

NEW MEXICO SENTENCING COMMISSION

October 3, 2008
MINUTES
NMSC FULL COMMISSION

NM Educator's Federal Credit Union
 4100 Pan American Highway NE
 Albuquerque, New Mexico

Commission Members Present	Commission Members Absent	Others	NMSC Staff
John Bigelow, Chair		Kevin Soules	Michael Hall
Cindy Aragon		Kyle Wackenheim	Tony Ortiz
Billy Blackburn (Mr. Blackburn assigned his proxy to David Schmidt upon leaving the meeting prior to its conclusion)			Dan Cathey
Bob Cleavall			Randall Cherry
Hugh Dangler			Linda Freeman
Inspector Scott Ford (for John Denko)			Nancy Gettings
Ted Lovato (for Dorian Dotson)			LaDonna LaRan
	Mark Donatelli (Proxy to David Schmidt)		Margie Lueras
	Veronica Garcia		Liz Watkins
Gary King			
Gina Maestas			
Lemuel Martinez			
Arthur Pepin			
Lynn Pickard/Mike Vigil			
John Pope			
Jerry Ritter			
April Land (for Suellyn Scarnecchia)			
David R. Schmidt			
	Melissa Stephenson		
Martin Suazo			
Angie Vachio			
Michael Vigil			
	Kent Waller		

Jim Brewster (for Joe Williams)			
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Welcome. John Bigelow, Chair, called the meeting to order at 9:05 a.m. Mr. Bigelow welcomed Judge Michael Vigil from the New Mexico Court of Appeals (COA) and introduced him as a new member of the Sentencing Commission. Judge Vigil is succeeding Judge Lynn Pickard, who is retiring. The Sentencing Commission thanked Lynn Pickard for her many years of service.

Next, April Land introduced two guests: student lawyers who are under her supervision for a semester.

Approval of minutes for the June 27, 2008 meeting.

MOTION: Martin Suazo moved, and John Pope seconded, that the minutes for the June 27, 2008 meeting be approved as written. The motion carried unanimously.

Next, Tony Ortiz reported that Billy Blackburn and Mark Donatelli gave their proxies to David Schmidt for this meeting.

Staff Report.

NMSC FY10 budget request. Michael Hall reported he and staff appeared before the Legislative Finance Committee for the Commission’s annual budget hearing. Mr. Hall stated the hearing went well, but it is still unclear how the slowing economy will impact revenue projections and the state’s budget. Commission staff has been worked closely with DFA and LFC analysts to educate them on the importance of the Commission’s work and the numerous projects on which the staff is currently working.

Resolution regarding notice for NMSC meetings.

The commission reviewed a draft resolution outlining the Commission’s notice requirements for public meetings.

MOTION: Martin Suazo moved, and Jerry Ritter seconded, that the Commission accept the resolution. It was noted that if the Commission holds a meeting in a city other than Albuquerque, notice should be placed in a local newspaper in that city to ensure the public has adequate notice of the meeting. Martin Suazo withdrew his motion.

MOTION: Lynn Pickard moved, and Angie Vacchio seconded, that the following language be added to the resolution:

“...and shall cause a notice of the date, time and place of such public meeting to appear at least one (1) calendar week prior to the meeting in a newspaper of general circulation within the City of Albuquerque, State of New Mexico, *or any other community where the Commission may meet.*”

The Commission approved the motion unanimously.

Reimbursement for NMSC chair and committee chairs when they represent the NMSC before an interim legislative committee.

Michael Hall explained that Commission members are paid per diem and mileage for attending Commission meetings, but are not reimbursed for attending legislative meetings. While the Commission cannot afford to reimburse every Commission member for attending legislative hearings, Michael Hall requested approval from the Commission to authorize reimbursement of per diem and mileage for the Commission chair, the SOMB chair, and Commission committee chairs to attend legislative meetings. Michael Hall noted that the impact on the Commission’s budget would be minimal.

MOTION: David Schmidt moved, and Angie Vacchio seconded, that the Commission authorize payment of per diem and mileage to the Commission chair, the SOMB chair, and Commission committee chairs to attend legislative meetings. The motion carried with one opposing vote.

Proxy policy for the NMSC.

The Committee reviewed a memo from the Attorney General’s office concerning the Commission’s policies regarding use of a proxy. The memo concluded that a member of the Commission who is unable to attend a Commission meeting cannot authorize a proxy vote at that meeting. During the ensuing discussion, the following comments were made:

- The proxy policy should extend to both full Commission meetings, to committee meetings and to SOMB meetings.
- The policy could be changed to use the word “designee” instead of “proxy.”
- A member’s designee could be granted the authority by the member to designate another person to attend the meeting, should the designee be unable to attend.
- A member who is absent from a meeting should not be able to vote or give their proxy to another voting member.
- Members could attend by telephone and thereby preserve their vote.

- It seems an inappropriate use of voting power to allow one member to cast the votes of members who are absent from the meeting.
- The legislative committee has adopted a policy whereby a person missing more than two meetings during a 30-day session loses their right to vote by proxy.
- The Commission serves in an advisory capacity to the legislature. The issues voted on by the Commission do not affect people's lives directly except for employment of the executive director and budget issues.
- A limitation on the number of proxies a member can exercise could ensure the balance of diversity within the Commission and the need for flexibility due to the members' busy schedules.
- The Commission has worked closely together over the years, and there are times when a member will vote one way and vote a different way with a proxy vote.
- Members receive agendas and notice of action items in advance of meetings and are able to make a determination on that basis where to place their proxy.
- Appointing a designee to attend a meeting may change the Commission's spirit of collaboration and consensus.
- The Open Meetings Act was enacted to ensure members of the public are informed about the official functions of government.
- Official acts of the Commission should be clearly defined.

MOTION: Arthur Pepin moved, and Gary King seconded, that no member of the Commission or committee of the Commission can exercise more than one vote.

The Chair ruled that David Schmidt may exercise the two proxies he carries for Billy Blackburn and Mark Donatelli.

The motion failed by an 8-10 vote.

MOTION: Jerry Ritter moved, and Gina Maestas seconded, that a Commission member may designate any individual as their designee under statute including another member of the Commission so long as no member attending exercises more than the member's and two additional votes.

MOTION: Martin Suazo moved an amendment, and Arthur Pepin seconded, that a Commission member exercise only the member's and one additional vote.

The amendment failed by a 5-13 vote.

MOTION: Cindy Aragon moved a friendly amendment that a Commission member could carry a proxy as long as there were no conflict of interest with the agency the member represents. The motion died for lack of a second.

MOTION: Jerry Ritter clarified his original motion as follows: The document entitled "Policies Regarding Use of a Proxy" should be amended to replace the word "proxy" with "designee" and limit the number of votes a member can exercise to the member's vote and two additional votes and that the policy would extend to all committees. The motion carried on a 12-6 vote.

MOTION: Arthur Pepin moved that if a non-ex officio member misses more than two meetings during a 30-day legislative session, that member loses the ability to vote by proxy. After further discussion, Mr. Pepin withdrew his motion.

The Commission directed Commission staff and legal counsel to research what Commission acts are official in nature and covered by the Open Meetings Act and what acts are not official in nature.

Survey results regarding committee membership.

Michael Hall reported Commission staff conducted a survey regarding committee membership. The results of the survey showed no requests were made for changes to committee membership. Arthur Pepin has volunteered to chair the Sentencing Reform Committee.

Updated resource needs assessments for the Judiciary, District Attorneys and Public Defender Department.

The Commission reviewed a document entitled "Statewide FTE Needs for the New Mexico Trial Court Judiciary, District Attorneys and Public Defender Department." Tony Ortiz noted that the document was provided to the LFC, DFA, Administrative Office of the District Attorneys, Administrative Office of the Courts and Public Defender Department on August 29, 2008. The information will also be shared with the Courts, Corrections and Criminal Justice Committee on October 21, 2008. Tony Ortiz noted that NMSC staff will produce this document each year, following receipt of data requested from the AODA, AOC and PDD.

Chairman Bigelow reported that recommendations made by the Governor's Prison Reform Task Force are already being implemented by the Department of Corrections.

Tony Ortiz reported that Commission staff recently published a report entitled "Estimated Number of Offenders in New Mexico Corrections Department Facilities in September 2008

Eligible for Controlled Release.” He thanked the Corrections Department for its review of the report.

Report from the Sex Offender Management Board.

Randall Cherry reported that the SOMB has continued its work on supervision guidelines for adult sex offenders. After a review of available studies regarding sex offenders, the SOMB has decided to recommend its original position to the Commission; that is, no sex offender shall reside or have contact with a family member under the age of 18, including the offender’s children, unless approved by the management team. Additionally, SOMB recommends that if the Commission chooses to forward the guidelines on to the Department of Corrections, that no guideline be implemented unless there is full funding to support the guideline.

Ted Lovato reported that CYFD recommends the Commission table the decision because it is inappropriate to make a recommendation on guidelines when funding is not available to implement the guidelines. Jim Brewster noted the Department of Corrections plans to request funding to implement the guidelines.

MOTION: Gary King moved, and Martin Suazo seconded, that the issue be tabled. The motion carried with one opposing vote. Chairman Bigelow stated the subject can be revisited at an appropriate time when resources become available.

Randall Cherry reported that HM 71 (2006) requested a recommendation from the Commission to the Courts, Corrections and Criminal Justice committee on whether the charge of aggravated stalking of a child under the age of sixteen should be added to the list of predicate offenses for placement on the sex offender registry. SOMB recommends the charge of aggravated stalking not be included in the list of offenses because the offense has never been charged or convicted in the state of New Mexico up to the present time and the addition of the charge to the registry will dilute the registry.

MOTION: Angie Vacchio moved, and John Pope seconded, that the Commission not recommend adding the charge of aggravated stalking of a child under the age of sixteen to the sex offender registry. The motion carried unanimously.

Randall Cherry reported SOMB continues to work on the issues surrounding Adam Walsh federal legislation. The Department of Public Safety plans to request an extension from the federal government to continue the work on this issue. The extension will allow the state to receive Byrne Grant funding while continuing to work on the issue.

Report from the Sentencing Reform Committee.

Artie Pepin reported the committee will hold its next meeting on October 30, 2008.

On a separate topic, Gary King reported that the Attorney General's Prison Oversight Task Force will present its report to the Courts Corrections and Justice committee in November 2008.

Report from the Data Committee.

Gina Maestas reported the committee has no pending issues and has no plans to meet at this time.

Report from the Justice Information Sharing Council.

Michael Hall reported that the JISC met with the chief information officer of the Department of Homeland Security to discuss the possibility of funding to enhance the consolidated offender query.

Report from the Juvenile Committee.

Bob Cleavall reported the committee continues to focus on the policies and procedures of juvenile facilities around the state. The committee's plan for fall is to review the availability of transitional living centers for juveniles. Many of the committee members have been focusing on proposed revisions to the Children's Code, which have been submitted to the Children, Youth and Families Department for review. The committee will meet in December to review juvenile justice legislation that will be introduced during the 2009 session.

Report from the Legislative Committee.

Martin Suazo reported the committee plans to meet on October 17, 2008. The committee will discuss preparations for the upcoming 60-day legislative session. The committee membership has grown over the years, and Martin Suazo requested that the NMSC chair exercise discretion before adding more members to the committee.

Plan for next meeting.

The next meeting of the New Mexico Sentencing Commission will be held on Wednesday, January 14, 2009. The time and location of the meeting will be determined.

Adjourn.

The meeting adjourned at 11:30 a.m.