

**NEW MEXICO SENTENCING COMMISSION**  
**FULL COMMISSION**

**July 23, 2004**  
**MINUTES**

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

<b>Commission Members Present</b>	<b>Commission Members Absent</b>	<b>Others</b>	<b>NMSC Staff</b>
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 20<sup>th</sup>.

Dr. David Lisak, a nationally recognized expert on sex offenders, will be presenting to the SOMB. The meeting is tentatively set for August 25<sup>th</sup>. 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 27<sup>th</sup>. 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 27<sup>th</sup> and 28<sup>th</sup> Sex offender trainings provided on a first come basis by the Corrections Department.

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

August 20<sup>th</sup> – Treatment Provider meeting.  
August 25<sup>th</sup> - Dr. David Lisak presents to the board.  
September 30<sup>th</sup> - 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 13<sup>th</sup> and September 24<sup>th</sup> 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 26<sup>th</sup> 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 15<sup>th</sup>**

Next meeting will be October 15<sup>th</sup>, 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.