

NEW MEXICO SENTENCING COMMISSION
FULL COMMISSION
MINUTES

May 11, 2007

9:30 a.m.
State Bar of NM Professional Development Center
5121 Masthead NE
Albuquerque, NM

Commission Members Present	Commission Members Absent	Others	NMSC Staff
Joe Caldwell, Chair			Michael Hall
	Billy Blackburn, Vice Chair (proxy to David Schmidt)	Charlene Knipfing	Tony Ortiz
Cindy Aragon		David Jablonski	Randall Cherry
John Bigelow		Sandra Evehart	Linda Freeman
Bob Cleavall		Renada Peery-Galon	Julie Frendle
Inspector Scott Ford		Judy Arciniaco	
Roger Gillespie (rep. Dorian Dodson)		Ella Frank	
	Mark Donatelli		
		Veronica Garcia, Ph. D. (Dr. Garcia, Sec. of PED, will become a member of the NMSC on July 1, 2007)	
Julie Meade (rep. Gary King)			
Gina Maestas			
Lemuel Martinez			
	Arthur Pepin (proxy to Gina Maestas)		
Lynn Pickard			
	John Pope (proxy to Lynn Pickard)		
Jerry Ritter			
April Land			
David Schmidt			
Melissa Stephenson			
Martin Suazo			
Angie Vachio			
Michael Vigil			
Kent Waller			
Nick D'Angelo (rep. Joe Williams)			

Welcome. Lynn Pickard, Acting Chair, called the meeting to order at 9:30 a.m. Dr. Veronica Garcia, Secretary of the Public Education Department, was recognized and welcomed by the Chair. Dr. Garcia will officially become a member of the New Mexico Sentencing Commission on July 1, 2007 [see HB 60 (2007)]. Sheriff Kent Waller and Michael Vigil were also introduced as new members recently appointed to the NMSC.

Approval of Minutes from the December 8, 2006 meeting. The minutes were approved by consensus.

Staff Report:

- **Summary of the 2007 Legislative Session.** Tony Ortiz summarized sentencing laws enacted during the 2007 legislative session and signed into law by the governor.

SB 10 (2007) amended Section 30-18-9 NMSA 1978 to provide criminal penalties for a new offense known as “cockfighting”. Upon a first conviction for cockfighting, a person is guilty of a petty misdemeanor. Upon a second conviction for cockfighting, a person is guilty of a misdemeanor. Upon a third or subsequent conviction for cockfighting, a person is guilty of a fourth degree felony.

CS/SB 528 & 439 (2007) amended Section 30-9-11 NMSA 1978 to create a new offense known as “aggravated criminal sexual penetration”. Upon a conviction for aggravated criminal sexual penetration, a person is guilty of a first degree felony for aggravated criminal sexual penetration and sentenced to life imprisonment (eligible for parole after serving 30 years). Revisions were also made to statutory sections regarding terms of probation or parole for certain sex offenders.

CS/SB 735 (2007) amended Section 30-37-3.2 NMSA 1978 and renamed the offense (“child solicitation by computer”) formerly found at that citation. The new offense is known as “child solicitation by electronic communication device”. The penalties set forth in Section 30-37-3.2 NMSA 1978 for child solicitation by electronic communication device are as follows:

“B. Whoever commits child solicitation by electronic communication device is guilty of a:

(1) fourth degree felony if the child is at least thirteen but under sixteen years of age; or

(2) third degree felony if the child is under thirteen years of age.

C. Whoever commits child solicitation by electronic communication device and also appears for, attends or is present at a meeting that the person arranged pursuant to the solicitation is guilty of a:

(1) third degree felony if the child is at least thirteen but under sixteen years of age; or

(2) second degree felony if the child is under thirteen years of age.”

SB 1106 (2007) created a new offense known as “criminal sexual communication with a child”. Whoever commits criminal sexual communication with a child is guilty of a fourth degree felony.

CS/SB 1207 (2007) created a new criminal offense known as “voyeurism”. The penalties for voyeurism are as follows:

“B. Whoever commits voyeurism is guilty of a misdemeanor, except if the victim is less than eighteen years of age, the offender is guilty of a fourth degree felony.”

Other legislative measures of interest were summarized and their eventual disposition noted:

HB 296 (NMSC-developed bill) established a process for production of detailed fiscal impact statements by the NMSC for criminal sentencing legislation. This measure passed the House and Senate, but was pocket-vetoed by the Governor.

HB 272 and SB 194 proposed changes to the Corrections Population Control Act. Both measures were pocket-vetoed by the Governor. As a result of the vetoes, the corrections population control commission’s duties will now be assumed by the secretary of corrections.

HB 508 (NMSC-developed bill) established a uniform crime reporting system. This measure was signed by the Governor.

HB 316 created the County Detention Facility Reimbursement Act. This measure was signed by the Governor. \$5.0 million dollars was

appropriated in HB 2 to flow through the formula established in the act to reimburse counties for the cost of housing felony offenders.

- **Workload Measurement Study for the Judiciary, District Attorneys and the Public Defender Department.** Tony Ortiz reported that work on this project remains on schedule. A draft report will be delivered to the NMSC by May 22, 2007. Following edits by the NMSC, a final report is expected by mid-June 2007. Arrangements have been made for a presentation of the report to the Legislative Finance Committee in July 2007. Mr. Ortiz noted that despite a number of efforts to encourage involvement in the workload study by attorneys who contract with the Public Defender Department, there was an extremely low participation rate for those attorneys. Due to the low participation rate, contract public defenders will not be included in the report. The draft recommendation for the public defender department is approximately 41 additional staff attorneys and 45 additional staff members. The draft recommendation for the judiciary is approximately 7 additional magistrate judges, 4 additional Bernalillo county metropolitan court judges and 24 additional judicial positions for the district courts. The draft recommendations for the district attorneys will be finalized soon.

- **NMSC Budget.** Michael Hall reported that we are nearing the end of FY07 and we should come down to the end of the year right on target. For FY08, we received the \$819,000 base operating budget that we requested. Additionally, the NMSC received a \$50,000 appropriation to conduct a study of biased based policing and a \$50,000 appropriation to conduct a gender specific probation and parole study. The NMSC has also applied for a federal grant (\$295,000) to further enhance the Consolidated Offender Query Program (COQ). The FY09 NMSC Strategic Plan is due in September 2007. Mr. Hall reported that he will do the first cut on a Strategic Plan and send it to Chairman Caldwell and the chairs of the respective committees for their review and input. He stated that for FY09, he intends to request a flat budget plus salary increases, unless he is directed to do otherwise.

Report from the Legislative Committee. Martin Suazo, Chair, reported that the Legislative Committee met every Tuesday during the 2007 Legislative Session. He thanked the committee members for their nearly perfect attendance at meetings. The Legislative Committee reviewed all criminal and juvenile justice bills introduced during the session and acted on 295 of them. A suggestion was made that additional information be provided to explain the actions taken by the committee on bills.

Report from the Juvenile Committee: Bob Cleavall, Chair, summarized juvenile justice-related measures enacted during the 2007 Legislative Session:

-HB 21: Creates the juvenile continuum grant fund. \$2.0 million appropriation to the fund is in HB 2 (p. 160).

-HB 271: Establishes procedures to ensure child safety upon the arrest of a parent or guardian.

-HB 517: Amends the purpose section of the Delinquency Article of the Children's Code to encourage the use of "best practices" in developing juvenile justice policies.

-HB 637: Re-codifies the Children's Mental Health and Developmental Disabilities Act.

-HB 738: Limits disclosure on a public access web site maintained by a state or local agency regarding arrests, delinquency proceedings and social records relating to a child.

-HB 1024: Establishes procedures for law enforcement agencies regarding runaway children.

-SB 471: Requires fingerprinting and background checks for volunteers or staff members at juvenile justice facilities.

-CS/SB 528 and 439: Creates a new crime of aggravated criminal sexual penetration (child is less than nine years of age and crime committed with intent to kill or with a depraved mind regardless of human life).

-CS/SB 611 (aka "Junior"): Appropriates \$70,000 to CYFD for the continued operation of the New Mexico juvenile justice commission.

-CS/SB 735: Creates a new criminal offense known as child solicitation by electronic communication device.

-SB 1106: Creates a new criminal offense known as criminal sexual communication with a child.

-CS/SB 1207: Creates a new criminal offense known as voyeurism. The penalty is enhanced when the victim is less than 18 years of age.

-HJM 40 and SJM 36: Requests that CYFD and PED study truancy and delinquency issues.

The Juvenile Committee has already set its schedule of meetings for the 2007 interim. The meetings will be conducted at juvenile facilities throughout the State. Meetings are planned for the Sequoyah Adolescent Treatment Center (Albuquerque), the J. Paul Taylor Detention Center (Las Cruces), the Eagle Nest Reintegration Center and the Area One Facility (Springer). Chairman Cleavall stressed that everyone is welcome to attend these meetings. He stated that meetings have been well-attended by committee meetings and that there is always a significant number of guests at the meetings.

Report from the Sex Offender Management Board: Randall Cherry, staff attorney for the SOMB, reported that the next meeting of the SOMB will be held on June 14, 2007. The meeting will be held at the NM Corrections Department administrative offices in Santa Fe and will convene at 1:30 p.m. At that meeting, the SOMB will determine its priorities for the 2007 interim. Mr. Cherry noted that the SOMB has already agreed to consider the issue of whether offenders should be allowed to petition for removal from the sex offender registry. Also, in response to a request from the Legislature (see HM 71), the SOMB will study the appropriateness of including aggravated stalking, when the victim is less than 16 years of age, as a sex offense subject to the provisions of the Sex Offender Registration and Notification Act.

Next, Mr. Cherry summarized the proposed standards and guidelines for sex offenders on probation and parole. He explained that the SOMB was required by statute to develop the guidelines. The SOMB developed the proposed guidelines based upon the best practices known to the Board at this time. He stated that the SOMB recognizes that the guidelines will likely evolve as the science and experience in the sex offender management field continues to mature. He also noted that the SOMB recognizes that the New Mexico Corrections Department does not currently possess the resources to implement the guidelines. However, the SOMB believes that its statutory mandate was to present the Legislature and the Governor with the best system that it could devise. The SOMB could then revise the guidelines to be less ambitious if so directed, or could work with all of the relevant parties on implementation as resources become available.

After extensive discussion, Commission members reached a consensus that they supported the guidelines in concept. However, some members had significant concerns about specific issues in the proposed guidelines. The issues included:

- 1) whether the definition of "sex offender" in the guidelines was too broad;
- 2) whether the guidelines would apply to sex offenders who reside on Indian land;
- 3) whether limitations on sex offenders' access to their families was too rigid;
- 4) requisite qualifications for polygraph examiners who conduct tests on sex offenders; and
- 5) the cost of implementing the proposed guidelines.

A motion was made to approve the SOMB's proposed Standards and Guidelines for Sex Offenders on Probation and Parole, contingent upon provision of adequate funding to implement the guidelines.

The motion failed (12 opposed and 10 supported).

A new motion was made to generally support the SOMB's proposed Standards and Guidelines for Sex Offenders on Probation and Parole, and to request that the SOMB further revise the guidelines to address the issues raised by Commission members.

The motion was adopted by consensus.

Report from the Sentencing Reform Committee: John Bigelow, Chair, reported that the SRC is reviewing sentencing standards set forth in the LEAA document. He reported that Tony Ortiz has produced an initial draft memorandum that incorporates principles set forth in the LEAA sentencing standards. Next, Chairman Bigelow reported that the SRC will work on the following issues during the 2007 interim:

- 1) in the aftermath of Cunningham v. California, a recent U. S. Supreme Court decision that affirms the holding of Blakely, the committee will review possible statutory revisions to address the holding in those cases (placing sentence-elevating fact-finding within the judge's province violates a defendant's right to trial by jury). When this issue is reviewed by the committee, Steve Suttle from the Attorney General's Office will be invited to participate in the meeting.
- 2) possible revisions to the statute regarding earned meritorious deductions for state inmates. Currently, the statute does not address deductions for: 1) serious youthful offenders convicted for murder in the first degree who are sentenced to a term less than life imprisonment; and 2) instances when an offender is convicted for attempt, conspiracy or solicitation to commit a "serious violent offense". It was noted that there is an appellate court case that directly addresses the second issue.
- 3) continue to develop the draft memorandum based upon sentencing standards in the LEAA document.
- 4) continue to support and follow-up on the findings and recommendations set forth in the NMSC workload study for the Judiciary, District Attorneys and the Public Defender Department.

5) continue to work on the "Virginia" bill (HB 296) (2007) that was pocket-vetoed by the Governor subsequent to the 2007 legislative session.

6) review and discuss Double Jeopardy issues.

A request was made that the NMSC staff e-mail to the commission members the draft memorandum based upon sentencing standards in the LEAA document.

Report from the Data Committee and the Justice Information Sharing

Council: Michael Hall, provided the report for the Data Committee and the Justice Information Sharing Council. He noted that the Data Committee and JISC have overlapping representation that both work on complex data-sharing issues. Mr. Hall then reported that Banyat Adipat, the JISC Program Manager, continues to make progress in his efforts to integrate criminal justice data maintained by tribes and the state. Next, Mr. Hall reported that there are now approximately 1,500 people authorized to use the Consolidated Offender Query (COQ) maintained by JISC. He noted that an alert has been added to the COQ to indicate when an individual has been ordered to place an ignition interlock device in his vehicle. Next, Mr. Hall summarized research reports assigned to the Sentencing Commission during the 2007 legislative session:

HJM61 (Rep. Swisstack) Requests the New Mexico Sentencing Commission to research issues related to providing adult probation and parole services to offenders in New Mexico, including adult probation and parole officer caseloads, vacant positions, officer retention rates and salary levels.

HM68 (Rep. Swisstack) Requests the New Mexico Sentencing Commission to study and make recommendations for community services and programs that support offender rehabilitation and reintegration into New Mexico communities. Also requests study and recommendations for programs and services that might reduce recidivism rates, and provide support for early release for nonviolent offenders.

HM71 (Reps. Jimmie Hall and Al Park) Requests the New Mexico Sentencing Commission to study the appropriateness of including aggravated stalking, when the victim is less than 16 years old, as a sex offense subject to the Sex Offender Registration and Notification Act.

HB527 (Rep. Chasey) NMSC will receive \$50K to study gender-specific probation and parole models and survey existing participants on probation and parole on the effectiveness of current programs and their ability to re-enter society. Funding was approved in SB 611.

HB942 (Rep. Powdrell-Culbert) NMSC will receive \$50K to conduct a study of biased-based policing. Funding was approved in SB 611.

Mr. Hall then described ongoing research projects that the Sentencing Commission is working on:

- NMSC will publish the annual report regarding meritorious deductions earned by state inmates;
- a recidivism study regarding individuals who have completed the Sex Offender Treatment Program in Las Vegas.
- annual research regarding the cost of housing felony offenders in county detention facilities [see HB 316 (2007)].
- An ongoing analysis of data sets provided to the Sentencing Commission by DPS, CYFD, the AODA and AOC .
- an update of a DWI study published by the Sentencing Commission five years ago.
- a study of domestic violence cases. This study is funded by a federal VOWA grant.
- the annual update of the Juvenile Justice Program Inventory.
- the annual update of Criminal Justice Resource Directory.
- NMSC will annually apply case weights determined in the Workload Measurement Study to “refresh” the resource needs for the judiciary, district attorneys and the public defender department.

Mr. Hall then asked the NMSC if a formal vote by the NMSC is needed when the NMSC is asked to undertake unfunded research projects. The NMSC recommended that the Data Committee make these decisions.

Plan for next meeting. The next meeting will be held on August 3, 2007. The location for the meeting will be determined.

Adjourn. The meeting adjourned at 12:05 p.m.