



**Minutes of the Meeting of the  
Criminal Code Update Committee  
10:00 a.m.,  
September 9, 2021**

via Zoom

<b>Committee Members Present</b>	<b>Committee Members Absent</b>	<b>Others Attending</b>	<b>NMSC Staff</b>
Angela "Spence" Pacheco, Chair	Claire Harwell	Caitlin Dillon (AGO)	Linda Freeman
Kim Chavez Cook (LOPD)	Anita Mesa (BHSD)	Cynthia Pacheco (AOC)	Douglas Carver
Jason Clack (AOC)	Nina Safier	Brittany Du Chaussee (AGO)	Derek Chin
Bob Cleavall (NMSC)		Niva Elgin (13 <sup>th</sup> Judicial District DA Office)	Nancy Shane
Mark Donatelli		Hon. Edward Chavez (ret) (NMSC Chair)	
Brady Horn		Holly Agajanian (Governor's office)	
Anne Kelly (AGO)		Connie Budaci (Sentencing Project)	
April Land (UNMSOL)		Tony Long (1 <sup>st</sup> Judicial District DA Office)	
Mike Lilley		Charles Gutierrez (AGO)	
Dave Schmidt		Brianne Bigej (NMCD)	
Alisha Tafoya Lucero (NMCD)		Ellen Rabin (LFC)	
Clint Wellborn (AODA)		Zach Jones (AGO)	
		Cindy Aragon (NMSC)	
		Tamar Ginossar (UNM ISR)	
		Bennett Baur (LOPD)	
		Monica Ault (FFJC)	
		Barron Jones (ACLU)	
		Savannah Brandenburg (2 <sup>nd</sup> Judicial District DA Office)	
		Philip Larragoite (LOPD)	

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

**II. Approval of minutes for the August 12, 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 the Commission's budget request had been submitted; the budget request included an expansion for the monies available for the Crime Reduction Grant Act, from \$178,000 to \$1 million. She also informed the committee that there had been approximately 257 fully-completed responses to the survey on Criminal Code reform. Douglas Carver, Deputy Director, NMSC, reminded members of the committee who were also members of the NMSC's Reform Committee that the Reform Committee had an upcoming meeting to discuss the two bills, on medical and geriatric parole and on adult fines and fees reform, that had been introduced, but not passed, in the last regular Legislative Session.

**IV. Report from the Child Abuse Statutes Working Group.**

Kim Chavez Cook, Law Offices of the Public Defender (LOPD), working group chair, informed the committee that the working group has had productive meetings, and has started their discussion of the state of the law versus statutory language, addressing what the twenty-plus published cases on the child abuse statutes meant and how they related to the present statutes. Particular focus has been on the conduct that is meant to be captured. On the structural front, the focus has been on creating one statute with a definitions section, and defined crimes for abandonment, reckless abuse, and intentional abuse. The major principles on which the working group is focusing are the term "endangerment", the level of risk required for endangerment, and the distinction between reckless and intentional conduct. The working group has already developed a solid draft, though it is fine-tuning it, but has yet to move on to the last big piece, determining the penalty structure. Ms. Chavez Cook gave an overview of the membership of the working group, noting particularly the welcome participation of attorneys from the Office of the Attorney General who were not members of CCUC, and informed the committee that to date a consensus model has worked in the working group's deliberations, although she acknowledged that there may be greater debate once the conversation turned to penalties. Other members of the working group added comments agreeing with Ms. Chavez Cook's details. Ms. Chavez Cook informed the committee that a draft would be made available to the committee once it was completed, recognizing that it was the very beginning of a discussion of the update of this section of the Criminal Code.

**V. Creation of Additional CCUC Working Groups.**

Chair Pacheco opened the discussion of the creation of additional working groups to move the committee's work forward. Deputy Director Carver noted that there was a list of possible working groups discussed by the committee in the minutes from the previous meeting. The committee had a long discussion about what working groups might be needed, and which would be of interest to committee members. Members advocated for working groups to discuss large issues, and for ones that were more tightly focused, like the child abuse statutes working group. The importance of having support from the Governor's office and the Legislature was discussed. The importance of having representation from line attorneys and appellate attorneys in each working group was also discussed. It was agreed that interested parties who were not members of the committee could participate in the working groups, but that each working group would need to have a committee member as part of its membership. Deputy Director Carver requested that the working groups, once formed, let him know when they were meeting, as it was important for NMSC staff to participate in each working group.

At the end of the discussion, it was decided the following working groups would be formed:

- Sentencing structure (examination of Section 31-18-15 NMSA 1978);
- Clarification of *mens rea* and elements of crimes;
- Mental and behavioral health issues;
- Race and ethnicity data collection;
- Homicide statutes; and
- Criminal sexual penetration.

This list does not necessarily represent the limit of the CCUC's work; other working groups might be formed in the coming year as work progresses. For example, future working groups might include an examination of serious violent offenses, probation and parole reform, the impact of fines and fees on the criminal justice system; and the reconciliation of jury instructions with the statutes.

Chair Pacheco informed the committee that she would decide upon the final membership of these working groups, name a chair to each, and instruct Deputy Director Carver to send an email to the committee's list informing the committee and interested parties of the composition of the groups. Deputy Director Carver requested that members of the committee and others in attendance who wished to serve on a particular working group that had been mentioned send him an email indicating their interest.

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

There was no public comment offered.

**VII. Next meeting.** The committee's next meeting will be scheduled in about a month's time.

**VII. Adjourn.** The meeting adjourned at 11:53 a.m.