

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.