on the report. Chairman Caldwell stated that it is the responsibility of the NMSC members to sell this report, that each person has spheres of influence and should speak to them about the study. He stated that this study addressed a crisis situation three years ago. Chairman Caldwell went on to say that we also need to continue to see where we are in the needs of the State Police and Corrections. Mr. Hall said that he will write a press release and send it to the committee members next week.

- **Schedule of meetings for the interim legislative Courts, Corrections and Justice Committee and planned presentations to that committee by NMSC staff.** Tony Ortiz pointed out the schedule for the Courts, Corrections and Justice Committee. Mr. Ortiz, Michael Hall and Linda Freeman will be making several presentations on the Workload Measurement Study in the next several months. Randall Cherry will be making presentations on Sex Offender issues and Banyat Adipat will be making presentations on the COQ. In September or October the CCJ will be presented with the Workload Measurement Study. Chairman Caldwell requested Mr. Adipat to demonstrate the COQ at the next Full Commission meeting.
- **Executive Summary from an audit performed by the LFC on inmates.** Mr. Ortiz reported that the Sentencing Reform Committee worked on this. He stated that some of the recommendations are: develop a ten year strategic plan; give further thought for financing or leasing correctional facilities; directive to LFC to use private vendors in order to save money; and provisions for medical care for inmates. Mr. Ortiz stated that in the full audit there were questions raised concerning if the Las Lunas facility should continue performing the diagnostic evaluations of all incoming inmates. The NMSC will be studying this in the future.

Report of the Juvenile Committee: Tony Ortiz reported for Bob Cleavall, Chair. Mr. Ortiz stated that the juvenile committee has held three meetings since the last Full Commission meeting held in May, two meeting held at Sequoyah and one at the Children's Psychiatric Hospital (CPH) to check out the female juvenile program. CPH has financing for six beds and have the desire to make this program sustainable and to incorporate step-down programs. Melissa Stevenson has brought up giving timely notification to victims about court dates. The next Juvenile Committee will be held next Friday, August 10, 2007 at the Eagle's Nest Integration Center. One issue that the committee is working on is the

mandatory parole for juvenile commitments. The chief concern is that the kids get savvy and do nothing to work on behavior changes and then they are released after doing their time. Bill O'Neil expressed concern that the driving principles be that the kids are ready to go back home and there should be some flexibility in the release dates. A sub-committee has been formed to address this and it was reported that the problem seems to be resolving itself after the sub-committee met.

Report from the Data Committee and the Justice Information Sharing Council:

Chairman Caldwell stated that Michael Cox has requested to be relieved of the Chair of the Data Committee and that he is willing to accept applications. He stated that the Data Committee has accomplished more for this State than any other committee and that the Chair should be a NMSC Commission Member. Michael Hall reported for both committees. Mr. Hall stated that the Data committee now has a mass data base and Paul Guerin oversees five graduate students who analyze these data bases. Mr. Hall reported that Banyat Adipat is leaving his position as JISC Program Manager at the end of the calendar year and that they have already started to look at possible replacements. Mr. Hall stated that Mr. Adipat will be difficult to replace because he is both technical and has developed great people relationships. Currently Mr. Adipat is at a tribal data conference in Phoenix and next week Mr. Adipat and Mr. Hall will be attending a conference in Chicago. They have been asked to present to an international data conference. The latest development is that we now can see domestic violence and [REDACTED] information from the Zuni pueblo. The COQ will show offender records from both the reservation and from the State.

Mr. Hall then reported on the Adult and Juvenile directories. He stated that the NMSC is producing 1,000 CD's of juvenile directory and that they will be distributed to all of the NM education system. He stated that the NMSC is working with Doug Nelson at Children Youth and Families to add fields to the juvenile directory to match needs with availability. It was requested that this also be done by gender.

Mr. Hall then reported on the Charge Code Table. It has been rolled into the District Attorney's system and into the [REDACTED] databases. There is a drop down menu for officers to choose from. Mr. Hall reported that this is the first time that we'll have apples to apples data.

Mr. Hall next reported on enhancements of the COQ. He stated that the District Attorney's office is required to notify victims when someone is released from prison. He stated that the COQ is used by 2,000 people and that the list will continue to grow. Currently abuse and neglect cases are faxed to local law enforcement and that no one knows what happens to these once they are faxed. We are working with CYFD to make this information immediately available to those law enforcement agencies and to include a feedback loop. Sheriff Kent Waller stated that this will stop the duplication of efforts.

Mr. Hall reported that representatives from several tribes attend the JISC meetings. He stated that we need to build a trust level and hope that it creates a critical mass among the tribes. Tribes are in beginning efforts of building a case management system.

Paul Guerin, PhD, reported on the NMSC research plan. He stated that some of the research projects are funded by the legislature, some are not and that some are funded by outside sources. He stated that more money would help to get more bodies to do the work. The current projects are listed on the research plan in each meeting folder.

Report from the Sex Offender Management Board: Randall Cherry reported for Judge Michael Vigil, Chair. Mr. Cherry reported that the Governors' office is working to fill the two open appointments on the SOMB from treatment and from law enforcement. Work is still being done on the guidelines and the supervision guidelines for juveniles is on hold because it has to interface with the adult guidelines. He reported that the adult treatment recommendations still needs a lot of work but should be finished this fall. Mr. Cherry reported that the funding for the STOP program had been stuck but has now been distributed. He reported that the STOP program beds are all full as of last week and that they have hired their fourth treatment provider. SOMB is going to coordinate Aug 16 an 17th in Taos and there will be a national leader present.

Presentation of the proposed SOMB Probation and Parole Guidelines for Sex Offenders: Randall Cherry stated that thanks to Angie Vachio the SOMB will revisit the issue of relationship between offender and families. The Board is still very concerned about the crossover of offenders.

Mr. Cherry reported on important issues in the sex offender field:

- Residency restrictions, this will be an upcoming issue at the next legislative session. The SOMB is not taking a stance on this issue.
- Adam Walsh bill. The SOMB is looking at the Adam Walsh bill and have agreed to put off any compliance legislation until 2009. He stated that juvenile registration of sex offenders continues to be a major issue. Last week the House voted to extend the deadline. NM is fully compliant now with the current law and about 65% compliant with the Adam Walsh.
- GPS systems for sex offenders. Mr. Cherry reported that a law was recently passed that all sex offenders will wear GPS devices. He stated that there isn't any research that finds that this is effective. California is doing pilot program and the cost to them so far is \$2.4 million for staff and \$1.6 million for the GPS units. NM Corrections wants to put GPS tracking on offenders as they get released but not on already released offenders. The cost of this is estimated to be \$4-5 million per year and the sex offender system didn't receive any additional money to do this so it's putting additional pressure on Probation and Parole. Currently NM has five people on GPS and has had to pull five Probation and Parole officers to monitor them 24 hours a day.

Michael Hall reported that Randall Cherry and his partner in Colorado have formed a National Sex Offender Board.

Report from the Sentencing Reform Committee: Tony Ortiz reported for John Bigelow, Chair. Mr. Ortiz reported that the committee met 10 days ago. During the meeting Jacqueline Cooper presented alternative sanctions available in some parts of the state however some of the statistics she presented weren't necessarily agreed with. These alternatives are all component parts of what Chairman Caldwell envisions the NMSC doing. The SRC members also were given the VERA report which was published in 2003. The committee will be looking at ways to reduce sentencing. The committee will revisit Blakely and Cunningham cases at the next meeting and double jeopardy issues will also be looked at.

Steve Suttle representing Gary King, Attorney General, will join the SRC committee.

Report from the Legislative Committee: Martin Suazo, Chair stated that there is no report at this time.

Plan for next meeting. The next meeting will be held November 30, 2007, location to be determined.

Adjourn. The meeting adjourned at 12:10 p.m.

NEW MEXICO SENTENCING COMMISSION

November 30, 2007 MINUTES **NMSC FULL COMMISSION**

NM Educator's Federal Credit Union, Albuquerque, NM

Commission Members Present	Commission Members Absent	Others	NMSC Staff
Joe Caldwell, Chair			Michael Hall
	Billy Blackburn, Vice Chair (proxy to David Schmidt)	David Jablonski, Adult Probation & Parole Division	Tony Ortiz
Cindy Aragon	Left the meeting before it concluded and gave her proxy to April Land	Ella Frank, Adult Parole Board	Randall Cherry
John Bigelow			Julie Frenkle
Bob Cleavall			Linda Freeman
Inspector Scott Ford (for John Denko)			Nancy Gettings
Deb Pritchard (for Dorian Dotson)			Paul Guerin
Mark Donatelli			Dan Cathey
Ron Lucero (for Veronica Garcia)			Banyat Adipat
Steve Suttle (for Gary King)			
Gina Maestas			
Arthur Pepin			
Lynn Pickard			
John Pope			
Jerry Ritter			
April Land (for Suellyn Scarnecchia)			
David Schmidt			
Melissa Stephenson			
	Martin Suazo (proxy to John Bigelow)		
Angie Vachio	Left the meeting before it concluded and gave her proxy to David Schmidt		
Michael Vigil			
	Kent Waller (proxy to Inspector Scott Ford)		
Lemuel Martinez	Left the meeting before it concluded and gave his proxy to Inspector Scott Ford		
Jim Brewster (for Joe Williams)			

Welcome. Joe Caldwell, Chair, called the meeting to order at 9:35 a.m.

Approval of minutes from the August 3, 2007 meeting. The minutes were approved by consensus.

Staff Report

- **FY07 NMSC Audit.** Michael Hall reported that the New Mexico Sentencing Commission had a perfect audit for the fourth year in a row. He stated that this was the first year using the state's problematic Share Program. Although many agencies faced challenges with implementation of the new system, the NMSC had no audit findings or exceptions.
- **NMSC Budget Status.** Mr. Hall reported that the NMSC has spent exactly one third of its budget for the initial third of the fiscal year and that budget expenditures are on schedule.
- **Update on physical plant for the NMSC office.** Mr. Hall reported that the NMSC staff offices have been in jeopardy due to New Mexico Tech owning the building and UNM not wanting to continue to pay rent on the office space. Two weeks ago, the UNM Board of Regents voted to purchase the old architecture building for the Institute of Social Research (ISR), which includes the NMSC. The New Mexico Board of Finance approved money for building improvements at UNM, which could include improvements to the architecture the building. Mr. Hall will keep the NMSC members informed of further developments.
- **Summary of the NMSC presentation to the Courts, Corrections and Justice Committee on October 15, 2007.** Tony Ortiz reported that the NMSC made a two and a half hour presentation to the Courts, Corrections and Justice Committee on October 15, 2007. NMSC staff briefed the committee on the following topics:
 - A completed literature review regarding gender-specific probation and parole services. A published research study will be completed by June 2008. ;
 - A completed literature review regarding biased-based policing. A published research study will be completed by June 2008;
 - A summary sheet regarding adult probation and parole services in New Mexico (See HJM 61);
 - A summary sheet regarding programs that promote offender rehabilitation and recidivism reduction (See HM 68);
 - A report entitled "Estimated Number of Offenders in New Mexico Corrections Department Facilities in September 2007 Eligible for Controlled Release";
 - A report regarding the provision of diagnostic evaluations for state inmates in New Mexico;
 - A report entitled "Time Served in New Mexico Prisons in Fiscal Year 2007: Analysis of the Impact of Earned Meritorious Deductions"; and
 - A report entitled "A Workload Assessment Study for the New Mexico Trial Court Judiciary, New Mexico District Attorneys' Offices and New Mexico Public Defender Department".

During the Courts, Corrections and Justice Committee meeting, Mike Hall and Banyat Adipat set-up a laptop computer in the meeting room and demonstrated the Consolidated Offender Query (COQ) program.

- **Legislation endorsed by the Courts, Corrections and Justice Committee for the 2008 Legislative Session.** Tony Ortiz referred to a document entitled “Courts, Corrections and Justice Committee Legislation for Endorsement – 2007 Interim”. He noted that the document lists legislative proposals endorsed by the CCJ Committee that will be introduced during the 2008 session. In response to an inquiry by a Commission member, it was noted that the CCJ Committee’s list of endorsed bills does not include criminal justice legislation proposed by the Attorneys General’s Office or the Governor’s Office.
- **Criminal justice proposals from the Governor’s Office and the Attorney General’s Office.** Tony Ortiz summarized criminal justice legislation proposed by the Governor’s Office:
 - Criminal penalties for recruiting others to join a criminal street gang;
 - Enhancing the basic sentence for crimes committed in furtherance of criminal street gang activity;
 - Expanding definitions in the Antiterrorism Act and increasing penalties for acts of terrorism;
 - Increasing the enhancement of a basic sentence when a firearm is used in the commission of a noncapital felony;
 - Increasing penalties for three or more batteries or aggravated batteries against certain household members; and
 - Changing the name of the “domestic violence offender treatment fund” to the “domestic violence offender treatment or intervention fund”.

Next, Tony Ortiz referred to a document listing criminal justice legislation proposed by the Attorney General’s Office. Steve Suttle provided additional information regarding the Attorney General’s proposals, which include the following:

- Allowing consecutive sentences for felony-murder and the underlying felony;
- Prohibiting tampering with an ignition interlock device;
- Including felony DWI’s in the habitual offender statute;
- Removing lack of consent as an element in certain sex offenses;
- Including insurance fraud as a predicate offense under the Racketeering Act;
- Allowing aggregation of false insurance claims to determine the penalty;
- Creating a criminal statute to address human trafficking;
- Proposed revisions to the Family Violence Protection Act;
- Enacting a uniform law proposal regarding Interstate Enforcement of Domestic Violence Protection Orders;
- Excluding the use of polygraph tests for certain victims of sex offenses; and
- Providing for HIV testing of alleged sex offenders.

- **NMSC reports responsive to HJM 61 and HM 68.** Tony Ortiz summarized the contents of reports responsive to HJM 61 (Adult Probation and Parole Services in New Mexico) and HM 68 (Programs that Promote Offender Rehabilitation and Recidivism Reduction). Dan Cathey explained the respective methodologies employed to produce the reports. Specific to the HM 68 report, Mr. Cathey explained that he relied extensively upon a meta-analysis of programs and services published by the State of Washington Institute for Public Policy in 2006. During the ensuing discussion, a commission member questioned whether the HM 68 report was truly responsive.

MOTION: A motion was made to reject the HM 68 report. Following a discussion among commission members and staff, the motion was withdrawn.

MOTION: A motion was made that the NMSC does not have to formally approve every research report developed and published by NMSC staff. Staff shall perform the research to the best of their abilities. The motion passed by a vote of 20-1.

- **Use of proxies for NMSC meetings and committee meetings.** Tony Ortiz reported that the use of voting proxies was called into question during the Sentencing Reform Committee meeting on November 2, 2007. The following issues were discussed:
 - whether authority exists for the use of voting proxies during NMSC meetings and committee meetings;
 - whether the NMSC is a "recommending" agency only and not a policy-making entity; and
 - whether NMSC staff should be directed to develop a written proxy policy.

MOTION: A motion was made to direct NMSC staff to perform research and develop a written proxy policy for NMSC meetings and committee meetings. The written policy shall set forth procedures for notifying NMSC staff that an individual wants to assign her proxy to another member. Following development of the policy, NMSC staff shall ensure that the written policy is published on the NMSC web site.

MOTION TO TABLE: A motion was made to table the initial motion and to seek an opinion on the use of proxies from the New Mexico Attorney General's Office. The tabling motion failed by a vote of 5-14.

The initial motion was then acted upon and passed by a vote of 17-5.

Report from the Sentencing Reform Committee. John Bigelow, Chair, reported that the committee last met on November 2, 2007. The committee is continuing to work on development of sentencing principles based upon the LEAA document.

A sub-committee of the SRC has been formed to study double jeopardy issues. Lynn Pickard is the sub-committee chair and the members include John Bigelow, John Pope,

Joe Arite, Angie Vachio and Steve Suttle. The sub-committee will develop recommendations for the consideration of the Sentencing Reform Committee.

During the 2008 interim, the committee will continue work on the ideas embodied in HB 296 (2007), which required that an appropriation accompany legislation that increases criminal penalties. Chairman Bigelow noted that the upcoming legislative session is a "short", 30-day session and that concerns regarding HB 296 raised by the executive branch and some legislators will need to be addressed during the 2008 interim.

Next, Chairman Bigelow summarized the committee's deliberations regarding possible revisions to New Mexico's sentencing statutes in light of *Blakely v. Washington* (U.S. Supreme Court), *Cunningham v. California* (U.S. Supreme Court), *State v. King* (NM Court of Appeals) and *State v. Frawley* (NM Supreme Court). He noted that there have been many "zigs and zags" in the post-*Blakely* line of cases (state and federal) that have analyzed an upward departure from a defendant's basic sentence. However, it now seems settled that Section 31-18-15.1 NMSA 1978 is facially unconstitutional (See *State v. Frawley*, (filed October 25, 2007) (NM Supreme Court)). The Sentencing Reform Committee discussed three possible remedies.

First, the SRC discussed the approach that was taken in HB 694 (2005). HB 694 was developed by the New Mexico Sentencing Commission in the immediate aftermath of *Blakely v. Washington* (U.S. Supreme Court)(2004). HB 694 required a finding by a jury beyond a reasonable doubt of any aggravating circumstances surrounding the offense or concerning the offender in order to impose an elevated sentence. HB 694 also provided that the judge, subsequent to a jury finding of an aggravating circumstance, has discretion whether to alter the basic sentence. If the judge determined to alter the basic sentence, she is required to issue a brief statement of reasons for the alteration and incorporate that statement in the record of the case. In 2005, HB 694 passed the House, but stalled in the Senate.

A second approach discussed by the SRC authorizes a judge to impose a determinate sentence within an indeterminate range. Proposed by Steve Suttle of the New Mexico Attorney General's Office, this approach would require the repeal of Section 31-18-15.1 NMSA 1978 and amendments to Section 31-18-15 NMSA 1978 to create sentencing ranges.

A third option discussed by the SRC would be to take no action in the aftermath of *State v. Frawley*. The consequence of taking no action would be that there would no longer be a statutory mechanism for upward departure of an offender's sentence based upon an aggravating circumstance.

The SRC ultimately adopted a motion to recommend to the New Mexico Sentencing Commission that the commission consider and adopt one of three possible approaches in the aftermath of *State v. Frawley*: 1) HB 694; 2) Steve Suttle's proposal; or 3) take no action.

Following Chairman Bigelow's report, there was an extensive discussion among the commission members regarding whether to adopt one of the three proposals presented by the SRC or to consider a fourth option, the repeal of Section 31-18-15.1 NMSA 1978.

MOTION: A motion was made that the NMSC not endorse any of these approaches during the upcoming 30-day session and to make it known to the legislature during the 2008 session that the Sentencing Commission will develop a proposal for the 60-day session in 2009. The NMSC recognizes that there is an unconstitutional statute on the books, but the NMSC would like to study the impact of the respective approaches in a thoughtful manner. The motion passed by a vote of 16-4.

Report from the Data Committee and the Justice Information Sharing Council. Gina Maestas, Chair of the Data Committee and Michael Hall, Chair of JISC reported that both committees had a joint meeting on October 23, 2007. The only action item was a Data Committee vote to have the New Mexico Judiciary take over responsibility for ongoing maintenance of the Charge Code Table developed by the NMSC.

Next, Mr. Hall reported on a study regarding diagnostic evaluations for state inmates prepared in collaboration with the New Mexico Corrections Department. The study was requested by the Legislative Finance Committee. Mr. Hall stated that the expense of performing the diagnostic evaluations in the field or at county detention facilities would be almost identical to the current cost of performing them all in Los Lunas. Mr. Hall will deliver his report to Charles Salle at the Legislative Finance Committee.

Report from Sex Offender Management Board. Randall Cherry reported on the following topics for the SOMB:

(1) The sex offender treatment program in Hobbs, New Mexico has been discontinued and will relocate to Santa Fe. The Department of Corrections has contracted for 114 beds at the Santa Fe County Detention Center, which will be used as treatment beds. The Department believes that the program will be in operation by the end of December 2007.

(2) The SOMB has decided to delay presenting the proposed Standards and Guidelines for the Supervision of Sex Offenders on Probation and Parole to the New Mexico Sentencing Commission for reconsideration. SOMB staff will work with the SOMB members to attempt to find compromise language regarding when a convicted sex offender can have unsupervised contact with the offender's own child.

(3) The SOMB has completed its position paper on residency restrictions. The SOMB concluded that it is not in the best interests of New Mexico citizens to impose distance limitations on where convicted sex offenders can reside in this state. A copy of the position paper is included in the Commission member's files.

(4) Some members of the legislature have expressed concern that the use of Global Position Satellite Tracking (GPS) devices for every convicted sex offender released after July 1, 2007 may be prohibitively expensive and may not be the most effective use of

resources. Mr. Cherry stated that the New Mexico Probation and Parole Division estimates that the Corrections Department releases approximately 200 sex offenders every year. However, this year the actual release numbers appear to be closer to 100 sex offenders.

(5) The SOMB has reviewed the issue of whether it is feasible and appropriate to include a conviction for Aggravated Stalking of a child under the age of 16 as a registration offense under the Sex Offender Registration and Notification Act. The SOMB concluded that it is feasible, but did not reach a conclusion on whether it is appropriate. Concerns expressed by members included:

(1) whether broadening the range of offenses might dilute the original purpose of SORNA, *i.e.*, to warn the public regarding dangerous sex offenders;

(2) unless carefully crafted, the law might include juveniles involved in dating quarrels or other relatively innocent circumstances;

(3) while stalking is clearly a serious matter, it would be imprudent, without further research, to conclude that the level of danger and risk of re-offense attendant to stalking is sufficient to justify the risks raised in issues (1) and (2); and

(4) the upcoming legislative session is 30 days and it seems unlikely that legislation on this issue will be introduced.

Chairman Caldwell instructed Mr. Cherry to communicate the SOMB's concerns to the Legislative Council Service. Moreover, Chairman Caldwell asked that, during the 2008 interim, the SOMB re-visit the issue of whether it is appropriate to include a conviction for Aggravated Stalking of a child under the age of 16 as a registration offense under SORNA. If the SOMB is unable to find consensus on this issue, Chairman Caldwell directed that the SOMB should put the matter to a vote and develop a position in time for the 60-day session in 2009.

Report from the Juvenile Committee. Bob Cleavall, Chair, reported that the Juvenile Committee will have one more meeting prior to the 2008 legislative session. The committee will meet on December 14, 2007 in Albuquerque. During that meeting, the Juvenile Committee will review legislative proposals regarding juvenile justice issues that will be introduced during the session.

Chairman Cleavall also reported that the Juvenile Committee has had an ongoing review and discussion of the following subjects:

1) mandatory parole for juveniles who receive one-year commitments;

2) "mixing" of juvenile offenders with 18, 19 and 20 year old offenders in detention facilities. He noted that nearly 50% of the residents at the Youth Diagnostic and Detention Center (YDDC) in Albuquerque are 18-20 years of age;

3) ongoing developments with regard to the federal Adam Walsh Act. The act sets forth registration requirements for certain juvenile sex offenders. A handful of states, including Ohio, have requested a compliance review from the U.S. Department of Justice. The Juvenile Committee (and the SOMB) will monitor the outcome of those compliance reviews and gauge the effect, if any, on the state of New Mexico's sex offender laws.

Finally, Chairman Cleavall reported that during a Juvenile Committee meeting held on November 16, 2007, Representative Tom Swisstack addressed the committee. Representative Swisstack also serves as Co-Chair of the Juvenile Justice Commission (JJC). He summarized recommendations that will be included in a report that the JJC will publish prior to the legislative session. Representative Swisstack noted that the report will include specific recommendations to “regionalize” juvenile justice services in New Mexico.

Report from the Legislative Committee. Martin Suazo, Chair, was unable to attend the meeting. Mike Hall reported that the Legislative Committee will again hold its meetings in the conference room at the Administrative Office of the Courts. The initial meeting will be on Tuesday, January 22, 2008 at 10:00 a.m.

Plan for next meeting. The next NMSC meeting will be held on Friday, March 28, 2008 at 9:30 a.m. The NMSC will convene in Albuquerque at the New Mexico Educator’s Federal Credit Union Training Center.

Adjourn. Chairman Caldwell adjourned the meeting at 12:30 p.m.

NEW MEXICO SENTENCING COMMISSION

March 28, 2008

MINUTES

NMSC FULL COMMISSION

NM Educator's Federal Credit Union, Albuquerque, NM

Commission Members Present	Commission Members Absent	Others	NMSC Staff
Joe Caldwell, Chair		Mark Weber, LFC	Michael Hall
	Billy Blackburn, Vice Chair (proxy to Mark Donatelli)	Ella Frank, Adult Parole Board	Tony Ortiz
Cindy Aragon			Randall Cherry
John Bigelow			Linda Freeman
Bob Cleavall			Nancy Gettings
	John Denko		Paul Guerin
Roger Gillespie (for Dorian Dotson)			Dan Cathey
Mark Donatelli			Margie Lueras
Ron Lucero (for Veronica Garcia)			
Steve Suttle (for Gary King)			
	Gina Maestas (proxy to Lynn Pickard)		
Arthur Pepin			
Lynn Pickard			
John Pope			
Jerry Ritter			
April Land (for Suellyn Scarnecchia)			
	David Schmidt (proxy to Angie Vachio)		
	Melissa Stephenson		
Martin Suazo			
Angie Vachio			
Michael Vigil			
	Kent Waller		
Lemuel Martinez			
Jim Brewster (for Joe Williams)			

Welcome: John Bigelow called the meeting to order at 9:35 a.m.

Approval of minutes for the November 30, 2007 meeting. The minutes for the November 30, 2007 meeting were approved by consensus.

Staff Report

- **Report on the current NMSC budget and the FY 09 budget.** Michael Hall reported that the NMSC is operating just barely within the budget. Mr. Hall noted the Commission expended \$15,000 more this year than last year on mileage and per diem for attendance at meetings. The budget may need to be increased next year to cover increased travel costs and increases in salary and benefits. Mr. Hall plans to submit the first draft of the strategic plan to the chairs for their review. It is likely NMSC will need to request an appropriation for rent at UNM next year.
- **Update on physical plant for the NMSC Office.** Michael Hall reported NMSC staff is working with UNM to secure facilities to house NMSC staff. Additionally, NMSC is building a rent cost component into new research projects. It is expected that a final decision on housing for NMSC will be presented to the budget subcommittee of the NMSC or the full commission before the NMSC budget is submitted on September 1, 2008.
- **Summary of the 2008 Legislative Session.** Tony Ortiz gave a summary of the measures related to the criminal justice system that were enacted in the 2008 legislative session, including HB 100, SB 68, SB 71, HJM 22, HM 3, HM 8, HM 12, SJM 19 and SM 47. The NMSC received funding to conduct the following research projects: HB 49 – review the prevalence and results of de novo appeals of DWI cases to district courts - \$20,000; HB 109 – convene a task force to study the collateral consequences of criminal arrest, conviction and extended periods of incarceration and to make recommendations on how to neutralize or eliminate those consequences - \$20,000; HB 270 – study bias-based policing in New Mexico (which will enable NMSC to expand work already underway) – \$26,000.
- **Research Request from the Legislative Finance Committee.** Tony Ortiz reported the LFC has asked the NMSC to study the reasons why the state inmate population has declined over the past 18 months. NMSC staff will report to the LFC on this topic in July 2008.

The Commission expressed its thanks to NMSC staff for their efforts during the legislative session. John Bigelow expressed his thanks to Martin Suazo for his leadership of the legislative committee. John Pope expressed his concerns regarding the perceived endorsement by the NMSC legislative committee for an appropriation to the controversial Second Chance program. The commission discussed how the legislative

committee was appointed, its mission and whether the legislative committee should be making recommendations regarding appropriation bills.

Chairman Caldwell joined the meeting at this time, and John Bigelow yielded to the Chair to preside over the remainder of the meeting.

MOTION: Steve Suttle made a motion that a sub-committee be appointed to review the procedures of the legislative committee and to provide more guidance on what the committee is to consider within the confines of statutory authority. Lemuel Martinez seconded the motion.

The Commission discussed the issue at length, including the origins of the legislative committee, the charge of the committee and the authority granted to the committee. Several members provided their recollections of the Second Chance appropriation bill and the legislative committee's discussion regarding that bill.

Chairman Caldwell provided a brief history of the Criminal and Juvenile Justice Coordinating Council and how that council evolved into the New Mexico Sentencing Commission. He stated his belief that the NMSC does have the responsibility to give guidance to the legislature on proposed appropriations, as well as substantive legislation. NMSC staff has developed a very effective method of bill tracking which enables the legislative committee to rapidly respond to developments during a legislative session. NMSC has gained credibility with the legislature by reaching consensus to recommend or not recommend proposed legislation. If no consensus can be reached, NMSC staff provides the vote count to the legislature, which enables the legislature to better assess the proposed legislation.

It was suggested the motion should be tabled because Martin Suazo, the chair of the legislative committee, was not present. Steve Suttle then withdrew his motion. There was consensus that the legislative committee did not endorse the Second Chance appropriation bill as an appropriation particularly to Second Chance, and any communication that it had done so was likely a miscommunication.

Chairman Caldwell then directed the legislative committee to convene during the 2008 interim to discuss the committee's scope, votes and reporting of votes in the future. Chairman Caldwell noted the discussion provided an excellent opportunity to refine the work of the Commission.

Angie Vachio noted that the Second Chance program should not be confused with the federal Second Chance Act recently enacted by Congress.

- **Report Regarding the Governor's Prison Reform Task Force.** John Bigelow reported that the Governor, by executive order, created the Governor's Prison Reform Task Force and charged the task force to identify reform measures to

reduce inmate recidivism rates and stabilize the expense of the state prison system. The task force will develop recommendations within three areas: 1) front-end programs that divert offenders from incarceration; 2) programs and services for offenders while they are incarcerated in prison; and 3) re-entry programs and services for offenders in preparation for and following discharge from prison, including case management services and services provided by the adult probation and parole division. The task force has already met one time. A sub-committee of the task force will meet on April 9, 2008 to receive public comment. The next full meeting of the task force will be held on April 23, 2008. Several members of NMSC and NMSC staff are members of the task force. The task force is charged with developing recommendations for the Governor by June 30, 2008. It was the consensus of the Commission that the task force presents a unique opportunity and that NMSC members and NMSC staff should participate fully in the task force.

- **Report from the Sentencing Reform Committee.** No report at this time.

Next, Chairman Caldwell expressed his belief that the NMSC should make every effort to provide assistance to the judiciary, the district attorneys and the public defender department to ensure the Workload Study is a useful tool for securing the resources needed to maintain properly functioning criminal justice system. It was noted that NMSC staff had difficulty getting accurate data from the Administrative Office of the District Attorneys. Susana Martinez, District Attorney for the Third District, has met with NMSC staff on several occasions to provide assistance with the district attorneys data. It was also noted that during the 2008 legislative session, the judgeship bill was tabled in Senate Finance Committee for reasons not pertaining to the Workload Study.

Chairman Caldwell directed the Sentencing Reform Committee to begin discussions on how to continue to inform the legislature on the utility of the Workload Study. It was suggested that the NMSC could develop a memorial referencing the Workload Study and that it be used as a guideline in all deliberations over budgets for the judiciary, the offices of the district attorneys and the public defender department.

Tony Ortiz noted that NMSC staff briefed the Legislative Finance Committee and the Courts, Corrections and Justice Committee during the 2007 interim on the recommendations set forth in the Workload Study. NMSC staff had numerous communications with LFC and DFA staff regarding the information set forth in the Workload study. NMSC staff also referenced the study results in committee hearings held during the 2008 legislative session.

Mark Weber, LFC analyst, noted requests and priorities included in budget submissions on September 1st have a better chance of succeeding than requests made after that date. While each agency submits its budgets independently, the needs contained in

the Workload Study should be coordinated between the agencies in order for each individual budget to reflect the needs and priorities of each agency.

- **Report from the Sex Offender Management Board.** Randall Cherry reported the board met last week to prepare its work plan for the 2008 interim. The board has formed a subcommittee to revisit the issue of whether aggravated stalking should be included as a sex offense subject to registration and plans to report its findings to the full Commission in June. Additionally, the board formed a large subcommittee to address the federal Adam Walsh Act. The board plans to report its recommendations regarding Adam Walsh to the full Commission before the end of the year. At the request of members of this Commission, the board will reconsider its recommendation regarding the reunification of families of sex offenders under parole or probation supervision. Three Commission members are currently working with a board member to propose new language regarding reunification. If the board can reach agreement regarding the proposed changes, the board will present the standards and guidelines for supervision of sex offenders reflecting the proposed changes for reconsideration by the Commission at the Commission's June meeting.
- **Report from the Juvenile Committee.** April Land reported the committee has finalized its meeting schedule and will be looking at reintegration programs, gender specific issues and mental health services for juveniles. The committee will hold its next two meetings at Area One in Springer and the J. Paul Taylor Detention Center in Dona Ana County.
- **Report from the Data Committee and the Justice Information Sharing Council.** Mike Hall reported that a representative from the offices of the district attorney has not attended a data committee meeting for the past four meetings and noted the data committee needs input from the district attorneys to continue its work. The data committee has decided it will meet quarterly, independent of the Justice Information Sharing Council, since the data committee work deals more with policy issues than the actual data. JISC will continue to meet bimonthly. Additionally, while the NMSC declined to work on expanding the charge code table to include traffic violations, the Commission, at the request of JISC, will request funding from the Traffic Safety Bureau to hire an expert to complete the traffic section of the charge code table and pass maintenance of the table to the AOC. NMSC staff has sent out 2500 surveys on the gender specific probation and parole study. At this time, five hundred of the surveys have been returned. Telephone surveys are being conducted on the bias-based policing study. JISC has signed an MOU with the attorney general's office to use federal funding to upgrade the consolidated offender query to make possible statewide, instant reporting of emergency domestic violence restraining

orders. NMSC staff is working on the programming to make possible real time reporting of emergency restraining orders. JISC continues to work on a consolidated system to run queries against individuals. With recent server upgrades, the servers are running at 2 percent capacity. The system infrastructure is now in place to accommodate the anticipated increase in queries when the system becomes a real time system. The New Mexico system was built at a cost of less than \$1 million, far less than what other states have spent for similar systems.

Plan for next meeting. The next NMSC meeting is scheduled for Friday, June 27, 2008 at 9:30 a.m. The location will be determined.

Adjourn. The meeting adjourned at 12:15 p.m.

NEW MEXICO SENTENCING COMMISSION

June 27, 2008

MINUTES

NMSC FULL COMMISSION

NM Educator's Federal Credit Union, Albuquerque, NM

Commission Members Present	Commission Members Absent	Others	NMSC Staff
Joe Caldwell, Chair		David Jablonski	Michael Hall
Billy Blackburn		Ella Frank	Tony Ortiz
Cindy Aragon		Richard Beckwith	Banyat Adipat
John Bigelow		Charlene Knipfing	Dan Cathey
Bob Cleavall		Tasia Young	Randall Cherry
Inspector Scott Ford (for John Denko)			Linda Freeman
Debra Pritchard (for Dorian Dotson)			Paul Guerin
Mark Donatelli			Nancy Gettings
Ron Lucero (for Dr. Veronica Garcia)			LaDonna LaRan
Gary King/Mary Helen Baber			Jonathan Ochsankehl
	Gina Maestas (Proxy to John Pope)		Margie Lueras
Arthur Pepin			Alex Adams
	Lynn Pickard (Proxy to John Pope)		
John Pope			
Jerry Ritter			
	April Land (for Suellyn Scarnecchia) (Proxy to Angie Vachio)		
	David Schmidt (Proxy to Angie Vachio)		
	Melissa Stephenson		
Martin Suazo			
Angie Vachio			
Michael Vigil			
	Kent Waller (Proxy to Inspector Scott Ford)		
Lemuel Martinez			
Erma Sedillo (for Joe Williams)			

Welcome. John Bigelow called the meeting to order at 9:35 a.m. A quorum was established. Mr. Bigelow welcomed Attorney General Gary King. Mr. Bigelow also welcomed Mary Helen Baber, who will be serving as Attorney General King's designee on the Commission.

Approval of minutes for the March 28, 2008 meeting.

MOTION: Angie Vachio moved, and Martin Suazo seconded, that the minutes for the March 28, 2008 meeting be approved. The motion carried unanimously.

Staff Report.

Proposed NMSC budget for FY 10. Michael Hall presented the proposed budget for the New Mexico Sentencing Commission for FY 2010. Mr. Hall noted the proposed budget contains a \$150,000 increase to cover increases in travel expenses for Commission members, a rent increase requested by the University of New Mexico, salary and benefits increases for staff, and the addition of a half-time programmer for the Justice Information Sharing Council. The proposed budget has been reviewed and approved by the NMSC Budget Subcommittee.

MOTION: Angie Vachio moved, and Martin Suazo seconded, that the proposed FY 2010 budget be approved. The motion carried unanimously.

Proposed NMSC Strategic Plan for FY 10. Michael Hall presented the draft FY 2010 NMSC Strategic Plan, noting the Budget Subcommittee has reviewed and approved the Plan. The Plan contains information on ongoing NMSC projects, committees, publications and coordinated efforts with other agencies and entities.

MOTION: Martin Suazo moved, and John Pope seconded, that the NMSC FY 2010 Strategic Plan be approved. The motion carried unanimously.

Chairman Caldwell joined the meeting at this time, and John Bigelow yielded to the Chair to preside over the remainder of the meeting.

Type of notice to be used for NMSC meetings. Tony Ortiz reported that the Open Meetings Act requires ratification on a yearly basis of the type of notice the Commission uses to notify the public of NMSC meetings. The Commission currently publishes notice in the Albuquerque Journal and on the NMSC Website. Gary King offered to review the Open Meetings Act to ensure the Commission is in compliance with the Act and, if necessary, to draft a resolution addressing both the policy on notification of meetings and the policy on how an emergency meeting may be called. Chairman Caldwell directed that this item be placed on the agenda for the next Commission meeting. Arthur Pepin

requested that Mr. King also review the Open Meetings Act to determine whether the Commission's proxy policy should be included in the resolution.

Summary of NMSC research projects. Tony Ortiz provided a summary of research projects NMSC staff is currently conducting and upcoming projects, including:

- Annual determination of earned meritorious deductions for state inmates
- Collection and analysis of data used to distribute funds pursuant to the County Detention Facilities Reimbursement Act
- How good time is awarded to jail inmates on a county-by-county basis
- A refreshed resource needs assessment for the Judiciary, District Attorneys and the Public Defender Department. Tony Ortiz noted that the LFC has requested that, with regard to the Public Defender Department, supplemental information be provided to determine resource needs for areas of the state where no PDD offices are located.
- How domestic violence cases flow through the justice system
- Ethnicity, demographics and other information regarding inmates housed in the state prison system, prepared for the Courts, Corrections and Justice Committee
- Whether bias based policing is taking place in New Mexico
- Best practices for gender specific probation and parole models for adult women
- Disposition of de novo appeals from DWI cases initiated in magistrate and municipal courts
- The effect of arrest, incarceration and conviction on felony offenders
- Detailed analysis of all criminal law bills to determine the impact on Correction Department resources (SM 47). Mike Hall summarized meetings on this subject held with officials from LFC and DFA.
- Possible reasons for the recent decline in the state inmate population after 30 years of continual growth
- National literature review to determine best practices for training CYFD staff
- Evaluation of DWI and drug courts in Bernalillo and Dona Ana counties

Report regarding the Attorney General's Prison Oversight Task Force. Gary King reported the task force has toured the Los Lunas prison facility and the women's prison facility in Grants. The task force has kept its focus on prison oversight and is not addressing issues of prison reform, which are being developed by the Governor's Prison Reform Task Force. The Attorney General's Task Force has focused on the key issue of "golden key" access to prisons. The task force will present its report to the interim legislative Courts, Corrections and Justice Committee later this year.

Report regarding the Governor's Prison Reform Task Force. John Bigelow reported the Governor's Prison Reform Task Force report is now available on the Governor's Website and the NMSC Website. The report is entitled "Increasing Public Safety in New Mexico Before, During and After Incarceration: New Directions for Reform in New Mexico Corrections". The report proposes a comprehensive reform package to increase public safety, control prison population and decrease recidivism rates. The task force also recommends structural changes to create a council to ensure resources are readily available for reentry reforms. Additionally, the task force recommends that the Corrections Department create a Reentry Division to coordinate programming and ensure inmates are given the best possible opportunity to succeed.

Report from the Data Committee and the Justice Information Sharing Council.

Cindy Aragon reported the Data Committee has decided to meet on a quarterly basis to address policy issues.

Michael Hall reported that JISC has requested from the Commission a formal vote in support of the concept of the use of electronic documents in the criminal justice system.

MOTION: Arthur Pepin moved, and John Bigelow seconded, that the New Mexico Sentencing Commission supports in principal the concept of the use of electronic documents in the criminal justice system, including the juvenile justice system. The motion passed by consensus. Scott Ford noted strict guidelines should be developed for the appropriate use of electronic documents. Cindy Aragon noted the importance of training staff to maintain confidentiality when using electronic documents.

Banyat Adipat reported that use of the Consolidated Offender Query (COQ) has doubled since the same period last year. JISC has increased system speed by 30 to 40 percent by installing a new server and has added ignition interlock alert and domestic violence tabs. JISC is waiting for approval by the New Mexico Supreme Court of a streamlined Emergency Order of Protection form. JISC continues to work with the New Mexico Attorney General's office on a pilot project to implement a web-based Emergency Order of Protection system. The system is 95 percent complete. JISC is also working on a request for non-recurring funding to incorporate Motor Vehicle Division data and District Attorney data into the COQ.

JISC is also working on enhancements to the juvenile justice resource directory for the Children, Youth and Families Department.

Michael Hall reported that the NMSC has converted the New Mexico Children's Code into a Word document to facilitate the efforts of the 2008 Children's Code Revision Task Force.

Report from the Sentencing Reform Committee. John Bigelow presented the Sentencing Reform Committee's proposed legislation amending Section 31-18-15.1 to provide for a jury determination of aggravating circumstances as the basis for a judge's decision to impose an upward departure from a basic sentence. The Sentencing Reform Committee recommended by an 8-1 vote that the legislation be approved by the Commission. A copy of the legislative proposal is in the member's files.

MOTION: Martin Suazo moved, and Billy Blackburn seconded, that the SRC-proposed legislation be approved by the Commission.

Arthur Pepin spoke in opposition to the recommendation and spoke in favor of an alternative approach, giving judges authority to impose a sentence within a one-third range up or down from the basic sentence. After a lengthy discussion, the Commission approved the SRC-proposed legislation by a 15-6 vote.

Report from the Sex Offender Management Board. Randall Cherry reported that Judge Vigil was unable to attend the meeting. A subcommittee of the SOMB that has been reviewing proposed supervision guidelines for sex offenders met and determined it supported the original version of the guidelines. The subcommittee rejected proposed revisions regarding sex offender's contact with family members. The SOMB is scheduled to meet in July, at which time it will act on several issues, including the subcommittee's recommendation regarding supervision guidelines, treatment guidelines for juveniles, and GPS requirements for sex offenders. Randall Cherry also provided the Commission members with a summary of recent activity regarding the federal Adam Walsh Act.

Report from the Juvenile Committee. Bob Cleavall, Chair, reported the Juvenile Committee has visited Desert Hills treatment facility in Albuquerque, Area One in Springer, and the J. Paul Taylor Juvenile Detention Center and the Mesilla Valley treatment facility in Dona Ana county. The committee has focused on provision of treatment services for juveniles, including problems with the 14-day reauthorization of treatment required by ValueOptions. Members of the Juvenile Committee and NMSC staff will be involved in the work of the 2008 Children's Code Revisions Task Force.

Report from the Legislative Committee. Martin Suazo reported the Legislative Committee plans to meet later this summer to discuss its scope, votes and reporting of votes.

At this time, Chairman Caldwell announced his resignation as Chair of the NMSC and thanked the Commission and staff for their hard work during his tenure. John Bigelow will assume the position of Chairman of the Commission, effective July 1, 2008. The Commission presented a token of appreciation to Chairman Caldwell and wished him the best of luck in his future endeavors.

Plan for next meeting. The next NMSC meeting is scheduled for Friday, October 3, 2008 at 9:30 a.m. The location will be determined.

Adjourn. The meeting adjourned at 12:25 p.m.