

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.