

# NEW MEXICO SENTENCING COMMISSION

January 14, 2009

MINUTES

NMSC FULL COMMISSION

## State Bar of New Mexico--Albuquerque, NM

Commission Members Present	Commission Members Absent	Others	NMSC Staff
John Bigelow, Chair		David Mills	Michael Hall
	Cindy Aragon (Designation to Bob Cleavall)	Jeremy Howard	Tony Ortiz
Billy Blackburn		Michael Vigil, SOMB	Randall Cherry
Bob Cleavall		Sharon Pino	Linda Freeman
Hugh Dangler		Melissa Hill	Nancy Gettings
John Wheeler (for John Denko)		Judy Arciniaco	LaDonna LaRan
Debra Pritchard (for Dorian Dodson)			
Mark Donatelli			
	Dr. Veronica Garcia		
Gary King			
Gina Maestas			
Ron Lopez (for Lemuel Martinez)			
Patrick Simpson (for Arthur Pepin)			
John Pope			
	Jerry Ritter		
April Land (for Suellyn Scarnecchia)			
David R. Schmidt			
	Melissa Stephenson		
Martin Suazo			
	Angie Vachio		
	Michael Vigil, COA (Designation to Gina Maestas)		
Michael Vigil, Citizen			
	Kent Waller		
Jim Brewster (for Joe Williams)			

**Welcome.** Chairman Bigelow called the meeting to order at 9:35 a.m. Chairman Bigelow welcomed Sharon Pino, Domestic Violence Czar for Governor Richardson; District Judge Michael Vigil, Chair of the SOMB; Melissa Hill, member of the SOMB; David Mills, Director of the state Crime Lab and Judy Arciniaco.

Tony Ortiz reported that for this meeting, Inspector Scott Ford designated John Wheeler, COA Judge Michael Vigil designated Gina Maestas, Cindy Aragon designated Bob Cleavall and Artie Pepin designated Patrick Simpson.

**Approval of minutes for the October 3, 2008 meeting.**

**MOTION:** Martin Suazo moved, and Gina Maestas seconded, that the minutes of the October 3, 2008, meeting be approved, with a revision to show that Billy Blackburn was present and that he assigned a designee when he departed the meeting. The motion was approved.

**Staff Report.**

Michael Hall reported the NMSC executive committee met on November 11, 2008 and discussed the following:

- No budget adjustments should be made in advance of the upcoming legislative session. NMSC can absorb a 5 percent budget cut this fiscal year. However, the NMSC cannot absorb such a budget cut during fiscal year 2010.
- The executive committee discussed, but made no decision, on whether the SOMB should exist under the NMSC. The executive committee discussed ways in which the SOMB can participate more fully in NMSC meetings.
- The executive committee discussed strategies for the upcoming legislative session.

**Audit results.**

Michael Hall reported NMSC achieved a nearly perfect external audit for the fourth year in a row.

**Budget Update.**

NMSC's base budget for FY 09 is not adequate to cover salaries, benefits and expenses. However, NMSC has received special appropriations to conduct research projects. The money for the research projects will enable the NMSC to absorb the shortfalls in the FY 2009 budget, including the 5 percent budget reduction ordered by the Governor.

Michael Hall reported on the DFA and LFC recommendations for the NMSC FY 2010 budget. He noted that the DFA recommendation proposes to reduce the budget by 2.5 percent from the FY 09 budget. The LFC recommendation proposes to reduce the budget by 13.2 percent from the FY 2009 budget.

Chairman Bigelow appointed an ad hoc committee consisting of Martin Suazo, Chairman Bigelow and Gina Maestas to work with Tony Ortiz, Randall Cherry and Michael Hall to write a letter and investigate other ways to lobby the LFC regarding the proposed NMSC budget for FY 2010.

### **“Official acts” of the NMSC**

Randall Cherry reported on his research concerning official acts of the NMSC, citing a 2006 case in which the Supreme Court ruled that a state agency or board cannot act officially unless there is a quorum of the entire board or commission. Thus the act of one of the NMSC committees would not be an official act until ratified. If a committee such as the NMSC Legislative Committee meets and has a quorum of the full commission present, then those acts would no need ratification.

It was the consensus of the Commission that in the future, to ensure compliance with the law, when the Commission designates authority to one of its committees, that any acts resulting from that committee should be presented to the full Commission at its next meeting for ratification.

### **Updates on research reports.**

Tony Ortiz reported NMSC staff will publish the following reports in the near future: a review of the outcome of de novo appeals in DWI prosecutions; an analysis of bias based policing in four New Mexico counties; and a report regarding recidivism of sex offenders who have completed a treatment program in Las Vegas, New Mexico.

### **Summary of proposals from the Office of the Governor.**

John Wheeler gave a summary of proposed DWI legislation under consideration by the Office of the Governor:

--Allow police officers and others participating in a license revocation hearing to appear by video or by telephone.

--Set levels of impairment for driving while under the influence of drugs.

Sharon Pino, the Governor’s Domestic Violence czar, reported on proposed legislation relating to domestic violence as follows:

--Promote the financial independence of victims of domestic violence, sexual assault and stalking.

--Proposed amendments to the elements for the offense of stalking.

--Provide penalties for criminal damage or deprivation of property against a household member.

--Provide that conviction for a domestic violence offense would be a bar to an individual being certified as a law enforcement officer.

Following Ms. Pino's presentation, Commission members discussed the following issues:

- The proposed revisions to the elements of stalking, including the definition for the term "pattern of conduct", may be too broad.
- Regarding the financial independence legislation, it was suggested the onus should be on agencies, advocates and law enforcement personnel to accommodate a victim's work schedule, rather than requiring employers to accommodate a victim's need to attend hearings and other meetings surrounding a domestic violence case. Additionally, a victim should be required to provide to the employer proof that a meeting or hearing was required in the case.
- Regarding the criminal damage to property legislation, the proposed legislation is in compliance with the Gun Control Act. The criminal damage to property should be clearly defined to take into account when the property is part of the community assets. The attorney general's proposed Domestic Violence legislation will include a provision for animals as property.
- **Report from the Legislative Committee.**

Martin Suazo suggested, in light of the earlier discussion regarding official acts of the Commission, that the legislative subcommittee issue a full report to the Commission for ratification at the meeting immediately following the end of the legislative session. Additionally, the legislative committee will give notice of meetings in compliance with the Public Meetings Act.

**MOTION:** Martin Suazo moved, and John Wheeler seconded, that the ad hoc committee appointed earlier in the meeting be authorized to take actions to secure adequate funding for NMSC. The motion carried.

Mr. Suazo reported the legislative committee will meet every Tuesday at 10:00 a.m. at the AOC offices starting January 27, 2009. The legislative committee will be using the designee policy adopted by the NMSC.

### **Report from the Sex Offender Management Board.**

District Judge Michael Vigil reported SOMB spent a good part of the 2008 interim working on the adult sex offender provision guidelines that NMSC sent back for further review. The guidelines will be resubmitted to the Commission for consideration later this year. SOMB continues to work on standards for treatment guidelines for adult and juvenile sex offenders and continues to assess risk assessment tools for future recommendation to the Commission. SOMB also worked on proposed amendments to the Sex Offender Registration and Notification Act (SORNA).

John Wheeler presented SOMB's proposed amendments to the New Mexico Sex Offender Registration and Notification Act (SORNA) to the Commission. Mr. Wheeler noted that the proposed amendments contain some, but certainly not all of the provisions required by the federal Adam Walsh Act. It was noted that there may be changes to the federal Adam Walsh Act when Congress reconvenes. The amendments to SORNA will not bring New Mexico into compliance with the federal Adam Walsh Act.

Mark Donatelli suggested that SOMB and the Commission impose a moratorium on any expansion of the sex offender registry until NMSC staff conduct a study of the effectiveness of the registry. Chairman Bigelow tabled the suggestion until a later date.

**MOTION:** Martin Suazo moved, and Gary King seconded, that the New Mexico Sentencing Commission support SOMB's recommendations on the proposed amendments to SORNA as set forth in the document entitled "SORNA Legislation Proposed Amendments" without prejudice to the legislative subcommittee in its review of legislation during the upcoming session.

The Commission heard the following discussion:

- The amendments to SORNA will assist the Department of Public Safety in doing its job.
- Noncompliance with the Adam Walsh Act results in a 10 percent reduction of Byrne Grant funds and block grants.
- The proposed amendments may result in innocent parties having their addresses published on the registry without their knowledge

- The Byrne Grant money could become available as part of a federal stimulus package, regardless of compliance with the Adam Walsh Act.

The motion passed on a 13 to 4 roll call vote, with one abstention.

**MOTION:** Mark Donatelli moved that NMSC request SOMB to consider a moratorium on expansion of the sex offender registry and that NMSC seek funding for a special project to evaluate and compare the efficiency and effectiveness of the sex offender registry in New Mexico to the effectiveness of evidence-based programs. Chairman Bigelow directed staff to place the issue on the agenda for the next full Commission meeting after the session. Additionally, staff was directed to distribute a recent study on the issue.

SOMB Chair Vigil reported SOMB has committed to exploring ways for an offender's name to be removed from the registry.

#### **Report from the Juvenile Committee.**

Bob Cleavall reported the Juvenile Committee has met two times since October to discuss issues related to transitional living and children leaving institutions and foster care. Mr. Cleavall reviewed several pieces of juvenile legislation being proposed during the upcoming session. The Juvenile Committee supports the changes to the Children's Code.

#### **Report from the Sentencing Reform Committee.**

Tony Ortiz reported the Sentencing Reform Committee has not met since the last full Commission meeting. Mr. Ortiz distributed a summary of measures endorsed by the interim CCJ committee. The CCJ interim committee endorsed legislation developed by the Commission on a proposed Frawley fix. Sponsorship of the bill was assigned to Representative Gail Chasey. Additionally, CCJ endorsed an appropriation bill in the amount of \$176,000 to allow NMSC to study the impact of criminal justice legislation on the state's correction system. Sponsorship of the bill has assigned to Representative Joseph Cervantes.

#### **Report from the Data Committee and the Justice Information Sharing Council.**

Michael Hall reported that sharing of and access to state agency data is working well. The consolidated offender query is being used by more than 3,000 subscribers and receives an average of 200,000 hits per month. JISC plans to use the last of the funding

to add auto correct and auto fill to the Emergency Protective Orders. JISC was close to an agreement with Acoma and Zuni Pueblos to allow sharing of Domestic Violence and DWI data, but Governor Richardson was unavailable to sign the agreement and leadership for the tribal governments changes ever year. Staff will continue to work on this agreement. Additionally, the law enforcement academy has invited NSMC to become part of the curriculum to teach cadets how to use the consolidated offender query.

The next meeting of the Commission is scheduled for Wednesday, April 29, 2009, at 9:30. The location of the meeting will be determined at a later time.