

# NEW MEXICO SENTENCING COMMISSION

December 9, 2015 MINUTES

Nusenda Credit Union  
 4100 Pan American Highway  
 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	Cindy Aragon	Jim Brewster, NMCD	Tony Ortiz
Bob Cleavall, Vice Chair (also designee for Dave Schmidt)	PED Sec. Hanna Skandera	Douglas Carver, LCS	Linda Freeman
Jorge Alvarado, Chief Public Defender	Artie Pepin	Jason Rael, LOPD	Amir Chapel
Hon. Michael Vigil, (COA)	Hon. Jerry Ritter		Amanda Armstrong
John Wheeler, (for AG Hector Balderas)	Frank Zubia		
Jennifer Saveedra, (for CYFD Secretary Monique Jacobson)	Hon. Joel Garnett		
Tasia Young, (for Sheriff Louis Burkhard)	Clint Wellborn		
Jim White	Dave Sidhu		
Gail Armstrong	Martin Suazo		
Regina Chacon, (for Greg Fouratt, DPS Secretary) (also designee for Amy Orlando)			
Gregg Marcantel, NMCD Secretary			
Mark Donatelli (designee for Michael Lilley)			

**Welcome.** Marron Lee, Chair, welcomed members and guests to the meeting. She asked members, guests and staff to introduce themselves. She noted that the following individuals are serving as designees today: Regina Chacon is the designee for DPS Secretary Gregg Fouratt and Amy Orlando; and Mark Donatelli is the designee for Michael Lilley.

**Approval of minutes.** The minutes for the August 25, 2015 meeting were approved by consensus.

**Staff report:**

**-FY2015 audit.** An exit interview for the FY 2015 audit has been held and there were two small findings regarding accounting for revenue generated pursuant to contracts with other agencies and entities. NMSC staff has brought these issues to the attention of the Department of Finance and Administration in previous years and will continue to work on a satisfactory solution. There was no reversion of agency funds at the end of FY 2015.

**-Update on FY 2017 appropriation request.** The FY 2017 appropriation request for the NM Sentencing Commission will be flat, in the amount of \$608,200. Also, the NMSC's request that non-reverting language be included for the agency appropriation in the General Appropriation Act was approved by the Legislative Finance Committee.

**-Financial disclosure forms.** NMSC members appointed by the Governor were reminded to submit their financial disclosure forms to the Secretary of State by the end of this calendar year.

**-NMSC research projects.** On September 22<sup>nd</sup>, Linda Freeman presented several research studies to the interim legislative Courts, Corrections and Justice (CCJ) Committee. The studies address the following programs: Crossroads for Women and Maya's Place; the Peanut Butter and Jelly Father's Building Futures Program; and the Men's and Women's Recovery Academies. During the presentation to the CCJ Committee, Ms. Freeman also briefed them on an article she published regarding definitions for recidivism and how to use recidivism as a metric for measuring program effectiveness.

NMSC staff has completed its statutorily assigned work pursuant to the County Detention Facility Reimbursement Act.

Work continues on the study concerning adverse childhood experiences and the relationship between those experiences and contacts with the juvenile justice system. The goal is to complete this study in January 2016.

Finally, NMSC staff met recently with managers for the NM Association of Counties and work will begin shortly on a third report regarding length of stay in county detention facilities.

**Discussion of criminal and juvenile justice bills likely to be introduced during the 2016 legislative session.** Commission members reviewed and discussed the following measures:

- a proposed constitutional amendment to reform bail processes in New Mexico;
- a request for an additional district judge in the 5<sup>th</sup> Judicial District;
- a proposal that would authorize a civil disposition for certain criminal offenses;
- increased sentences for battery on a CYFD worker;
- a proposal to allow for the tolling of time when a juvenile absconds from supervised release and a warrant has been issued;
- increased penalties for child abuse;
- mandatory removal of children from an emergency home placement if all adults in the home do not submit to a criminal background check;
- provision of penalties for the intentional sending of any pictures of intimate body parts to a child;
- provision of authority to local governments to enact a curfew ordinance;
- provision of individual counts for each separate instance of sexual exploitation of children;
- a measure to expressly authorize pension forfeiture when government officials commit fraud; and
- a proposal to bring New Mexico law into alignment with federal law regarding Medicaid fraud.

The NM Association of Counties will continue to work on restoration of funding for the County Detention Facility Reimbursement Act. The amount of money previously allocated to that purpose has been reduced by nearly half.

The NM Corrections Department will focus its efforts on improving compensation for staff and addressing large vacancy rates for correctional officers and field staff. Also, the NMCD continues to work on a plan to remove female inmates from the Women's Correctional facility in Grants, NM.

Finally, NMSC staff is working on a simulation model to determine the impact of proposed "3-strikes" bills on the NM Corrections Department. Rep. Bill Rehm and Rep. Paul Pacheco have both asked for such an analysis.

**Report from the Legislative Committee.** Tony Ortiz briefed the Commission members on behalf of Martin Suazo, Legislative Committee Chair. The NMSC's Legislative Committee will hold three meetings during the 2016 legislative session: January 26<sup>th</sup>, February 2<sup>nd</sup> and February 9<sup>th</sup>. All meetings will begin at 10.00 a.m. and will be held in the conference room for the Administrative Office of the Courts, in Santa Fe. The roster for the Legislative Committee includes the following members or their designees: Martin Suazo, Chair; Marron Lee, NMSC Chair; Jorge Alvarado; Secretary Monique Jacobson; Secretary Greg Fouratt; Secretary Gregg Marcantel; Bob Cleavall; AG Hector Balderas; Amy Orlando; Dave Sidhu; Clint Wellborn; Arthur Pepin; Judge Michael Vigil; Frank Zubia and Jim White. During Legislative Committee meetings, staff will summarize justice-related bills and the members will review and discuss the bills. Comments, relevant research and data points will then be published in the NMSC Bill Tracker and the bill tracker will be distributed to policy makers during the session.

**Report from the Justice Information Sharing Council.** Regina Chacon, JISC Chair, briefed the Commission members. During the upcoming legislative session, there will be an effort to acquire funding so that the Department of Public Safety (DPS) can prepare criminal history reports for the use of the Judiciary. DPS has included needed funding for this task in its FY 2017 appropriation request. Information in the criminal history reports would be provided to judges for bond determinations and sentencing decisions. The Consolidated Offender Query will be one of the data bases used to prepare the criminal history reports. It was also noted that the timely provision of comprehensive criminal history reports to the Judiciary will be an integral element of the proposed constitutional amendment regarding bail reform.

The JISC continues to work on improving the provision of criminal case dispositions to the Department of Public Safety. Other states face the same challenges as New Mexico with regard to reporting of criminal case dispositions and they report to the federal government at or near the same rate as New Mexico. New Mexico is now positioned to apply for federal NICS Act Record Improvement Program (NARIP) Awards and will do so in the future. Finally, Regina Chacon reported that information technology staff at DPS are analyzing methods to best use criminal case disposition information provided to DPS by the Administrative Office of the District Attorneys,

**Report from the Juvenile Committee.** Bob Cleavall, Juvenile Committee Chair, briefed the Commission members. He summarized a briefing that the Juvenile Committee received from CYFD Secretary Monique Jacobson, regarding the temporarily suspension of sports programs at the Youth Diagnostic and Detention Center (YDDC) due to an escape by two YDDC residents during transport to an off-site sporting event. CYFD has reviewed and revised policies regarding sports programs at YDDC and the basketball and wrestling teams have resumed competition. Currently, all basketball games and wrestling matches are held at YDDC. Next year, the department will assess the possibility of travel to off-site games and matches. Girls will have an opportunity to participate in the sports programs and the department is also looking into the creation of a debate team. Chairman Cleavall also reported that CYFD is currently working on a county-by-county assessment of available services, including the accessibility of existing services.

San Juan county was the first county selected to go through a JDAI system assessment. Data and information gleaned from interviews conducted during the assessment were published and the findings included the following: there is an immediate need for a Data Committee to measure outcomes in the San Juan county juvenile justice system; it is apparent that Native American youth are over-represented in the San Juan county juvenile justice system; there must be ongoing efforts to engage with the Navajo Nation on juvenile justice issues and procedures in San Juan county; and there is a need to educate judges and other criminal justice partners in San Juan county on the use of risk assessment instruments when youth are detained by law enforcement.

Finally, Chairman Cleavall reported that the Juvenile Committee discussed juvenile justice-related legislation likely to be introduced during the upcoming session, including: increased sentences for battery on a CYFD worker; allowing for the tolling of time when a juvenile absconds from supervised release and a warrant has been issued; increased penalties for child abuse; mandatory removal of children from an emergency home placement if all adults in the home do not submit to a criminal background check; provision of penalties for the intentional sending of any pictures of intimate body parts to a child; provision of individual counts for each separate instance of sexual exploitation of children; and provision of authority to local governments to enact a curfew ordinance.

**Report from the Sex Offender Management Board.** Tony Ortiz, Acting Chair for the SOMB, briefed the Commission members.

NMSC staff visited the Otero County Prison Facility (OCPF) on October 30, 2015. NMSC staff, along with members and staff for the interim legislative Courts, Corrections and Justice Committee, toured the prison facility on that date. The OCPF has an operational capacity for 1,420 inmates and it is a maximum security level facility. There

is a mix of state and federal inmates housed at the OCPF, including: New Mexico state inmates, Arizona state inmates, and federal inmates under the jurisdiction of the Bureau of Prisons, Marshall's Service and a few military prisoners. On October 30<sup>th</sup>, there were 536 New Mexico state inmates. The majority of those inmates are convicted sex offenders and there is a small number of New Mexico inmates who are former law enforcement officers. The OCPF is accredited by the American Corrections Association and is also accredited pursuant to the provisions of the federal Prison Rape Elimination Act. Tala Ibrahim, Lead Therapist for the Sex Offender Treatment Program (STOP) at the Otero county facility, attended the SOMB meeting in November. She supervises five counselors who all possess masters-level degrees. All continuing education credits for staff are provided in-house. The STOP uses a curriculum developed by the Medlin Institute. It is an evidence-based, cognitive behavioral therapy. The focus of the program is to help offenders take ownership of their behavior, which is essential to healing. STOP uses a risk instrument to assess offenders. Participants in STOP have been convicted of a sexual offense and are within 5 years of their discharge date. Ms. Ibrahim noted that she was familiar with a NM Sentencing Commission report on recidivism rates for sex offenders. She also indicated her desire to improve data collection and analysis regarding offenders who graduate from STOP.

Finally, there were ongoing discussions regarding *State v. Ollson/Ballard* 324 P. 3d 1230 (2014), in which the state Supreme Court held that the state statute 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. 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.

**Public comment.** No public comment.

**Schedule next meeting.** The next meeting will be held on April 27, 2016, at 10.00 a.m.

**Adjourn.** The meeting adjourned at 12.10 p.m.