



**Minutes of the Meeting of the
Reform Committee
10:00 a.m.
July 23, 2020**

via Zoom

Committee Members Present	Committee Members Absent	Others Attending	NMSC Staff
Angela “Spence” Pacheco, Chair	Neal Bowen (BHSD)	Cindy Aragon (NMSC)	Linda Freeman
Kim Chavez Cook (LOPD)	Karl Brooks (AOC)	David River (CYFD)	Douglas Carver
Bob Cleavall (NMSC)	Clint Wellborn (AODA)	MaryEllen Garcia (CVRC)	Derek Chin
Mark Donatelli		Frances Moya (CYFD)	
Claire Harwell		Kandace Littlefoot (Bold Futures)	
April Land (UNMSOL)		Bryce Pittenger (CYFD)	
Mike Lilley		Monica Ault (Fines & Fees Justice Ctr.)	
Mark Probasco (AGO)		Ibukun Adepoju (LOPD)	
Nina Safier		Ellen Rabin (LFC)	
Alisha Tafoya Lucero (NMCD)		Kristin Jones (CYFD)	
		Melanie Martinez (NMCD)	
		Bennett Baur (LOPD)	
		Pam Wiseman (NMCADV)	
		Grace Philips (NM Counties)	

I. Welcome and Introductions. Angela Pacheco, Chair, called the meeting to order at 10:05 a.m. Everyone on the Zoom call introduced themselves.

II. Approval of Minutes for the July 16, 2020 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), informed the committee that she was working with Shari Houk of the NMSC to create a page on the NMSC website to house reports and other materials that would be useful for the committee as it

proceeds with its work. Douglas Carver, Deputy Director, NMSC, noted that the Commission now also has the space to post agendas for committee meetings on its website.

IV. Presentation on the Use of Fines & Fees in New Mexico.

Monica Ault, New Mexico Director of the Fines and Fees Justice Center, made a presentation to the committee on *The Landscape of Criminal Justice Fines and Fees in New Mexico*. She discussed the history and mission of the Fines and Fees Justice Center, noting that their New Mexico office was one of four offices in a state (the others are New York, Florida, and Nevada), and that the center has its headquarters in Washington, DC. The website of the center is a clearinghouse of information on the various issues surrounding the use and impact of fines and fees in the country. The center's work includes a campaign called "Free to Drive", which focuses on stopping the suspension of licenses for non-public safety reasons; and research into budgets of cities and counties to see how holes in those budgets might be filled as fines and fees are eliminated. She noted that the work of the Fines and Fees Justice Center was non-partisan, with support from advocates across the political spectrum.

Ms. Ault then discussed some of the differences between fines and fees, stating that fines are intended to be a punishment and a deterrent to criminal activity, although research has shown that it is questionable whether fines work as a deterrent. She noted the range of fines in New Mexico, starting from traffic misdemeanors, which can go up to \$300, to first degree felonies, which can go to \$15,000; certain crimes, she added, have increased or mandatory financial penalties. Fees, on the other hand, are intended to raise revenue, a way to shift costs from taxpayers to the perceived "users" of the system, criminal defendants. Fees are present in every part of the criminal justice process, including pre-adjudication, which creates perverse incentives in our criminal justice system.

Ms. Ault noted that while there has not been much research on the use of fines in New Mexico, nationally there is an addiction to fines. Fines account for over 10 percent of general revenue in 600 jurisdictions nationally; in 284 of those jurisdictions, fines account for over 20 percent of revenue.

The system of fines and fees have effectively re-created the system of debtor's prisons in the United States. Debtor's prisons were abolished in 1833. The Supreme Court's *Bearden* decision in 1983 held that a local government can only imprison or jail someone for not paying a fine if it can be shown, by means of a hearing, that the person in question could have paid it but willfully chose not to. This has become known as the "ability to pay inquiry"; in New Mexico, the inquiry is enshrined at NMRA 6-207.1. In truth, however, judges spend very little time on ability to pay inquiries; in addition, defendants are often afraid to attend these hearings when they know they cannot pay, which results in a \$100 bench warrant; if they do attend the hearings, they are unrepresented and thus cannot make the necessary arguments.

After noting a successful reform effort spearheaded by the American Civil Liberties Union in Ohio in 2013, Ms. Ault went in detail through the panoply of fines and fees in New Mexico, from the pre-trial stage, to conviction, probation, prison and jail time, in other parts of the criminal justice system, and some civil impacts. She also detailed the programs they fund. She told the committee that while many of the programs funded through this system are very important, the state should come up with better ways to fund the programs it cares about. She noted that the Fines and Fees Justice Center had just begun its research in tracing the money that goes into various state and local budgets from the fines and fees collected.

Ms. Ault then discussed a report published in 2018 by the Brennan Center for Justice, "The Steep Costs of Criminal Justice Fines and Fees: A Fiscal Analysis of Three States and Ten Counties". Three of the counties studied in the report were in New Mexico: Bernalillo, Santa Fe, and Socorro. One of the stark facts uncovered by the Brennan Center's research was that Bernalillo County, which was the worst-performing county of all of the jurisdictions studied, spent more on the collection of fines and fees than it was owed.

She discussed the Brennan Center's recommendations for areas to reform the fines and fees system, including the elimination of court-imposed fees, instituting a sliding scale for fines based on an ability to pay, the ending of jailing people for failure to pay, the elimination of debt-based driving suspensions, improvement of data automation practices to assist the public in understanding their debts, and a purging of old balances that are unlikely to be paid (something that San Francisco has done, the first in the nation).

Ms. Ault next discussed some of the impacts the burden of fines and fees places on people, including driver's license suspensions and disenfranchisement, and the impact of juvenile justice fees. She ended her presentation with suggested areas of work for reform:

- Ending incarceration for nonpayment of fines and fees;
- Eliminating driver's license suspensions for nonpayment of fines and fees;
- Eliminating fees in juvenile justice proceedings;
- Eliminating fees for conviction, probation, parole, electronic monitoring, phone calls, commissary, jail fees, and bench warrants; and
- Reducing fines by mandating ability to pay assessments or capping fines at 1 percent of the individual's income.

David River from the Children, Youth, and Families Department spoke to the committee about the domestic violence fee, noting that the treatment fund has half of its current funding in defender treatment. He noted that if this fee was removed quickly, it would be difficult to find resources to replace it. The fee funds approximately 20 positions.

Mr. Carver noted that the intent of the committee was to get input from everyone who might be affected by these efforts, and that if a particular party or organization wanted to make a presentation to the committee, they should contact him to get on the agenda.

Members of the committee and others attending the meeting asked questions about and discussed whether there was any way to track whether the fines and fees collected went to their statutorily enumerated purposes; the need to find better ways to fund the dedicated purposes in the fines and fees scheme in the state; the importance of the Crime Victims Reparation Fund; the timeline of any reform efforts; the problems with a system that both loses money and causes people to lose their liberty; the particular problem of converting monies owed to jail time, which could be eliminated quickly without impacting any of the funds tied to special interests; the nine counties that charge booking fees for people booked into their jails, and the 12 counties that charge medical co-pays; and the impact of the Covid-19 crisis.

V. Committee Tasks for Fines and Fees Work.

Chair Pacheco said that this topic would be discussed at the committee's next meeting.

VI. Next Meeting. The committee scheduled its next meeting for 10:00 a.m., July 23, 2020.

VII. Adjourn. The meeting adjourned at 11:55 a.m.

