

April 7, 2016 SOMB MINUTES

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

SOMB Members Present	SOMB Members Absent	Others	Staff
Tony Ortiz, Acting Chair	Honorable Abigail Aragon	Regina Chacon	Amir Chapel
Amy Orlando, for the Secretary of DPS	Secretary of DOH	Glenn Metzger	
Kim Chavez-Cook, for the Chief Public Defender	Marron Lee, NMSC Chair	Douglas Carver	
Clara Moran, for Attorney General Hector Balderas	Secretary Gregg Marcantel, NMCD	Rick Dean	
Dr. Troy Rogers	Secretary Hanna Skandera, PED		
Chaplain Jose Villegas	Suzette Shijie, for Secretary Kelly Zunie, Indian Affairs		
	Helen Quintana, for Secretary Monique Jacobson, CYFD		
	Rick Tedrow, District Attorneys Association		
	Daniel Barela, Adult Probation and Parole		
	Donna Richmond		

Welcome. Tony Ortiz, Acting Chair, called the meeting to order at 1:30 p.m. He welcomed SOMB members and guests.

Approval of minutes. The minutes for the November 12, 2015 meeting were approved by consensus.

Staff report. No staff report at this time.

Discussion regarding the disposition of and ongoing issues concerning Senate Judiciary Committee Substitute for Senate Public Affairs Committee Substitute for House Bill 65, as amended. The SOMB members summarized the legislative path for HB 65, which received considerable attention during the 2016 session. The discussion included the following topics:

- the Attorney General’s Office would have preferred a definition for “units of prosecution”, but is supportive of the increased sentence lengths provided in HB 65 for possession, distribution or manufacturing of child pornography;
- it was noted that possession of child pornography now has a longer basic

sentence than some offenses which involve sexual contact of a minor. The amendments in HB 65 to Section 31-18-15 NMSA 1978 created a special fourth degree felony that has a basic sentence length of ten years. The typical sentence length for a fourth degree felony is 18 months;

- HB 65 did not address concerns raised by the state Supreme Court in *State v. Ollson* regarding outdated language in state statutes;

- the “sexting” amendment placed upon the bill in the Senate Finance Committee is problematic, since children engaged in such activity could still be prosecuted pursuant to federal law. Several members noted that “sexting” cases involving children in New Mexico are typically handled informally by local law enforcement agencies and present an opportunity for law enforcement to intervene and educate the child and their family. That intervention point has now been lost. Also, the “sexting” amendment did not address distribution of child pornography;

- it would be helpful for schools throughout the state to be aware of the “sexting” amendment and the above-mentioned issues;

- the inclusion of the “sexting” language in HB 65 may imperil ongoing federal funds that are received by the Attorney General’s Office and distributed to law enforcement agencies throughout the state; and

- the constant evolution of technology has changed the way that offenders possess pornography.

Discussion regarding *State v. Sena* (NM Court of Appeals) (March 2016), concerning units of prosecution for distribution of child pornography.

The analysis by the NM Court Appeals in *State v. Sena* is very similar to and predicated upon the state Supreme Court’s analysis in *State v. Ollson*. The Court of Appeals in *Sena* “requests that the Legislature consider clarification and specificity regarding the intended unit of prosecution for possession of child pornography and the distribution of child pornography, especially in light of rapidly advancing technology and changes in society regarding the use of the internet.” (*State v. Sena*) (pp. 13-14).

Development of work plan for the 2016 interim. The following topics were raised as possible work plan items for the 2016 interim:

- review and discussion of any proposed revisions to the state Sex Offender Registration and Notification Act;

- briefing from the Adult Parole Board concerning the use of risk/needs assessments during parole hearings for convicted sex offenders;

- need for additional half-way houses for sex offenders who are discharged from prison;

- briefing from the NM Corrections Department regarding ongoing inclusion of standards in contracts between the department and individuals who provide treatment services to adult sex offenders;

- continue efforts to find an administrative home for proposed standards for individuals who provide treatment services to adult sex offenders; and

- review and discuss ongoing issues with the Substitute for HB 65 (2016), regarding possession and distribution of child pornography.

Public comment. Glenn Metzger inquired whether the Uniform Jury Instructions for provisions of the state Sex Offender Registration and Notification Act (SORNA) had been finalized. Those instructions are in the public comment stage and when they are finalized the instructions will be transmitted to SOMB members.

Douglas Carver, staff attorney for the interim legislative Courts, Corrections and Justice (CCJ) committee, noted that he would like to organize a briefing by the SOMB before that legislative committee during the 2016 interim.

Next meeting. The next SOMB meeting will be held in July 2016.

Adjourn. The meeting adjourned at 3.00 p.m.

