



**Minutes of the Meeting of the  
New Mexico Sentencing Commission  
10:00 a.m.  
November 16, 2020**

via Zoom

<b>Members Present</b>	<b>Members Absent</b>	<b>Others Attending</b>	<b>NMSC Staff Present</b>
Hon. Edward Chavez (retd.), Chair	Hon. Marci Beyer (DMCJA)	Eva Buchwald (NM Coalition for the Fair Sentencing of Youth)	Linda Freeman
Bob Cleavall, Vice Chair	Sheriff Mark Cage (House Minority)	Javier Rojo (NM Voices for Children)	Douglas Carver
Marit Andrews (for PED)	Regina Chacon (for DPS)	Cody Zeger	Amanda Armstrong
Cindy Aragon (State Bar)	Jason Clack (for NM SCt)	Monica Ault (Fines & Fees Justice Center)	
Hon. John Chavez		Danielle Elliot	
Jim Cowan (for CYFD)		Devan Shea	
Mark Donatelli (Speaker)		Anavictoria Avila	
Sheriff Manuel Gonzales (NM Counties)		Kim Chavez Cook (LOPD)	
Claire Harwell (Governor)			
Brady Horn (for NM SCt)			
Anne Kelly (AGO)			
April Land (UNM SOL)			
Michael Lilley (Pro Tem)			
Angela "Spence" Pacheco (Speaker)			
Jason Rael (for LOPD)			
Nina Safier (Governor)			

David Schmidt (Pro Tem)			
Martin Suazo (Pro Tem)			
Alisha Tafoya Lucero (NMCD)			
Clint Wellborn (NMDAA)			
Ron West (Senate Minority)			

**I. Welcome.** The meeting began at 10:05 a.m. Chair Justice Edward Chavez (retd.) welcomed members, guests, and staff to the meeting.

**II. Approval of minutes for the October 20, 2020 meeting.** The minutes of the meeting were approved by unanimous vote.

**III. Staff Report.**

Linda Freeman, Executive Director of the New Mexico Sentencing Commission (NMSC), informed the Commission that the Grants Committee had met and approved \$178,500 in crime reduction grants, and that Commission staff was now working on developing scopes of work for those agreements. She also informed the Commission that two working groups of the Justice Information Sharing Council had met, one that discussed memoranda of understanding for data-sharing agreements, the other discussing a hierarchy of offenses on the Charge Code Table.

**IV. Report from the Legislative Committee.**

Martin Suazo, Chair of the committee, informed the Commission that although the details of the upcoming Legislative Session were up in the air due to the pandemic, the committee would meet either via Zoom or, as usual, in the Administrative Office of the Courts. He added that the committee had its marching orders from the bill drafts the Commission had endorsed today.

**V. Legislation Proposed by the Executive Committee.**

*Abolition of the Sex Offender Management Board*

Douglas Carver, Deputy Director, NMSC, discussed the bill draft presented to the committee that abolishes the Sex Offender Management Board (SOMB). He informed the committee that the SOMB had not met since before the last gubernatorial election, as the Governor had not made her appointments, and that the Board had struggled for years to achieve a quorum, and had never met for the statutorily-required eight times a year. The Commission, he concluded, can absorb most of the duties and responsibility of the SOMB.

A motion was made and seconded to endorse the draft. The motion passed unanimously.

## **VI. Legislation Proposed by the Juvenile Committee.**

### *Fines and fees in the juvenile justice system.*

Bob Cleavall, Chair of the committee, informed the Commission that the Juvenile Committee had formed two working groups, one to address fines and fees in the juvenile justice system, the other to address concerns around serious youthful offender and youthful offender statutes. The serious youthful offender and youthful offender working group will be continuing its work in the coming year. The bill proposed by the juvenile fines and fees working group was before the Commission. He informed the Commission that the bill draft had the unanimous approval of the Juvenile Committee, though there was one concern raised regarding language in the bill concerning costs to be paid by a parent or guardian.

Professor April Land, University of New Mexico School of Law, thanked everyone who had participated in the working group. She informed the Commission that the policy animating the bill draft was to remove a potential economic burden on children involved in the juvenile justice system by removing juvenile fines and fees. She noted that the bill does not effect restitution, nor does it address traffic fees. Traffic fees were a subject of contention in the Juvenile Committee and thus the committee decided to move forward with a consensus bill, with the idea of having a more thorough discussion of the issue of traffic fees in the coming year.

The Commission had a discussion regarding the language concerning costs to be paid by a parent or guardian, as the concern was raised that the language removed in the bill draft from Section 32A-1-19(B) would violated Federal requirements. It was determined that the concerns were raised by review of an earlier draft of the proposed legislation, and that this draft had the necessary language in Subsection C of 32A-1-19. There was also discussion of whether the committee had any data indicating what the financial impact of this legislation might be. Professor Land noted that the Children's Court Improvement Commission had sent a survey to practitioners in juvenile justice in the state to see whether these fines and fees were being assessed, as anecdotal evidence seemed to indicate that they were not assessed presently.

A motion was made and seconded to endorse the draft. The motion passed unanimously.

## **VII. Legislation Proposed by the Reform Committee.**

### *Fines and fees in the adult justice system.*

Angela Pacheo, Chair of the committee, thanked Monica Ault, New Mexico Director of the Fines and Fees Justice Center, for the assistance she had provided in the committee's work on this draft bill and invited her to present the bill draft to the Commission. Deputy Director Carver informed the Commission that the Legislative Council Service (LCS) had made a series of errors in the bill draft that was before them, and noted that he and Ms. Ault would flag those for the Commission as she explained the bill draft.

Ms. Ault gave an overview of the draft legislation, noting that in general it incorporates New Mexico court rules on ability to pay. She noted that Jason Clack of the Administrative Office of the Courts had assisted with the drafting of provisions that directly addressed court matters. She then walked the Commission through the specific provisions of the draft legislation.

A member of the Commission asked whether this legislation applied to juveniles. Ms. Ault stated that while there might be some provisions that affect juveniles, the bill draft does not directly address juvenile issues; those issues were addressed in the bill presented by the Juvenile Committee. A member also asked whether the bill addressed traffic issues. Ms. Ault informed the Commission that the new language addressed traffic

cases where the defendant was indigent, but that the larger issue of traffic cases was postponed for the Reform Committee's work in the following year. Members discussed how this was part of the compromise to develop a consensus bill. Members of the Commission also raised the point that there were fundamental problems with employees of the Judiciary acting as bill collectors and these fees and costs should be eliminated entirely, and that there were similar problems with the principle of putting people in jail to convert fines or fees owed.

A motion was made and seconded to endorse the draft as sent to LCS. The motion passed unanimously.

#### *Geriatric and medical parole reform.*

Reform Committee Chair Pacheco noted that Megan Dorsey, who led the working group addressing this issue, was not able to attend the meeting and thus Deputy Director Carver would be presenting the bill in her stead. She thanked Ms. Dorsey for her work on the draft legislation. She also thanked Alisha Tafoya Lucero, Secretary of Corrections, for the input from her and her department, and noted that much of the language in the draft legislation was drawn from present policies of the department. Deputy Director Carver also added that Abram Anaya, Director of the Parole Board, had been involved in the working group on this issue and had provided input on the draft. Secretary Tafoya Lucero discussed the policies her department already had implemented around these issues.

Deputy Director Carver went through the provisions of the draft bill, highlighting issues that had been of particular concern in Reform Committee discussion. A member noted that the District Attorneys had particular concern over the dropping of the age of eligibility to apply for geriatric parole from the present age 65 to age 55. Executive Director Freeman informed the Commission that looking at the confined population on June 30, 2020, 5.8 percent were women over 55, and 11.5 percent were men over 55. There were seven women incarcerated and 166 men over age 65. Additionally, 75 percent of the total population was under 46, with a minimum age of 18 and a maximum age of 89.

Members of the Commission asked questions about and discussed whether victims were still included in the parole process under this proposed legislation – it was noted that all of the present rights of victims were still honored in the legislation and nothing for victims had been changed; how the proposed legislation would affect an elderly sex offender who was incarcerated; whether a person should be required to serve a certain percentage of his or her sentence before being eligible for the provisions of this legislation; and the procedures for appellate review in the draft.

A motion was made and seconded to endorse the draft. Over the course of the Commission's discussion, it was recommended that the draft reflect consistent usage of "medical and geriatric". The motion was amended and seconded to endorse the draft with that change. The motion passed with two dissenting votes, one from the member representing the District Attorneys, who opposed the age change for geriatric parole eligibility; and one from a public member who opposed the exclusion of first degree murder felons from the provisions of the bill draft.

### **VIII. Other Legislation.**

#### *Appropriation to Redraft the Criminal Code*

Deputy Director Carver presented the appropriation to the Commission. He informed the Commission that Representative Gail Chasey, Co-Chair of the Legislature's interim Courts, Corrections, and Justice Committee (CCJ) and Chair of the House Judiciary Committee, requested that the NMSC bring a cost estimate to rewrite the state's Criminal Code to CCJ by that interim committee's last meeting. Deputy

Director Carver noted that the \$500,000 appropriation was for two years, and would cover criminal statutes that were not in the Criminal Code.

A motion was made and seconded to endorse the draft as sent to LCS. The motion passed unanimously.

#### *Collection of Race and Ethnicity Data*

Deputy Director Carver informed the Commission that the Reform Committee began work on this issue at the request of Senator Antoinette Sedillo Lopez. The committee had not yet completed work on a possible bill draft. He will give the Commission an update on this work at its December meeting.

#### **IX. Public Comment.**

There was no public comment offered.

#### **X. Next meeting.**

The committee scheduled its next meeting for either the second or third week of December, via Zoom. NMSC staff will survey members to confirm the date that worked best for Commission members.

#### **XI. Adjourn.** The meeting adjourned at 12:07 p.m.