



**Minutes of the Meeting of the
Juvenile Committee
11:00 a.m.
October 24, 2019**

**John E. Brown Juvenile Justice Center, Conference Room B
5100 Second St. NW, Albuquerque, NM**

| Committee Members Present | Committee Members Absent | Others Attending | NMSC Staff |
|--------------------------------------|------------------------------------|--------------------------------------|-------------------|
| Bob Cleavall (NMSC), Chair | Hon. Marci Beyer (DMCJA) | Robert Mitchell (AOC) | Linda Freeman |
| Cindy Aragon (State Bar) (on phone) | Sheriff Manuel Gonzales III (NMAC) | Edward Lovato (AMI) | Douglas Carver |
| Jim Cowan (for CYFD) | Angela “Spence” Pacheco (Speaker) | Daniel Bacallao (AMikids) | |
| Diana Garcia (NMDAA) | Hon. John J. Romero, Jr. | Tom Swisstack (AMikids) | |
| April Land (UNMSOL) | | Lucy River (UNMSOL) | |
| Traci Neff (NMAC) | | Denali Wilson (UNMSOL) | |
| Hon. William Parnall | | Sam Ashman (UNMSOL) | |
| Jason Rael (LOPD) | | Josh Lilley (UNMSOL) | |
| John Scheppen (for Children’s Court) | | Rep. Dayan Hochman-Vigil | |
| David Schmidt (Pro Tem) | | George Davis | |
| Hon. Marie Ward | | Ron Lucero | |
| Ron West | | Lindsey Jones (Juv. Treatment Court) | |
| | | Hon. Richard Bosson (Ret’d). | |
| | | Janet Winchester-Silbaugh | |
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I. Welcome and Introductions. Bob Cleavall, Chair, called the meeting to order at 11:10 a.m.

II. Approval of Minutes for the August 15, 2019 meeting. The minutes for the previous committee meeting were approved by consensus.

III. Staff Report.

Douglas Carver, Deputy Director of the New Mexico Sentencing Commission (NMSC), informed the committee that he had made a presentation to the Criminal Justice Reform Subcommittee, a subcommittee of the Legislature's interim Courts, Corrections, and Justice Committee (CCJ), on reforms being advanced in some states involving young adults in the criminal justice system – individuals who were in the 18 to 25 age range when they committed their crimes.

Mr. Carver also informed the committee of the Pew Charitable Trust's upcoming Length of Stay Policy Academy on juvenile justice issues.

IV. Residential Treatment for Juvenile Offenders.

Chair Cleavall informed the committee of his past experiences with AMIkids, when they housed juveniles from the Federal system. Tom Swisstack, member of the Board of Trustees, AMIkids Sandoval; Daniel Bacallao, Executive Director, AMIkids Sandoval; and Edward Lovato, Board Chair, AMIkids Sandoval then informed the committee about the operations of AMIkids Sandoval and their transition from housing Federal system juveniles to housing New Mexico juveniles.

Mr. Swisstack gave some background to the AMIkids organization and its history in New Mexico. AMIkids has been in Cuba, NM since 2011, working with the Federal Bureau of Prisons. AMIkids has been in operation for around 50 years, and presently is working in eleven states. They only recently have switched from working with the Federal Bureau of Prisons to working with the Children, Youth, and Families Department (CYFD). Mr. Swisstack said that AMIkids hopes to fill the gap caused by the closure of Desert Hills. At present their facility can handle 24 kids, but could expand to 36. AMIkids is also looking to develop wraparound services for children, day reporting, group therapy, family therapy, and education options. AMIkids is also exploring a partnership with Rio Rancho Public Schools.

Mr. Lovato gave additional background on the history of AMIkids, and noted that the organization's board has 12 members, including NMSC Commissioner and committee member Ron West.

Mr. Bacallo discussed the intake, screening, and treatment services utilized by AMIkids, including the AMIkids Personal Growth Model, which includes educational, treatment, and behavior modification elements. AMIkids has a strong vocational program, as there is a need to teach independent living to the youth at the facility. AMIkids works in conjunction with Youth Development, Inc. to help with employment and transitioning for their clients. Mr. Bacallo further noted that the children from the Federal system averaged 18 months of stay. but he expects that New Mexico children will have shorter lengths of stays. The anticipated population will be youth from 16 to 20 years old.

Mr. Lovato added during questions that the current population was nine kids, and that AMIkids Sandoval was incorporated separately in New Mexico, but was an affiliate of the larger AMIkids organization.

Members of the committee asked questions about and discussed whether AMIkids treated children with dual diagnoses, whether they used medical assisted treatment methods, how AMIkids worked with the families of the youth, how children entered the facility, what the structure and goals of the education program were, whether AMIkids utilized culturally-specific treatments, the difference between AMIkids Sandoval and the earlier experience of AMIkids at the troubled Sierra Blanca facility, the financing of education opportunities at the facility, AMIkids's incorporation status, and the status of AMIkids's contract with the Children, Youth, and Families Department.

V. Reviving the Juvenile Parole Board. As Sen. Bill O’Neill was not able to attend the meeting, it was decided to postpone this item until a future meeting.

VI. Examination of Near-Life Sentences for Juvenile Offenders. Although this possible legislation is principally being advanced by Sen. O’Neill, as Sen. O’Neill was not able to attend the meeting, Representative Dayan Hochman-Vigil presented in his stead, along with retired Supreme Court Justice Richard Bosson; Dr. George Davis; and Denali Wilson and Lucy River, students at the University of New Mexico School of Law.

Justice Bosson noted that he served on the state Supreme Court for 13 years, and before that on the Court of Appeals for eight years, but that he was not speaking for the Court or its judges and justices. He told the committee about a case that was before him in 2002 when he was on the Court of Appeals, *State v. Ira*, which has bothered him since the time he heard it. The case involved a teen who had sexually assaulted his sister and was charged with multiple sex offense felonies. He pled guilty, so the only question was his sentence. The judge in the case below noted that as he had to make a decision on the child’s fate, and as there was no consensus among the experts on the child’s amenability to rehabilitation, and due to the lack of resources in the state, he had a duty to protect society and thus gave the youth a series of stacked sentences amounting to over 90 years. The judge noted that he wished that there was the ability to see how the child was faring when the child turned 25 to see whether the sentence given was still warranted. When the Court of Appeals heard the case, they agreed that the sentence was legal, but bemoaned the fact that judges in the state were often faced with this dilemma, and they implored the Legislature to make a change in the law. The state Supreme Court, when they heard the case, essentially agreed, echoing the request of the Court of Appeals for the Legislature to examine whether there might be a reform to these statutes.

Justice Bosson noted that other states take two approaches to these issues. One is to put a cap on a juvenile’s sentence, making the juvenile parole-eligible after a certain number of years; the other is to allow the sentencing court another look at the offender, as the judge in the *Ira* case desired. Justice Bosson noted that as a former member of the judiciary, he favors the second approach, but that did not mean that approach was necessarily the best. Justice Bosson discussed that hurdles included that under our present system, children are completely out of the juvenile system at 21, though that is something that can be addressed legislatively; and that there is a debate whether such a change would be an incursion on the powers of the Parole Board or the Executive Branch, but that is mostly a conversation for lawyers to have. He concluded by stating that the need for a constructive change is not debatable.

Dr. Davis gave a presentation titled “Creating More Fair and Age-Appropriate Sentencing of Children in New Mexico” – he noted that his presentation to the committee was a scaled-down version of the presentation he gave to the joint CCJ-Legislative Health and Human Service Committee meeting earlier in October. He opened his presentation by noting situations where a teenaged brain might not make the wisest decision. Situations with adolescents that involve emotions, urgency, or friends particularly make adolescents more impulsive and emotions drive decision-making. Additionally, adolescent decision-making is particularly rewards-based, and there is greater thrill and sensation-seeking, in part because the reward circuit in the brain is overdeveloped, especially in relation to front of brain inhibitions. Much of the difference is in the timing of decisions, which can be observed with real time imaging. The consequences of this poor decision-making is reflected in the vastly higher mortality rate in this population (200% increase), homicides, suicides, risky sexual activity, drug-taking, and criminal activity. Not only are the decisions youth make not optimal, they are likely decisions that the youth might never make again, very akin to the concept in criminal law applying to adults of “heat of the moment” decisions. Dr. Davis concluded that the science of these matters is not debatable, but people have different opinions about what to do about it.

Ms. Wilson informed the committee that she had spent the last year studying juvenile sentencing and has concluded that the time had come to think about a solution. She gave an overview of recent U.S. Supreme Court jurisprudence that has affected the law in this area, especially 2012's *Miller* decision, where fundamental to the Court's reasoning was the diminished culpability of juveniles and that juveniles had greater prospects for rehabilitation. She further informed the committee that in New Mexico there were 87 individuals who have been sentenced over ten years for crimes committed as children, and 39 who have been sentenced over 30 years; 15 offenders have already served over 20 years, and the same number over 40 years. She stated that not only does the *Miller* decision and brain science argue for a solution, but that addressing these issues would comport with New Mexico's long tradition of protecting children from the harshest laws. There are now, however, 22 states who have taken the lead ahead of New Mexico on these issues – 13 of these states have created a review process like the one being contemplated by Sen. O'Neill. She concluded by noting that in the states that have promulgated reform along these lines, the bills have been bipartisan, and of the offenders who were released for demonstrating reform potential, there has been zero percent recidivism.

Ms. River noted that this idea had been presented to CCJ in October, and that there had been some press about it. Sen. O'Neill has received many emails from victims and affected family members. Sen. O'Neill has made a point of reaching out to victims groups, and wanted any resulting bill to be a bipartisan initiative. She noted that one concept in the bill was that parole hearings might be mandated after a certain number of years. Representative Hochman-Vigil added that the thought at present was that offenders would be eligible for a review hearing after they had reached 30 years of age. Ms. River also noted that this effort might be in legislation or included as a concept as part of a task force to address juvenile justice issues more broadly.

Members of the committee asked about and discussed outreach to victims groups; more specifics about the legislation; plans for introduction of a bill; whether this was more of a juvenile justice issue or an adult issue; the work that might be involved in preparing for the contemplated review hearings, especially by the public defender; funding for these proposals; the need for services in the state for those for whom release might be contemplated; whether administrative review or judicial review was the better option; and the merits of a memorial to address such matters.

At the conclusion of the presentation, the following motion was approved by the committee with no dissenting votes: That the New Mexico Sentencing Commission Juvenile Committee be responsible for starting an effort to address the legislative effort at revising sentencing for serious juvenile offenders and youthful offenders subject to adult sentences, and determining whether the best approach is judicial or administrative review.

VII. Next meeting. The committee scheduled its next meeting for December 12, 2019; that meeting will cover certain legislative initiatives surrounding juvenile parole.

VIII. Adjourn. The meeting adjourned at 1:00 p.m.