

NEW MEXICO SENTENCING COMMISSION

May 13, 2015 MINUTES

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

Commission Members Present	Commission Members Absent	Others	NMSC Staff
Marron Lee, Chair	Hon. Michael Vigil, (COA)	Theresa Rogers, LFC	Tony Ortiz
Bob Cleavall, Vice Chair	Hanna Skandera, PED Secretary	Yael Cannon, UNM Law School	Linda Freeman
John Wheeler, (for AG Hector Balderas)	Amy Orlando		Amir Chapel
Martin Suazo	Max Minzner		
Michael Lilley			
Sheriff Louis Burkhard	Hon. Joel Garnett		
David Schmidt	Hon Jerry Ritter		
Clint Wellborn, DA	Monique Jacobson, CYFD Secretary		
Cindy Aragon	Jorge Alvarado, Chief Public Defender		
Frank Zubia	Arthur Pepin		
Gregg Marcantel, NMCD Secretary			
Regina Chacon, (for Greg Fouratt, DPS Secretary)			

Welcome. Marron Lee, Chair, called the meeting to order at 10:00 a.m. She welcomed Commission members, staff, and guests.

Approval of minutes. The minutes for the December 9, 2014 meeting were approved by consensus.

NMSC Staff Report.

Summary of 2015 legislative session. Governor Susana Martinez took the following actions on justice-related legislation that reached her desk:

-HB 101, as amended, revising elements for the criminal offense of sexual exploitation of children by prostitution (**Laws 2015, Chapter 13**);

-HJC Substitute for HB 142, as amended, creating a new criminal offense known as unauthorized distribution of sensitive images (**Laws 2015, Chapter 42**);

-HB 332, as amended, reducing terms of supervised probation for good behavior (**Vetoed**);

-HB 404, providing that the provisions of the Ignition Interlock Licensing Act shall not apply to a person with a single DWI conviction in another state who successfully completed all conditions of the person's sentence (**Pocket vetoed**);

-HB 560, as amended, revising seizure and forfeitures procedures pursuant to the Forfeiture Act and providing that proceeds from the sale of forfeited property and currency be deposited in the general fund (**Laws 2015, Chapter 152**);

-SB 83, making technical corrections to the Criminal Sentencing Act (**Laws 2015, Chapter 12**);

-Senate Judiciary Committee Substitute for SB 42, as amended, regarding provision of medicaid enrollment for incarcerated persons (**Laws 2015, Chapter 127**);

-Senate Floor Substitute for SB 95, reorganizing the Department of Public Safety (**Laws 2015, Chapter 3**);

-SB 358, as amended, enacting the Halfway House and Transitional Residential Facility Act (**Pocket vetoed**);

-Senate Public Affairs Committee Substitute for SB 433, as amended, prohibiting

the sale of e-cigarettes to minors (**Laws 2015, Chapter 98**); and

-SB 510, as amended, creating a crime victims reparation fee and allowing the NM Crime Victims Reparation Commission to extend the time for filing a claim upon good cause shown (**Laws 2015, Chapter 10**).

-Update on NMSC research projects. Work continues on recidivism studies for the Peanut Butter & Jelly “Fathers Building Futures” program, programming offered by Cross Roads for Women, and the Men’s and Women’s Recovery Academies. These studies will be completed by mid-September.

Staff is working on the annual prison population forecast report for the NM Corrections Department. This will be the sixth forecast prepared by NMSC staff. The report will be finalized in early July and will be distributed to policy makers in all three branches of government.

Later this year, staff will begin work on an updated length of stay analysis for adult county detention facilities. The initial report, published in 2012, has been very useful to the New Mexico Association of Counties and the Bernalillo County Public Safety Review Commission.

-FY16 operating budget. The NM Sentencing Commission’s FY16 operating budget, in the amount of \$608,200, has been submitted to the Department of Finance and Administration and the Legislative Finance Committee.

-2014 NMSC audit. Tony Ortiz briefed the committee members on the NMSC’s FY14 audit. He noted that the same firm, Moss-Adams, has been the auditor for the NM Sentencing Commission since 2006. NMSC business practices have been unchanged during that time period and the NMSC had clean audits in FY12 and FY13.

In the course of several meetings with the Moss-Adams audit team, NMSC staff repeatedly explained the unique status of the NMSC as a “hybrid” agency. The NMSC receives an annual appropriation in the General Appropriation Act (HB 2). We then enter into a contract with the University of New Mexico (UNM) for fiscal and administrative services at the university. Consequently, NMSC staff record financial transactions in both the state SHARE accounting system and the UNM BANNER accounting system.

Despite repeated efforts to explain this “hybrid” status to the auditors, the supervising auditor was unwilling to recognize our adherence to state and university policies

regarding financial transactions. There was also an unwillingness to recognize that research projects performed by the NMSC often do not adhere to fiscal years. Frequently, the work begins in one fiscal year and ends in another.

The final audit report included five findings and a recommendation that the NMSC revert \$74,097.00. After the Moss-Adams audit report was finalized and published, NMSC Commissioner Martin Suazo, Tony Ortiz and Linda Freeman met with the State Auditor and his staff to discuss the audit. At the conclusion of the meeting, Tony Ortiz was asked by the State Auditor to draft a letter that detailed concerns about the manner in which the audit was conducted. That letter (included in the Commission member's meeting files) was mailed to the State Auditor on April 17, 2015.

In closing, NMSAC staff has discussed the FY14 audit with our LFC and DFA analysts and with the Controller's Office at UNM. Corrective measures have been adopted and the NMSC's FY17 appropriation request will include a request for "non-reverting" language in HB 2.

Report from the Legislative Committee. Martin Suazo, Legislative Committee Chair, briefed the Commission members. The NMSC's Legislative Committee held six meetings during the 2015 legislative session. The committee reviewed 126 bills, memorials and resolutions. Comments were published in the NMSC's Bill Tracker and included references to court opinions, possible legal issues, potential implementation issues, data points and relevant research. The Bill Tracker was distributed to policy makers and their staff in all three branches of government.

Report from the Juvenile Committee. Bob Cleavall, Juvenile Committee Chair, briefed the Commission members. During a Juvenile Committee meeting held on April 28th, Jorge Alvarado briefed committee members on a funding shortfall (\$900,000) in the current fiscal year faced by the Law Offices of the Public Defender (LOPD). The budget deficit has necessitated a hiring freeze by the department and the LOPD will meet with the State Board of Finance to request a loan to address the shortfall. Mr. Alvarado advised the committee members that for the remainder of FY 2015, the LOPD may suspend the assignment of cases involving out-of-custody juvenile offenders to contract attorneys.

Next, Amir Chapel, Professor Yael Cannon and Dr. George Davis briefed the committee on a research study that is a collaborative effort between CYFD, the UNM School of Law, the UNM School of Medicine and the NM Sentencing Commission. The purpose of the study is to enhance understanding of the incarcerated juvenile justice population in order to better meet their needs. The study will focus on the following questions: 1) What sorts of victimization have New Mexico's juvenile-justice involved adolescents

experienced?; 2) What are the needs of this population?; 3) In what ways do incarcerated juveniles differ from the general population with respect to victimization? Sentencing Commission staff, working with the other entities, plans to publish the study later this year.

Next, CYFD Secretary Monique Jacobson briefed the committee on her vision for the department. CYFD's core mission will be to improve the quality of life for children in our state, by working to minimize trauma and maximize health and happiness. The department will place a renewed emphasis on measuring performance. And in a structural change, behavioral health will no longer be a stand-alone division. It will be integrated into the operations of early childhood services, child protective services and juvenile justice services. Also, an emphasis will be placed on improving information sharing among divisions at CYFD.

Secretary Jacobson outlined five operating principles for the department:

- 1) Focus on the basics, which will include getting caseloads in line with national standards, reducing vacancy rates, and providing ongoing training for staff.
- 2) Improve prevention efforts, in an effort to avoid future tragedies.
- 3) Improve communication with law enforcement agencies, including development of a virtual desktop that will allow law enforcement agencies to access CYFD data.
- 4) Improve internal financial discipline, to avoid reversion of general fund dollars and make the best use of funds appropriated to the department. She noted that CYFD's FY 2016 operating budget is the largest in the department's history.
- 5) Improve community outreach and engagement.

Finally, the committee members developed a scope of work for the 2015 interim:

-request a briefing from the Judiciary's task force regarding expansion of Juvenile Detention Alternatives Initiatives (JDAI) throughout the state;

-work on areas of mutual interest, including legislative proposals, with CYFD;

-the Law Office of the Public Defender (LOPD) is exploring the creation of a statewide Juvenile Defense Unit that would handle serious youthful offender and youthful offender cases. The Chief Public Defender welcomes ideas and support for this initiative;

-request a briefing from the J. Paul Taylor Early Childhood Task Force, which will be reconvened by the UNM Health Sciences Center (see Senate Memorial 69) (2015); and

-later in the 2015 interim, request a briefing from CYFD and other interested parties regarding behavioral health services for youth.

Report from the Justice Information Sharing Council (JISC): Regina Chacon, JISC Chair, briefed the Commission members. During a JISC meeting held on April 21st, JISC members discussed a NMSC memorandum that detailed sentencing laws enacted during the 2015 legislative session and signed by Governor Martinez, that will require revisions to the Charge Code Table. The next version of the Charge Code Table will incorporate the revisions.

Next, JISC members received a briefing on the TraCS system and necessary changes to the Charge Code Table. The TraCS system generates electronic traffic citations that can be transmitted by a law enforcement officer to a court. The Dona Ana County Sheriffs Office is currently using TraCS. The system will soon be implemented by the Bernalillo County Sheriffs Office, the Albuquerque Police Department and the San Juan County Sheriffs Office. To facilitate the implementation of the TraCS system, the Judiciary and Administrative Office of the District Attorneys want to begin adding codes to the Charge Code Table for municipal ordinances and county ordinances.

Next, JISC members were briefed on an effort to standardize probation agreements for juvenile offenders. Currently, probation agreements vary from one judicial district to another. The variety means that terms and conditions in agreements may differ and it makes it difficult to quantify how many juveniles are detained for technical violations of probation. Policy goals include cost savings, reduction of unnecessary detention of youth, and mitigation of disproportionate minority contact with the juvenile justice system.

The federal government is sending clear signals that, in the near future, there will be financial penalties if New Mexico does not improve its reporting of criminal case dispositions. Current challenges include use (or non-use) of state tracking numbers (STN's), data sharing between justice entities, and data quality. This subject will be a regular agenda item for JISC meetings and information will be gathered on how to improve reporting of dispositions.

Report from the Sex Offender Management Board (SOMB). Tony Ortiz, Acting SOMB Chair, briefed the Commission members. During a SOMB meeting held on May 8th, NMSC staff noted that there are new members of the Sex Offender Management Board (SOMB): Attorney General Hector Balderas; Indian Affairs Secretary Kelly Zunie; Department of Health Secretary Retta Ward; and Children, Youth and Families Secretary Monique Jacobson. Staff has contacted the new members and provided them with information regarding the Sex Offender Management Board.

Also, staff has advised the Governor's Office regarding vacancies on the SOMB, including: a juvenile sex offender treatment specialist; a representative from the adult probation and parole division who has expertise in the supervision of sex offenders; a representative from the law enforcement community who has expertise regarding sex

offender community notification, registration, tracking and monitoring; and a representative who is affiliated with a civil liberties organization.

The SOMB members discussed the disposition of and issues regarding sex-offender related legislation introduced during the 2015 legislative session.

Finally, the SOMB members developed a scope of work for the 2015 interim:

- receive a briefing on the respective roles and responsibilities of county sheriffs and the Department of Public Safety concerning registration of sex offenders, including issues that arise when sex offenders fail to register;
- discuss issues raised by the NM Supreme Court in State v. Ollson, regarding units of prosecution in child pornography possession cases;
- re-visit the provisions of SB 151 (2015), regarding terms and conditions of parole for sex offenders;
- request an update from the New Mexico Corrections Department (NMCD) regarding inclusion of standards in contracts between the NMCD and individuals who provide treatment to adult sex offenders; and
- request a briefing from officials at the Otero county prison facility, which houses the majority of convicted sex offenders committed to the NMCD.

Public comment. There was no public comment.

Next meeting. The next Sentencing Commission meeting will be held on August 25, 2015, at 10:00 a.m.

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