

August 12, 2015      SOMB MINUTES

PERA Building  
 5<sup>th</sup> Floor, CYFD Conference Room  
 1120 Paseo De Peralta  
 Santa Fe, NM

<b>SOMB Members Present</b>	<b>SOMB Members Absent</b>	<b>Others</b>	<b>Staff</b>
Tony Ortiz, Acting Chair	Honorable Abigail Aragon	Glenn Metzger, Bernalillo County Sheriff's Office	Amir Chapel
Regina Chacon, (for Secretary Greg Fouratt, DPS)	Secretary Retta Ward, DOH	Brock Harvell, Dona Ana County Sheriff's Office	
Kim Chavez-Cook (for Chief Public Defender Jorge Alvarado)	Marron Lee, NMSC Chair	Jessica Morales, DPS	
Clara Moran (for Attorney General Hector Balderas)	Secretary Gregg Marcantel, NMCD	Teresa Hernandez, DPS	
Secretary Kelly Zunie, Indian Affairs	Secretary Hanna Skandera, PED	Henry Valdez, Director, AODA	
Chaplain Jose Villegas	Dr. Troy Rogers	Gary Gold, San Miguel County Sheriff	
Daniel Barela, Adult Probation and Parole	Secretary Monique Jacobson, CYFD	Andrea Herrera-Gabaldon, San Miguel County	
District Attorney Angela "Spence" Pacheco (rep. Rick Tedrow)	Donna Richmond	Rick Dean	

**Welcome.** Tony Ortiz, Acting Chair, called the meeting to order at 1:35 p.m. He welcomed SOMB members and guests.

**Approval of minutes.** The minutes for the May 8, 2015 meeting were approved by consensus.

**Staff report.** On July 27<sup>th</sup>, Tony Ortiz met with Lou C de Baca and Lori McPherson of the federal Sex Offender Sentencing, Monitoring, Apprehending, Registering and Tracking (SMART) Office. Mr. C de Baca was recently appointed as the Director of the SMART Office and was touring New Mexico to meet with officials who work on sex offender issues. Ms. McPherson is a Senior Policy Advisor for the SMART Office and has worked with officials in New Mexico for several years. Mr. C de Baca advised that they would also schedule meetings with the New Mexico Department of Public Safety, the New Mexico Attorney General's Office and several tribes and pueblos in New Mexico.

**Roles and responsibilities of County Sheriffs and the Department of Public Safety concerning registration of sex offenders.** Detective Glenn Metzger, Bernalillo County Sheriffs Office, and Regina Chacon, Department of Public Safety (DPS). led the discussion. Teresa Hernandez (DPS) also briefed the members. Issues discussed

included the following:

- use of the Offender Watch web site to monitor sex offenders;
- issues raised when an offender absconds, including the issue of “good years” versus “actual years”;
- the reluctance of some prosecutors to file charges when an offender absconds;
- differing registration requirements for offenders, based upon the enactment of amendments to the Sex Offender Registration and Notification Act (SORNA);
- what it means for an offender to establish a residence; and
- provision of notice regarding registration requirements.

During the ensuing discussion, the following points were made:

- it is vitally important for law enforcement agencies to upload information in a timely manner to the Offender Watch site;
- regular communication between law enforcement and prosecutors can yield more effective responses when offenders abscond;
- the Judiciary’s Uniform Jury Instructions Committee is working on a chart that illustrates differing registration requirements pursuant to SORNA. When the chart has been approved by the Supreme Court for public distribution, it will be transmitted to SOMB members;
- the state SORNA includes clear language that describes what it means to establish a residence; and
- the Department of Public Safety sends letters regarding registration requirements to offenders, the offender’s lawyer, and law enforcement agencies.

**Update from the New Mexico Corrections Department (NMCD) regarding inclusion of standards in contracts between NMCD and individuals who provide treatment to adult sex offenders.** Daniel Barela, Adult Probation and Parole, New Mexico Corrections Department (NMCD), briefed the members. He noted that the NMCD has opted out of the Behavioral Health Collaborative (BHC). The 12% administrative fee formerly paid to the BHC will now be allocated for expanded treatment services, including treatment services for sex offenders. In February of this year, requests for proposal (RFP’s) were published for all treatment services. The RFP’s for treatment services for sex offenders include an expanded scope of work that addresses standards for treatment providers. The RFP’s address treatment provided at in-patient programs, out-patient programs and transitional living settings. During the ensuing discussion, Chaplain Villegas indicated that he will share the expanded scope of work with the New Mexico Counseling and Therapy Practice Board.

**Discussion regarding “units of prosecution” in possession of child pornography cases.** Clara Moran, Kim Chavez-Cook, Angela “Spence Pacheco and Henry Varela led a discussion regarding “units of prosecution” in possession of child pornography cases. As discussed in previous SOMB meetings, the NM Supreme Court in *State v. Ollson/Ballard* 324 P. 3d 1230 (2014) held that the state statute, in the possession context, does not clearly define how many crimes a person commits when they possess multiple images of child pornography. Consequently, single charges are filed when an offender possesses multiple images of pornography. During the 2015 legislative session, a committee substitute for House Bills 251 and 440 sought to amend the child pornography statute. However, the bill did not pass both chambers.

Next, there was a discussion regarding criteria that may be considered in future discussions regarding revisions to the state statute, including:

- the age of the victim;
- the nature of the images;
- instances when there are multiple victims; and
- sentencing enhancements, including imposition of mandatory minimum sentences.

In closing, there was general consensus that technology has outpaced the law in this realm and that amendments to the current law are urgently needed.

**Public comment.** There was no public comment.

**Next meeting.** The next SOMB meeting will be held on November 12, 2015, at 1.30 p.m.

**Adjourn.** The meeting adjourned at 3.35 p.m.

