

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

**August 18, 2006**

9:30 a.m. – State Bar Center – Albuquerque, NM

<b>Commission Members Present</b>	<b>Commission Members Absent</b>	<b>Others</b>	<b>NMSC Staff</b>
Joe Caldwell, Chair		Diane Wood	Michael Hall
Billy Blackburn		Scott Sandlin	Tony Ortiz
	Cindy Aragon	Robert Desidario	Randall Cherry
John Bigelow		John Brennan	LaDonna LaRan
Roger Gillespie (rep. Dorian Dodson)		Rick Pendrey	Banyat Adipat
Bob Cleavall		Barri Roberts	Jonathon Ochsankehl
Inspector Scott Ford		Rick Melton	Julie Frendle
	Mark Donatelli (proxy to Billy Blackburn)	John Wheeler	Linda Freeman
	Roger Hatcher (proxy to Scott Ford)	Tasia Young	
	Arthur Pepin (proxy to Judge Pickard)	Judy Arciniaco	
	Michael Cox	Renada Peery-Galon	
	Gina Maestas (proxy to Judge Pickard)	Kathleen MacRae	
Lemuel Martinez			
	Antonio Ortega (Proxy to Martin Suazo)		
Judge Lynn Pickard			
Judge John Pope			
Judge Jerry Ritter			
	Elizabeth Rapaport		
David Schmidt			
Martin Suazo			
Melissa Stephenson			
	Angie Vachio (proxy to Dave Schmidt)		
	Nick D'Angelo		

**Welcome.** Joe Caldwell, Chair, called the meeting to order at 9:35 a.m.

**Approval of minutes of the April 27 2006 meeting.** The minutes were approved by consensus.

**Staff Report.**

NMSC FY08 Strategic Plan. Michael Hall reported on two major changes to the FY08 NMSC Strategic Plan: 1) a list of specific duties and projects which comply with the statutory duties of the NMSC and the SOMB; and 2) a list of recent NMSC publications and accomplishments.

**Motion:** A motion was made to approve the NMSC strategic plan. The motion was approved by consensus.

NMSC FY08 Budget Request. Michael Hall reported that the NMSC FY08 budget request is flat, except for: 1) a request for \$50,000 to address cost of living increases that have not been funded in previous fiscal years; and 2) \$350,000 to fully fund the operations of the Justice Information Sharing Council, which is now a component of the NMSC.

**Motion:** A motion was made to approve the NMSC FY08 budget request. The motion was approved by consensus.

Workload Measurement Study for the Public Defender Department, District Attorneys and the Courts. Tony Ortiz reported that the Advisory Group for the study met yesterday (8/17/06). The purpose of the meeting was to brief the Advisory Group on the considerable work already performed in preparation for data collection from the three agencies. The Advisory Group reached agreement on important aspects of the data collection component of the study, including case types and a six-week data collection period. While recognizing the different missions performed by the three agencies, it is necessary to have as much comparability as possible during data collection. It is believed that this is the first instance of a workload measurement study being performed simultaneously in a state for the Public Defender Department, District Attorneys and the Courts. It was suggested that a subsequent workload measurement study could be performed for other criminal justice agencies, including the probation and parole division of the corrections department.

Contract with the New Mexico Association of Counties (NMAC) Regarding Felony Offenders Incarcerated in County Detention Facilities. Tony Ortiz reported that during a meeting held in Carlsbad in May, the Legislative Finance Committee asked NMSC staff to assist the NMAC with development of a legislative proposal to reimburse counties for the expense of housing felony offenders in county detention facilities. The NMSC has a small contract with the NMAC to continue collection of data from county jails regarding felony offenders and to develop a legislative proposal. This is the third year that the NMSC has performed such data collection. A discussion draft is nearly ready for review by NMAC officials. It was noted that while NMSC staff is assisting with development of the legislative proposal, this is not an NMSC bill.

Summary of the Governor's Crime Package for the 2007 Legislative Session. John Wheeler briefed commission members on the Governor's crime package for the 2007 Legislative Session:

--Two domestic violence bills that have introduced in previous sessions: 1) provision of substitute addresses for victims of domestic violence; and 2) graduated penalties for domestic violence offenders.

--Two gang-related bills that have been introduced in previous sessions: 1) penalties for recruitment of gang members; and 2) enhanced penalties for gang-related criminal activity.

--Two methamphetamine-related bills regarding registration of methamphetamine-impacted properties and remediation of properties used for methamphetamine production.

--A sex offender proposal similar to a bill introduced during the 2006 Legislative Session.

--A proposed increase in the enhancements provided for crimes committed with a firearm.

--A proposal to eliminate the availability of "lump-sum" earned meritorious deductions to serious violent offenders.

Summary of National Association of State Sentencing Commissions (NASSC) Meeting (August 6-8). Randall Cherry reported on presentations he attended during the NASSC conference held in Philadelphia. He noted the following:

--Savings realized by using treatment programs as an alternative to incarceration range from \$1.33 to \$39.00 per day. Every day that an offender does not re-offend equals reduced costs.

--A poll conducted in 2006 indicates that a majority of the public does not understand that crime rates have dropped in recent years. A majority of those polled believes we are too lenient on criminals. Yet, those polled support rehabilitation efforts and are supportive of treatment programs as an alternative to incarceration.

--A sex offender treatment program in Canada reported very favorable recidivism rates for offenders who participated in the program during a 5-year period. The rate of recidivism was reported as 14%.

Proposed Study on the Costs of Capital Felony Sentencing. Tony Ortiz reported that NMSC staff had been contacted by Kathleen MacRae, Director for the Coalition to Repeal the Death Penalty, for a possible study by the NMSC regarding the costs of capital felony sentencing in New Mexico. NMSC has the research capability to do this. It was noted that this will not be a NMSC bill, and that the Coalition will lobby the legislature for money to conduct such a study.

During the ensuing discussion among commission members, the following points were made:

-the proposed cost study does not require the NMSC to support or oppose capital felony sentencing.

-if the NMSC performs a research study for a special interest group, it might compromise the credibility of the NMSC and open the door for future requests by other special interest groups.

-it would be more appropriate to do such a study if the NMSC is asked by the legislature to do the study.

**Motion:** A motion was made that, if asked, NMSC staff shall advise the legislature that the NMSC does possess the technical expertise to conduct a cost study regarding capital felony sentencing in New Mexico. A substitute motion was offered to table the original motion. The substitute motion failed. Next, there was a vote on the original motion. That motion also failed.

Following additional discussion, NMSC staff was directed to respond to all research requests by special interest groups in the following manner: If asked by the legislature to conduct a research study for a special interest group, the NMSC will conduct the research if it possesses the technical expertise to do so and if an adequate level of funding is provided to perform the research.

**Overview of the Second Chance Program.** Former District Court Judge John Brennan briefed the commission members on the Second Chance Center. The Second Chance Center is a secure, long-term treatment facility for offenders with substance abuse problems. The center is scheduled to open on September 5, 2006 and will initially be staffed to provide treatment to 200 offenders. Offenders referred to the program will participate in a full-time treatment program that emphasizes detoxification and educational services for offenders. The center will be located in a former jail facility in Albuquerque and will accept referrals from judges throughout the state.

**Proposed Expansion of the New Mexico Sentencing Commission's Membership.** Tony Ortiz reported that during the NMSC retreat in April 2006, there was a discussion about whether to expand the membership of the NMSC. During the retreat, it was suggested that the Secretary of Public Education and a Tribal representative be added to the membership of the NMSC. Mr. Ortiz also mentioned that he had been contacted by Judge Judy Nakamura, who requested that a representative for Bernalillo County Metropolitan Court be added to the membership of the NMSC. During the ensuing discussion among commission members, the following points were made:

-the enabling legislation for the NMSC currently provides for representation by a Native American attorney appointed by the state bar.

-the enabling legislation for the NMSC currently provides for representation by members appointed by the Chief Justice of the Supreme Court.

**Motion:** A motion was made that a bill draft be prepared to add the Secretary of Public Education to the membership of the NMSC. The motion was adopted.

**Hearing on a Proposed Rule Regarding Collection and Analysis of Criminal and Juvenile Justice Data by the New Mexico Sentencing Commission.** At this time, Chairman Caldwell conducted a public hearing on a Proposed Rule Regarding Collection and Analysis of Criminal and Juvenile Justice Data by the New Mexico Sentencing Commission. The hearing was recorded. The Chair stated that the proposed rule had previously been approved by the NMSC Data Committee and by the full Commission at an earlier meeting. Since that earlier meeting, NMSC staff has attended mandatory training sessions offered by the New Mexico Commission of Public Records. Staff has re-formatted the proposed rule in accordance with rules published by the Commission of Public Records. Moreover, proper notice of this hearing has been published. Chairman Caldwell asked if anyone in attendance wished to comment on the proposed rule. No public comment was offered.

**Motion:** A motion was made to approve the proposed rule and to direct staff to make final arrangements for publication of the rule in the New Mexico Administrative Code. The motion was adopted by consensus.

**Report from the Juvenile Committee.** Bob Cleavall, Chair of the Juvenile Committee, briefed the commission members. He introduced Roger Gillespie, the newly-appointed Director of Juvenile Justice Services for the Children, Youth and Families Department. Next, Chairman Cleavall announced that the next meeting of the NMSC Juvenile Committee will be held at Camp Sierra Blanca, which is located near Ruidoso. Chairman Cleavall also indicated that Dave Schmidt may bring proposed revisions to the Children's Mental Health and Developmental Disabilities Act to the committee for its consideration. Judge Jerry Ritter expressed his thanks to the Juvenile Committee for scheduling the meeting at Camp Sierra Blanca and for holding meetings at juvenile facilities throughout the state.

**Report from the Sentencing Reform Committee.** John Bigelow, Chair of the Sentencing Reform Committee, briefed the commission members. Chairman Bigelow reported that the SRC adopted a motion to table consideration of proposed changes to the "worthless check" statute. Susana Martinez polled her District Attorney colleagues and reported to the SRC that they were opposed to the proposed changes. Many of the District Attorneys expressed to Susana that they viewed withdrawal of the proposed changes to the worthless check statute (from the original version of House Bill 80, regarding equitable sanctions for property offenses) as consideration for the District Attorneys not opposing House Bill 80. Next, Mr. Bigelow reported that the SRC adopted a motion to table consideration of proposed changes to the "aggravating circumstances" statute. He noted that the SRC discussed *State v. Lopez* (NM Supreme Court), which upheld the constitutionality of the statute despite *Blakely* and its progeny (U.S. Supreme Court). Also, the SRC members were advised that there is a sharp split of opinion among state Supreme Courts (Washington, California, New Mexico, Tennessee, New Jersey) regarding the application of *Blakely* to state sentencing schemes. The likelihood is great that the U.S. Supreme Court will have to further clarify their position in light of this split of opinion in state appellate courts. Finally, Mr. Bigelow reported that the SRC adopted a motion to present a discussion draft to the full commission for consideration. The discussion draft, which emulates a Virginia statute enacted in 2000, requires that an appropriation accompany any criminal justice bill that will result in an increase in periods of imprisonment in adult correctional facilities. Mr. Bigelow summarized the SRC deliberations concerning the discussion draft.

**Motion:** A motion was made to adopt the discussion draft as developed by the Sentencing Reform Committee. The motion was adopted.

**Report from the Sex Offender Management Board.** Randall Cherry reported, in Judge Vigil's absence, that the SOMB is making good progress on probation and parole guidelines for sex offenders. Those guidelines will soon be finalized by the SOMB and presented to the NMSC for its review at the next commission meeting. Mr. Cherry also reported that the SOMB is close to finalizing a risk and needs assessment tool for sex offenders. Next, Mr. Cherry reported that the SOMB is considering a legislative proposal that would add a representative from the Office of Indian Affairs and the Secretary of Public Education to the membership of the SOMB. Finally, Mr. Cherry reported that administrators for the Sex Offender Treatment Program (STOP) in Las Vegas have asked NMSC researchers to study recidivism rates for STOP graduates. Randall Cherry and Paul Guerin will follow-up on this request. Finally, Mike Hall reported that Randall Cherry recently became one of only two non-treatment professional members of the Association for the Treatment of Sexual Abusers (ATSA). ATSA is a national organization whose members are primarily clinicians and researchers who provide treatment services to the sex offender population.

**Report from the Data Committee and JISC.** Mike Hall reported, in Michael Cox's absence, that NMSC data-collection capabilities continue to expand. The NMSC will soon receive 5 years of disposition data from the Judiciary. The NMSC has agreed not to reveal sentencing patterns of individual judges. Next, Mr. Hall reported that the annual NMSC "earned meritorious deduction" study is underway and will be delivered in November 2006. Mr. Hall also reported that the NMSC Charge Code Table has been completely revised and is now fully integrated into the District Attorney's data base. The NMSC is in dialogue with the Department of Public Safety and the Judiciary to use the NMSC Charge Code Table universally.

**JISC** – The JISC servers had been stationed at the New Mexico Corrections Department and they have recently been moved to the General Service Department. The Consolidated Offender Query (COQ) program is now running 3 to 5 times faster and contains more complete offender information. One hundred twenty-five State Police officers are now using the COQ program. Mike Hall noted that he and Banyat Adipat will continue to demo the COQ program to criminal justice agencies throughout the state in an effort to illustrate its value and to build support for full funding for JISC in FY08.

**Report from the Legislative Committee.** Martin Suazo, Chairman of the Legislative Committee, reported that the Legislative Committee will meet each Tuesday during the 2007 legislative session in the conference room for the Administrative Office of the Courts. The meetings will convene at 10:00 a.m.

**Next meeting.** The next NMSC meeting will be held on December 8, 2006, in Santa Fe. The meeting will begin at 9:30 a.m. The location of the meeting will be determined by staff.

**Adjourn.** The meeting adjourned at 12:15 p.m.