



**Minutes of the Meeting of the
Reform Committee
10:00 a.m.
January 13, 2020**

**New Mexico Corrections Department
4337 NM 14
Santa Fe NM 87508**

Committee Members Present	Committee Members Absent	Others Attending	NMSC Staff
Angela “Spence” Pacheco, Chair	Neal Bowen (BHSD)	Shammara Henderson (NMSC Chair) (on phone)	Linda Freeman
Collin Brennan (AGO)	Nina Safier	Megan Dorsey	Douglas Carver
Karl Brooks (AOC)	Clint Wellborn (AODA)	Mika Tari (BHSD)	
Kim Chavez Cook (LOPD)		Mark Probasco (AG)	
Mark Donatelli		Melanie Martinez (NMCD)	
Claire Harwell		Cynthia Pacheco (AOC)	
April Land (UNMSOL)		Esperanza Dodge (Bold Futures)	
Mike Lilley		Eric Harrison (NMCD)	
John Sugg			
Alisha Tafoya Lucero (NMCD)			

I. Welcome and Introductions. Angela Pacheco, Chair, called the meeting to order at 10:07 a.m.

II. Approval of Minutes for the October 7, 2019 meeting. The minutes for the previous committee meeting were approved by consensus.

III. Staff Report.

Linda Freeman, Executive Director of the New Mexico Sentencing Commission (NMSC), gave an overview of the document provided to the committee from the Council of State Governments concerning the effectiveness of custodial versus community sanctions for probation and parole violators. She also discussed the Legislative Finance Committee (LFC) and Department of Finance and Administration (DFA) budget recommendations for the NMSC; the LFC has recommended a flat budget, while DFA supported the increases that the NMSC had requested.

IV. Discussion of Pending Reforms to Probation and Parole Processes.

Chair Pacheco began the discussion by informing the committee that a new version, .7, of Rep. Antonio Maestas's bill had been sent out that morning. Douglas Carver, Deputy Director, NMSC, informed the committee that from his rapid comparison of the two versions of the bill, most of the changes between the .6 and .7 versions concerned removing the language that created an independent probation agency, though there was some additional language involving New Mexico Corrections Department (NMCD) reporting requirements.

Concerns were expressed throughout the meeting that no one had had the time to properly review the latest draft before the committee meeting.

Chair Pacheco noted that the principal concern of the committee centered on the definitions of standard and technical violations of probation and parole. Many members expressed concern with the provisions in Section 11 of the new bill draft concerning probation violations. Twelfth Judicial District Attorney John Sugg noted that the technical violations scheme in bill seemed similar to the Steps Program in use in Bernalillo County, and suggested that a statewide Steps Program might solve many of the problems that the bill intends to address, as petitions are not in front of the Court. He noted that the District Attorneys are concerned that Section 11 takes discretion from the Courts; the District Attorneys were pleased to see a plan for technical violations in Section 14.

There was discussion concerning whether the Steps Program applied to probation or parole violators, and how, and whether, sanctions or penalties for violations for people on dual supervision were aligned.

Kim Chavez Cook, from the Law Office of the Public Defender (LOPD), stated that Sections 11 and 14 needed to be discussed in concert, and noted that the bill as written could have the balance of one's sentence imposed based on one violation. She also noted that the LOPD has problems with the definition of absconding in the bill, but that they had determined in the spirit of compromise to not let that definition be a deal breaker.

The committee discussed the absconding definition, which was an area of disagreement.

April Land, from the University of New Mexico School of Law, noted that the difference between standard and technical violations the bill is trying to draw breaks down when the sanctions provisions in the bill are taken into account, especially as one of the available sanctions is the re-imposition of the original sentence. Mark Probasco, from the Office of the Attorney General, informed the committee that other states have a 90-day cap on incarceration for technical violations, while in this bill 90-days is the cap for a standard violation, but for technical violations there does not seem to be a limit on the sanctions that could be imposed. A number of members noted that the language in the bill for sanctions for standard violations seems to be more appropriate for technical violations, and that of technical for standard. It was also noted that the language is also all permissive; thus, someone could be reincarcerated for any violation.

There was a great amount of discussion concerning the sanctions language for technical and standard violations, with many members stating that the language in the bill seems to undermine the proclaimed intent of the legislation, and that the ultimate effect of the bill language was that there effectively would be no changes to the probation and parole processes, though these processes would be made more complicated. Members also question the utility of spending a long amount of time working on a bill that will not effectuate its purported purpose.

District Attorney Sugg noted that an unintended consequence of the caps on sanctions in the bill is that an offender, depending on the judge, might be less likely to get probation and be sent straight back to incarceration, that restricting a judge's discretion might make it less likely that clemency will be granted, especially as the judge has to answer for his or her decisions at the next election.

Executive Director Freeman informed the committee that this bill would be the first item of legislation considered by the NMSC Legislative Committee when it began meeting in the second week of the Legislative Session, and that the Legislative Committee chair would welcome Reform Committee input.

District Attorney Sugg noted that the District Attorneys prefer to have the discretion to file on every violation, but also would favor an alternative like a strong Steps Program throughout the state. New Mexico Corrections Department (NMCD) Secretary Alisha Tafoya Lucero noted that certain language in the bill would make the job of NMCD more difficult.

Mr. Carver, summarizing the committee's discussion, stated that there did not appear to be any consensus position regarding this bill, other than that all members of the committee did not support it as drafted in the .7 version. Members of the committee agreed. Members repeated that it was hard to take a fixed position on the legislation as it kept changing, noting again that this most recent version was only distributed that very morning, and that it was the seventh version of the legislation.

Members of the committee continued to discuss the merits of the Steps Program; the definitions of standard versus technical violations; the impact of local rules on this process; the need for there to be a standardized system to handle violations throughout the state, which was one of the ostensible reasons for the legislation; the merits of non-incarceratory sanctions; and whether the geriatric parole provisions could be salvaged from the bill, as these provisions are not controversial but have not passed for years as they have been placed in bills that have proposed controversial changes.

The final committee consensus was that while the committee ultimately perhaps could come to agreement on a probation and parole reform bill, this bill was not it and would need a good bit of work, especially concerning the provisions around technical violations. Members of the committee expressed satisfaction at the dialogue among committee members, but frustration with how the process has played out, with versions of the bill being given to the committee immediately before a meeting, when the members have not had time to properly consider it; or representations that the committee, or members of the committee, supported provisions in drafts of the bill when that was not the case. The committee ultimately expressed the desire to keep working on this issue in the coming year, but it could not support this version of the bill. Mr. Carver noted that the committee could produce its own bill to present to the full Sentencing Commission, which, as a state agency, could have a bill drafted, requiring then only a sponsor to carry it.

A number of members of the committee noted that this present version of the bill is very far removed from HB 564 from the 2019 Legislative Session that was vetoed by the Governor; that the present bill seems not to have addressed issues in the Governor's veto message; and that perhaps it would be best to go back to HB 564 and use that as a starting template for a reform bill, incorporating various ideas that had committee approval in the committee's many conversation about probation and parole reform. It was noted that the District Attorneys had marked up a version of HB 564 (2019), and the LOPD had made annotations to that bill. District Attorney Sugg noted that it was possible that the District Attorney's version of HB 564 might be introduced in the upcoming Session.

V. Discussion of Any Other Pending Criminal Justice Reform Legislation.

Mr. Carver informed the committee that Sen. Antoinette Sedillo Lopez has a draft of the memorial that will have the NMSC pull together a task force to draft legislation mandating the collection of race and ethnicity data throughout the criminal justice system; he also mentioned that “red flag gun law” legislation will be introduced. Committee members noted that there will be requests for increased funding for mental health and behavioral health services; legislation requiring registration of sex offenders who are visiting, but not residents of, New Mexico, in response to the Jeffrey Epstein scandal; and that a bill may be introduced adding fatality due to driving while intoxicated to the list of statutes in the state’s three strikes law.

VI. Next Meeting. The committee will schedule its next meeting for some time after the Legislative Session.

VII. Adjourn. The meeting adjourned at 11:50 a.m.