



**Minutes of the Meeting of the  
Criminal Code Update Committee  
10:00 a.m.,  
August 12, 2021**

via Zoom

Committee Members Present	Committee Members Absent	Others Attending	NMSC Staff
Angela “Spence” Pacheco, Chair	Mark Donatelli	Diana Crowson	Linda Freeman
Brianne Bigej (NMCD)	Anne Kelly (AGO)	Diane McCash	Douglas Carver
Kim Chavez Cook (LOPD)		Ellen Rabin	Derek Chin
Jason Clack (AOC)		Monica Ault (FFJC)	
Bob Cleavall (NMSC)			
Claire Harwell			
Brady Horn			
April Land (UNMSOL)			
Mike Lilley			
Anita Mesa (BHSD)			
Nina Safier			
Dave Schmidt			
Clint Wellborn (AODA)			

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

**II. Approval of minutes for the July 29, 2021 meeting.** The minutes for the previous committee meeting were approved by consensus.

**III. Staff Report.**

Linda Freeman, Executive Director, New Mexico Sentencing Commission (NMSC), informed the committee that Derek Chin, NMSC Research Scientist, was working on coding the criminal justice system surveys that had been completed recently, and that surveys had now gone to members of the state House of Representatives. Douglas Carver, Deputy Director, NMSC, informed the committee that the bills developed by the Reform Committee and introduced during the past regular Legislative Session – concerning medical and geriatric parole and adult fines and fees – would be discussed at the next meeting of the Reform Committee rather than by this committee.

#### **IV. Scope of Work/Areas of Concentration for the CCUC.**

Chair Pacheco informed the committee that she had met with Senate President Pro Tempore Mimi Stewart, Senate Majority Leader Peter Wirth, and with Speaker of the House Brian Egolf about the committee's work. She let them know that although many talk of an update to the Criminal Code, the areas that most want addressed seem to involve criminal procedure. She then invited members of the committee to discuss areas they thought should be addressed by the committee.

District Attorney Clint Wellborn, Seventh Judicial District, and Chief Appellate Defender Kim Chavez Cook spoke about their experience testifying before the interim Courts, Corrections, and Justice Committee earlier in the week. Both said that the message they heard from the legislators was that they were hoping to get a package of reforms rather than piecemeal reforms. Deputy Director Carver noted that piecemeal reform could be crafted into a bill package that would not violate the state's logrolling provisions. There was further discussion of the merits of a piecemeal approach and a more comprehensive approach, and the difference between codifying case law and deciding whether certain areas of the law needed to be reformed.

Chair Pacheco then led the discussion of creating working groups to address specific areas of the law that needed to be examined. Members discussed that it would be preferable for members of the defense bar and prosecution to be part of any work group. There was discussion concerning judges participation in these work groups, and whether that would pose any problems due to possible conflicts when hearing cases. The importance of participation by non-attorney members of the committee was also discussed. There was some discussion of how increasing treatment options versus incarceration could be included in the committee's efforts, and that one product of the committee's work might be to discern what can be accomplished legislatively, and what needs to be addressed outside of the legislative process.

Specific areas on which working groups might concentrate included:

- broader scope for treatment alternatives to incarceration;
- kidnapping statutes;
- addressing mens rea in the general provisions of the Code;
- child abuse statutes;
- child pornography statutes;
- aggravated stalking;
- assault to commit a violent felony;
- drug possession, specifically residue versus a consumable amount;
- drug trafficking amounts;
- tampering with evidence;
- sentencing structure overall;
- DWI and child abuse statutes;
- criminal sexual penetration statutes;
- Dangerous Dog Act;
- competency and dangerousness;
- second degree murder, both the statute of limitations and the huge penalty drop from 1<sup>st</sup> to 2<sup>nd</sup>;
- electronic solicitation of a minor;
- collection of race and ethnicity data; and
- definition of a serious violent offense.

There was discussion of the difference between cleaning up the statutes, to clarify matters or to bring the statutes in conformity with case law and uniform jury instructions, and making reforms to the law. The committee formed a working group to examine the child abuse statutes. It was decided that other working groups would be formed at the committee's next meeting.

There was additional discussion concerning including people who were not committee members in future working groups.

#### **V. Committee Decision-Making Processes.**

This agenda item was postponed until the committee had a better overall sense of the scope of its work.

#### **VI. Public Comment.**

There was no public comment offered.

**VII. Next meeting.** The committee scheduled its next meeting for 10:00 a.m., September 9, 2021.

**VII. Adjourn.** The meeting adjourned at 12:08 p.m.