



New Mexico Sentencing Commission

Hot Topics

- If the inmate population continues to increase as projected by the New Mexico Corrections Department, the state will need an additional 600 prison beds every three years.
- From 1998 to 2005, the average daily population in county detention facilities increased by 47.8%.
- Probation and parole officers do not receive competitive salaries and their caseloads exceed national standards by 50%.
- The New Mexico Supreme Court Criminal Justice Task Force, concerned about caseloads carried by public defenders, is developing workload standards in the area of indigent criminal defense.
- New Mexico currently does not have a secure, residential treatment program for female juvenile offenders. Consequently, girls with psychiatric issues are treated out-of-state or are committed to facilities that cannot adequately address their needs.
- The Sex Offender Treatment program is a 24-bed facility dedicated exclusively to sex offender treatment. Due to funding issues, only 14 of those 24 beds are currently being used.

New Mexico Sentencing Commission Data Report: *An Overview of the Juvenile Justice And Criminal Justice Systems*

As agency leaders and government policy makers, we tend to look at New Mexico juvenile and criminal justice agencies as stand-alone entities.

However, when looking at the whole of our justice system, we see how changes in any one part of the system (for example, increased DWI arrests) can cause backlogs in others areas of the system (such as increased caseloads for courts, district attorneys or public defenders). Every such increase also impacts the prison and jail populations (at considerable cost to the state and counties) and the load on probation and parole.

The New Mexico Sentencing Commission was created to assist agency leaders and policy makers in looking at juvenile and criminal justice issues from a multi-agency perspective. This statistical and narrative overview of the New Mexico juvenile and criminal justice systems is a key component of the commission's core mission.

Much of the data in this report was obtained from the state agencies. Annual reports published by agencies were used when possible. We have used data from FY2004 because that is the last complete year for which summary information was available in time to write and publish this report.

Budget and fiscal information for this report was taken directly from the General Appropriations Act of 2003, also known as House Bill 2, which contained nearly all agency appropriations for the 2004 fiscal year.

The Price Tag

The figures set forth below for state agencies are for FY 2004. The figures reflect the base amounts appropriated to the agencies in the 2003 General Appropriations Act and do not reflect other funding sources, such as special appropriations or federal grants.

These figures do not include costs for juvenile detention facilities administered by local governments, local law enforcement agencies or municipal courts.

These figures do not include budget information for the following counties: Chaves, Los Alamos, Santa Fe, Sierra, Torrance and Valencia counties.



Agency	General Appropriations
Juvenile Justice	\$ 55.7 million
Dept. Public Safety	\$ 97 million
Courts	\$ 112 million
District Attorney	\$ 45.1 million
Public Defender	\$ 29.5 million
County Jails	\$ 113.3 million
Corrections, includes Probation & Parole	\$ 221.1 million
Total	\$ 673.7 million

ACKNOWLEDGEMENT

The New Mexico Sentencing Commission would like to acknowledge the state agencies that provided us with assistance and helped us obtain information used to produce this report:

- * Administrative Office of the Courts
- * Administrative Office of the District Attorneys
- * Children, Youth and Families Department
- * NM Corrections Department
- * Public Defender Department
- * Department of Public Safety
- * NM Parole Board

The Commission also thanks the following members of the New Mexico Sentencing Commission staff who researched, wrote and produced this report:

Randall Cherry
Linda Freeman
Julie Frenkle
Nancy Gettings
Paul Guerin
Mike Hall
LaDonna LaRan
Meghan Maes
Chris Miller
Tony Ortiz
Nalani Quinn

ABOUT THE COMMISSION

The New Mexico Sentencing Commission serves as a criminal and juvenile justice policy resource to the State of New Mexico. Its mission is to provide information, analysis, recommendations, and assistance from a coordinated cross-agency perspective to the three branches of government and interested citizens so that they have the resources they need to make policy decisions that benefit the criminal and juvenile justice systems. The Commission is made up of members from diverse parts of the criminal justice system, including members of the Executive and Judicial branches, representatives of lawmakers, law enforcement officials, criminal defense attorneys, and members of citizens' interest groups.

New Mexico Sentencing Commission

2808 Central Ave. SE
Albuquerque, NM 87106

Web Site: <http://www.nmsc.state.nm.us>

E-mail: nmsc@unm.edu

Office: (505) 277-3494

Fax: (505) 277-4215

Toll Free: 1-888-466-2552



New Mexico Sentencing Commission

Briefing Note

Juvenile Justice: A Profile of the New Mexico Juvenile Justice System

Highlights

- The Children, Youth and Families Department is making a concerted effort to treat youth in community-based programs and reduce the number of youth referred to secure detention facilities.
- In FY04, almost 28,000 referrals were received by juvenile probation and parole offices. The ensuing dispositions included 15 juveniles who received adult sanctions and 419 commitments to secure, juvenile detention facilities.
- An alternative to detention is a justice model known as restorative justice, which focuses on repairing the harm associated with a crime or act of delinquency. The Children, Youth and Families Department is developing restorative justice pilot projects in Ruidoso, Roswell, Silver City, Portales and Albuquerque.
- New Mexico currently does not have a secure, residential treatment program for girls with psychiatric issues. Several groups have pledged their support for the development of a program that meets the unique needs of female juvenile offenders.
- The state might want to consider an increased level of compensation for Juvenile Parole Board members, such as allowing per diem for time spent reviewing files in preparation for hearings.

Background

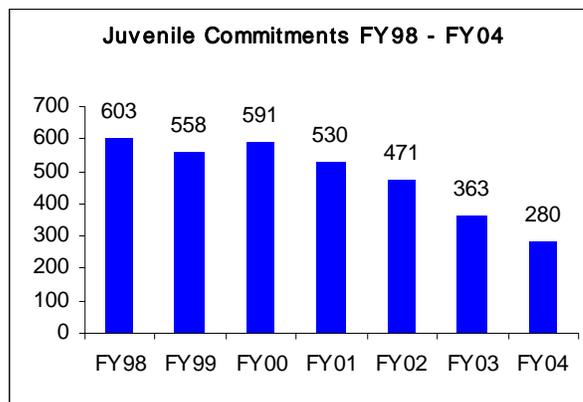
The Children, Youth and Families Department offers a wide range of services to youth and families throughout New Mexico. Included in that mix are services provided to children who come into contact with the justice system. The Juvenile Justice Services Division of the department “.....provides rehabilitative services to youth committed to the department, including but not limited to medical, educational, mental health and other services.” (See 2003 General Appropriation Act) As noted in a recent report published by the department, “The Children, Youth and Families Department believes that children and families should receive services that are provided in the least restrictive setting and most normative environment and are integrated.....with other child-serving agencies and which use peers, family and natural supports.” (See Children, Youth and Families Department Report for Town Hall Meeting, January 7, 2005)

The majority of juveniles who come into contact with the juvenile justice system are dealt with in an informal manner. Others are referred to community-based services, probation or commitment to a secure treatment facility, a secure detention facility, a reintegration center or a community residential

facility. A very small number of juvenile offenders, who commit serious or multiple felony offenses, receive adult sanctions.

Current Issues

The Children, Youth and Families Department is implementing significant changes in the way it allocates resources for the juvenile justice system. The department is making a concerted effort to treat youth in community-based programs and further reduce the number of youth referred to secure detention facilities. As noted in the graph below, juvenile commitments have declined appreciably in the period from FY98 to FY04. The decline in commitments can be attributed to the use of new classification tools, expanded behavioral health services, increased referrals to drug courts and detention reform efforts developed by the department in collaboration with the Annie E. Casey Foundation. (See Children, Youth and Families Department



Source: Central Intake Unit Database and YDDC monthly reports (before FY02)

Report for Town Hall Meeting, January 7, 2005)

As it pursues detention reform, the department is studying innovative programming already developed and used effectively by the Bernalillo County Juvenile Detention Center. The center has developed community-based services and programs for youth who previously would have been incarcerated. Moreover, it has done so in a manner that has not compromised public safety. For its efforts, the Bernalillo County Juvenile Detention Center was recently recognized by the Annie E. Casey Foundation as a “National Model Site for Detention and Systems Reform.”

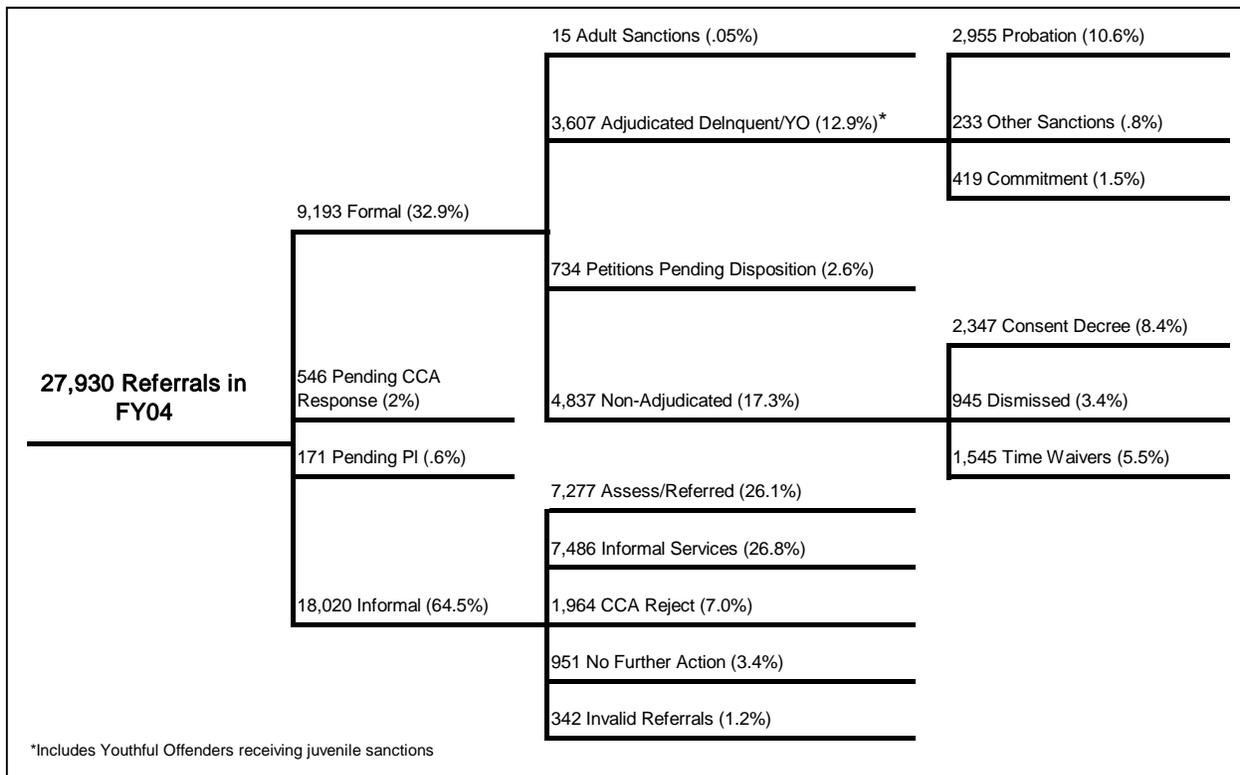
An alternative to detention that is emerging nationally and in New Mexico is a justice model known as restorative justice. Restorative justice focuses justice decision-making on repairing the harm associated with a crime or act of delinquency. Juvenile offenders are held accountable directly to their victims and their communities. As a result, there is a greater emphasis on balancing the needs of victims, offenders and the communities where the delinquent acts occur. Programs that have used restorative justice models in other jurisdictions report higher victim satisfaction rates and lower offender recidivism rates. The

Children, Youth and Families Department will test the restorative justice model in several sites throughout New Mexico.

Another emerging issue in juvenile justice is gender specific programming for female juvenile offenders. The nature and causes of delinquency among girls is often different from that of boys. In many instances, a girls involvement in delinquency is directly connected to conflicts in her familial and social relationships. Girls in the delinquency system have histories of physical, emotional and sexual abuse and suffer from physical and mental disorders. Recent research has shown that current programs do not adequately address the unique developmental, physiological and emotional needs of girls.

Numbers

The chart set forth below illustrates the disposition of 27,930 referrals received by juvenile probation and parole offices during FY04. The dispositions occurred between July 2003 and November 2004. The dispositions include 419 commitments to a department facility and 15 offenders who received adult sanctions.



Source: Children, Youth, and Families Department Report for Town hall meeting, Jan. 7, 2005.

THE JUVENILE PAROLE BOARD

BACKGROUND

The Juvenile Parole Board consists of three members appointed by the governor. Members of the board serve for six years. The Juvenile Parole Board is recognized in statute as the releasing authority for adjudicated juveniles. It offers early release for adjudicated juveniles.

CURRENT ISSUES

Before ordering the parole of any child, the Juvenile Parole Board must personally interview the child. Since there are only three board members and hearings take place at juvenile facilities throughout the state, some juvenile parole hearings have been delayed because no board member is available to travel to the hearing location. This can result in juveniles staying an additional month in a facility.

Juvenile Parole Board members are not paid a salary, but do receive compensation when they travel to attend board meetings and hearings. Board members do not receive per diem for the time they take to review files prior to hearings.

NUMBERS

The Board reviews up to 30 cases when hearings are conducted and holds approximately two days of hearings each month. Board members spend an average of 30 minutes reviewing each child's file prior to hearings.

COST

The FY04 appropriation to the New Mexico Juvenile Parole Board for its annual operating budget was approximately \$348,000 (See 2003 General Appropriation Act).

POLICY CONSIDERATIONS

The state should consider increasing the number of Juvenile Parole Board members to at least five, in order to avoid cancellation or delay of hearings due to lack of a quorum. The state should also consider some increased level of compensation for Juvenile Parole Board members, such as allowing per diem for time spent reviewing files in preparation for hearings.

Several states do not have a Juvenile Parole Board. Instead, those states give release authority to agencies that are the equivalent of New Mexico's Children, Youth and Families Department.

Cost

The FY04 operating budget for the Juvenile Justice Services Division of the Children, Youth and Families Department was approximately \$55.7 million (See 2003 General Appropriation Act).

Policy Considerations

The New Mexico Juvenile Justice Advisory Committee and the Juvenile Justice Services Division are working with several New Mexico communities to develop restorative justice pilot projects throughout the state. In Ruidoso, Roswell, Silver City, Portales and Albuquerque, community leaders are being trained in the principles of the restorative justice model. If the pilot projects prove to be successful, restorative justice will merit wider consideration as an alternative to the traditional juvenile justice model in New Mexico.

The Sequoyah Adolescent Treatment Center in Albuquerque provides mental health services for male juvenile offenders with intense psychiatric needs. However, New Mexico currently does not have a secure, residential treatment program for female juvenile offenders. Consequently, girls with psychiatric needs are treated out-of-state or are committed to facilities that cannot adequately address their needs. The New Mexico Juvenile Justice

Advisory Committee, the New Mexico Women's Justice Project and the New Mexico Sentencing Commission have made the case for gender specific programming to meet the unique needs of female juvenile offenders with psychiatric issues. Subsequently, the Secretaries of Children, Youth and Families, Health, and Human Services have pledged their support for development of such programming. In addition to a secure, residential treatment program for girls, there is also a need for community-based services to help the girls make a successful return to their families and communities. 

About The Commission

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New Mexico Sentencing Commission

Highlights

- In the data set used for this report, DWI accounted for the largest percentage of all arrests made by law enforcement agencies in New Mexico (18.2%).
- Indiana, Mississippi and New Mexico are the only three states that currently do not have Uniform Crime Reporting (UCR) programs. The State may want to consider enactment of a statutory provision to establish a Uniform Crime Reporting Program in New Mexico. Such a program would facilitate the timely collection and analysis of statewide arrest information.
- County sheriffs have been assigned duties in state law regarding the registration and supervision of convicted sex offenders. Additional changes to sex offender laws are pending in Congress. At some point in time, the duties placed upon county sheriffs to register and supervise sex offenders may need to be accompanied by funding.
- At a starting salary of \$34,328 per year, the New Mexico state police are not able to match starting salaries offered by other law enforcement agencies in the state. In order to enhance recruitment and retention of state police officers, it may be necessary to increase salaries.

Briefing Note

Law Enforcement: A Profile of Law Enforcement in New Mexico

Background

The Department of Public Safety is the home agency for the New Mexico state police. “The purpose of the law enforcement program (of the Department of Public Safety) is to provide the highest quality of law enforcement services to the public and ensure a safer New Mexico.” See 2003 General Appropriation Act).

In addition to the state police, there are more than 140 law enforcement agencies in New Mexico, including municipal law enforcement agencies, county sheriff departments, tribal law enforcement agencies and university law enforcement agencies. A list of those agencies is set forth in a New Mexico Sentencing Commission publication.¹

Current Issues

Some law enforcement agencies in New Mexico do not report their arrest data to the New Mexico Department of Public Safety. Indiana, Mississippi and New Mexico are the only three states that currently do not have Uniform Crime Reporting (UCR) programs. Many states have mandatory reporting requirements.

Particularly in rural areas of the state, the New Mexico state police are the primary law enforcement presence. The starting salary for state police officers is \$34,328 a year. That starting salary ranks sixth among all law enforcement agencies in New Mexico and is a factor in the recruitment and retention of state police officers.

Recent enactments to the New Mexico Sex Offender Registration and Notification Act have placed additional responsibilities on county sheriffs for the registration and supervision of convicted sex offenders. County sheriffs have not received appropriations for the additional duties.

Numbers

The information in the following tables is derived from data provided to the New Mexico Sentencing Commission (NMSC) by the New Mexico Department of Public Safety (DPS).

The arrest data includes the following elements: arrest date, arrest location, arrest code, arrest description, date of birth, race, gender, residential zip code, originating agency identifier, and originating agency description. The NMSC does not have direct access to DPS data, and DPS is unable to provide the most current data due to delays in receiving arrest data from reporting law enforcement agencies and a slight delay in data entry.²

The data in Table 1 includes arrests that were made by law enforcement agencies, the district courts, the New Mexico Corrections Department (NMCD), and the Probation and Parole Division of the NMCD. Arrests by the Probation and Parole Division of the NMCD accounted for 3.4% of reported arrests in 2003. Arrests by the district courts accounted for 0.2% of arrests and arrests by the NMCD accounted for 8.3% of all arrests. Arrests

Arresting Agency	Frequency	Percent
Municipal	44,449	57.9
Primary State Law Enforcement	10,608	13.8
County	12,268	16.0
Probation/Parole	2,633	3.4
Other	6,778	8.8
Total	76,736	100.0*

*missing = 214

by these two groups are included in the 'other' category. A majority of all arrests were made by municipal police departments (57.9%), followed by county sheriffs (16%), and the state police (13.8%).

Age Group	Frequency	Percent
Under 18	5633	7.4
19-24	22001	28.9
25-34	23115	30.3
35-44	17051	22.4
45-54	6668	8.8
55 and older	1698	2.2
Total	76166	100.0*

*missing = 784

The average age of arrestees in this data set was 31.1 (range 9 to 67 years old). Individual's aged 25-34 comprised the largest group and percentage (30%) of arrestees closely followed by 19-24 year olds (28.6%). Together these two groups made up almost 60% of all arrestees. Individuals 55 years old and older comprised the smallest percent of arrestees.

Sex	Frequency	Percent
Male	62280	81.0
Female	14440	19.0
Total	76721	100.0*

*missing = 231

Males accounted for slightly more than 80% of all arrests.

Race/Ethnicity	Frequency	Percent
White	61312	80.0
African American	3969	5.2
Native American	11133	14.5
Asian/Pacific Islander/Other	220	.3
Total	76634	100.0*

*missing = 316

The majority of arrestees were Whites, followed by Native Americans, African Americans, and

Asian/Pacific Islander/Other. The data set used for this report did not include a variable that counted Hispanics separately.

Crime Category	Frequency	Percent
Violent Crimes	12109	15.7
Property Crimes	8790	11.4
Drug/Narcotic Violations	6696	8.7
Public Order Crimes	32945	42.8
Warrants	8817	11.5
Other Offenses	7592	9.9
Total	76949	100.0*

Table 5 reports the frequency and percent of arrests by crime category. Public order crime arrests comprised 42.8% of reported arrests in 2003, followed by violent crime arrests (15.7%), warrants (11.5%), property crime arrests (11.4%), and other offenses (9.9%). Drug/narcotics violations comprised 8.7% of all arrests. The next table (Table 6) separates the crime categories listed in Table 5 into more distinct crimes and crime categories.

Crime Category	Frequency	Percent
Violent Crimes		
Homicide	202	0.3
Kidnapping	180	0.2
Sex Offenses ^a	524	0.7
Robbery	506	0.7
Assault	2147	2.8
Battery	4412	5.7
Domestic Violence	2654	3.4
Other Homicide ^b	91	0.1
Other Violent Offenses ^c	1393	1.8
Property Crimes		
Arson	39	0.1
Burglary	1991	2.6
Shoplifting/Larceny Theft	1975	2.6
Motor Vehicle Theft	1059	1.4
Forgery	772	1.0
Fraud	778	1.0
Stolen Property	821	1.1
Other Property Offenses ^d	1355	1.8
Drug/Narcotic Violations	6696	8.7
Public Order Crimes		
DWI	13972	18.2
Weapons Violations ^e	771	1.0
Traffic Offenses	6933	9.0
Other Public Offenses ^f	11269	14.6
Warrants		
Warrants	8817	11.5
Other Offenses		
Other Offenses	7592	9.9
Total	76949	100.0

^a= Sex Offense, Forcible Sodomy, Criminal Sexual Penetration

^b= Homicide by Vehicle

^c= Child Abuse, False Imprisonment

^d= Embezzlement, Destruction/Damage/Vandalism of Property, Possession of Burglary Tools

^e= Firearms; Receipt, Unlawful Carrying of a Deadly Weapon, Negligent Use of a Deadly Weapon, Weapon Law Violation

^f= Escape/Fugitive, Prostitution; Contributing to the Delinquency of a Minor; Resisting, Evading or Obstructing an Officer; Concealing Identity; Tampering with Evidence; Probation Violation; Disorderly Conduct; Liquor Law Violations; Trespass of Real Property

DWI accounted for the largest percentage of all arrests (18.2%), followed by other public order offenses (14.6%), warrants (11.5%), other offenses (9.9%), traffic offenses (9.0%), and drug/narcotic violations (8.7%). These six categories of crimes accounted for 71.9% of all arrests. Three of the top five crimes are in the public order crimes category.

Cost

The FY04 appropriation to the Department of Public Safety for its annual operating budget was approximately \$97.0 million (See 2003 General Appropriation Act).

Cost information was not available for the operating budgets of municipal law enforcement agencies, county sheriff departments, tribal law enforcement agencies or university law enforcement agencies.

Policy Considerations

The State may want to consider enactment of a statutory provision to establish a Uniform Crime Reporting Program in New Mexico. Such a program would facilitate the timely collection and analysis of statewide arrest information.

At a starting salary of \$34,328 per year, the New Mexico state police are not able to match starting salaries offered by other law enforcement agencies in the state. In order to enhance recruitment and retention of state police officers, it may be necessary to increase salaries.

County sheriffs have been assigned duties in state law regarding the registration and supervision of convicted sex offenders. Additional changes to sex offender laws are pending in Congress. At some point in time, the duties placed upon county sheriffs to register and supervise sex offenders may need to be accompanied by funding.



Notes

¹Guerin, P., 2005. *Preliminary Analysis of Arrest Patterns in New Mexico*. New Mexico Sentencing Commission.

²The information in the tables is a preliminary analysis of arrest patterns in New Mexico using data for calendar year 2003. It is important to note that the information reported in the tables does not include all arrests in New Mexico that occurred in calendar 2003. The analyzed data set is derived from arrests that were voluntarily reported to DPS by New Mexico law enforcement agencies. We do not know to what degree the data is under-reported. We do know that DWI arrests are under-reported by approximately 46% in this dataset. In calendar year 2003 the New Mexico Motor Vehicle Division (MVD) administratively recorded 20,325 DWI arrests and this dataset contains information on 13,972 DWI arrests. One reason this happened is that a number of law enforcement agencies that administratively reported their arrests for DWI to MVD are not included in the data set. This means they either did not report their arrest information to DPS or not all arrest data for calendar 2003 has been received or data entered by DPS. A review by DPS staff and a subsequent brief conversation confirmed our finding that arrest information is under-reported. DPS staff informed us that in 1995 approximately 52% of all arrests were reported to DPS by New Mexico law enforcement agencies and that this has improved to the point where DPS believes approximately 70% of all arrests are now being reported.

About The Commission

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New Mexico Sentencing Commission

Highlights

- In FY04, more than 266,000 new adult cases were opened in state trial courts.
- Courts must handle every case put before them. Complex cases such as death penalty prosecutions and water rights cases can include dozens of filings, motions, and hearings and may stay on court dockets for years.
- In FY04, felony DWI offenses accounted for 7% of all felony case filings and 20% of all misdemeanor case filings.
- During the 2005 Legislative Session, eight new judgeships were created throughout the state.
- The New Mexico Judiciary has been very proactive in using a number of alternatives to the traditional court model, including drug courts and DWI courts.

Briefing Note

Judiciary: A Profile of the New Mexico Judicial Branch

Background

A guiding principle for the New Mexico judiciary "...is to provide access to justice, resolve disputes justly and timely and maintain accurate records of legal proceedings that affect rights and legal status in order to independently protect the rights and liberties guaranteed by the constitutions of New Mexico and the United States." (See 2003 General Appropriation Act)

State courts which preside over criminal proceedings include Magistrate Courts, Bernalillo County Metropolitan Court and District Courts. District Courts have exclusive jurisdiction over juvenile proceedings. The New Mexico Court of Appeals and the New Mexico Supreme Court have jurisdiction over criminal cases and juvenile cases.

Current Issues

During the 2005 Legislative Session, money was appropriated for eight new judgeships throughout the state. The Second, Ninth, and Eleventh Judicial Districts received one additional judge. The Bernalillo County Metropolitan Court received funding for two additional judges, and the San Juan, Sandoval and Santa Fe magistrate districts each received one additional magistrate.

While the additional judgeships will undoubtedly provide relief to crowded court dockets in the

aforementioned districts, it raises an issue concerning whether the Public Defender Department and District Attorneys who serve in those districts will also need additional resources to staff the new courts. The New Mexico Sentencing Commission has been directed to contract for and supervise a statewide workload measurement study that will examine resource needs of the courts, the public defender department and the district attorneys.

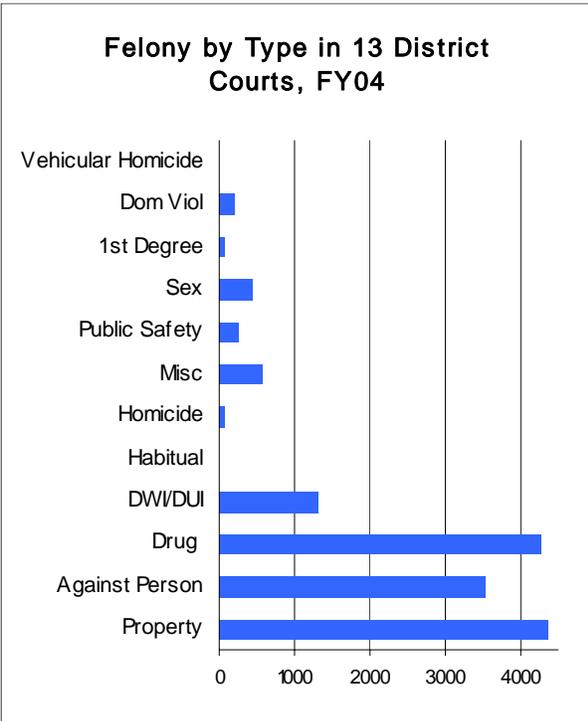
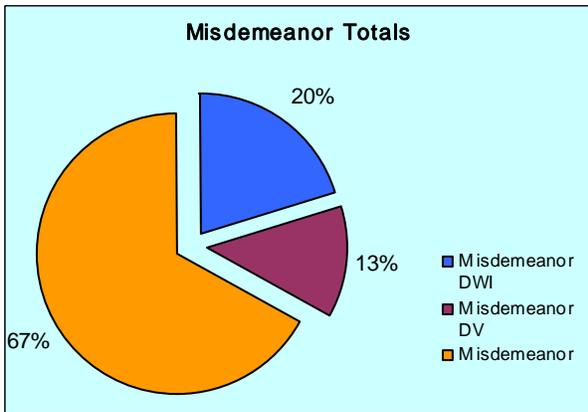
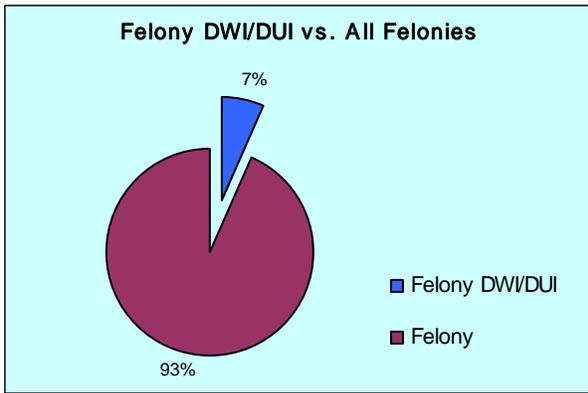
Numbers

Courts must handle every case that is put before them. Police citations and district attorney and grand jury felony indictments resulted in nearly 300,000 adult and juvenile cases that flowed into and through the state courts in one year.

While simple traffic citations may result in a case opening (with clerk data entry for each citation) and payment of fines and fees at the counter, complex cases such as death penalty prosecutions and water rights cases can include dozens of filings, motions, and hearings and may stay on court dockets for years.

In FY04, 266,034 new adult cases being opened in state trial courts (See Table 1).

Bernalillo Cnty Metro. Court	54 Magistrate Courts	13 District Courts	Municipal Courts	TOTAL
95,973	153,539	16,522	NA	266,034



Additionally, state courts re-opened 7,008 cases in FY 2004. Approximately 175,000 of these cases were traffic cases.

The majority of felony case filings consist of property offenses, crimes against a person and drug offenses. Felony DWI offenses account for 7% of all felony case filings and 20% of all misdemeanor case filings. (See charts this page)

Cost

The collective FY04 operating budget for state courts (Bernalillo County Metropolitan Court, Magistrate Courts, District Courts, New Mexico Court of Appeals, New Mexico Supreme Court and Administrative Office of the Courts) was approximately \$112 million (See 2003 General Appropriation Act). About 28% of cases filed in state courts are civil cases. Consequently, criminal and juvenile offender cases account for approximately 72% of cases filed in state courts.

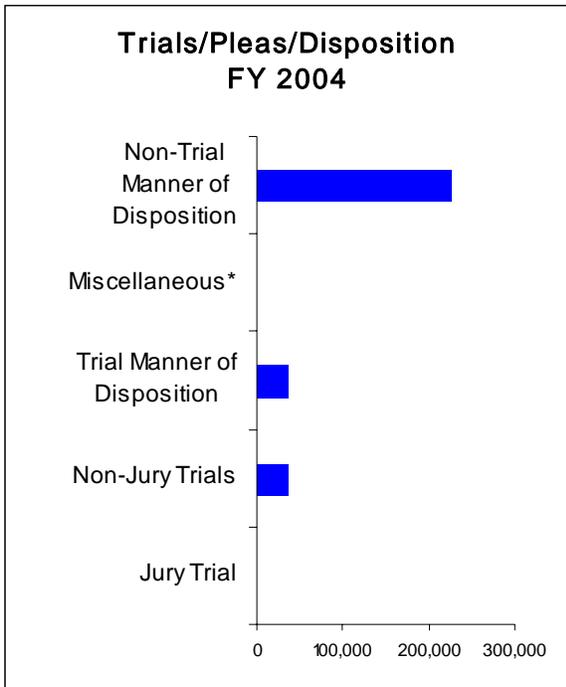
Policy Considerations

The chart (on next page) shows that few cases actually go to trial. Most cases, in fact, are resolved in the pre-trial period by pre-prosecution diversion programs utilized by the district attorneys or by a plea agreement proposed by the district attorney and defense attorney, and approved by the judge.

Other alternatives to traditional court proceedings have shifted processing of certain cases away from the traditional court model. Such alternatives may also reduce the number of people sent to jail or prison. New Mexico Sentencing Commission researchers have concluded that DWI and Drug Courts, in particular, are cost effective, successful alternatives to traditional court sanctions.

The New Mexico Judiciary has been very proactive in using a number of alternatives to the traditional court model. Those alternatives include:

- Drug Courts
- DWI Courts
- Family Dependency Courts
- Mental Health Courts
- Teen Courts
- The Early Plea Program
- Alternative Dispute Resolution
- Restorative Justice Programs



*The "Miscellaneous" category refers to cases that were officially categorized under "Jury" or "Non-Jury" Trial for the purposes of the *Statistical Addendum of the 2004 Annual Report of the New Mexico Judiciary* as stipulated by national guidelines but the courts did not define them as such. The figures in this category compensate for the discrepancies between the "Trials" categories and the "Trial Manner of Disposition" category. **Pleas" includes both the pleas that occurred before or during trial. Additionally, these figures are included within the "Manner of Disposition" categories.

Finally, as illustrated in the figures in this section, DWI cases represent a significant percentage of misdemeanor and felony case filings in state courts. Recent changes in DWI penalties, including mandatory minimum sentences, have also significantly increased the number of DWI offenders sentenced to terms of incarceration in county jails and state prisons.



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New Mexico Sentencing Commission

Highlights

- During FY04, the fourteen district attorney offices collectively prosecuted nearly 60,000 cases.
- District attorney offices throughout the state would benefit from modern computer equipment.
- The New Mexico Sentencing Commission has been directed to contract for a workload measurement study to determine the resource needs of the District Attorneys, the Public Defender Department, and the Judiciary.
- In 2005, the Public Service Law Loan Repayment Act was enacted. However, there was not an accompanying appropriation for the act. If funded, the act will enhance efforts by the District Attorneys to recruit and retain staff attorneys.
- Consider salary increases for assistant district attorneys, as a means to enhance recruitment and retention efforts.

Briefing Note

Prosecution: *A Profile of District Attorneys across New Mexico*

Background

The 14 district attorney offices “.....enforce state laws as they pertain to the district attorneys and ensure the protection, safety, welfare and health of the citizens within the [respective] judicial districts.” (See 2003 General Appropriation Act)

The Administrative Office of the District Attorneys “.....provides fiscal, human resource, staff development, automation, victim protective services and support to all district attorneys’ offices in New Mexico.....so that they may obtain and access the necessary resources in order to effectively and efficiently carry out their prosecutorial, investigative and programmatic functions.” (See 2003 General Appropriation Act)

Current Issues

During the past eight years, lack of consistent funding for the district attorneys’ information technology plan has affected their ability to maintain integrated and effective computer systems. Also, district attorney offices throughout the state are using out-dated personal computers.

The New Mexico Sentencing Commission has been directed by the Supreme Court Criminal Justice Task Force to contract for a workload measurement study to determine the specific resource needs of the District Attorneys, the Public Defender Department and the Judiciary.

The workload measurement study will use a blend of objective and subjective criteria to carefully calibrate the needs of those three entities.

Although there have been recent salary increases for assistant district attorneys, their compensation rates still lag behind salaries offered to other public service attorneys.

Cost

The collective FY04 appropriation to the 14 district attorney offices for their annual operating budgets was approximately \$43.9 million (See 2003 General Appropriation Act).

The FY04 appropriation to the Administrative Office of the District Attorneys was approximately \$1.2 million (See 2003 General Appropriation Act).

Policy Considerations

During the 2005 legislative session, Senate Bill 258 was introduced, passed and signed into law. The bill established the Public Service Law Loan Repayment Act, which provides loan forgiveness to attorneys who take public service positions subsequent to law school. The enabling legislation was enacted, but there was not an accompanying appropriation. In order to use this new act as a tool to recruit and retain public sector lawyers, including assistant district attorneys, money is needed for the loan repayment program.

The State may want to consider salary increases for assistant district attorneys as a means to bolster recruitment and retention efforts.

The New Mexico Sentencing Commission has been directed to conduct a workload measurement study for the Public Defender Department, District Attorneys and the Judiciary. When the study is completed, use the data to inform policy makers concerning the resource needs of all three entities, including the district attorneys.

Numbers

The information in Table 1 was collected and reported by the Administrative Office of the District Attorneys for FY04 in response to performance-based measures for the district attorneys.



District	Cases Prosecuted	Avg Attorney Caseload
1st	1,563*	96*
2nd	25,215	577
3rd	3,842	260
4th	1,890	201
5th	3,625	242
6th	1,897	224
7th	2,565	118
8th	1,734	281
9th	2,280	240
10th	900	561
11th San Juan county	3,685	272
11th McKinley county	2,531	665
12th	4,157	327
13th	4,643	285

* The information in this table for the First Judicial District Attorney's Office is incomplete. A significant number of cases that were prosecuted by that office in FY04, but that were not closed at the end of that fiscal year, were not included in these figures.

About The Commission

The New Mexico Sentencing Commission serves as a criminal and juvenile justice policy resource to the State of New Mexico. Its mission is to provide information, analysis, recommendations, and assistance from a coordinated cross-agency perspective to the three branches of government and interested citizens so that they have the resources they need to make policy decisions that benefit the criminal and juvenile justice systems. The Commission is made up of members from diverse parts of the criminal justice system, including members of the Executive and Judicial branches, representatives of lawmakers, law enforcement officials, criminal defense attorneys, and members of citizens' interest groups.



New Mexico Sentencing Commission

Highlights

- During FY04, the Public Defender Department opened more than 61,000 new cases, including approximately 30,600 misdemeanor cases, 23,300 felony cases and 7,500 juvenile cases.
- The New Mexico Supreme Court Criminal Justice Task Force, concerned about heavy caseloads carried by public defenders, is developing workload standards in the area of indigent criminal defense.
- The New Mexico Sentencing Commission has been directed to contract for a workload measurement study to determine the resource needs of the Public Defender Department, the District Attorneys and the Judiciary. This will be the first time such a study has been performed for the Public Defender Department.
- In 2005, the Public Service Law Loan Repayment Act was enacted. However, there was not an accompanying appropriation for the act. If funded, the act will enhance efforts by the Public Defender Department to recruit and retain staff attorneys.
- Consider salary increases for public defender staff attorneys and contract counsel, including contract attorneys who represent clients in capital felony cases.

Briefing Note

Public Defender: A Profile of the New Mexico Public Defender Department

Background

The New Mexico Public Defender Department has the responsibility to “provide effective legal representation and advocacy for eligible clients so that their liberty and constitutional rights are protected and to serve the community as a partner in assuring a fair and efficient criminal justice system that also sustains New Mexico’s statutory and constitutional mandate to adequately fund a statewide indigent defense system.” (See 2003 General Appropriation Act, pp. 56-57)

As noted in *Gideon v. Wainwright*, 372 U.S. 335 (1963), the seminal United States Supreme Court decision regarding provision of counsel to indigent defendants: “From the very beginning, our state and national constitutions and laws have laid great emphasis on procedural and substantive safeguards designed to assure fair trials before impartial tribunals in which every defendant stands equal before the law. This noble ideal cannot be realized if the poor man charged with crime has to face his accusers without a lawyer to assist him.”

Current Issues

In many states, including New Mexico, it remains a challenge to realize *Gideon’s* “noble ideal” of providing adequate representation for indigent defendants. The New Mexico Supreme Court Criminal Justice Task Force, concerned about representation of indigent

defendants in light of heavy caseloads carried by public defenders, is developing workload standards in the area of indigent criminal defense.

In the short-term, the Supreme Court Criminal Justice Task Force has reviewed national standards regarding suggested caseloads for attorneys who provide indigent defense representation. The national standards, when compared with caseloads carried by public defenders in New Mexico, provide a general standard for analyzing the resource needs of the Public Defender Department.

In the long-term, the New Mexico Sentencing Commission has been directed by the Supreme Court Criminal Justice Task Force to contract for a workload measurement study to determine the specific resource needs of the Public Defender Department, the District Attorneys and the Judiciary. The workload measurement study will use a blend of objective and subjective criteria to carefully calibrate the needs of those three entities. Workload measurement studies have been produced for the District Attorneys and the Judiciary in previous years, but this will be the first time such a study has been performed for the Public Defender Department.

Another issue regards the rate of compensation for contract attorneys who provide indigent defense representation, including compensation for contract

attorneys who represent clients in capital felony cases. The concern is that contract attorneys must be compensated adequately to enable them to develop cases and represent clients in a manner that meets professional and ethical standards.

Although there have been recent salary increases for public defender staff attorneys, their compensation rates still lag behind salaries offered to other public service attorneys.

Numbers

The Public Defender Department provides representation in a variety of cases, including juvenile cases, misdemeanor cases, felony cases and capital felony cases. The department also operates a busy appellate division.

The following figures illustrate the number of cases handled by department staff attorneys and contract counsel in FY04. At the beginning of FY04, the Public Defender Department had 41,665 pending cases. During FY04, the department opened 61,445 new cases, including approximately 30,600 misdemeanor cases, 23,300 felony cases and 7,500 juvenile cases.

During FY04, the Public Defender Department closed 45,939 cases. Consequently, 57,171 cases were pending at the close of FY04.

Cost

The FY04 appropriation to the New Mexico Public Defender Department for its annual operating budget was approximately \$29.5 million (See 2003 General Appropriation Act).

Policy Considerations

During the 2005 legislative session, Senate Bill 258 was introduced, passed and signed into law. The bill established the Public Service Law Loan Repayment Act, which provides loan forgiveness to attorneys who take public service positions subsequent to law school. The enabling legislation was enacted, but there was not an accompanying appropriation. In order to use this new act as a tool to recruit and retain public sector lawyers, including public defenders, money is needed for the loan repayment program.

The State may want to consider salary increases for public defender staff attorneys as a means to bolster recruitment and retention efforts. Also, consider a pay increase for contract counsel, including contract attorneys who represent clients in capital felony cases.

The New Mexico Sentencing Commission has been directed to conduct a workload measurement study for the Public Defender Department, District Attorneys and the Judiciary. When the study is completed, use the data to inform policy makers concerning the resource needs of all three entities, particularly the Public Defender Department.



About The Commission

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New Mexico Sentencing Commission

Highlights

- The average daily population for detention facilities grew from 4,257 in 1998 to 6,294 in 2005, an increase of 47.8%.
- From 1998 to 2005, the reported total capacity of county detention facilities increased from 4,674 to 6,440, an increase of 37.8%.
- Increased capacity has not kept pace with demand. Even with a 37.8% increase in capacity, the overall average percentage occupied only decreased slightly from 87.4% in 1998 to 84.7% in 2005.
- Taking into account inflation, county detention facilities' operating budgets increased 36.1% since 1998 to 113.3 million in 2005.
- According to a 2004 study done by the New Mexico Sentencing Commission, 2,536 out of 3,682 of the arrestees held in a sample of local New Mexico detention facilities on June 30, 2003, were charged with at least one felony.
- Based on data from the study, the typical arrestee with a new charge who does not bond out before trial spends 167 days in a detention center.
- Felony arrestees comprise a large portion of jail populations and stay in jail longer than misdemeanor arrestees; reductions in the length of stay of felony arrestees would have a significant impact on jail populations.

Briefing Note

County Jails: A Profile of New Mexico's County Jails

Background

28 of New Mexico's 33 counties have detention facilities. As stated in Section 33-3-3 NMSA 1978, jails in each county "shall be used or be available for the detention of every person who, within the same county, is charged with any crime or properly committed for trial or for the imprisonment of every person who in conformity with sentence, upon conviction of an offense, may have been sentenced, and for the safekeeping of every person who shall be committed by competent authority according to law." Counties without detention facilities pay other counties or private detention facilities to house inmates held for their county. The size of county detention facilities vary widely. Table 1 lists the facility sizes.

	Number	Percentage
1-25 Beds	6	21.4
26-50 Beds	3	10.7
51-100 Beds	3	10.7
101-200 Beds	5	17.9
201-300 Beds	5	17.9
301-499 Beds	3	10.7
Over 500 Beds	3	10.7
Total	28	100.0

Current Issues

County detention facility populations have grown. The average daily population for

detention facilities grew from 4,257 in 1998 to 6,294 in 2005, an increase of 47.8%.¹ This growth has caused great strain on county government operating budgets. As of July 1, 2004, counties were given the expanded ability to impose a 1/8th gross receipts tax increment for building, maintaining, and operating detention facilities, as well as transporting and expediting prisoners. To date, 15 counties have enacted this County Correctional Facility gross receipts tax increment.

According to a 2004 study done by the New Mexico Sentencing Commission, 2,536 out of 3,682 of the arrestees held in a sample of local New Mexico detention facilities on June 30, 2003, were charged with at least one felony.² Of those felony arrestees, 66.8% were arrested on a new charge in an unsentenced status, meaning they were awaiting a trial or a hearing, 15.1% were unsentenced probation violators, 9.1% were convicted of a felony and sentenced to the detention facility, 4.4% were sentenced probation violators, 3.1% were sentenced to prison and awaiting transport, and 1.5% were parole violators.

In addition to a snapshot of the population in detention centers on June 30, 2003 the overall length of stay was examined. Length of stay of felony arrestees is driving population growth. The typical arrestee with a new charge who does not bond out before trial spends 167 days in a detention center.³

Numbers

From 1998 to 2005, the reported total capacity of county detention facilities increased from 4,674 to 6,440, an increase of 37.8%.⁴ Despite this increase in capacity, the overall average percentage occupied only decreased slightly for the same time period from 87.4% in 1998 to 84.7% in 2005. This means that almost all of the new bed space is already being used. Statewide total capacity will increase when San Juan county opens their new facility later this fall. Table 2 lists the average percentage occupied by size of facility. It is important to note that available bed capacity statewide does not alleviate strain on detention centers that are operating near or over capacity. The smallest facilities in the state operate at the lowest percent of capacity and are geographically distant from the facilities that are over capacity. Consequently, transporting prisoners to be housed in another county is not an economically feasible option.

Table 2 The Average Percentage Occupied by Size of Facility

Size	Average
1-25 Beds	65.9%
26-50 Beds	104.2%
51-100 Beds	90.4%
101-200 Beds	81.1%
201-300 Beds	87.1%
301-499 Beds	79.3%
Over 500 Beds	105.2%
Total	84.7%

Cost

Taking into account inflation, county detention facilities' operating budgets increased 36.1% since 1998 to 113.3 million in 2005.⁵ This figure does not include capital debt for the facilities.

Policy Considerations

Building jail capacity is very costly and should only be undertaken after less costly options have been explored.

Because felony arrestees comprise a large portion of jail populations and stay in jail longer than misdemeanor arrestees; reductions in the length of stay of felony arrestees would have a significant impact on jail populations. The size of the impact will vary by the type of arrestee.

County detention facilities should work with local courts, district attorneys, public defenders, local government, and law enforcement to improve the administration of justice, i.e., expedite the judgment and sentence, work with sheriffs to reduce delay in transporting offenders to prison, quicken the scheduling of probation revocation hearings, and investigate the use of goodtime allowed by law.



Notes

¹ Information was voluntarily provided by facilities. Data from 1998 excludes Santa Fe and Torrance counties. Data from 2005 excludes Chaves, Santa Fe, and Torrance counties.

² For a more detailed discussion of this study see Guerin, P., & Freeman, L. 2005. *The Cost of Housing Arrestees Held on Felony Charges: A Profile of Six New Mexico Detention Centers*. Albuquerque: University of New Mexico, Institute for Social Research.

³ Guerin, P., & Freeman, L. 2005. *Length of Stay for Arrestees Held on Felony Charges: A Profile of Six New Mexico Detention Facilities*. Albuquerque: University of New Mexico, Institute for Social Research.

⁴ Information was voluntarily provided by facilities. Capacity excludes bed space at private prisons in Guadalupe and Torrance counties that primarily house NM Department of Corrections prisoners. Data from 1998 excludes Santa Fe county. Data from 2005 excludes Chaves and Santa Fe counties.

⁵ Information was voluntarily provided by facilities. Data from 1998 excludes Cibola, Hidalgo, Roosevelt, Santa Fe, Torrance and Union counties. Data from 2005 excludes Chaves, Los Alamos, Santa Fe, Sierra, Torrance and Valencia counties.

About The Commission

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New Mexico Sentencing Commission

Briefing Note

Corrections: A Profile of the New Mexico Corrections Department

Highlights

- The FY04 appropriation to the New Mexico Corrections Department was approximately 221.1 million. The department's budget is the largest component of the cost to operate a criminal justice system in New Mexico.
- Despite its efforts to slow inmate population growth, the corrections department has announced that it needs additional beds for male and female inmates. The projected annual cost of the planned expansion is more than \$22 million.
- The Corrections Department's inmate population projection for the period 2005-2015 indicates an ongoing, steady increase in population growth.
- As of June 2004, nearly 42% of all state inmates in New Mexico were incarcerated in privately-operated correctional facilities.
- The state of Virginia has a statute which requires that proposed criminal sentencing legislation be accompanied by an appropriation or other source of revenue to pay for the forecast increase in periods of incarceration.

Background

The New Mexico Corrections Department bears the responsibility to "incarcerate offenders in a humane, professionally sound manner and to provide safe and secure prison operations." (See 2003 General Appropriation Act) A steady increase in the state's inmate population has made that task more difficult, placing a strain on the department's operating budget. In order to perform its mission and stay within budget, the department has implemented measures to ease inmate population growth while remaining mindful of the need to ensure the safety of the public, corrections staff and inmates.

To provide context for inmate population figures in New Mexico, Table 1 sets forth per capita incarceration rates for western states.

The Corrections Department also is responsible for the operation of probation and parole services. Issues related to the provision of those services are discussed in a separate section of this report.

Region and jurisdiction	Prisoners under the jurisdiction of State or Federal correctional authorities, June 30 & December 31, 2003, and June 30, 2004					
	Total		6/30/03	% Chg from —		*Prison incarceration rate, 6/30/04
	6/30/04	12/31/03		6/30/03 to 6/30/04	12/31/03 to 6/30/04	
WEST	292,828	288,454	285,308	2.6%	1.5%	421
Alaska	4,515	4527	4431	1.9	-0.3	367
Arizona	31,631	31170	30741	2.9	1.5	506
California	166,053	164487	163361	1.6	1.0	457
Colorado	19,756	19671	19085	3.5	0.4	429
Hawaii	5,946	5828	5635	5.5	2.0	320
Idaho	6,312	5887	5825	8.4	7.2	454
Montana	3,800	3620	3440	10.5	5.0	410
Nevada	10,971	10543	10527	4.2	4.1	468
New Mexico	6,341	6223	6145	3.2	1.9	319
Oregon	13,219	12715	12422	6.4	4.0	366
Utah	5,802	5763	5603	3.6	0.7	239
Washington	16,559	16148	16284	1.7	2.5	264
Wyoming	1,923	1872	1809	6.3	2.7	382

Source: Harrison, Paige M., and Allen J. Beck. *Bureau of Justice Statistics Bulletin: Prison and Jail Inmates at Midyear 2004*. Washington, D.C.: U.S. Department of Justice, 2005.

* The number of prisoners with a sentence of more than 1 year per 100,000 residents.

Current Issues

The New Mexico Corrections Department has enacted a number of measures to curb inmate population growth. Those measures include:

- reviewing policies related to the award of earned meritorious deductions to

inmates in an effort to process awards more efficiently;

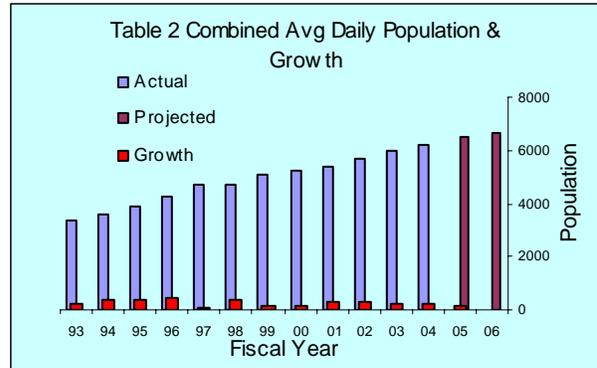
- reducing the number of inmates who serve their parole time in prison;
- establishing a program for technical parole violators as an alternative to returning those offenders to prison;
- implementing a gender specific classification instrument for female inmates; and
- collecting data in an effort to determine recidivism rates for offenders committed to the corrections department.

Despite its efforts to slow inmate population growth, the corrections department has publicly announced that it needs additional beds for male and female inmates. To that end, the department plans to contract with Union county and the Geo Group (formerly Wackenhut) for the operation of a 600-bed jail in Clayton to house male inmates.

Additionally, the corrections department plans to use Camino Nuevo, formerly a high-security detention facility for juveniles, as a facility to house female inmates. Camino Nuevo, located in Albuquerque on the campus of the Youth Diagnostic and Development Center, will provide the department with an additional 192 beds for female inmates.

During legislative hearings this summer, the corrections department made the case regarding its plans to house state inmates in the proposed 600-bed jail in Clayton. Several concerns were directed to the department during those hearings, including the following:

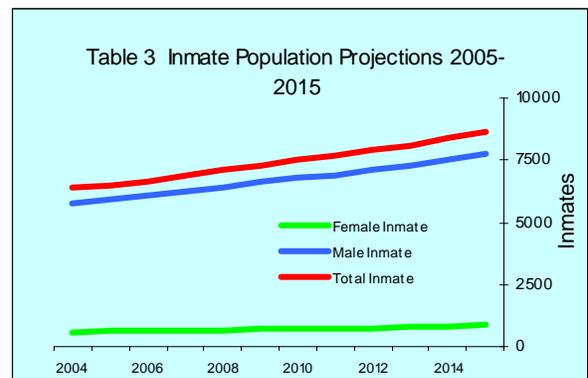
- Has the department exhausted all available measures to control inmate population?
- Would it be more cost efficient to expand bed capacity at existing facilities, rather than using the proposed facility in Clayton?
- Is there sufficient infrastructure (water, electricity, medical services) in Union county to adequately support a 600-bed jail?
- Is there a sufficient labor pool in Union county and the surrounding region to adequately support a 600-bed jail?
- Will the remote location of a facility in Clayton deter families from visiting incarcerated family members?
- Will the remote location of a facility in Clayton increase the department's transportation costs?
- Will the remote location of a facility in Clayton make it difficult to hire and retain professional staff to provide services to inmates?



Source: New Mexico Corrections Department, Annual Report: 2003-2004.

Numbers

In the period between fiscal year 1993 and fiscal year 2004, the average daily inmate population has nearly doubled, increasing from 3,336 inmates to 6,242 inmates (See Table 2). The growth in inmate population can be attributed to a number of factors, including an increase in the number of people who



Source: New Mexico Corrections Department, Presentation to Legislative Finance Committee 6/14/05.

live in New Mexico, the enactment of "truth-in-sentencing" laws that require violent offenders to serve at least 85% of their sentence, the enactment of felony-level DWI offenses and toughened sex offender laws.

An inmate population projection for the period 2005-2015 indicates an ongoing, steady increase in population growth. The projection for 2015 is an inmate population of 8,612 (See Table 3).

As it responds to the challenge of managing a growing inmate population, the corrections department has become increasingly reliant on the use of privately-operated prisons and jails. Corrections Corporation of America has operated the Women's Correctional

Table 4. Prisoners held in private facilities, June 30, 2004

Region and jurisdiction	Inmates held in private facilities	
	Number	Percent of all inmates
NORTHEAST	3328	1.9%
Connecticut	0	0
Maine	0	0
Massachusetts	0	0
New Hampshire	0	0
New Jersey	2566	9.1
New York	0	0
Pennsylvania	361	0.9
Rhode Island	0	0
Vermont	401	19.7
MIDWEST	3854	1.5%
Illinois	0	0
Indiana	655	2.8
Iowa	0	0
Kansas	0	0
Michigan	480	1.0
Minnesota	268	3.1
Missouri	0	0
Nebraska	0	0
North Dakota	47	03.7
Ohio	1903	4.3
South Dakota	8	0.3
Wisconsin	493	2.2
SOUTH	47706	8.0%
Alabama	153	0.6
Arkansas	0	0
Delaware	0	0
Florida	4327	5.1
Georgia	4597	9.5
Kentucky	1679	9.5
Louisiana	2923	8.0
Maryland	126	0.5
Mississippi	4397	21.5
North Carolina	217	0.6
Oklahoma	5675	22.9
South Carolina	17	0.1
Tennessee	5121	19.8
Texas	16906	10.
Virginia	1568	4.4
West Virginia	0	0
WEST	19,397	6.6%
Alaska	1,304	28.9
Arizona	4,371	13.8
California	2,797	1.7
Colorado	3,074	15.6
Hawaii	1,621	27.3
Idaho	1,269	20.1
Montana	1,060	27.9
Nevada	455	4.1
New Mexico	2,649	41.8
Oregon	0	0
Utah	0	0
Washington	232	1.4
Wyoming	565	29.4

Facility in Grants for nearly two decades. It is currently the sole correctional facility for female inmates in New Mexico.

In the late 1990's, the department contracted with Wackenhut (now known as the Geo Group) for the operation of facilities to house state inmates in Lea county and Guadalupe county. As a result, New Mexico leads all states in the percentage of inmates held in private facilities (See Table 4).

Cost

The FY04 appropriation to the New Mexico Corrections Department for its annual operating budget was approximately \$221.1 million (See 2003 General Appropriation Act).

The Corrections Department estimates the projected annual cost to contract for operation of a 600-bed facility in Union county to be \$17,153,540.

The department's projected annual cost to contract for operation of a 192-bed facility for female inmates at Camino Nuevo is estimated to be \$5,055,200.

The projected annual cost of contracting for operation of the proposed jail in Clayton and Camino Nuevo will exceed \$22 million – a recurring cost that will be a ten percent increase in the FY04 appropriation to the corrections department.

Policy Considerations

If inmate population growth continues as projected, in approximately three years the New Mexico Corrections Department will be contemplating the need for another 600-bed expansion. In order to slow inmate population growth and accompanying costs for the department in future years, the

following topics may merit consideration:

- ▶ The Corrections Population Control Act (Section 33-2A-1 NMSA\1978) sets forth procedures for the early release from prison of qualifying, nonviolent offenders.
- ▶ Section 31-21-27 NMSA 1978 authorizes an early release reentry drug court program for offenders convicted for a nonviolent, drug-related offense. Offenders within eighteen months of discharge or eligibility for parole could be diverted to the drug court program. The corrections department is currently assessing the feasibility of the reentry drug court program.
- ▶ Expand the availability of community corrections programs (See Section 33-9-1 NMSA 1978). This will allow the department to divert qualifying offenders from prison beds into less expensive community corrections slots.
- ▶ During the 2005 legislative session, the New Mexico Sentencing Commission supported the introduction of House Bill 514, which proposed a uniform, equitable schedule of sanctions for property offenses. House Bill 514 would have increased the "value of property taken" threshold for certain property crimes that are currently felony offenses. Consequently, enactment of House Bill 514 would have reduced the number of felony offenders committed to the Corrections Department for commission of property offenses.
- ▶ During the 2005 legislative session, the corrections department supported the introduction of three bills (Senate Bills 599, 600 and 601) that would have streamlined administrative procedures related to award of earned meritorious deductions and expanded the availability of earned meritorious deductions to parolees. Current law provides that an inmate is not

eligible to earn meritorious deductions if the inmate is within the first sixty days of receipt by the corrections department. In addition to the amendments proposed by the department during the 2005 legislative session, the statute could be revised to allow earned meritorious deductions for nonviolent offenders during the initial sixty days of incarceration.

- ▶ The state of Virginia has a statute which requires that proposed criminal sentencing legislation be accompanied by an appropriation or other source of revenue to pay for the forecast increase in periods of incarceration. In the absence of an appropriation or other funding source, the proposed legislation cannot be reported out of committee.



About The Commission

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New Mexico Sentencing Commission

Highlights

- On June 30, 2004, the Probation and Parole Division was supervising over 12,000 offenders.
- On that same date, the Division had 165 officers and 13 vacant positions.
- In 2004, the average caseload of probation and parole officers performing standard supervision was nearly 50% higher than the national standard.
- 70% of probation and parole officers have four years of experience or less.
- At a starting salary of \$14 per hour, the Probation and Parole Division cannot compete with salaries offered by other agencies for similar work.
- New technologies, such as GPS ankle bracelets, have proven effective. However, the GPS bracelets require constant monitoring for maximum effect.

Briefing Note

Probation & Parole: *A Profile of Probation and Parole in New Mexico*

Background

“The purpose of the community offender management program is to provide programming and supervision to offenders on probation and parole with increased emphasis on high-risk offenders to better ensure the probability of them becoming law-abiding citizens in order to protect the public from undue risk and to provide intermediate sanctions and post-incarceration support services as a cost-effective alternative to incarceration.” (See General Appropriation Act of 2003)

Current Issues

National standards suggest a caseload of not more than 65 offenders for probation and parole officers to safely and effectively manage offenders placed on standard supervision. In New Mexico in 2004, the average caseload for those officers was 96 offenders.

Officer retention is a continuing problem for the Probation and Parole Division. Currently, approximately 70% of the Division’s officers have four years of experience or less. Salaries and caseloads appear to be important factors in attrition rates. The legislature increased starting salaries for officers from \$13.07 to \$14.00 per hour during the 2005 regular session. However, the Division continues to lose experienced officers to the probation departments at the Bernalillo County Metropolitan Court, which offers approximately \$16 per hour to supervise misdemeanor offenders, and the federal

government, which starts its officers at \$18 per hour.

Based upon past offenses and other assessments, the Probation and Parole Division has determined that certain individuals are more likely to violate their conditions of parole or probation than others. Typically, the Division would place these individuals in the intensive supervision program (ISP). The caseloads for ISP officers are limited to approximately 20 offenders. However, because of increased caseloads for the entire Division, the ISP program has been discontinued outside of Albuquerque.

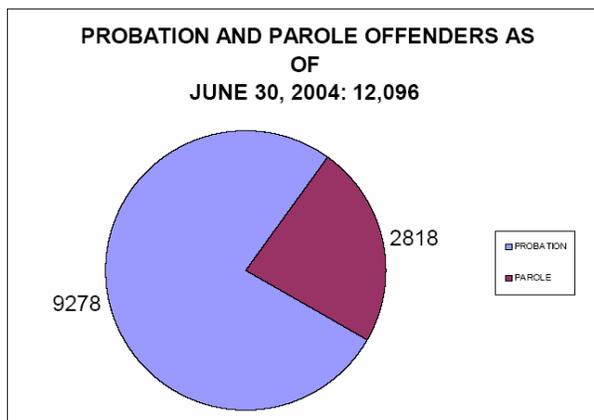
The Global Positioning Satellite System (GPS) allows the Probation and Parole Division to track the position of offenders by means of an ankle bracelet and transmitter. The technology has proven useful, but requires constant monitoring for maximum effect. The Division lacks the resources to maximize use of this technology. The Division is currently reviewing use of a management service that would monitor GPS transmissions and provide other support services, including data entry and offender telephone contacts. Use of this service would allow officers to focus on supervision priorities.

The administration has indicated that it will introduce legislation during the 2006 legislative session to provide for life-time supervision of certain sexual offenders. If

enacted, the number of sexual offenders under supervision will increase over time.

Numbers

The Probation and Parole Division is responsible for the management of probationers and parolees under the jurisdiction of the Corrections Department. As of June 30, 2004, the Division supervised 9,278 probationers and 2,818 parolees. On that same date, the Division had 165 officers and 13 vacant positions. The average caseload per officer performing standard supervision was approximately 96 offenders. The average caseload per officer performing intensive supervision was approximately 23 offenders. Finally, the average caseload for officers supervising offenders placed in community corrections programs was approximately 26 offenders.



Probation and Parole Assignments and Caseloads (2004)			
	Number of PPOs	Average Caseloads	PPO Vacancies
Standard Supervision	133	95.56	10
Intensive Supervision	16	22.8	1
Community Corrections	16	25.93	2

Cost

The FY04 appropriation to the New Mexico Corrections Department for the Community Management Program was approximately \$18,800,000. (General Appropriation Act of 2003). The FY04 appropriation to the New Mexico

Corrections Department for the Community Corrections Program was approximately \$3,300,000. (General Appropriation Act of 2003).

These costs are included in the cost information provided for the New Mexico Corrections Department in a separate section of this report.

Policy Considerations

At a starting salary of \$14 per hour, the Probation and Parole Division cannot compete with other agencies. As noted above, the Bernalillo County Metropolitan Court and the federal government offer higher starting salaries to probation and parole officers. In order to address recruitment and retention issues for the Division, it may be necessary to increase starting salaries for probation and parole officers.

In 2004, each probation and parole officer with a standard supervision caseload managed approximately 96 offenders. That figure is 50% higher than the caseload (65) suggested in national standards. When caseloads are that high, effective supervision of offenders and public safety are called into question. At a minimum, there is a need to fill vacant probation and parole officer positions and the authorization of additional positions must be considered.

GPS transmitters have proven to be an effective supervisory tool for immediate post-release and high-risk offenders. The use of a private company to provide support services, including data input, GPS monitoring and inmate telephone contacts, would give officers additional time to engage in personal contacts and other important aspects of supervision.



THE ADULT PAROLE BOARD

BACKGROUND

The New Mexico Parole Board is an independent agency that reports to the Governor. The agency has statutory authority to grant, deny or revoke parole. The agency also investigates and reports cases of executive clemency at the request of the Governor. The agency notifies victims through the District Attorneys Victims Advocate of scheduled parole hearings for offenders and meets with victims when requested.

CURRENT ISSUES

Parole Board members are not paid a salary, but do receive compensation when they travel to and attend board meetings and hearings. Parole Board members must travel to every part of the state to conduct hearings, which are held several times each month. The Parole Board has experienced considerable turnover among its members, which makes it difficult to obtain quorums for parole hearings.

The increase in the potential length of parole for certain sex offenders (up to 20 years) may result in a higher number of revocation hearings in the future. Also, proposals to operate additional prison facilities in Clayton, and at Camino Nuevo in Albuquerque, will increase the workload for the Parole Board.

NUMBERS

The Parole Board conducts nearly 4,000 hearings per year and maintains files on almost five times that many parolees. The hearings are conducted on a regularly-scheduled basis at correctional facilities throughout the state.

COST

The FY04 appropriation to the New Mexico Parole Board for its annual operating budget was approximately \$348,000 (See 2003 General Appropriation Act).

POLICY CONSIDERATIONS

Six board members (for a total of 15) were added to the Parole Board pursuant to the enactment of House Bill 695 (2005). Hopefully, the additional board members will alleviate the time and travel strain on individual board members and reduce board vacancy and turnover rates. However, Parole Board members also spend a significant amount of time reviewing inmate files prior to hearings. The state should consider some increased level of compensation for Parole Board members, such as allowing per diem for time spent reviewing files in preparation for hearings.

The Parole Board is working with the Corrections Department on a long-range transition into the use of video to conduct parole hearings. Use of video parole board hearings will save the expense of shipping hundreds of files hearing sites and reduce travel expenses for board members. The Parole Board is requesting a non-recurring appropriation to obtain the equipment needed to link its office to planned video conferencing units at correctional facilities.

About The Commission

The New Mexico Sentencing Commission serves as a criminal and juvenile justice policy resource to the State of New Mexico. Its mission is to provide information, analysis, recommendations, and assistance from a coordinated cross-agency perspective to the three branches of government and interested citizens so that they have the resources they need to make policy decisions that benefit the criminal and juvenile justice systems. The Commission is made up of members from diverse parts of the criminal justice system, including members of the Executive and Judicial branches, representatives of lawmakers, law enforcement officials, criminal defense attorneys, and members of citizens' interest groups.



New Mexico Sentencing Commission

Highlights

- In June 2004, there were 698 sex offenders incarcerated in state correctional facilities. Currently, the New Mexico Corrections Department has 224 treatment beds for sex offenders.
- The Sex Offender Treatment program in Las Vegas has 10 empty treatment beds due to lack of funding.
- In September 2005, there were 1,882 registered sex offenders in New Mexico. Information regarding 1,512 sex offenders was posted on the web site maintained by the Department of Public Safety.
- The Sex Offender Management Board is developing probation and parole guidelines for the supervision and management of convicted sex offenders.
- Restrict caseloads for probation and parole officers who supervise sex offenders to 15-20 sex offenders per officer.

Briefing Note

A Profile of the Sex Offender Management Board and Issues Regarding Sex Offenders in New Mexico

Background

During a special session of the New Mexico legislature in October 2003, the Sex Offender Management Board (SOMB) was created within the New Mexico Sentencing Commission. The SOMB includes representatives from the attorney general's office, district attorneys, the public defender department, the district courts, the corrections department, the department of health, the children, youth and families department, victims' advocates, mental health professionals who treat sex offenders, the probation and parole division, law enforcement, a civil liberties organization and a faith-based organization. The general mission of the SOMB is to develop and make recommendations to the New Mexico Sentencing Commission regarding best practices in the management and treatment of adult and juvenile sex offenders.

Prior to the 2005 legislative session, the SOMB developed proposed amendments to the state "Sex Offender Registration and Notification Act". In large part, the amendments were necessary to bring New Mexico into compliance with federal laws concerning the management and supervision of sex offenders. The amendments were endorsed by the New Mexico Sentencing Commission and introduced as House Bill 165 (2005). The House Judiciary Committee Substitute for House Bill 165 was passed by the Legislature and signed into law by the Governor.

Current Issues

The Sex Offender Management Board is currently focusing on the following issues: treatment for sex offenders; supervision of sex offenders; and issues specific to juvenile sex offenders.

New Mexico lacks treatment facilities and programs. On June 30, 2004, there were 698 sex offenders incarcerated in state correctional facilities. Currently, the Corrections Department has a total of 224 treatment beds for sex offenders. The minimum-security unit at the Penitentiary of New Mexico in Santa Fe has two pods with a total of 108 beds devoted exclusively to sex offender treatment. The Lea County correctional facility in Hobbs has an additional 116 sex offender treatment beds.

The Department of Health has a 24-bed facility dedicated exclusively to sex offender treatment. The facility, known as the Sex Offender Treatment Program (STOP), is located on the grounds of the New Mexico Behavioral Health Institute in Las Vegas. However, because of funding issues, only 14 of those 24 beds are now available.

Treatment in the private sector is limited as well. Research conducted by the SOMB indicates that New Mexico currently has 63 professionals who provide treatment for sex offenders. There are no private, adult residential treatment programs for sex offenders in New Mexico.

Because the number of treatment beds is limited and because the security level of some sex offenders renders them too dangerous to house in correctional facilities with treatment programs, some offenders will not receive treatment prior to release from prison. Consequently, the responsibility to provide initial treatment and continuing treatment to sex offenders rests with the Probation and Parole Division of the Corrections Department.

The SOMB is in the process of developing probation and parole guidelines for the supervision and management of convicted sex offenders. As contemplated in the draft guidelines, upon release a sex offender will be supervised by an appropriate team. The team will include a probation and parole officer trained in sex offender management, a polygraph examiner, a treatment provider and, in certain cases, a law enforcement officer. The guidelines under development by the SOMB will formalize the relationship among the team members. Unfortunately, resources are limited. For instance, New Mexico currently has only two resident polygraph examiners experienced in work with sex offenders. Also, the team concept will be more difficult to implement in rural areas of the state.

The team approach has already been implemented in a limited form. The Probation and Parole Division established a "sex offender management unit" in Bernalillo County in 2004. The unit consists of 8 probation and parole officers who exclusively supervise sex offenders. The sex offender management unit works with the Bernalillo County Sheriff's Department. This joint operation has a number of apparent advantages: it allows law officers to support unarmed probation and parole officers; it provides for a quick response by law enforcement in the event of probation or parole violations; and the extra level of supervision may deter additional offenses.

Juvenile sex offenders present unique management and treatment challenges as compared to adults. However, treatment providers generally agree that, unlike adults, early and aggressive clinical intervention with juvenile offenders can result in successful treatment outcomes.

One challenge with juvenile sex offenders is that the "potential" offender is often difficult to identify. While every sex offender is different, it is not uncommon for adult sex offenders to engage in a pattern of criminal activity that escalates in frequency

and violence. By contrast, a juvenile sex offender is often a model student and citizen prior to his offense. Thus, prevention is difficult.

Further, juvenile treatment is complicated because the treatment method and regimen must be carefully tailored to meet the needs of the particular child. Whereas adult patients may generally be expected to possess the emotional maturity of "adults," each child must be evaluated and treated at the appropriate emotional maturity level unique to the child. For example, a seventeen-year-old patient with cognitive maturity appropriate to his age may have the emotional maturity of a twelve-year-old.

Despite the promising results of early intervention, treatment opportunities for juvenile sex offenders in New Mexico are limited. The Children, Youth and Families Department has one sex offender treatment facility. It is Sandia Cottage, located on the campus of the Youth Diagnostic and Development Center in Albuquerque. Sandia Cottage has 16 beds. Research by the SOMB indicates that there are 62 private, residential treatment beds for juvenile sex offenders in New Mexico.

Numbers

Information provided by the Children, Youth and Families Department indicates that in FY04, there were a total of 196 dispositions involving juveniles with a sex offense charged on the petition. Of the 196 dispositions, 107 of the juveniles were adjudicated as delinquent offenders for committing at least one sex offense. Of those adjudicated, 64 were sentenced to a period of probation and 17 were committed to detention facilities operated by the department. One juvenile sex offender was convicted and sentenced as an adult.

As noted earlier, on June 30, 2004, there were 698 adult sex offenders incarcerated in state correctional facilities.

Information provided by the Department of Public Safety indicates that in September 2005, there were 1,882 registered sex offenders in New Mexico and information regarding 1,512 sex offenders was posted on the web site maintained by the department.

Cost

In FY04, the New Mexico Sentencing Commission received a special appropriation in the amount of \$250,000 to fund the operations of the Sex Offender Management Board.

Policy Considerations

Provide additional funding for the Sex Offender Treatment Program. During the 2005 legislative session, House Bill 924 and Senate Bill 968 (identical bills) were introduced for the purpose of fully funding the operations of the Sex Offender Treatment Program (STOP), located on the grounds of the New Mexico Behavioral Health Institute in Las Vegas. Neither bill passed and money was not appropriated elsewhere to fully fund the operations of the STOP program. The STOP program has the capacity to provide treatment for 24 sex offenders, but currently has funding only for the operation of 14 treatment beds.

Hire probation and parole officers who are highly trained in the assessment and supervision of sex offenders. Restrict caseloads for these probation and parole officers to 15-20 sex offenders per officer.

Develop and implement coordinated supervisory teams similar to the “sex offender management unit” that operates in Bernalillo County. Teams would consist of specialized probation and parole officers, treatment providers, polygraph examiners and, in certain cases, law enforcement officers.

Institute life-time parole for particularly dangerous sex offenders and “step-down” extended parole for all sex offenders consistent with the seriousness of the offense and the level of risk.

Develop and implement treatment and continuing education standards for professionals who provide treatment to sex offenders.



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