

NEW MEXICO SENTENCING COMMISSION
FULL COMMISSION
MINUTES

May 20, 2005

9:30 AM

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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.