



Minutes of the Meeting of the Criminal Code Update Committee 10:00 a.m., July 29, 2021

via Zoom

Committee Members Present	Committee Members Absent	Others Attending	NMSC Staff
Angela “Spence” Pacheco, Chair	Mark Donatelli	Justice Edward Chavez (ret.) (NMSC Chair)	Linda Freeman
Brianne Bigej (NMCD)	Nina Safier	Diana Crowson	Douglas Carver
Kim Chavez Cook (LOPD)		Ellen Rabin (LFC)	Derek Chin
Jason Clack (AOC)		Monica Ault (FFJC)	
Bob Cleavall (NMSC)		Cindy Aragon (NMSC)	
Claire Harwell		Barron Jones (ACLU)	
Brady Horn		Mark Probasco (AGO)	
Anne Kelly (AGO)		Denicia Cadena (Bold Futures)	
April Land (UNMSOL)		Megan Dorsey	
Mike Lilley			
Anita Mesa (BHSD)			
Dave Schmidt			
Clint Wellborn (AODA)			

I. Welcome and Introductions. Angela Pacheco, Chair, called the meeting to order at 10:02 a.m.

II. Approval of minutes for the July 15, 2021 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 and Douglas Carver, Deputy Director, NMSC, made a presentation to the Legislature’s interim Courts, Corrections, and Justice Committee (CCJ) on the progress of the Criminal Code update. As part of that presentation, they presented a memorandum on progress to date to CCJ. That memorandum will be sent to CCUC members as well. Deputy Director Carver added that they informed CCJ that the hope was that collection of race and ethnicity data would be included as part of the update. In addition, CCJ members asked that the CCUC reach out to Federal prosecutors and defenders about the intersection of state criminal law and Federal law. Deputy Director Carver said that he suggested to CCJ that a similar outreach should be made to experts in criminal law in the state’s Native American tribes, nations, and

pueblos. Executive Director Freeman informed CCUC members that CCJ members were interested in the composition of the CCUC, as they had praise for the results of the Reform Committee’s work in the last Legislative Session around the medical and geriatric parole bill and the adult fines and fees bill.

IV. Analysis of the NMSC Criminal Justice Surveys.

Executive Director Freeman informed the committee that analysis of the surveys was done by Derek Chin, Research Scientist, NMSC. Close to 200 surveys were analyzed for this presentation. More survey results are still coming in; this analysis will be updated again in the future to account for those additional responses.

Mr. Chin presented a PowerPoint to the committee. He informed the committee that the analysis has been organized around people’s work in the criminal justice system. Defense attorneys provided the most survey responses, followed by judicial branch employees, judges, then prosecuting attorneys. The mean time spent working as a part of the criminal justice system across all jobs was 16 years. He noted that only survey results that were fully completed were analyzed – many surveys were begun, but not completed, so they were left out of the analysis.

The survey asked a prompted question about potential areas for a Code update, with respondents to choose whether an area was important, unimportant, neither (“don’t know” was also an option); Deputy Director Carver informed the committee that these prompts were drawn from discussions that had been held in legislative committees over the years. The area that received the most responses for “important” was making penalties for offenses more proportionate, followed by amending statutes to reflect present case law, then adding *mens rea*. Adding more felony or misdemeanor degrees received the fewest “important” responses, both under 50 percent. Reducing special penalties landed at just over 50 percent for “important”.

The survey also asked whether respondents believed that the Criminal Code and related statutes struck the right balance, were too lenient, or were too tough. There was a wide discrepancy in responses, depending on the person’s role in the criminal justice systems. A majority of defense attorneys answered “too tough”; a majority of prosecutors answered “too lenient”. The majority of judges felt the statutes struck the right balance.

For strengths of the statutes, the top five responses were, in order, its simplicity, that it was comprehensive, the discretion afforded, its fairness, and its overall structure. Of these, the Code’s simplicity was easily the most common strength indicated across respondents. The picture for weaknesses was much more jumbled. The principle responses were the need to clarify the language, drug laws, undercharging/too lenient, the habitual offender statutes, and classifications. Also flagged as weaknesses were sex crimes, sex offender statutes, competency, and the child abuse statutes. For the strengths and weaknesses, Mr. Chin read quotes pulled from the surveys to illustrate key points.

Members of the committees asked questions about and discussed their surprise that there was not more discussion of the homicide statutes or the sentencing enhancements regarding exploitation of a child; that there might be interest in working with the drug trafficking statutes and associated quantities; that there did not seem to be a clear focus in the surveys for direction; that it was interesting that strengths included simplicity and fairness, and that the committee should therefore avoid making things more complex; that there did seem to be some direction in that the Code’s simplicity was praised, and the areas criticized were ones where the statutes were complex or difficult to interpret; that such areas included the child sexual abuse statutes and negligence statutes; that there seemed to be support for examining the state’s drug laws; that there was possible consensus around examining *mens rea* and defenses, as well as codifying case law; how the uniform jury instructions interacted with the criminal statutes and this reform effort; whether the committee should consider dividing all of the chapters of the Code into groups, each to be addressed by a

working group; proportionality, and whether addressing proportionality would necessitate additional felony or misdemeanor levels; that despite the statutes nominally only having four felony degrees, we in truth have far more given all of the special penalties in the Code; that the kidnapping statute was another good example of one that could use revision in a proportionality discussion; the importance of communication with the Legislature and the Governor's office on this process; competency issues; and whether the committee should look at sentencing guidelines.

V. Next Steps. Chair Pacheco led the discussion of the committee's next steps. The focus of the next meeting of the committee will be to start developing specific scopes of work. Members of the committee noted that the Legislature is relying on the committee, and the NMSC as a whole, to guide the process, and thus the committee should feel empowered to make suggestions and provide direction. It was recommended that committee members bring specific statutes that they have found problematic to the committee's attention at its next meeting. There was also discussion of whether the committee needed a formal consensus-building tool or mechanism, and that the committee will need to discuss how it will go about making its decisions.

VI. Next meeting. The committee scheduled its next meeting for 10:00 a.m., August 12, 2021.

VII. Adjourn. The meeting adjourned at 11:45 a.m.