



**Minutes of the Meeting of the
Reform and Criminal Code Update Committee
10:00 a.m.
April 21, 2022**

via Zoom

Committee Members Present	Committee Members Absent	Others Attending	NMSC Staff
Angela “Spence” Pacheco, Chair	Anita Mesa (BHSD)	Cynthia Pacheco (AOC)	Linda Freeman
Kim Chavez Cook (LOPD)	Henry Valdez	Hon. John Chavez	Douglas Carver
Jason Clack (AOC)		Brianne Bigej (NMCD)	Jamey Cook
Bob Cleavall (NMSC Vice Chair)		Zach Jones (AGO)	Nancy Shane
Mark Donatelli		Amber Farrell (Fines and Fees Justice Center)	Keri Thiel
Claire Harwell		Arthur Pepin (AOC)	
Brady Horn		Melanie Martinez (NMCD)	
Anne Kelly (AGO)		Van Snow (AGO)	
April Land (UNMSOL)		Ellen Rabin (LFC)	
Mike Lilley		Jonathan Gardner (AGO)	
Dave Schmidt			
Alisha Tafoya Lucero (NMCD)			

I. Welcome and Introductions. Angela Pacheco, Chair, called the meeting to order at 10:04 a.m.

II. Approval of Minutes for the September 30, 2021 Reform Committee meeting and the September 9, 2021 Criminal Code Update Committee meeting. The minutes for the previous committee meetings were approved by consensus.

III. Staff Report.

Douglas Carver, Deputy Director of the New Mexico Sentencing Commission (NMSC), informed the Committee that NMSC staff was participating in the task force that had been formed by Senate Memorial 6 and House Memorial 11, passed in the most recent regular Legislative Session; this task force is tasked with examining whether the state might want to consider a unified jail and prison system. NMSC staff also have met with staff members of the Crime and Justice Institute, the national criminal justice research organization that is helping to facilitate the task force meetings.

IV. Geriatric and Medial Parole.

Deputy Director Carver informed the Committee that the bill on geriatric and medical parole that the Committee had put forward never received a message from the Governor's office, and thus was not considered during the 2022 Legislative Session. Secretary of Corrections Alisha Tafoya Lucero informed the committee that the Corrections Department (NMCD) still supported the bill. Chair Pacheco asked Committee members to let her or Deputy Director Carver know if anyone had ideas for a future sponsor of the bill.

V. Adult Fines and Fees Bill.

Deputy Director Carver informed the Committee that the bill on adult fines and fees the Committee had put forward failed to pass the Senate. He noted that the bill ran into some unexpected headwinds. He also noted that if the Committee still supported this concept, it could be folded into the work the Committee was doing on fees abolition.

VI. Working Group on Fees Abolition.

Linda Freeman, Executive Director, NMSC, informed the Committee that she had begun meetings to assess what the fiscal impact on agencies would be from an abolition of fee funds. These meetings included meetings with Legislative Finance Committee staff and individuals from the Bureau of Business and Economic Research at the University of New Mexico (UNM). She is interested in what proportion of agency budgets the fee funds represent, and looking at court collections versus motor vehicle assessments. In addition, she is interested in looking at the cost to individual defendants who are going through the criminal justice process. Some of the budget information is available in agency audits. She will also be working with Dr. Brady Horn, a member of the Committee, who is an economist at UNM, to address the question of costs to individuals and systemic costs to detention centers and the courts.

Cynthia Pacheco, Administrative Office of the Courts (AOC), informed the Committee that all of the money from penalty assessments are transmitted to the AOC, and then from the AOC to the various funds, including to the Motor Vehicle Division. They should be able to say how much has been collected, and how much it costs to collect. Arthur Pepin, Director, AOC, confirmed that AOC would be able to provide the information concerning how much came in and how much was distributed. He added that it would be good to invite those who would be affected by fees abolition to the table. Concerning the fines and fees bill introduced in the past Legislative Session, he noted that the AOC wished for fees to be abolished and those programs to be funded by the general fund, but that the AOC did not want to see additional administrative burdens put on the courts in an ability to pay process.

Professor April Land, UNM School of Law (UNMSOL), informed the Committee that one of her colleagues had collected 5,000 records of unhoused people, which might help get to the question of ability to pay and whether people are incarcerated if they are unable to pay.

Members of the Committee asked questions about and discussed the trouble with trying to collect the information to assess the costs and budgetary impact of fines and fees; whether the adult fines and fees bill should be set aside while the Committee researched fees abolition issues; whether there was support in the Legislature for fees abolition; the process for collecting data on the impact fines and fees have on people; and the number of agencies potentially affected by fees abolition.

Issue of Incarceration for Certain Offenses in the Traffic Code

Magistrate Judge John Chavez, a NMSC member, brought before the Committee the issue of incarceration for certain offenses in the Traffic Code. He noted that there were wide discrepancies in penalties in the Traffic Code, including possible incarceration for minor offenses, when more serious offenses of a similar nature had no incarceration attached. In his eight years on the bench he has handled approximately 24,000 traffic cases. He shared a document with the Committee illustrating some of these discrepancies, including jail exposure for violations such as renewal of registration. He informed the Committee that whenever there was a risk of jail exposure, the defendant could request a public defender and demand a jury trial, which adds costs to all elements of the criminal justice system. He noted that most of these types of offenses have fines, which are intended to prompt someone to change their behavior; the court can work with a defendant, have them bring in proof of the documentation. If a defendant does not have the money for the documentation, however, they probably do not have the money to pay the fine.

Judge Chavez proposed a variety of solutions to the issues he raised. The default penalty statute in the Traffic Code, Section 66-8-7 NMSA 1978, could be amended to remove the language giving imprisonment for 90 days as an option – statutes such as those for driving under the influence and the like already have penalties specifically written into them and thus would not be affected. Alternatively, one could add penalties into the list of penalty assessments (Section 66-8-116 NMSA 1978) for the various statutes covered by the default statute. Judge Chavez concluded by suggesting that if the Committee wished to address this issue, they should consider surveying judges to gather their opinions on any changes.

Members of the Committee supported looking at this issue, with members noting that it was good policy to remove jail penalties for minor offenses, especially for what were administrative provisions of the Traffic Code. Members of the Committee asked questions about and discussed the difference between the two approaches outlined.

On a motion by Prof. Land, seconded by Jason Clack, AOC, the Committee directed Deputy Director Caver and Keri Thiel, Staff Attorney, NMSC to work with Judge Chavez to compile a list of what statutes would be affected by this change.

VII. Other Reform Committee Working Groups?

This discussion was combined with the discussion of the Criminal Code Update working groups.

VIII. Criminal Code Update Working Groups.

Chair Pacheco informed the Committee that the last time the Committee had met, seven working groups were formed: sentencing structure, *mens rea*, behavioral health, race and ethnicity data collection, homicide statutes, criminal sexual penetration statutes, and child abuse statutes.

Kim Chavez Cook, Law Offices of the Public Defender, informed the Committee that the child abuse statutes working group had met and had finished the first part of its work, but was waiting to see whether the sentencing structure was going to be changed as there did not seem to be enough degrees of penalty with which to work, especially with the state's present felony structure.

Chari Pacheco made the following appointments to the six working groups that had not yet been appointed:

1) *Sentencing Structure.*

Kim Chavez Cook, LOPD – Chair
Mike Lilley, NMSC member
Secretary Alisha Tafoya Lucero, NMCD
Charles Gutierrez, Office of the Attorney General (AGO)
Dave Schmidt, NMSC member
Megan Dorsey, NMSC designee
Van Snow, AGO
Herbert Strassberg, 12th Judicial District Court
Megan Kalm, District Court Staff Attorney
Zach Jones, AGO
Ronald LoLordo, District Attorney, 7th Judicial District

In addition, Ashley Nellis of the Sentencing Project was named as an interested party assisting the working group's work.

2) *Behavioral Health.*

April Land, UNMSOL – Chair
Brady Horn, UNM
Dave Schmidt, NMSC member
Anita Mesa, Behavioral Health Services Division
Dr. Wendy Price, NMCD
Bob Cleavall, NMSC Acting Chair
Tim Rose, District Attorney, 10th Judicial District

Ms. Chavez Cook said that she would work to get someone from the LOPD to volunteer for this working group.

In addition, Barron Jones of the American Civil Liberties Union (ACLU) was named as an interested party assisting the working group's work.

3) *Race and ethnicity data collection*

Douglas Carver, NMSC Deputy Director - Chair
Cindy Aragon, CYFD
Charles Berry, AOC
Regina Chacon, Department of Public Safety

In addition, Barron Jones of the ACLU was named as an interested party assisting the working group's work.

4) *Homicide Statutes*

Megan Dorsey, NMSC designee - Chair
Mark Donatelli, NMSC member
Anne Kelly, AGO
Caitlin Dillon, AGO
Hon. Joseph Montano
Zach Jones, AGO
Henry Valdez, Administrative Office of the District Attorneys

Ms. Chavez Cook said that she would work to get someone from the LOPD to volunteer for this working group.

In addition, Ashley Nellis of the Sentencing Project was named as an interested party assisting the working group's work.

5) *Criminal Sexual Penetration Statutes*

Claire Harwell, NMSC member - Chair

Anne Kelly, AGO

Caitlin Dillon, AGO

Van Snow, AGO

Barbara Romo, District Attorney, 13th Judicial District

Ms. Chavez Cook said that she would work to get someone from the LOPD to volunteer for this working group.

In addition, Ashley Nellis of the Sentencing Project was named as an interested party assisting the working group's work.

6) *Mens Rea*

Anne Kelly, AGO - Chair

Charles Gutierrez, AGO

Dave Schmidt, NMSC member

Jonathan Gardner, AGO

Megan Dorsey, NMSC designee

Ronald LoLordo, District Attorney, 7th Judicial District

Ms. Chavez Cook said that she would work to get someone from the LOPD to volunteer for this working group.

Chair Pacheco said that the Chairs can decide when their working groups will meet. She added that membership may change as more people express interest, or someone's availability changes, or the like. In addition, Deputy Director Carver and Ms. Thiel will be available to assist all working groups.

IX. Next Meeting. The committee will next meet June 9, 2022.

X. Adjourn. The meeting adjourned at 11:47 a.m.