

# NEW MEXICO SENTENCING COMMISSION

## REFORM COMMITTEE

10:00 a.m.  
September 9, 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		Megan Dorsey	Linda Freeman
Collin Brennan (AGO)		Anthony A. Romero (NMCD)	Douglas Carver
Karl Brooks (AOC)		Melanie Martinez (NMCD)	
Kim Chavez Cook (LOPD)		Cynthia Pacheco (AOC)	
Mark Donatelli		Mark A. Peralta-Silva (LCS)	
April Land (UNMSOL) (on phone)		Amanda Dick-Peddie	
Mike Lilley (on phone)		Ellen Rabin (LFC)	
Alisha Tafoya Lucero (NMCD)			
Clint Wellborn (AODA)			

**I. Welcome and Introductions.** Angela Pacheco, Chair, called the meeting to order at 10:07 a.m.

**II. Approval of minutes from August 19, 2019 meeting.** The minutes were approved by voice vote.

**III. Staff report.**

*Legislature's interest in collection of race data.*

Douglas Carver, Deputy Director, New Mexico Sentencing Commission (NMSC), mentioned that at the recent meeting of the Legislature's interim Courts, Corrections, and Justice Committee (CCJ), Sen. Antoinette Sedillo Lopez and Rep. Karen Bash asked a number of questions of NMSC staff regarding the collection of racial and ethnicity data during the presentation of the Prison Population Forecast. These concerns were repeated by the legislators at the second day of

the CCJ meeting. Sen. Sedillo Lopez in particular seems intent on introducing legislation mandating that the NMSC collect racial and ethnic data on the state's criminal justice population.

Linda Freeman, Executive Director, NMSC, discussed the problems with collecting this data in the New Mexico She noted that while the New Mexico Department of Corrections (NMCD) does input self-identified racial and ethnic data when they process someone, many people never hit the NMCD system; racial and ethnic data collected further upstream in the process is often incomplete, and it is not known whether the data in those systems is self-identified or officer-identified. She stated that she plans to do an informal survey of how racial and ethnic data arrives in our systems by doing a quick poll of counties and jails. Mr. Carver stated that he has started research on how other states collect racial and ethnic data. The plan is to come up with a defensible policy to present to the Legislature, with the hope that the legislators interested in this issue will allow the NMSC time to work on it for the 2021 Legislative Session. Executive Director Freeman and Mr. Carver will report back to the Reform Committee on their progress at an upcoming committee meeting.

Members of the committee asked about the differing values of having self-identified and officer-identified racial and ethnic data; the role of the training provided by the state Law Enforcement Academy; the importance of racial and ethnic data from informal police contacts; the differing issues surrounding collecting this data from rural and urban jurisdictions; the differing systems used in different counties and different parts of the criminal justice system to collect this kind of data; and whether people will want to self-report such information, especially in an immigration context.

*Legislature's desire for reporting on suggested legislative action in Court of Appeals and Supreme Court cases.*

Mr. Carver then informed the committee that the legislators on CCJ wished to have a way of being informed when the New Mexico Supreme Court or Court of Appeals suggest in opinions that some aspect of criminal law needs to be amended or examined by the Legislature. Mr. Carver informed the committee that he has suggested to CCJ that the Reform Committee was well-positioned to assume such a task. The committee agreed that its members could provide this service, but members noted that a distinction would have to be made between when the Court was overturning a statute, interpreting a statute, or calling for legislative action around an issue.

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

The committee had before them for review and discussion the final version of HB 564 as passed by the Legislature, the Governor's veto message of that bill (House Executive Message No. 28), and a markup of HB 564 that was presented by district attorneys at a July CCJ meeting. Mr. Carver informed the committee that he had been informed that Rep. Antonio Maestas, who is working on revisions to his Probation and Parole bill, would likely be providing his revised draft of the bill to the committee for their review.

Members of the committee had a wide-ranging discussion of the changes to the Probation and Parole system presented in HB 564 and the suggested modifications to the bill proposed by the district attorneys. There was some concern expressed that the discussion would not be complete without having Rep. Maestas's revisions to his bill in front of them.

Some members of the committee expressed the concern that HB 564 took discretion away from judges, especially when concerning how to handle what are termed technical violations. There was also a concern that the bill did not account for special categories of offenders, such as sex offenders. These members objected to the legislation's cookie cutter approach to violations. The guidelines in HB 564 for how to handle violations were considered too restrictive. It was suggested that the STEPS program represented a model that could be adapted into legislation.

Members of the committee who were more supportive of the legislation stated that the Legislature wished to move away from the present system that involved a wide range of differing tolerances for violations throughout the state. Some noted the number of violators who make up our prison population solely for their violation (not a new crime), and stated that it has been demonstrated that any time in prison has a deleterious effect on a person. It was also noted that there are inconsistent approaches to violations taken by probation and parole officers in the state, and that there is a national movement away from imprisonment as a sanction

Key disagreements centered around what kinds of consequences should attach to violations of probation or parole, and at what point (or whether) imprisonment was an appropriate sanction for repeated violations. Part of the disagreement was which approach – reliance on imprisonment as a sanction or alternatives to incarceration – was better for public safety. There was much discussion of the language in Section 31-21-15(A), concerning issuance of a warrant for violations of probation, both in the HB 564 language and the district attorneys's suggested modifications to that language.

There was general agreement that absconding was a situation that would require more serious sanctions. There was also agreement that there was a great need for more treatment and rehabilitation options in the state. And there was agreement on the need for a tighter time frame between a violation and the sanction for that violation.

There was discussion around what constitutes a violent, or serious violent, offense; how and when warrants are issued; whether the state needs to supervise the offenders it does in the manner it does; whether probation officers should be cross-trained as social workers; the use of the COMPAS system by NMCD; and whether it might be possible for violators to be taken directly to a District Judge instead of to jail, as is done in certain Magistrate Courts.

Towards the end of the meeting discussion coalesced around a potential compromise approach – that there be a two-tier system, under which those who have been convicted of more serious offenses are addressed under something resembling the present system, and those who have committed less serious offenses are treated under something resembling the system of reforms in HB 564.

The committee will continue its discussion of Probation and Parole at its next meeting.

**IV. Next meeting.** The committee scheduled its next two meetings for September 23 and October 7, 2019.

**V. Adjourn.** The meeting adjourned at 11:51 a.m.