

NEW MEXICO SENTENCING COMMISSION

REFORM COMMITTEE

10:00 a.m.
October 7, 2019

Administrative Office of the Courts,
Conference Room
237 Don Gaspar
Santa Fe, NM 87501

Committee Members Present	Committee Members Absent	Others Attending	NMSC Staff
Angela "Spence" Pacheco, Chair		Shammara Henderson (NMSC Chair)	Linda Freeman
Collin Brennan (AGO)		Rep. Antonio Maestas	Douglas Carver
Karl Brooks (AOC)		Megan Dorsey	
Kim Chavez Cook (LOPD)		Francine Garcia (NMCD)	
Mark Donatelli		Melanie Martinez (NMCD)	
April Land (UNMSOL)		Ellen Rabin (LFC)	
Mike Lilley		Mark Probasco (AGO)	
Alisha Tafoya Lucero (NMCD)		Mark Peralta-Silva (LCS)	
Clint Wellborn (AODA)		Anthony A. Romero (NMCD)	
		Alysandra Martinez (UNMSOL)	
		Ricardo Gonzales (UNMSOL)	

I. Welcome and Introductions. Angela Pacheco, Chair, called the meeting to order at 10:03 a.m.

II. Approval of minutes from September 23, 2019 meeting. The minutes were approved by voice vote.

III. Staff report.

Update on racial and ethnic data collection

Douglas Carver, Deputy Director, New Mexico Sentencing Commission (NMSC), gave an update on the progress of matters concerning the collection of the racial and ethnic data of people involved with our criminal justice system. He noted that Jeff Proctor's *New Mexico In Depth* article on this issue had gone on line that morning. He let the committee know that Sen.

Antoinette Sedillo Lopez had agreed with the approach to have a Memorial passed during the 2020 Legislative Session directing the New Mexico Sentencing Commission (NMSC) to work on this issue in conjunction with community partners – she specifically mentioned the American Civil Liberties Union of New Mexico and Somos Un Pueblo Unido – with the idea of crafting a bill to be introduced in the 2021 Session. Rep. Antonio Maestas noted that the National Conference of State Legislators was compiling 50-state information on racial and ethnic data collection.

Request to present to the Criminal Justice Reform Subcommittee

Mr. Carver informed the committee that there had been a request from the Criminal Justice Reform Subcommittee (CJRS) of the Legislature’s interim Courts, Corrections, and Justice Committee (CCJ) for the committee to report on its work. Mark Peralta-Silva, staff attorney for the Legislative Council Service and lead staff for CCJ and CJRS, let the committee know that CJRS hoped to hear about the committee’s deliberation concerning probation and parole reforms, plans for racial and ethnic data collection for the individuals in contact with the state’s criminal justice system, and the possibility of a revision to the state’s Criminal Code.

Possible request to revise the Criminal Code

Mr. Carver informed the committee of the interest of the Legislature in revising the state’s Criminal Code. He noted that at this point the legislators who have expressed interest in revising the Code have not been clear as to whether they wish a comprehensive overhaul of the Code such as Prof. Leo Romero of the University of New Mexico School of Law (UNMSOL) undertook in the 1980s, or a balancing of present sentences. Mr. Carver suggested that one approach to reform, if the Legislature was more interested in balancing sentences, might be to take each section of the code at a time, starting with something that is relatively uncontroversial, such as property crimes, to develop good communication between the interested parties before moving on to more controversial or hot button areas such as violent crimes or sex offenses. He noted that the comprehensive overhaul developed by Prof. Romero took two years. He also noted that Prof. Romero’s reform was rejected by the Law Office of the Public Defender, the district attorneys, and the Office of the Attorney General (AGO).

Rep. Maestas noted that there was bi-partisan interest in Code reform, with the hope that any reforms would be in one big package. He said that legislators were approaching the Governor for one-time dollars, with the idea that the NMSC take the lead, adding that the Commission had the credibility to advise the Legislature. He noted that among the reform ideas were adding a fifth felony tier, examining special penalties, human trafficking, issues surrounding homicide sentencing, looking at converting many fourth degree felonies to some kind of high misdemeanor, and removing the 50%/80% good time distinction. He added that the credibility of the NMSC was such that any proposed reforms agreed to by the Commission would likely be approved by the Legislature.

Members of the committee noted and discussed that this was the kind of work that the NMSC was formed to do; that piecemeal efforts at reform can get messy quite quickly; that the Model Penal Code would provide a good place to start with a comprehensive overhaul of the Criminal Code; that there was much litigation around boutique crimes; the utilization of UNMSOL resources; the need for certain of the specialized or boutique crimes; the need for everyone to be

at the table when reform is discussed, particularly the district attorneys and the AGO; the need for appropriate resources for such an effort; and the need to be mindful of the political calendar.

All members of the Committee expressed the wish to be involved in this effort.

IV. Discussion of pending reforms to Probation and Parole processes.

The committee continued to discuss the pending reforms to the probation and parole processes. Chair Pacheco directed the committee's attention to the "Probation and Parole Reforms – Where the Reform Committee Stands" document prepared by Mr. Carver for the committee, and the Governor's veto message of HB 564. She discussed a case that had come before her as a pro tem judge, where someone on supervision was brought before her on the crime of driving on a suspended license, which would be a new crime, and how this illustrated the fact that often people who are released from prison generally have poor problem-solving skills. Members of the committee noted that this would probably not be a technical violation under the proposed reforms, and that the example demonstrates the hurdles facing people trying to re-enter society, not least because renewal of a driver's license will cost around \$175, which puts it out of the range for the indigent.

The New Mexico Corrections Department (NMCD) discussed the work they do to help offenders obtain basic vital records and the financial assistance they provide for probationers and parolees. Members of the committee discussed the need for greater resources to be provided to NMCD for these efforts. Members also discussed the particular problems that child support issues raise, and the need for civil legal services.

Rep. Maestas noted that the consensus view of the committee gets to the thrust of the legislation – to get away from the underlying crime and treat each violation proportionately to the violation. He also recognized that the reforms contemplated in the legislation would be a cultural shift for the Probation and Parole Division. He further noted that the changes would give more power and authority to Probation and Parole without going to a judge.

Members of the committee noted and discussed that repeat violations were a sticking point among members; the number of violations that occur before someone is revoked; the workings of county supervision; what sanctions short of revocation were presently used by NMCD; whether some kind of graduated sanctions regimen before revocation and reincarceration would work for repeat violators; the importance of codifying any changes; the need for precise language in any codification to limit unintended consequences; the possible use of halfway houses, or halfway back, or other residential options; payment for drug treatment for offenders upon release; that there was no way to force offenders who are in residential treatment programs to remain in treatment against their will; whether home confinement or education-based options would work as part of a sanctions regime; what the mechanisms were for the early discharge of an offender from supervision, and whether there needed to be statutory reform in that area; the mechanics of unsupervised probation versus people who are non-reporting; questions concerning the constitutionality of modifying a Judgment and Sentence; whether there might need to be changes made in Judicial Rules; and whether it was advisable to reduce or remove the Judiciary's role in supervision of offenders.

NNMSC Executive Director Linda Freeman noted that in the past the NMSC had studied the variance in county misdemeanor compliance and would like to study it again if funding was

provided. The AGO noted that they had compiled research on how other states manage probation and parole, which they will have circulated to the committee.

Rep. Maestas noted that the present bill will be on the Governor's call, and that it would do away with parole costs, would not deal with the issues surrounding 30-year lifers, and might possibly include an independent Probation Office. He plans to get the committee copies of the new bill when it is drafted, and will circulate the draft to the AGO and the district attorneys. CCJ will have a hearing on the bill in November or December. He added that there were other reforms in the original HB 564 that were not controversial and will be included again in the new legislation.

The committee appeared to coalesce around a new consensus regarding codifying the use of a graduated sanctions regimen by the Probation and Parole Division that had intermediate steps short of, or leading up to, reincarceration for repeat violators.

IV. Next meeting. The committee tentatively scheduled its next meeting for October 21, 2019, if the committee has the opportunity to review the draft of Rep. Maestas's probation and parole bill before that date; otherwise, the committee will meet shortly after a draft of the bill is made available to them.

V. Adjourn. The meeting adjourned at 12:15 p.m.