



**Minutes of the Meeting of the
Reform Committee
10:00 a.m.
September 3, 2020**

via Zoom

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

I. Welcome and Introductions. Angela Pacheco, Chair, called the meeting to order at 10:03 a.m. Everyone on the Zoom call introduced themselves.

II. Approval of Minutes for the August 20, 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 the Commission staff will be presenting to the Legislature’s interim Courts, Corrections, and Justice Committee on September 14, 2020. Staff did not receive much guidance on what the committee wished to hear.

IV. Fines and Fees Discussion I – Broad Area vs. Specific Fines & Fees.

Douglas Carver, Deputy Director, NMSC, went over the updated results of the survey on fines and fees sent to Reform Committee members. There were eight surveys returned. The following areas had unanimity as

areas that members who responded to the survey might consider for discussion or elimination; certain items had fewer than eight total votes, which was been indicated where applicable.

For addressing a broad category:

- Pre-Trial COR
- Prison/Jail
- [Other CJ Tools had no “No” votes, but only 5 responses.]

For addressing specific fines or fees:

Pre-Trial COR

- Evaluation/testing
- Counseling
- Classes

Conviction

- Facilities fee [6 votes]
- Docket fee [6 votes]
- Automation fee [6 votes]
- Corrections fee [6 votes]
- Jury & witness fee [6 votes]
- Judicial education fee [7 votes]
- Brain injury fee [7 votes]
- Community comprehensive program fee [7 votes]
- In-house screening fee [7 votes]
- Controlled substances fee [7 votes]
- Juvenile adjudication fee [6 votes]
- Mediation fee [6 votes]

Probation

- Must pay all fines, fees, etc. [4 votes – I think people might not have realized this was a category]
- Evaluation/testing [7 votes]
- Counseling [7 votes]
- Classes [7 votes]
- Probation office [7 votes]
- Housing [7 votes]

Prison/Jail

- Communication services [7 votes]
- Medical care [7 votes]
- Commissary [7 votes]
- Booking fee [6 votes]

Other CJ Tools

- FTP bench warrant
- Diversion programs

Civil: Everything in this category had a “No” vote.

Members of the committee had a long discussion on the need to collect data on the money flow in the fines and fees system, how much money goes where, how much is converted to community service, how much is expended to collect unpaid fines or fees, and similar matters. It was noted that the Legislative Finance Committee would have some of that data, particularly in terms of revenue coming in, but some monies were comingled with other sources of revenue, which could make discerning what monies came from a particular fine or fee difficult. Additionally, many of the monies generated from fines and fees flows through counties, and particularly the courts, which poses its own data collection challenges. The Fines and Fees Justice Center is willing to assist the committee in the collection of and analysis of this data.

It was noted that a loss a funding for various release programs, such as ones involving electronic monitoring, might lead to people not being released who would otherwise be released. Members also discussed that this creates a tension, as the bail reform measure in the state Constitution ensured that people would not be held in custody based merely on an inability to pay. An additional point was raised that pre-trial fees raise a different set of issues, as there were constitutional questions when you apply what might be considered financial penalties on people who have yet to be convicted of a crime.

After discussion, members of the committee decided to address broad categories of fees; based on the results of the survey, the focus would be on the pre-trial category and the prison/jail category. It was noted that the fees associated with prisons and jails posed more complications, as it involved county-level policies, and private contracts with the counties and the New Mexico Corrections Department (NMCD).

A motion was made and seconded that the Reform Committee tackle the pre-trial category of fines and fees as a unit. The motion passed with no objections.

Members stated that they would need information, if available, such as the total monies raised from each fee in the category, who gets charged with the fee, how many people have a particular fee waived, and the total amount collected for a particular fee. It was noted that some of this data might be difficult to collect as te evaluations, counselling, and the like are performed by private entities, and Soberlink and drug testing and the like involve county-level contracts with private entities.

Mr. Carver said that he would reach out to Kelly Bradford, Statewide Pretrial Services Program Manager for the Administrative Office of the Courts, to make a presentation to the committee at their upcoming meeting on the mechanics of pre-trial fees.

A further motion was made and seconded that the Reform Committee tackle the prison and jail category of fines and fees as a unit. The motion passed with no objections.

The committee decided that it would address the prison and jail category at its meeting in a month's time.

Members of the committee discussed and asked questions about the need for a broader, more global reform of fines and fees; that addressing fees or fines singularly was something of a concession for those who wish for broader reform; the difficulty of addressing anything surrounding DWI; the need to address the area of ability to pay; conversion to community service and jail credit in lieu of payment; the question of whether the enumerated recipients of the various fees in statute actually received the monies in question; whether the present system of fines and fees was in the best interests of public safety; the difference between a fine, which is part of a sentence, and a fee, which is essentially a tax on someone engaging with the system; and the need for general fund monies to be used for many of the items tied to particular fees.

Members also briefly addressed fines and fees in the juvenile justice system, and were informed that the NMSC Juvenile Committee had formed a subcommittee to tackle this issue specifically.

V. Fines and Fees Discussion II – Stacking of Penalties.

This matter was postponed to the next meeting.

VI. Other Areas of Reform – Geriatric Parole.

Chair Pacheco informed the committee that there was a desire to examine the issues surrounding geriatric parole. The starting point for the committee's discussion would be the reforms that were included in the probation and parole reform bill that was discussed in the past Legislative Session (HB 263). Mr. Carver summarized these provisions, noting that the legislation essentially changed the thrust of the present geriatric parole provisions, putting the onus to initiate the process on NMCD instead of the inmate. He noted that this concept had received wide support in the past, at least since it was discussed by the Legislature in 2013, but the geriatric parole provisions always ended up paired with other reforms that were more controversial, and thus had not passed. He clarified that the legislation also covers terminally ill inmates and permanently incapacitated inmates.

A further motion was made and seconded that the Reform Committee move forward with exploring drafting a statute regarding geriatric parole. The motion passed with no objections.

The committee asked to be able to review both the geriatric parole provisions that were initially introduced in HB 263 and that were in the final version, the House Judiciary Committee substitute for HB 263.

Chair Pacheco indicated that the committee would address geriatric parole at its next meeting.

Members of the committee discussed whether it would be better to address this matter through NMCD policy changes; and the need to have a policy surrounding this set in law rather than policies, which could change with a different Administration.

VII. Next Meeting. The committee scheduled its next meeting for 10:00 a.m., September 17, 2020.

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