



**Minutes of the Meeting of the
Reform Committee
10:00 a.m.
September 17, 2020**

via Zoom

Committee Members Present	Committee Members Absent	Others Attending	NMSC Staff
Angela “Spence” Pacheco, Chair	Neal Bowen (BHSD)	Ellen Rabin (LFC)	Linda Freeman
Kim Chavez Cook (LOPD)	Collin Brennan (AGO)	Megan Dorsey	Douglas Carver
Bob Cleavall (NMSC)	Karl Brooks (AOC)	Monica Ault (FFJC)	
Mark Donatelli	Mike Lilley	Bennett Baur (LOPD)	
Claire Harwell			
April Land (UNMSOL)			
Nina Safier			
Alisha Tafoya Lucero (NMCD)			
Clint Wellborn (AODA)			

I. Welcome and Introductions. Angela Pacheco, Chair, called the meeting to order at 10:07 a.m. Everyone on the Zoom call introduced themselves.

II. Approval of Minutes for the September 3, 2020 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, appeared in front of the Legislature’s interim Courts, Corrections, and Justice Committee (CCJ) when CCJ was discussing issues surrounding the Corrections Department (NMCD). Mr. Carver added that it appeared Representative Antonio Maestas was going to introduce a probation and parole bill in the upcoming Legislative Session, and that he informed CCJ that the Reform Committee was planning on having a bill concerning geriatric parole for the committee’s consideration in December.

IV. Fines and Fees Discussion I – Stacking of Penalties.

Chair Pacheco introduced the topic of the stacking of fees in criminal cases, that is, when a fee is applied to each underlying crime in the case rather than on the case as a whole. Monica Ault, New Mexico Director of the Fines and Fees Justice Center, noted that the statute on this matter is unclear, and that the law reads fees can be assessed for each conviction – some judges read that to mean for a case as a whole, others for each crime for which a conviction is found in a case. She noted that a fix could be as simple as clarifying the meaning in the statute.

Members of the committee discussed and asked questions about the *State v. Davila* case; whether there should be a difference in how traffic, misdemeanor, and felony cases are handled; and how the first area to examine in statute was Section 31-12-3 NMSA 1978.

V. Fines and Fees Discussion II – Ideas for Broad Reform.

Ms. Ault gave a presentation to the committee entitled “Broad Reform: Ability to Pay, Payment Plans and Community Service”. She discussed the difference between fines and fees and some of the key court cases addressing the impact of fines and fees on defendants. She then discussed the manner in which ability to pay inquiries were enshrined in New Mexico Court Rules, flagging some contradictory language in the rule between what is permitted and what is required. Ms. Ault then discussed possible reform measures, including that ability to pay policies should include a rebuttable presumption that some individuals will not have the ability to pay any fine or fee; widening the calculations used to determine income and using a sliding scale based on multipliers of Housing and Urban Development guidelines; incorporating the definition of a “needy person” in the Indigent Defense Act into the ability to pay inquiry, which would lessen the burden on courts as this mechanism is well-established already; making payment plans mandatory; placing a cap of two percent of a person’s monthly net income or \$10, whichever is greater; considering early release provisions upon 12 payments being made within 15 months; examining having court costs and fines to run concurrent with a sentence or to have any payments deferred while a person is incarcerated; limiting the amount of community service hours that can be assigned to a person (at times people are assigned more hours than is possible to complete) and increasing the conversion rate for those hours; placing a cap on community service hours that can be assigned per case; and expanding the types of activities that can be considered community service to include participation in counseling, rehabilitation programs, job training, school attendance, and the like.

A motion was made and seconded that the committee pursue bill language prohibiting the stacking of fees in cases. The motion passed with no objections.

A further motion was made and seconded that Deputy Director Carver draft language for the committee’s consideration that incorporates the indigency standard from Indigent Defense Act into the ability to pay inquiry. The motion passed with no objections.

Members of the committee discussed and asked questions about the potential for abuse of the use of community service; the idea of expanding community service options; and the use of the Indigent Defense Act and possible conflicts in statute surrounding the Act.

VI. Geriatric Parole.

Deputy Director Carver presented a document to the committee showing the changes made to geriatric parole provisions in the House Judiciary Committee substitute for HB 263 in the 2020 Legislative Session, and the differences between that version of HB 263 and the original version of the bill. Chair Pacheco

invited Secretary Alisha Tafoya Lucero of NMCD to respond to the proposals that were introduced in HB 263. Secretary Tafoya Lucero noted that NMCD has already been making changes to the geriatric parole process along the lines of what was in the bill. She added that ultimately the decision to release is up to the Parole Board; she also noted that the Parole Board would like to see a third party medical evaluation, but that would make the process much longer.

Members of the committee discussed and asked questions about the fact that the process for release of elderly and terminally ill inmates should be speedy, and that there was already much consensus around the basic issues here; that the concern should be based on needs and not stringent criteria as long as there are no public safety concerns; and how this issue was related to issues that were raised at the outbreak of the pandemic concerning how and whether prisoners were eligible for release.

Chair Pacheco requested that a working group be formed to examine this issue. Megan Dorsey was asked to head the effort. Secretary Tafoya Lucero was asked to participate; she indicated that she would reach out to the Parole Board to get their participation. Mr. Carver said that he would reach out to the members of the Attorney General's Office who have attended committee meetings in the past to see if one of them would be interested in participating. Chair Pacheco asked that the group report on their discussion at the committee's next meeting.

VII. Next Meeting. The committee scheduled its next meeting for 10:00 a.m., October 1, 2020.

VIII. Adjourn. The meeting adjourned at 11:30 a.m.