

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.