

# NEW MEXICO SENTENCING COMMISSION

December 10, 2013 MINUTES

NM Educator's Federal Credit Union,  
4100 Pan American Highway NE  
Albuquerque, NM  
10:00 AM

<b>Commission Members Present</b>	<b>Commission Members Absent</b>	<b>Others</b>	<b>NMSC Staff</b>
Marron Lee, Chair		Mike Hall	Tony Ortiz
Bob Cleavall, Vice Chair	Cindy Aragon	Alex Tomlin	Linda Freeman
Judge Jerry Ritter	Raymond Cobos	Jim Brewster	Amir Chapel
Regina Chacon, (for DPS Secretary Gorden Eden)	Judge Joel Garnett	Craig Pacheco	Renee Cordova
Judge Michael Vigil (COA)	Raymond Cobos	Paul Guerin	
Patrick Simpson (for Artie Pepin)	Matt Chandler	Michael Stout	
Kay Monaco	Leighann Lenti, (for PED Secretary Hanna Skandera)		
Jennifer Padgett, (for CYFD Secretary Yolanda Berumen-Deines)	Rep. of a victim organization (vacant)		
Mike Vigil			
Dave Schmidt			
Mark Donatelli			
Jorge Alvarado, Chief Public Defender			
NMCD Secretary Gregg Marcantel			
Max Minzner			
David Pederson, (for Attorney General Gary King)			
Amy Orlando (on phone)			
Martin Suazo			

**Welcome.** Marron Lee, Chair, called the meeting to order at 10:10 a.m. She welcomed Commission members and guests.

**Approval of minutes.** The minutes for the August 20, 2013 meeting were approved.

**Report on the work of the NM Public Defender Commission.** Michael Stout, Chair for the NM Public Defender Commission (NMPDC) briefed the Sentencing Commission members on the work of the 11-member NMPDC. The NMPDC was created via an amendment to the state constitution and began work earlier this year. He noted three primary goals for the NMPDC: selecting a Chief Public Defender (Jorge Alvarado); seeking increased funding for the Public Defender Department (requesting a 6% operating budget increase for FY 2015); and setting standards for representation by PDD attorneys. Other issues included the following:

- administer surveys to gather information regarding issues of interest to line staff;
- continue to work on funding issues, including compensation rates for contract attorneys; and
- bail standards, use of preliminary hearings instead of grand jury investigations, mental health issues and substance abuse issues.

**Staff Report:**

--The New Mexico Sentencing Commission (NMSC) received a clean audit, with no findings, for fiscal year 2013.

--Linda Freeman has completed work on data needed for the County Detention Facility Reimbursement Act. A spreadsheet and memorandum were transmitted to the Department of Finance and Administration prior to the December 1<sup>st</sup> deadline for submission of the information.

--Sentencing Commission staff and Chairwoman Marron Lee recently briefed the Governor's Public Safety Advisory Commission on the Results First Initiative and the NMSC's request for a \$50,000 budget expansion for work related to implementation of the initiative.

--Sentencing Commission staff is scheduled to brief the interim legislative Criminal Justice Reform Sub-Committee on December 16, 2013. Staff will address the following topics: the 1999 criminal justice reform effort; current, parallel reform efforts; and an overview of "drivers" of the state prison population.

--The Sentencing Commission's Sentencing Reform Committee (SRC) will meet during the 2014 interim. Amy Orlando has been appointed as Chair for the SRC.

--The 2014 legislative session begins on January 21st and concludes on February 20th.

**Summary and discussion of criminal and juvenile justice bills likely to be introduced during the 2014 legislative session.** The following entities summarized legislation being considered for the 2014 legislation session.

**Children, Youth and Families Department:**

- an increase in criminal penalties for intentional abuse of a child;
- an increase in criminal penalties for sexual abuse of a child;
- establish authority and process for criminal background checks of prospective foster parents or guardians prior to the placement of a child;
- establish authority to oversee and regulate the operation of private businesses that provide housing and services to at-risk youth; and
- clarify the scope of the duty to report child abuse.

**New Mexico Corrections Department:**

- make it a criminal offense for an inmate to be in possession of an electronic device; and
- establish authority for the NMCD to charge a film production company for the use of all state-owned prison facilities.

**New Mexico Public Defender Department.** Remove Public Defender Department staff from the provisions of the State Personnel Act, while implementing a separate system of due process for those employees.

**Department of Public Safety:**

- reorganize divisions within the Department of Public Safety; and
- establish authority for NICS mental health background checks when a firearm is purchased.

**Judiciary:**

- requesting five additional judgeships: district court judgeships in the First, Second, Fifth and Thirteenth judicial districts and an additional magistrate in the Dona Ana district; and
- enhance the solvency of the judicial retirement fund.

**Report from the Legislative Committee.** Martin Suazo, Chair, briefed Commission members. Legislative Committee meetings will be held in the Administrative Office of the Courts' conference room, in Santa Fe. The initial meeting will be held on January 28<sup>th</sup> at 10:00 a.m. There will be two subsequent meetings, on February 4<sup>th</sup> and February 11<sup>th</sup>.

**Report from the Juvenile Committee.** Bob Cleavall, Chair, briefed Commission members. He noted that the Juvenile Committee recently received a lengthy report from Sandra Stewart, Director for Juvenile Justice Services (JJS), CYFD, regarding juvenile justice initiatives, including:

--attaining compliance with the federal Prison Rape Elimination Act (PREA).

--the "Lincoln Pines" juvenile detention facility recently became operational. Lincoln Pines is located near Ruidoso and the operational capacity is 24 beds;

--the Albuquerque Boy's Center and Albuquerque Girl's Center have been converted to reintegration centers that will be used as "step down" facilities for youth who have been housed in secure detention facilities;

--youth who attend school in CYFD facilities will no longer receive suspensions, as this is often the outcome they seek;

--JJS has hired a new training director and will now conduct all training in-house. The contract with Missouri Youth Services will not be renewed; and

--JJS will be reviewing potential modifications to the Cambiar model, to ensure that it takes into account unique cultural aspects of New Mexico.

**Report from the Sex Offender Management Board.** Tony Ortiz, Acting Chair, briefed Commission members. The SOMB recently reviewed the federal SMART Office's response letter regarding state compliance with federal SORNA criteria. Essentially, New Mexico has done enough in 13 of the 15 categories that are reviewed by the SMART Office:

- I. **Immediate Transfer of Information:** New Mexico meets the SORNA requirements of this section.
- II. **Offenses that Must Be Included in the Registry:** New Mexico does not meet the SORNA requirements of this section.
- III. **Tiering of Offenses:** The SMART Office considered the deviations in New Mexico statutes and policies from SORNA requirements and determined that the departures do not substantially disserve the purposes of this requirement.

- IV. **Required Registration Information:** The SMART Office considered the deviations in New Mexico statutes and policies from SORNA requirements and determined that the departures do not substantially disserve the purposes of this requirement.
- V. **Where Registration is Required:** The SMART Office considered the deviations in New Mexico statutes and policies from SORNA requirements and determined that the departures do not substantially disserve the purposes of this requirement.
- VI. **Initial Registration: Timing and Notice:** The SMART Office considered the deviations in New Mexico statutes and policies from SORNA requirements and determined that the departures do not substantially disserve the purposes of this requirement.
- VII. **Initial Registration: Retroactive Class of Offenders:** The SMART Office considered the deviations in New Mexico statutes and policies from SORNA requirements and determined that the departures do not substantially disserve the purposes of this requirement.
- VIII. **Keeping the Registration Current:** The SMART Office considered the deviations in New Mexico statutes and policies from SORNA requirements and determined that the departures do not substantially disserve the purposes of this requirement.
- IX. **Verification/Appearance Requirements:** The SMART Office considered the deviations in New Mexico statutes and policies from SORNA requirements and determined that the departures do not substantially disserve the purposes of this requirement.
- X. **Registry Website Requirements:** New Mexico does not meet the SORNA requirements of this section.
- XI. **Community Notification:** New Mexico meets the SORNA requirements of this section.
- XII. **Failure to Register as a Sex Offender: State Penalty:** New Mexico meets the SORNA requirements of this section.
- XIII. **When a Sex Offender Fails to Appear for Registration:** New Mexico meets the SORNA requirements of this section.
- XIV. **When a Jurisdiction has Information that a Sex Offender May have Absconded:** New Mexico meets the SORNA requirements of this section.

**XV. Tribes and Pueblos in New Mexico:** The state and the tribes and pueblos are working on their information sharing issues. When an offender registers with the state and then relocates to tribal or pueblo lands, the NM Department of Public Safety (DPS) forwards the offender's information to the local sheriff and the tribe or pueblo. Once the offender registers with the tribe or pueblo (where the tribe or pueblo is operating its own registry), DPS retains a record of the registration for its files. At present, the following tribes and pueblos in New Mexico actively register sex offenders: Pueblo of Acoma, Pueblo of Isleta, Pueblo of Jemez, Jicarilla Apache Nation, Pueblo of Laguna, Mescalero Apache Tribe, Navajo Nation, Ohkay Owingeh, and Pueblo of Santa Ana.

Finally, the SMART Office written response noted that New Mexico will have to address additional issues (See Sections II and X, above) in order to achieve substantial compliance with federal SORNA requirements.

**Report from the Justice Information Sharing Council.** Mike Hall, Chair, briefed Commission members. JISC members have been focused on a host of issues regarding the Consolidated Offender Query: antiquated software, security vulnerabilities and additional capacity. Also, there have been discussions regarding whether the Department of Public Safety is willing and able to become the new administrative home for the COQ. Information has been collected regarding one-time and recurring expenses to update and build capacity for the COQ.

**Next meeting.** The next Sentencing Commission meeting will be held on April 15, 2014.

**Adjourn.** The meeting adjourned at 12:10 p.m.