

NEW MEXICO SENTENCING COMMISSION

December 4, 2012 NMSC Full Commission

NM Educator's Federal Credit Union

4100 Pan American Highway NE

Albuquerque

9:30 AM

Commission Members Present	Commission Members Absent	Others	NMSC Staff
Marron Lee, Chair		Regina Chacon	Tony Ortiz
Cindy Aragon		Jim Brewster	Linda Freeman
Billy Blackburn		Sheila Lewis	Nancy Gettings
District Attorney Matt Chandler		Josh Anderson	Renee Cordova
Bob Cleavall			
Sheriff Raymond Cobos (via teleconference)			
Ben Bauer			
Ann Halter (for CYFD Sec. Yolanda Berumen-Deines)			
Mark Donatelli			
DPS Sec. Gorden Eden Jr.			
Judge Joel Garnett			
David Pedersen (for Attorney General Gary King)			
	Ricky Madrid		
NMCD Sec. Gregg Marcantel			
Patrick Simpson (for Artie Pepin)			

	Judge Jerry Ritter		
Ron West (for David Schmidt)			
	Sec. Hanna Skandera		
Martin Suazo			
Judge Michael Vigil, (COA)			
	Michael Vigil, Citizen		
Max Minzner (for Kevin Washburn) (via teleconference)			
Rep. of a victim organization (vacant)			
District Court Judge (vacant)			

Welcome: Marron Lee, Chair, called the meeting to order at 9:35 a.m. Committee members, guests and staff introduced themselves.

Approval of minutes for the August 2, 2012 meeting: The minutes for the previous committee meeting were approved by consensus.

Staff Report.

Linda Freeman summarized a Sentencing Commission report regarding length of stay in county detention facilities. The report was presented to the interim legislative Courts, Corrections and Justice Committee on October 9, 2012. Staff is beginning work on a supplemental report that will analyze whether provision of mental health services or legal competency proceedings impact length of stay.

The annual survey performed pursuant to the County Detention Facility Reimbursement Act has been completed. Information gathered in the survey has been delivered to the Department of Finance and Administration.

An annual report that analyzes the impact of earned meritorious deduction on sentences served by state inmates has been finalized. The report has been distributed and will be posted on the NMSC web site.

Summary and discussion of criminal and juvenile justice proposals likely to be introduced during the 2013 legislative session:

Bills prepared by the Judiciary: Patrick Simpson summarized bills prepared by the Judiciary, including measures: 1) creating additional judgeships throughout the state; 2) increasing the legal practice requirement for Metropolitan Court judges; 3) amending provisions in the statutes

regarding pensions to allow retired law enforcement officers return to work as court security officers; 4) stabilizing a funding stream for judicial retirement plans; 5) providing that a municipality may appeal to the court of appeals from any decision of a district court; 6) clarifying provisions in the Motor Vehicle Code relating to the suspension or revocation of a driver's license; 7) providing penalty assessments for certain traffic code violations; 8) revising processes related to traffic citations; and 8) providing that a person cited for no vehicle registration, driver's license or insurance shall not be convicted if the person produces evidence of compliance in court.

There was a brief discussion regarding the operation of the NMSC's Legislative Committee once the session begins. Comments made at this meeting regarding bills will be incorporated into the NMSC's Bill Tracker. The Legislative Committee will continue to focus on legal issues, implementation issues, relevant research and data. Mark Donatelli asked that the Legislative Committee vote on whether to support or oppose bills reviewed by the committee. The Chair responded that the committee will not take votes.

With regard to the bill creating additional judgeships, comments included the following:

- the bill does not include funding for additional public defenders or district attorneys;
- there is a need to address existing shortfall in resources for the Public Defender Department;
- much of the growth in court case filings has been in civil filings;
- judges initially assigned civil dockets may be reassigned to criminal case duties in the future;
- the resource needs assessment published annually by the Sentencing Commission for the trial court judiciary, district attorneys and public defender department is based upon distinct data sets provided to the Sentencing Commission by the AOC, AODA and PDD, respectively.

Bills prepared by the NM Corrections Department: Secretary Gregg Marcantel and Jim Brewster summarized bills prepared by the NMCD, including measures: 1) increasing the caseload of a probation and parole officer working intensive supervision programs; 2) eliminating state and local selection panels under the Community Corrections Act; 3) requiring the NMCD to collect a DNA fee from offenders transferred to New Mexico pursuant to an interstate compact; and 4) providing that electronic communication devices are contraband and are prohibited in prisons and jails.

With regard to the bill concerning electronic communication devices, comments included the following:

- the bill is written too broadly and may be unconstitutionally vague;
- inclusion of a specific intent element may remedy the bill's vagueness. There is language in a similar federal law that may be helpful.

With regard to the bill concerning intensive supervision caseloads, comments included the following:

--the size of caseloads should never have been set in statute. Better to address in department rule;

--new technology and supervision techniques have made it possible to increase ISP caseloads;

--increase in ISP caseloads will ease caseloads carried by other probation and parole officers;

--instead of increasing ISP caseloads, shift funds allocated for incarceration to the probation and parole division.

Bills prepared by the Attorney General's Office: David Pederson summarized bills prepared by the Attorney General's Office, including measures: 1) revising the statute of limitations for commencing prosecutions; 2) revising the threshold amounts tied to penalties for larceny statutes; 3) clarifying the elements of burglary offenses; 4) prohibiting the reproduction of child pornography evidence for a defendant prosecuted under the Sexual Exploitation of Children Act; and 5) clarifying notice provisions for certain prosecutions based upon sex offenses against children.

With regard to the bill concerning the statute of limitations for commencing prosecutions, comments included the following: Has there been a fiscal analysis of the impact of the proposed amendments on criminal justice resources?

Bills prepared by the Children Youth and Families Department: Ann Halter summarized a bill prepared by CYFD, which proposes to amend the Children's Code to provide dual sentencing for adjudicated youthful offenders. She noted that the proposal emulates statutes in place in Missouri and that the policy rationale is to maximize public safety and rehabilitative efforts for this small group of offenders in the juvenile system.

With regard to the dual sentencing bill, comments included the following:

--a concern was raised about the unknown, unintended consequences of blending juvenile and potential adult sentences;

--the proposed amendments to the Children's Code may create an impetus for prosecutors to over-charge cases, in order to preserve the possibility of adult sanctions;

--the proposed amendments will only affect a small number of youthful offenders. The amendments will provide needed leverage for older, disruptive residents who refuse to participate in programming and pose security threats to CYFD staff and other residents;

--the proposed amendments to the Children's Code may create an impetus for presiding Children's Court judges to use a dual sentence in instances when they previously may have imposed adult sanctions, because that was the only option available.

Bills presented by the Public Defender Department: Ben Baur, Acting Chief Public Defender, advised the members that he continues to work with other interested parties on enabling legislation for a commission that will provide oversight to the Public Defender Department. Voters passed a constitutional amendment in November 2012 that authorized the creation of such a commission. Mr. Baur indicated that elements of the bill are still being worked upon as the legislative session draws near.

With regard to the concept of an oversight commission, comments included the following:

--what will be the status of PDD employees, particularly the Chief Public Defender and regional managers?;

--will there be funding to staff the commission and compensate commission members for per diem?;

--what will be the consequence if enabling legislation is not passed, or if enabling legislation is vetoed?;

--establishment of a commission will give the PDD more autonomy.

Bills prepared by the Department of Public Safety: Gordon Eden, Secretary of Public Safety, summarized proposed changes to the state Amber Alert Act. He also noted that the department's proposed bill regarding sex offender registration will be discussed during the Sex Offender Management Board report.

Report from the Legislative Committee: Martin Suazo, Chair, reported that the committee's initial meeting will be held on January 22, 2013, at 10:00 a.m. The committee will meet in the conference room at the Administrative Office of the Courts. The committee will have thirteen members and members of the public are invited to attend meetings. Comments on bills offered today will be included in the NMSC's Bill Tracker.

Report from the Juvenile Committee: Bob Cleavall, Chair reported that the Juvenile Committee held meetings at the Bernalillo County Youth Services Center. The committee was briefed on operations and programming at the center and toured the center. A recent committee meeting focused on the issue of synthetic cannabinoids. The committee was briefed on this topic by we had two detectives from the Albuquerque Police Department, the Director for the Albuquerque Crime Lab and an investigator from the NM the Pharmacy Board. The committee's next meeting will be held on January 16, 2013 to review juvenile justice-related measures that may be introduced during the legislative session.

VII. Report from the Sex Offender Management Board: Tony Ortiz, Acting Chair, reported that the SOMB held a four-hour meeting in October, 2012 that focused on SORNA issues. The SOMB received testimony from Lori McPherson, Senior Policy Advisor, federal SMART Office, US Department of Justice. Ms. McPherson described how the SMART Office performs a review to determine if a state is in substantial compliance with federal SORNA requirements. She

noted that states are evaluated on the basis of statutes and guidelines. The federal SMART Office evaluates 15 SORNA categories and a state must not fail any of the categories. Prior to the meeting, Ms McPherson had reviewed the respective SORNA bills prepared by Representatives Maestas and Herrell. She noted in her remarks whether their bills addressed the aforementioned categories. Representatives Maestas and Herrell also attended the SOMB meeting and briefed the SOMB on their respective bills. At the conclusion of the meeting, Tony Ortiz volunteered to prepare a third bill that would set forth all areas of agreement between Rep. Maestas' bill and Rep. Herrell's bill. Such a consensus bill might be useful during the 2013 legislative session.

With regard to SORNA issues, comments included the following:

--the National Criminal Justice Association is urging the US Department of Justice to relent on some of the federal SORNA requirements, including the scope of required juvenile registration;

--financial penalties for non-compliance are having an adverse impact on local law enforcement programs that rely upon federal Byrne grant funds;

--the issue of retroactive application of the state SORNA is pending in a case before the NM Court of Appeals.

Representatives from the Adult Parole Board, the Public Defender Department, and the Attorney General's Office are working on proposed amendments to the statute regarding parole hearings for convicted sex offenders. Issues include use of a risk/needs assessment by the Adult Parole Board, determining who would perform the assessments, determining how to pay for the assessments, and developing a clear statutory procedure for scheduling hearings for offenders when their parole is revoked and the offender is re-incarcerated.

Report from the Justice Information Sharing Council: Mike Hall, Chair. was not able to attend the Commission meeting today. His report will be moved to the next meeting.

Next meeting: The next commission meeting is scheduled for May 10, 2013 at 10:00 a.m.

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