



NMSC Code Rewrite Survey

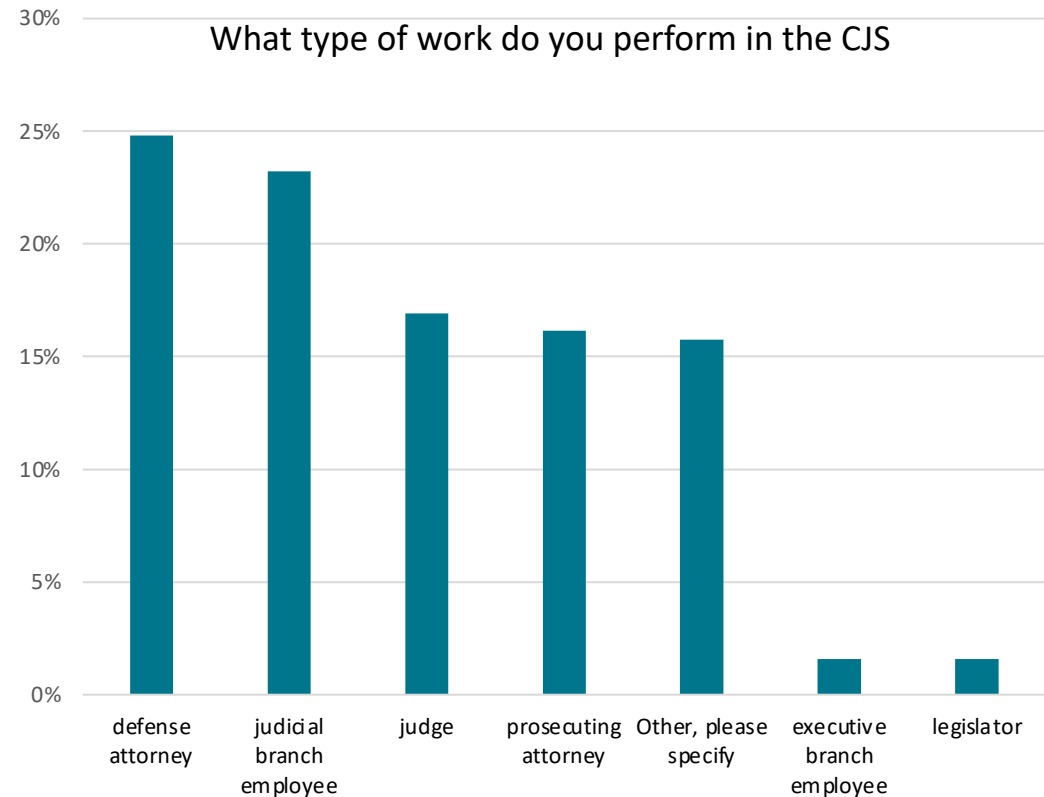
What do system actors want in a rewrite?

Survey Questions Discussed Today

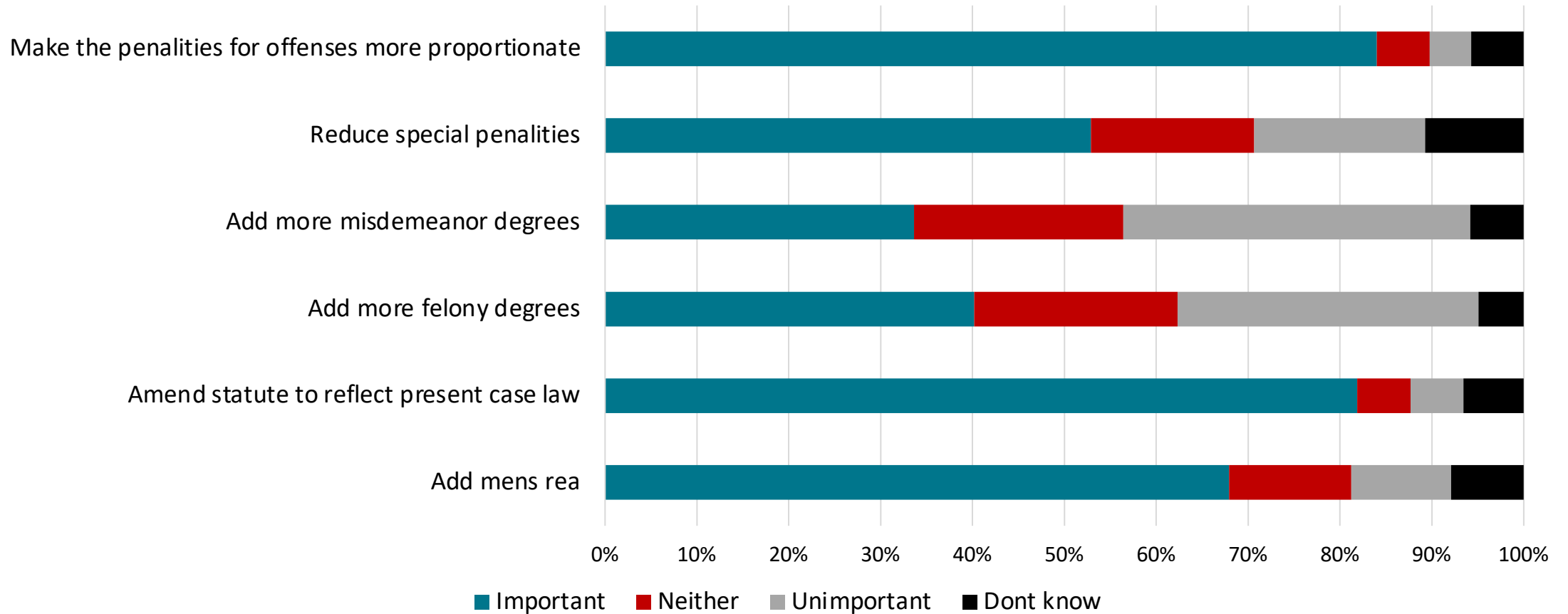
- The survey asked a number of questions about changes practitioners would like to see in the NM Criminal code:
 - What type of work do you perform in the criminal justice system?
 - Top 5 Strengths of the NM Criminal Code?
 - Top 5 Concerns/Issues needing change in the NM Criminal Code?

Dataset – Who responded?

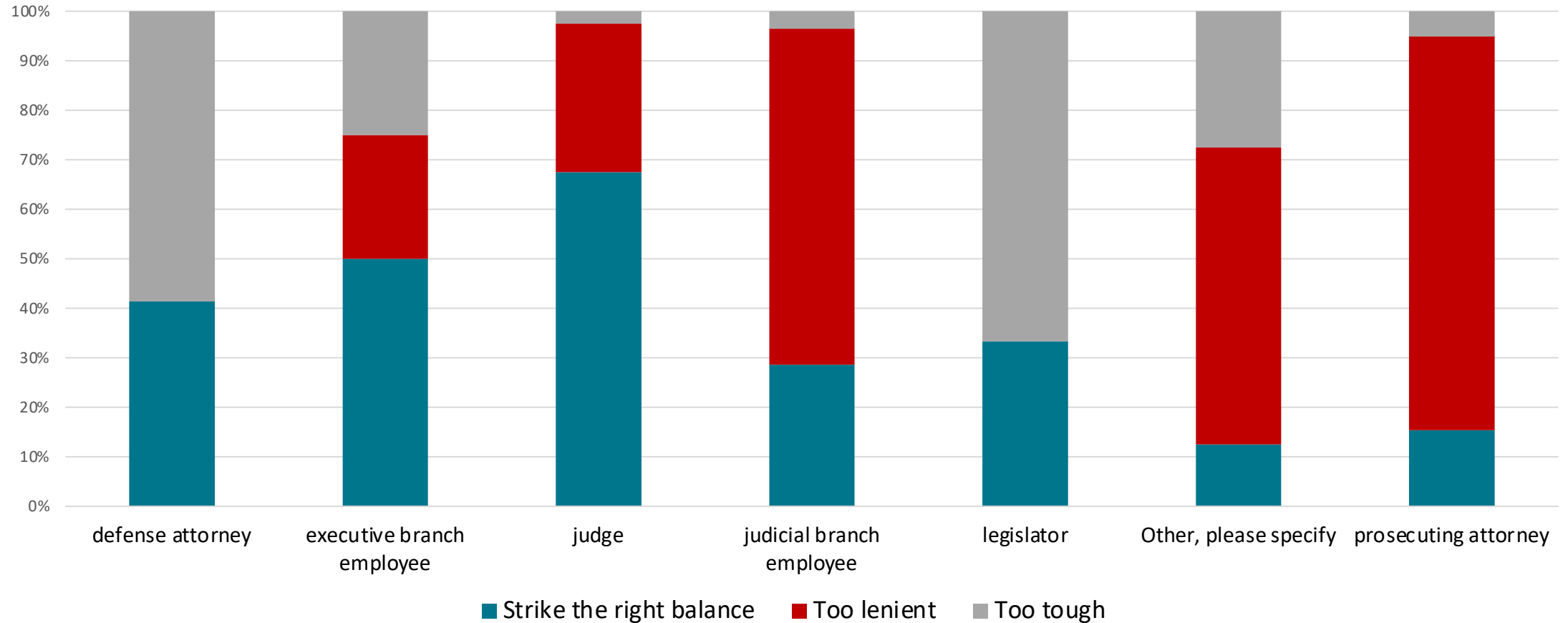
- Survey was targeted towards Criminal Justice employees and government officials
 - Mostly received responses from experienced individuals; average years of experience was about 16 years.
- Does not contain all responses, only individuals who completed the survey.
- Analysis is preliminary, new results are still coming in.



Potential Areas for Code Update



In General do you believe the code & related statutes



Strengths – Top 5

	judge	executive branch employee	Other, please specify	prosecuting attorney	judicial branch employee	defense attorney	legislator	Total
Simplicity	10	1	3	10	5	11	0	40
Comprehensive	6	1	1	6	1	3	1	19
Discretion	3	0	2	6	0	7	0	18
Fairness	5	0	0	1	2	4	0	12
Overall Structure	2	0	0	1	1	3	0	7

Strengths - General

- Many respondents agreed that the **NM Criminal Law is simple, comprehensive, and fair.**
- A Prosecuting Atty on comprehensiveness: *“The New Mexico Criminal Code covers a broad range of crimes...The Criminal Code is also easy to navigate...”*
- A court employee on simplicity: *“...Statutes are relatively straight-forward with little deviation from the uniform jury instructions.”* UJI’s were cited a few times.
- A Defense Atty on fairness: *“Our statutes offer judges a lot of flexibility in crafting sentences, which improves fairness (e.g., they can suspend all or part of many sentences if a defendant needs treatment). Our statutes are generally speaking easy to understand, compared with federal law. Our sentencing structure is simple and fair.”*

Strengths – Issue Areas

- A wide variety of specific issues were cited as strengths; often related to day to day activities of the respondent.
- A state legislator cites specific strengths: *“Providing public defender services. Eliminating the bail bond system which penalized poverty. Legalizing and decriminalizing cannabis possession.”*
- A Defense Atty: *“(1) The Juvenile Code (2) The statute employing a presumption against waiver of Double Jeopardy rights (3) The new eyewitness ID statute”*
 - The ID statute, discovery tools, and public defense generally were frequently cited as strong by defense attys and some judges.
- A Prosecuting Atty: *“The habitual offender statute that provides for statutory mandatory minimums for imprisonment.”*
 - Response to habitual statutes were mixed in other roles, but prosecuting attorneys often called them strengths.

Weaknesses – Top 5

	judge	executive branch employee	Other, please specify	prosecuting attorney	judicial branch employee	defense attorney	legislator	Total
Clarify Language	3	0	1	3	1	14	0	22
Drugs	4	0	3	0	3	10	1	21
Undercharging/Too Lenient	3	1	4	4	8	0	0	20
Habitual Offenders	2	0	1	2	3	10	0	18
Classifications	2	1	0	2	2	9	0	16

Weakness – Confusion/Disorganization

- This is a sampling of the many specific complaints about the structure of the code:
- A Judge: *“Need to remove the few crimes still included that are vague and unconstitutional. Annotations REALLY need to be updated.”*
- A defense atty: *“The current official criminal and traffic manual has the worst index of anything I've worked with. DWI offenses should be coded in the main body of the criminal code. There should be one index for all the different groups of crimes, instead of having to go to each individual section to peruse the table of contents.”*
- A Judicial Employee says: *“Fines and fees for criminal offenses are scattered throughout the statutes and cause difficulty when trying to determine which convictions should contain which financial sentence, and where these monies ultimately should be distributed to, and how that money is to be used.”*

Weakness – Habitual Offender

- Respondents cited Habitual Statutes as a weakness. Respondents did not like that **HO statutes took away sentencing discretion, could use less serious felonies to secure long sentences, and gave prosecutors significant leverage.**
- A Defense Atty: *“The habitual offender statute is too strict and harsh. As written a person with a couple of convictions for property crimes suddenly can face a 4 year enhancement. There should be more distinctions for less violent offenders and more opportunities to deviate.”*
- A Judge: *“I am concerned when discretion is taken away from the court with mandatory sentencing and imposing habitual offender time without discretion.”*

Weaknesses - Drugs

- Across all jobs except prosecutors, drugs were cited as a weak spot. Respondents cited a variety of weaknesses including:
 - insufficient rehabilitation programming, classifications of certain drug crimes as felonies (some users are sentenced using trafficking codes), drug felonies leading to habitual sentences.
- A judge: *“The biggest issue is the **limited time to offer rehabilitation to drug offenders**...Drug Court programs are effective, but most require a minimum of 18 months, and 24 months is better. Meth and Opiates are difficult drugs to quit, and time is needed to offer effective treatment.”*
- A Defense Atty: *“**Our drug laws treat addiction as a criminal problem rather than as a public health issue.** Simple possession should not be a crime and the trafficking statute should be reworked so that it isn't so easily usable against people who are actually just users.”*

Weakness – Sex Crimes

- Regardless of role, respondents had issues with sex crimes, especially as they relate to child pornography. **Some respondents identified disproportionate sentencing for certain types of crimes. Others felt that the current regime was being incorrectly applied.**
- A Defense Atty summarizes a common issue identified with child pornography: *“...Manufacture of child pornography can be charged as one offense per image, where 'manufacture' can mean as little as copying the images to a disc or hard drive, and each offense is a twelve-year sentence. **A person with two or three images of child pornography could easily serve a longer sentence than someone who committed actual sexual abuse of a child.**”*
 - A judge also points out a disparity between sexual assault and child pornography: *“...sexual assaults against children have lesser penalties than possessing photos of children.”*
- A prosecutor: *“**Possession of Child Porn is supposed to have a minimum 10 year sentence but I don't believe this is being properly imposed by Judges and prosecutors.** Also, these crimes are not included in the 5-20 year indeterminate sex offender probation. 30-6A The prosecution of child porn cases seems to be a crap shoot regarding whether the DA's office is going to keep a case or if the AG's office takes the case, it would be nice to have clarification on when cases stay with the DA and when they go to the AG.”*

Weakness – Sex Offenders

- A number of respondents **found sex offender parole/probation statutes in NM confusing.**
- A Defense Atty: ***“The sex offender registration requirements are too convoluted for some lawyers to understand, much less the actual offenders subject to them. They seem designed to force sex offenders to violate the byzantine requirements so that they can continually be charged with new felonies for failure to register.”***
 - Another defense Atty found overlapping community supervision schemes: *“...it serves no purpose whatsoever for people to be on sex offender probation for 5-20 years if they are also on sex offender parole for 5 years to life. the probation provision should cease to operate if the offender is on parole”*
- A defense atty brings up structural issues with the sentencing/exposure locations: ***“At the very least, these should be cross-referenced in the initial statute, **but it would be better if they were all in the same place to start with.** Like a section titled: Sentencing for sex offenses pursuant to 30-9-1 through whatever, and include the basic sentence, parole and probation exposure, and any registration requirements. And in the statute prohibiting the offense, ‘violation of this section is subject to the penalties outlined in [whatever this new section is]’”***

Weakness - Competency

- Competency statutes were frequently cited as **confusing and insufficient in addressing mental health needs.**
- A Judicial Employee: *“Competency cases - how to get the Defendant's the help they need so they are not repeating getting their cases dismissed & turning around and being brought back in”*
- A Prosecutor cites a conflict found in the rules: *“Competent Statutes are being circumvented by Court Rules. Section 31-9-1 et. al. provide a very thorough framework for dealing with competency, but the Supreme Court created Rules 5-602.1 et. al. which shifts the burden and creates unrealistic deadlines and processes that prevent a mentally ill person from getting help.”*
- A Prosecutor *“Competency is used as a get-out-jail-free card. Defendant who have been found not competent, can commit non-violent crimes (and even get licenses and drive around), completely free of the consequences of their actions. And they will not get treatment unless we can go through the Civil Commitment process, which is rare. **When a defendant accused of a crime is found not competent, they should immediately be taken to a treatment facility to get treatment.**”*

Weakness – Child Abuse

- Child abuse and Statute 30-6-1 is too vague. It was difficult to find any detailed quotes, but here is a sample:
 - A Prosecutor: *“Child Abuse statutes are vague, confusing and unworkable”*
 - A Prosecutor: *“child abuse statutes are so vague as to be meaningless”*
 - A Prosecutor: *“child abuse has 2 levels 3rd degree and 1st degree. there needs to be different levels that are better spelled out “*

Questions/Comments

- More surveys are still incoming
- NMSC can search on specific issues as requested.