MINUTES OF THE
2015-2016 INTERIM
ADVISORY COMMISSION ON
THE ADMINISTRATION OF JUSTICE
SEPTEMBER 12, 2016

The meeting of the Advisory Commission on the Administration of Justice was called to order by Chair Hardesty at 9:31 a.m. at the Legislative Building, Room 3137, 401 South Carson Street, Carson City, Nevada, and via videoconference at the Grant Sawyer Building, Room 4412, 555 East Washington Avenue, Las Vegas, Nevada. Exhibit A is the Agenda and Exhibit B is the Attendance Roster. All exhibits are available and on file in the Research Library of the Legislative Counsel Bureau.

COMMITTEE MEMBERS PRESENT (CARSON CITY):

Justice James W. Hardesty, Nevada Supreme Court
Assemblyman Elliot T. Anderson, Assembly District No. 15
Connie Bisbee, Chairman, State Board of Parole Commissioners
Judge Kevin Higgins, Justice of the Peace, Sparks Justice Court
Jorge Pierrott, Lieutenant, Parole and Probation, Department of Public Safety
Eric Spratley, Lieutenant, Washoe County Sheriff's Office
Judge Lidia S. Stiglich, Second Judicial District Court, Washoe County
Holly Welborn, Policy Director, ACLU of Nevada, Inmate Advocate

COMMITTEE MEMBERS PRESENT (LAS VEGAS):

Senator Mark A. Lipparelli, Senatorial District No. 6
Assemblyman John Hambrick, Assembly District No. 2
Paola Armeni, Representative, State Bar of Nevada
Chuck Callaway, Police Director, Office of Intergovernmental Services, Las Vegas Metropolitan Police Department
Phil Kohn, Clark County Public Defender
Adam Laxalt, Attorney General, Office of the Attorney General
James Dzurenda, Director, Nevada Department of Corrections

COMMITTEE MEMBERS ABSENT:

Mark Jackson, Douglas County District Attorney, Vice Chair
Senator Aaron D. Ford, Senatorial District No. 11
Lisa Morris Hibbler, Victim's Rights Advocate

STAFF MEMBERS PRESENT:

Nicolas C. Anthony, Senior Principal Deputy Legislative Counsel, Legal Division, Legislative Counsel Bureau
Angela Hartzler, Secretary, Legal Division, Legislative Counsel Bureau
Linda Hiller, Interim Secretary, Legal Division, Legislative Counsel Bureau

OTHERS PRESENT:

Clyde Means
Franny Forsman
Michael Cherry, Justice, Nevada Supreme Court
Richard Francis
Robyn Grace
Kristen Knight Bennett
Anonymous Female
Florence Jones Crew
Lea Tauchen, Retail Association of Nevada (RAN)
Tonja Brown, Advocate for the Inmates, Advocate for the Innocent
Wes Goetz
David Carroll, Executive Director, Sixth Amendment Center (by teleconference from Boston, Massachusetts)
Kelly Mitchell, Executive Director, Robina Institute of Criminal Law and Criminal Justice, University of Minnesota Law School; President, National Association of Sentencing Commissions
Carmen Tarrats, Criminal Justice Information Services (CJIS) Manager, Shared Computer Operation for Protection and Enforcement (SCOPE) Administrator, Las Vegas Metropolitan Police Department (Metro)
Julie Butler, Administrator, General Services Division, Department of Public Safety
Mindy McKay, Records Bureau Chief, General Services Division
John Witherow, President, Nevada Citizens United for the Rehabilitation of Errants (NV-CURE)
Craig Caples
William O'Connell (NV-CURE)

Chair Hardesty:
I will open the meeting of the Advisory Commission on the Administration of Justice with an overview of what I hope we are able to address today to set up what will eventually be a work session of the Commission in October to focus on recommendations we will make to the 2017 Legislature. One of the issues in the State is the status of our indigent defense. The Nevada Supreme Court (NSC) has had an Indigent Defense Commission chaired by Justice Michael Cherry. That Commission has undertaken a tremendous amount of work to address the qualifications and the issues surrounding the State's

obligation to provide attorneys for indigent defendants in criminal cases. A few weeks ago, that Commission voted unanimously to request that this Advisory Commission hear their recommendations and proposals and consider whether to include those as part of this Commission's recommendations to the Legislature.

I will open agenda item III, public comment.

Clyde Means:
The State Board of Parole Commissioners (Parole Board), without legitimate reasons, are denying eligible inmates the opportunity to be released on parole. I know many inmates who have demonstrated by positive actions that they have changed since committing their crime. Their behavior, as well as taking programs if they are available, which they are not at each facility, is what should be used in determining if they are granted parole. Every case where parole is denied, two suggestions are listed on that parole deniability. One is program and the other is keep out of trouble. Prior to his last parole hearing, Teddy C. completed 56 programs since being incarcerated, yet the denial of parole stated for him to program. Clearly, this indicated that the Parole Board does not consider what the inmate has done or even looked at the inmate's record.

Take the case of Steve H., a typical inmate being denied parole. In 2009, he was incarcerated and at that time he did not even have a GED. His mother would drop him off at the front door of the high school and he would go out the back door. Not only has he earned a GED while at Lovelock Correctional Center, he has also earned a Pershing County high school diploma and is currently in his second semester of college. He has taken lemons that the Parole Board gave him and plans on turning that into lemonade by earning a bachelor's degree in business administration. I have a DVD prepared by the Parole Board where they re-adjudicated this 45-year-old, making him feel worse than when he first went before the judge for sentencing. This is wrong. They did not recognize anything this man has done and he is an example of what we want in inmates.

The Parole Board is an obsolete entity that needs to be done away with. A few months ago, I came before you and said you need to abolish them. I also brought what the budget is costing and made a recommendation that those funds for those seven members and their staff could be transferred to the Division of Parole and Probation. If we grant parole when their time is up, Parole and Probation is going to need those funds. You could transfer the staff along with them. I strongly encourage this Commission to do away with the Parole Board.

Franny Forsman:
I was the federal public defender for the District of Nevada for 22 years before retiring. I have been on the NSC Indigent Defense Commission for more than a decade. We have made a lot of really great improvements in the urban counties. There is still a ways to go, but a lot has happened in the last 10 years in the urban counties. I have worked with this

issue for my entire legal career. At this point, Nevada needs an independent commission to oversee the provision of defense to poor people in the State. Without that, we will never achieve independence of the defense function nor will we be able to adequately oversee the disparity in representation between poor people and people of color in Nevada.

Chair Hardesty:
Thank you, I invite you to stay for Mr. Carroll's presentation and if you do not mind, be available for any questions from Commissioners.

Michael Cherry (Justice, Nevada Supreme Court):
I want to thank Justice Hardesty and the rest of you for this Commission; it has been long overdue. I have lived in Las Vegas since 1970 and Carson City since 2007 and I have been involved in the criminal justice system ever since I was a deputy public defender. I have been a district court judge and now a Nevada Supreme Court justice and I have seen what is going on with the criminal justice system.

In 2007, then-Chief Justice Maupin appointed me as the chair of the Indigent Defense Commission. We have done some great things. We have gotten performance standards for indigent defense representation which won me a national award that no judge had ever won before with the criminal defense attorneys in this country. Now we are studying caseload standards. The reason I am here is to hear David Carroll's testimony. He has been a consultant to my Commission for a long time. Although I love being Chair of this Commission, I think it is time for an independent Indigent Defense Commission in Nevada. To Speaker Hambrick and the rest of the Legislators on this Commission, God love the counties; they have been magnificent to my Commission as far as eliminating flat-fee contracts and getting the judiciary out of appointment of counsel. We have two public defender offices in Reno and two in Las Vegas and Douglas County has one, so does Elko. Meanwhile, the rest of the counties are supported by contract attorneys.

Speaker Hambrick, I am looking at you and saying it is time the State stepped forward and allowed an independent Indigent Defense Commission to be established. When you hear from David Carroll, you will understand where I am coming from. Thank you all for what you have done so far. I have watched some of these hearings even though I am sitting in my office. Thank you for what you have done and I appreciate what you will do in the future. I have confidence in you.

Richard Francis:
I am from Las Vegas and want to call to your attention two items that could use attention. I am an un-remarried widower since my wife passed away in 2002. I am 64 and came back to Las Vegas on July 2, 2015 to organize my retirement only to find I had become a victim of a well thought out and patiently executed plan to rob me of my assets. It was exquisitely carried out with the unknowing aid of the inadequacies of the Clark County document recording process and the State of Nevada marriage laws. I am in the process

of being fleeced by the way of counterfeit recorded deed and a legal Nevada divorce filing that does not require proof of marriage. I am not married. My big mistake was paying off my house and this made me a target. A deed was prepared in the names of two people with different last names and it was notarized. I have submitted my written testimony (Agenda Item III A) detailing this fraud that is an organized real estate scam dressed as a marriage. It is carried out by the disciple of at least two other prolific scammers who have been operating comfortably in Las Vegas for years. I am their recent victim.

I want to make you aware of what is going on in this State, in my district, and in my neighborhood in front of the very eyes that are supposed to protect us, but did not. I contacted at least two dozen public officials and only one replied; Assemblyman Elliot Anderson. He said, "What you are describing is fraud' you really need to speak to an attorney, not the Legislature. It is already very illegal." I have been battling this for 8 months now and I have spent $60,000 of my retirement money trying to find a law that will protect me against this. There is none. The burden of proof is up to me to prove I am single. It is very difficult to prove you are single.

Robyn Grace:
I run The Door is Open. Judge Hardesty, I apologize for not getting that letter to you but I am trying to get a plan together that is not putting a bandage on a bullet wound. It is a long-term plan that will be put into effect over a period of years. When I have a platform, I want it to be something that can be looked at seriously that we can put into action.

Chair Hardesty:
Thank you for being here today; I appreciate your efforts and know that something like that would be a huge undertaking.

Kristen Knight Bennett:
I am here to discuss a couple issues with the Nevada Department of Corrections (NDOC). Director Dzurenda, on behalf of several of the inmates and families I speak with, we are very excited about your appointment and that of David Tristan. Your office staff has been fantastic and Rhonda Larsen has been a tremendous help.

That said, there are very serious issues that I am sure you are aware of. The discretionary parole system does not work; it is unfair. There is no possible way a commission of seven people can hear 700 cases per month on average. The man I love is currently incarcerated at Southern Desert Correctional Center. In a moment of desperation, he reached over a counter and stole $438. There was no weapon, no assault, no threat—he took the money and left. He has been incarcerated for more than 3 years and he is 51 years old. He went before the Parole Board in June 2015, a month that the Board had 950 cases. They denied him based on an incorrect Presentence Investigation Report (PSI) as well as an old conviction from 1989.

While he has been incarcerated, first at High Desert State Prison and then transferred to Southern Desert, there have been many problems with retaliation by the guards for filing grievances. There is a tremendous problem with racism perpetrated by the guards. You have inmates that are nonviolent, low-level offenders housed with people who are doing multiple life sentences. The violence is crazy. It is prison; we understand that, but giving an inmate a write-up because his cellmate has a weapon is unfair. I do not know how to fix those problems but they definitely need to be addressed. You have the power to make recommendations. We are grateful in anticipating the new changes that are going to be made; we see changes already. It is very important to the families and friends of loved ones to be able to get information and to have communication although often that is lacking. With Director Dzurenda in place, that has greatly improved. We want to thank you for that and let you know we are watching and we will do what we can do to be of assistance to provide solutions; not just come before you to complain.

Anonymous Female:
Thank you Chair Hardesty. I am speaking anonymously due to the retaliation we survivors of domestic violence are receiving. Just to give you an update, I have already explained that we are bringing legal causes of action against members of this panel for their knowledge and concealment of destroying child abuse evidence. When this panel was formed, the panel was provided documentation and testimony regarding the illegal destruction of child abuse evidence. The bill that was before this committee, excuse me, the regular session of the Nevada Legislature in 2013, was Senate Bill (S.B.) 27, which detailed who would be legal counsel for all of the persons in Nevada who are either destroying child abuse evidence illegally or participating in the destruction of the abuse.

SENATE BILL (S.B.) 27: Revises provisions relating to legal representation. (BDR 3-219)

When the bill was in committee, a Legislator asked, “Do we not have immunity?” In the context of what was being decided by the Legislature, was who will be defense council; not what the defense will be, but who will be defense counsel. So when the Legislator asked about immunity, that was the defense that the Legislator was presenting before the committee. The Legislator did not get the response, “Yes, you have immunity,” or “No, you do not have immunity,” but the Attorney General—and I will use the Attorney and the Office of the Attorney General as one in the same—the Attorney General replied, “It is a complicated matter.” Well, immunity is not a complicated matter when it regards illegal activity such as destroying child abuse evidence. Immunity, as you all know, under *Nevada Revised Statutes* (NRS) 41, was waived by the State of Nevada, and that was sovereign immunity. But the U.S. Supreme Court in a case with a Nevada resident decided that there is qualified immunity. Qualified immunity is just that; a person has to argue that they have immunity. So when qualified immunity, which is the matter before this State regarding the destruction of child abuse evidence, the Attorney General finally responded to us survivors last week and stated that the defense for all the persons who

are involved in the destruction of child abuse evidence and the concealing of the child abuse evidence being destroyed, qualify…

Chair Hardesty:
I believe you have exceeded your time. Could you wrap up by succinctly stating what it is you are asking this Commission to do?

Anonymous Female:
Briefly, the argument of your defense counsel is that destroying child abuse evidence is a discretionary act. It is not a discretionary act, so we are asking yet again, which we have been asking since the start of this Interim Session, to be put on the agenda.

Florence Jones Crew:
No one knows better than I that our Board of Parole Commissioners (Parole Board) has been operating in darkness and without transparency since 2001 when they arbitrarily took themselves out from underneath the Nevada Open Meeting Law (OML). The 10 years of operating outside the OML was finally cleared up in 2011 as noted in the history on the first two pages of my report (Agenda Item III B-1). My question is about the 10 years that paroles were denied and possibly the rights of the public and the inmates were not followed clearly.

The other area I am concerned about is my sons are both successful litigators. On page 6 of my report, there is a chronology of my son Norman's prison life. When he was paroled from his first life sentence with its enhancement, he litigated because the NDOC and the Parole Board were separating his sentences—we believed incorrectly, but two district courts agreed with us, so the Parole Board was forced to take action back. Many of the people who were involved have been released on parole, but my two sons who litigated successfully in two district courts are still in prison, serving now on their 36th year. Their particular case is unique, I think, because they may very well be now, as Oscar Goodman has told me, political prisoners more than being held for the crime. Fifteen years was adequate to give them a parole on the first life and its enhancement. They have now been in prison 21 years after litigating on this second life and its enhancement.

I had the opportunity to see the Nevada Offender Tracking Information System (NOTIS) file that Tonja Brown will be speaking about. The file shows that before 1999, records are not noted. My children have been in prison since 1981. Does that mean 18 years have just been discarded? It is my understanding that the NOTIS records are what the Parole Board is working from. Possibly that is why Chairperson Bisbee wrote in a letter to a sitting Governor here in Nevada saying my sons had four 10-to-life mandatory sentences, which certainly would not have allowed them to be paroled off of a life and its enhancement. Maybe the other members of that first Parole Board were in error. It certainly would not call for all these parole hearings that are being had if she were right in what she said to the Governor when he inquired about my sons, they would not be heard for a parole

hearing until 2021. I am concerned about the incorrect information, possibly the lack of information, and quite possibly, the retaliation that may be going on.

I also have submitted a letter from Oscar Goodman that was presented to the Parole board in 2011 when my sons were both denied parole (Agenda Item III B-2). Attached to it is some information on records. I believe our Parole Board has unchecked discretionary power that must be changed, whether we just add controls and oversight or whether we eliminate and go to a system NV-CURE is proposing today. I also submitted two articles, *Reducing Elder Incarceration and Promoting Public Safety* (Agenda Item III B-3) and *Life Without Parole*, (Agenda Item III B-4) from scholars in New York State which seem to quite clearly point to what we are facing here in Nevada, not only with problems but with solutions. The entire 117-page report was very stimulating and quite possibly we could insert "Nevada" in where "New York" is listed.

Lea Tauchen (Retail Association of Nevada (RAN)):
This Commission has had several discussions regarding burglary through this Interim and since burglary is the most important security issue facing the retail industry, our RAN members are concerned about the possibility of burglary crimes being reclassified. I have submitted my written testimony (Agenda Item III C) explaining what is happening in the retail setting and the impact it is having on our industry through what is becoming known as organized retail crime where professional criminals commit theft and other fraud to fund other criminal activities such as human trafficking, drugs or terrorism.

Chair Hardesty:
Thank you. To be clear, this Commission is not discussing the elimination of the kinds of theft you are describing from being categorized as felonies. What is being discussed is the proportionality of sentencing associated with behavior. I would request that your Association, RAN, look at the burglary statutes and determine, as this Commission is evaluating, whether the breadth of the burglary statutes and what they encompass achieves more than what they should with respect to sentencing. All of these kinds of acts, even the customary theft from someone's store, are still felonies. The question is, what should be the sentencing range and what should be the category in which the crime is placed. We invite your input as we approach our October work session. The kinds of acts you are talking about—commercial burglary which creates a risk to the safety of others and commercial burglary that is part of organized crime—are certainly acts that are significantly distinguishable. The punishments for those crimes, I think, are substantially different than a customary commercial theft of a coke or bread or gum. The question is, how should this Commission consider these matters and provide for distinctions in the statutes to address the difference in the gravity of these issues and the period of incarceration associated with them? We would invite a memo or paper from you that might articulate and recognize those differences, perhaps looking at other states and what they have done as well. If you come here, you are likely to get a homework assignment, so we appreciate you being here.

Tonja Brown (Advocate for the Inmates, Advocate for the Innocent):
I have a letter from an inmate, Mr. Johnson, with concerns about his Parole Board hearing but it has been advised that I contact him again so I will bring it to the next meeting.

Chair Hardesty:
Mr. Goetz, I mistakenly told you the Schneider case would be on today's agenda but it is actually on the agenda for September 27 so we will not be discussing it today.

Wes Goetz:
OK, I will just speak my piece now. Since this order has come out, I feel like I am a free man. I have not had to report to my parole officer and I can travel to California when I want. A week before all this happened, I had problems with my travel permit. It seemed like every time I came and talked to the committee, Lieutenant Pierrott would tighten up my travel permits. I have three different vehicles—a motorcycle, a van and an Isuzu Rodeo—and they said I would have to choose what car I would take to California. I said that sometimes one vehicle is not working so I have to take the other one. They said I had to decide on one or invite people to come to Nevada so I can take them on Nevada roads. If I tell them they have to come to Nevada because my parole officer says so, then I will have to tell them my whole situation about my past. I called the captain of the Division of Parole and Probation (P&P) to ask why this was happening and she said it was my fault and that when Lieutenant Pierrott reads your complaints and then notices that maybe you have too much freedom, that is why he is tightening you in, so you are the one causing the problem.

Several years ago I had to take a polygraph test but I do not think I have to take those anymore. When I was having all this control, it felt to me like I was in some kind of Nazi camp being policed of everything I do. But for the last month, I actually feel like a free man. I am not going to do more crime. I do not have to worry about being stressed out and maybe doing a crime, because it seems like P&P always wants to stress you out so you will do more crime and be back in prison where you feel more comfortable. I have been fighting this for 7 years. This new order that came out a month ago has freed a lot of people on lifetime supervision. I know others on lifetime supervision tried to come here to testify in front of committees and they were retaliated against.

Chair Hardesty:
Mr. Goetz, you have exceeded your time and you are being repetitive.

Mr. Goetz:
I recommend that this committee make up another committee that will help make up special conditions for lifetime supervision. Have psychologists, civil rights attorneys and judges on these committees to make these special conditions for the people on lifetime supervision because I know that in the upcoming session, P&P will try to make new laws trying to follow their special conditions.

Chair Hardesty:
The Schneider decision is on the agenda and issues surrounding it will be discussed on September 27. I will now open agenda item IV, the approval of the minutes from the last meeting of this Commission (Agenda Item IV).

> ASSEMBLYMAN HAMBRICK MOVED TO APPROVE THE ADVISORY COMMISSION ON THE ADMINISTRATION OF JUSTICE MINUTES FROM AUGUST 3, 2016.
>
> KEVIN HIGGINS SECONDED THE MOTION.
>
> THE MOTION CARRIED UNANIMOUSLY.

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I will now open agenda item VI, a presentation on NSC's Indigent Defense Commission. One of the issues that continue to affect the criminal justice system is the status of Nevada's indigent defense system. The system is a significant part of the criminal justice system and how counsel are appointed, their qualifications and capabilities and the like in defending individuals charged with a crime. As Justice Cherry noted, the Indigent Defense Commission appointed by the NSC in 2007 has undertaken a lot of work studying this issue and has made a number of recommendations that have become the product of court rules governing how attorneys practice law in this area. A critical aid to that effort is David Carroll, the Executive Director of the Sixth Amendment Center. The Indigent Defense Commission has asked this Advisory Commission, and will be asking the 2017 Legislature, to consider the appointment of an indigent defense commission that is consistent with what is done in a number of other states in the country.

David Carroll (Executive Director, Sixth Amendment Center; by teleconference from Boston, Massachusetts):
The Sixth Amendment Center is a nonpartisan, nonprofit organization assisting states to meet their constitutional obligation to provide effective lawyers to indigent individuals accused in criminal proceedings. We have worked with the Nevada Supreme Court's Indigent Defense Commission for many years under a grant from the U.S. Department of Justice (DOJ). I have submitted my slide presentation (Agenda Item VI A-1) along with a written script (Agenda Item VI A-2).

I want to cover five topics today. First will be a brief overview of the Sixth Amendment. This will transition into a discussion of Nevada's unique history and vision with regard to the right to counsel. The main part of the presentation will be the work of the Nevada Supreme Court Indigent Defense Commission, focusing on identified systemic deficiencies and accomplished remedies. Unfortunately, there are some reforms that cannot occur without legislative action. So I will also talk about a consensus bill draft that

the Commission is proposing. Finally, I will briefly discuss what has been happening in your neighboring states focusing on legislative achievements and ongoing litigation to give context to the proposed changes.

In 1963, the U.S. Supreme Court in *Gideon v. Wainwright* determined that the 14th Amendment requires states to provide lawyers to poor defendants under the Sixth Amendment (Agenda Item VI A-1), page 4. The Court famously announced that, "The right of one charged with crime to counsel may not be deemed fundamental and essential to fair trials in some countries, but it is in ours." But what has always fascinated me is the next line in the Gideon decision as the Court stated, "From the very beginning, our state and national constitutions and laws have laid great emphasis on procedural and substantive safeguards designed to ensure fair trials." Is that true? From the "very beginning" of our country? The answer is, "Yes." Courts were appointing counsel since even before the Sixth Amendment was ratified because the right to counsel goes to the very core of what it means to be American.

For the signers of the Declaration of Independence, liberty is the universal notion that every person should determine their own path to happiness, free from undue governmental control (Agenda Item VI A-1), page 6. Patrick Henry preferred death to living without it. In fact, liberty is so central to the idea of American democracy that the framers of our Constitution created a Bill of Rights to protect personal liberty from the tyranny of big government. All people, they argued, should be free to express unpopular opinions or choose their own religion or take up arms to protect their home and family without fear of retaliation from the state. Preeminent in the Bill of Rights is the idea that no one's liberty can ever be taken away without the process being fair. We call this "due process." A jury made up of everyday citizens, protection against self-incrimination, and the right to have a lawyer advocating on one's behalf are all American ideals of justice enshrined to protect personal liberty against governmental tyranny.

John Adams risked his reputation for these very ideals by defending the British soldiers involved in the Boston Massacre (Agenda Item VI A-1), page 9. Adams stated years later that a defense lawyer ought to be the last thing a person should be without in a free country. Why did Adams and other patriots believe so fervently in the right to counsel? Because the European people that arrived on American shores were, in many instances, those who had been subject to religious persecution in European courts without the presumption of innocence and without the ability to have a lawyer. Simply put, the new colonists were not going to set up justice systems that would railroad defendants into jail who were ignorant of the law. I mention all of this because if you think the right to counsel starts in 1963, it is far too easy to write off indigent defense as simply a civil right of the liberal-leaning Warren Court. But that is simply not the case. In fact, the state we have to thank for reminding us of the "liberty v. tyranny" framework of the right to counsel is none other than your State; Nevada. Nearly 100 years before Gideon, Nevada was the first

state in the Union to require the right to counsel in all cases, including misdemeanors, and to require the payment of lawyers for services.

This story starts in Lander County (Agenda Item VI A-1), page 11. In the fall of 1873, a 30-year-old harness maker was arrested in Battle Mountain. He was wearing a uniquely identifiable coat that was commissioned by the Manhattan Silver Mining Company before it was stolen during one of a series of stagecoach heists. His name was Shepherd L. Wixom and he was no saint, having already been charged with horse stealing. He also spent time in the Nevada State Prison for helping an accused murderer escape from the Lander County jail. Wixom had the stolen coat and he fit the general description. He was an ex-felon; he must be guilty.

In January 1874, Wixom finally got his day in court. He was arraigned in front of the Honorable DeWitt C. McKenney, who set the trial for a few days later. Besides his "not guilty" plea, Wixom only made one statement: "Defendant objects to the time of trial and to the legality of his being tried without counsel." Judge McKenney would have appointed a lawyer, as was his custom in other counties, but with no lawyers in the Lander County courtroom, he proceeded with the trial. Wixom was found guilty.

With Wixom in the state penitentiary, the story turns to the Nevada Assembly. Thomas Wren was the Austin city prosecutor from 1864 to 1866 (Agenda Item VI A-1), page 13. Subsequently, Wren was elected to the Nevada Assembly as the representative from Eureka and later served as the Nevada's lone U.S. Congressman from 1877 to 1879. But in 1875, he was passionately and persuasively arguing in the Nevada Assembly. As a state assemblyman, Wren introduced Assembly Bill 122 in 1875, which stated: "An attorney appointed by a Court to defend a person indicted for any offense, is entitled to receive from the County treasury the following fees: For a case of murder, such fee as the Court may fix, not to exceed fifty dollars; for felony, such fee as the Court may fix, not to exceed fifty dollars; for misdemeanor, such fee as the Court may fix, not to exceed fifty dollars."

Wixom was eventually able to make arrangements to sell what little property he owned and hire an attorney. Unfortunately for him, the only legal action available to him was to petition the Supreme Court of Nevada for a writ of certiorari. The Court granted the writ and considered what the right to counsel meant in Nevada 140 years ago. In a sad twist of legal irony, had Wixom been able to retain private counsel within the appellate filing deadline, it is likely his conviction would have been overturned on direct appeal and a new trial ordered. Through dicta in Wixom's case, the Court took pains to say that, in forcing the defendant to go to trial without a lawyer, "The district judge may have erred, and may have abused his discretion. His action may have afforded good grounds for granting the defendant a new trial, or for reversing the judgment on appeal …". Wixom, however, had never filed an appeal.

The Court did not stop there. Justice William H. Beatty, writing on behalf of the unanimous three-person bench, foreshadowed the view of the Nevada Supreme Court in cases to come. Referring to Wren's Assembly Bill 122, the Court concluded that "a statute passed since the trial of this petitioner, has made provision for compensation of attorneys appointed to defend in such cases. Probably since this statute, if not before, a failure to assign professional counsel for a poor defendant would be deemed a fatal error on appeal …". It was too late for Wixom, but Wren's 1875 bill and the 1877 Nevada Supreme Court decision assured that from that day forward the failure to ever appoint counsel to the poor in a criminal case was a valid reason to overturn convictions on direct appeal.

To the extent that Wren's bill could have been construed as merely giving judges the discretion to pay appointed counsel, but without requiring them to do so, the Nevada Supreme Court eliminated any ambiguity 2 years later in the 1879 case of *Washoe County v. Humboldt County* (Agenda Item VI A-1), page 17. The case involved, among other things, the payment of counsel in the controversial death penalty case of J. W. Rover. The Nevada Supreme Court, citing Wren's 1875 law, concluded that it was their duty "to determine the real intention of the legislature." Noting the financial hardship some attorneys endured when representing the indigent accused, the Nevada Supreme Court was "of the opinion that it was not the intention of the legislature to invest the courts with any such discretionary power." Instead, "it was the intention of the legislature to provide for the payment of a fee, not exceeding fifty dollars, to every attorney who defends a prisoner charged with crime, under appointment from the court."

So there you have it; your state was the first to commit to equal justice. Nevada's commitment to equal justice that began in the 1870s reached its zenith in 1971. In the wake of the Gideon decision, the National Conference of Commissioners on Uniform State Laws, funded by the U.S. Department of Justice, published a Model Public Defender Act that it recommended all state governments adopt. Following that recommendation, in 1971 the Nevada Legislature created the State Public Defender as an executive branch agency charged with administering the constitutional mandate to provide competent lawyers to the poor in all counties other than Clark County and Washoe County. The Model Public Defender Act created an independent seven-member commission appointed by a diversity of factions to ensure that no single branch of government could exert undue interference on the work of the agency dedicated to representing poor people. The commission was charged with overseeing the State Public Defender system, hiring and firing the chief defender, and setting uniform policies for the delivery of indigent defense services. If in place today, the State Public Defender Commission of 1971 would meet virtually every national standard related to the independence of the defense function.

However, the commitment to anti-tyranny began to fade over time. In 1975, only 4 years after creating the State Public Defender Commission, the Nevada Legislature did away with it and voted instead to make the State Public Defender a direct appointment by the

Governor. Chief public defenders who are direct political appointees often take into account what they must do to please the Governor, rather than doing what is solely in the best interest of the defendants as ethics require, or they risk losing their jobs.

Say, for example, that a Governor calls for all executive branch departments to take a 10 percent cut in their budgets. The problem is that public defenders are constitutionally required to defend all people appointed to them from the court. Unlike other aspects of government, defense practitioners do not control their own workload. Therefore, a 10 percent budget cut is impossible to implement if it is not met by a 10 percent cut in workload, especially if one is concerned about providing ethical representation. But despite the ethical considerations, the public defender that is a direct gubernatorial appointee is likely to cut 10 percent rather than risk being replaced by someone who will do what the Governor wants.

Independence of the defense function is not just good public policy; it is the law (Agenda Item VI A-1), page 19. In the 1979 case of *Ferri v. Ackerman*, the U.S. Supreme Court determined that "independence" of appointed counsel to act as an adversary is an "indispensable element" of "effective representation."

Two years later, the Court held in *Polk County v. Dodson* that states have a "constitutional obligation to respect the professional independence of the public defenders whom it engages," (Agenda Item VI A-1), page 20. Observing that "a defense lawyer best serves the public not by acting on the State's behalf or in concert with it, but rather by advancing the undivided interests of the client," the Court concluded that a "public defender is not amenable to administrative direction in the same sense as other state employees."

This principle was re-affirmed in *Strickland v. Washington*, where the Court stated that "independence of counsel" is "constitutionally protected," and that "government violates the right to effective assistance when it interferes in certain ways with the ability of counsel to make independent decisions about how to conduct the defense," (Agenda Item VI A-1), page 21.

In 1989, the Legislature further compromised the ability of the State Public Defender to render effective services by demoting the position from a gubernatorial cabinet-level position to one of several intra-agency positions within the Department of Human Services. This move resulted in the State Public Defender having to argue for adequate budgetary resources among several other Human Service agencies. From there, the director of Human Services would have to argue for all of their needs against the needs of all the other executive branch departments.

Without an independent voice to advocate for appropriate resources, the State's commitment to the rural counties deteriorated further. As originally conceived, the State paid for 80 percent of all public defender costs in the rural counties and the counties

themselves funded the other 20 percent. The State's financial commitment slowly eroded to the point where counties had to initially pay the majority of the costs and eventually, 80 percent of the entire cost. Counties quickly learned that by simply opting out of the State system, they could spend less money to provide the services and exercise local power over their public defense systems. Unfortunately for poor defendants, this movement out of the State Public Defender system was done with no guidance whatsoever by the State. There were no standards as to how the counties must set up their systems. There were no standards to say what training or experience attorneys must have to take indigent defense cases or what on-going training was required for them to continue to take cases.

In most instances, the county governments established systems in which an attorney was contracted to provide representation in an unlimited number of cases for a single flat fee and these contracts predictably went to the lowest bidders. The attorneys were not reimbursed for overhead or out-of-pocket case expenses such as mileage, experts, investigators, etc. The more work an attorney did on a case, the less money that attorney would make, giving attorneys a clear financial incentive to do as little work on their cases as possible. The impact of this devolution was keenly felt during a survey undertaken by the Nevada Supreme Court Indigent Defense Commission in 2008. Since no State agency was responsible for the representation given to poor defendants in rural Nevada, the Commission had to ask each county to self-report information such as indigent defense expenditures and number of cases. Some counties could not, or would not, provide even this basic information to Nevada's highest Court.

From the counties that did report this information, an ugly picture emerged. Douglas County reported that it spent $383,683 in 2007 on primary defender services, which was $191,845 each for two separate attorneys; and $46,661 on conflict counsel, with an additional $23,036 spent on case-related services. Though that may sound like a lot of money, the county reported that in the same year they had 202 felony cases including one murder case, 3,249 misdemeanors, and 341 juvenile delinquency cases. On average, there was only $119.56 available on each of these cases to pay the attorney a fee, the attorney's overhead and all of the out-of-pocket expenses in the case. Remember, 140 years ago, the Nevada Legislature set attorney compensation at a rate not to exceed $50 dollars per case. That amount of money in 1874 would be about $12,200 in 2007 dollars. Douglas County public defenders in 2007 earned less than 1 percent of the compensation originally envisioned by that Legislature.

Douglas County is not alone. The Las Vegas Review-Journal investigated the indigent defense system in Lyon County and found even more problematic conditions. When a contract defender there was appointed to the bench, his pending cases needed to be transferred to another attorney. A 27-year-old attorney who had only passed the bar exam a few weeks prior inherited the flat-fee contract. He began his tenure as a public defense attorney by receiving 600 open cases on his first day, 200 of which were felonies,

including some murder cases. Under national standards, this caseload should have been handled by more than three experienced full-time attorneys. If that was bad enough, all related expenses had to be paid out of that same flat fee.

The State Supreme Court's Indigent Defense Commission set about trying to fix as many of these deficiencies as possible (Agenda Item VI A-1), page 25. Here is how the process works. An issue is raised and debated among Commission members composed of criminal justice stakeholders, county managers and others. If research or data collection is needed, it is done. More debate and discussion occurs until a consensus recommendation is made. The Court holds a hearing to consider the recommendation and if the Court finds the recommendation meritorious, the Court issues an administrative order adopting said changes. Through this process, the Court has banned flat-fee contracts, removed the judiciary from the oversight of defender services, set a uniform standard for indigence, set attorney performance qualifications, and studied workload controls. As Justice Cherry commented earlier, the Commission's work has been recognized nationally.

Unfortunately, the Commission cannot fix what is truly needed in the rural counties; a functioning and independent state public defender. The Legislature needs to reclaim its commitment to equal justice. In 2015, the Court supported a bill draft request (BDR) to do just that. The BDR creates a permanent, independent 13-member commission and is set to be proposed again in 2017. The Governor appoints these members based on recommendations by diverse authorities so no one branch of government can exert undue influence. In the BDR (Agenda Item VI A-1), page 27, the Commission would have authority to promulgate standards that must be approved by the Court. All Commission standards would still go through the Nevada Supreme Court, and Clark County and Washoe County would still have to follow them. However, because their systems are deemed to be effective they would maintain the funding and administration autonomy they currently possess.

Additionally, the Commission would have the ability to decide the best way to provide representation in the rural counties through assigned counsel, contracts, public defenders or a combination of all of the above. County costs would be capped at 2016 levels and any new monies to meet standards would come from the State. This is a good deal for the counties because from now into the future, they will know their levels for indigent defense will be capped. It is also a good deal for the State because it does not need to come up with all the money at once; only to meet the new standards the Commission has promulgated. It is important that Nevada gets this right. A number of western states including Washington, Idaho, Utah, and California have been sued by the ACLU for providing sub-par public defense services. That list does not include Montana, where the ACLU tabled a lawsuit while that state works to create a fully integrated statewide public defender system that has now been operating for nearly a decade.

Perhaps more importantly, the U.S. Department of Justice (DOJ) filed a Statement of Interest in the Washington State case. In Idaho, they filed an amicus brief supporting the ACLU. In these cases, the DOJ declares that a court does not have to wait for a case to be disposed of and then try to unravel retrospectively whether a specific defendant's representation met the aims of Gideon and its progeny. If state or local governments create structural impediments that make the appointment of counsel "superficial" to the point of "non-representation," a court can step in and presume, prospectively, that the representation is ineffective. The types of government interference enunciated in the DOJ Statement of Interest includes "a severe lack of resources, unreasonably high caseloads, critical understaffing of public defender offices," or anything else making the "traditional markers of representation" go unmet. They specifically referenced, "timely and confidential consultation with clients," "appropriate investigations," and non-adversarial representation, among others. The Supreme Court Task Force found all of these deficiencies in rural Nevada (Agenda Item VI A-1), page 29.

In both Idaho and Utah, these lawsuits are ongoing despite recent legislative changes. Utah's Senate Bill 155, which was passed on a nearly unanimous vote and signed by the Utah Governor earlier this year, created the new Utah Indigent Defense Commission (UIDC), made up of members appointed from diverse appointing authorities (Agenda Item VI A-1), page 30. The principal duty of the UIDC is to adopt guiding principles for the oversight and assessment of criminal defense services. The Utah bill also includes the first-ever state funding of trial-level public defense services in Utah. The UIDC is statutorily required to develop policies and procedures for how best to disseminate these new monies. However, it is important to note that all local governments are bound by UIDC standards whether they seek state funding or not. Having studied indigent defense in rural Utah, I can tell you that the problems being addressed by the Utah Commission and at the heart of the class action lawsuit are the same as what we found in rural Nevada.

The same can be said of Idaho. In March, the Idaho Legislature on a nearly unanimous vote enacted House Bill 504, a bill with the expressed Legislative purpose of "improving the delivery of trial-level indigent defense services by providing funding to counties and creating standards with which counties must comply." The bill authorizes a State Public Defender Commission to promulgate and enforce uniform indigent defense standards. Additionally, a companion $5.4 million appropriations bill was passed, authorizing the Commission to disseminate grants to counties to offset the cost of compliance with indigent defense standards. All Idaho counties must comply with the Commission's standards, regardless of whether they apply to the Commission for funding assistance. The hammer to compel compliance with standards is significant. If the Commission determines that a county "willfully and materially" fails to comply with Commission standards, the Commission is authorized to step in and remedy the specific deficiencies, including taking over all services, charging the county for the cost. Additionally, if the cost is not paid within 60 days, "the state treasurer shall immediately intercept any payments from sales tax moneys that would be distributed to the county," and the intercepted funds

will go to reimburse the Commission. These “intercept and transfer provisions” operate by force of law.

Today, Utah, Idaho, Montana, Oregon, Wyoming, Colorado and New Mexico all have statewide integrated public defender systems and/or a statewide indigent defense commission. Public defense advocates in Nevada need your help.

In conclusion, I encourage you all to read the full account of the Wixom case in the Sixth Amendment Center report, “Reclaiming Justice.” Though no one can go back in history and say what a competent lawyer could have done in that case, there is a lot of circumstantial evidence—including Judge McKenney writing on behalf of a pardon for Wixom—that suggests Shepherd Wixom was framed. A Civil War veteran who continued in the Army even after suffering severe injuries, Wixom is buried in California. In honor of him, we ask that you consider passing the recommended changes legislatively. I hope to come to Nevada to work with you on these issues. The DOJ grants we work with allow us to work with any policy maker or criminal justice stakeholder in your State.

Chair Hardesty:
We will circulate that proposed BDR from 2015 for a proposed State public defender commission at the next meeting of this Advisory Commission.

Assemblyman Anderson:
We have seen a crunch in the budget in Missouri in the news lately. There was an interesting situation there where a state defender appointed the governor to represent counsel. Can you elaborate on what is going in that state?

Mr. Carroll:
In Missouri, they have a fully integrated state public defender system; the counties have no responsibility for indigent defense. That is true of the vast majority of states. Unfortunately, unlike Nevada, Missouri was one of the last states to recognize that attorneys should be compensated for their work. Even in the 1980s when most states were compensating attorneys, Missouri was still trying to get by on conscripting the private bar to do the work. The problem was, if you did not have full funding prior to the explosion of cases in the 1980s and 1990s with three-strikes and tough-on-crime laws, it was hard to get the legislature to give a large amount of money to fully fund indigent defense.

Since the 1980s, Missouri has always ranked between 49th and 50th in indigent defense funding. The other state that follows that pattern is Mississippi. To try to draw attention to the issue, the Missouri Public Defender used a very little-known statute that says he has the authority to appoint any attorney to a case, so he appointed the sitting governor. A court has already ruled that the other statutes take precedent and that the Public Defender did not have the authority to do that. It was a publicity stunt in my opinion to try and call

attention to the underfunding because the Missouri Governor is not a practicing attorney and it is not true that anyone with a bar card can provide criminal representation. Just as you would not go to a dermatologist for brain surgery, even though both are licensed and practicing doctors, you cannot have a sitting governor provide effective representation in a serious felony case, which is what this was. The circumstances are different between your State and Missouri. There have been a number of lawsuits filed in Missouri. The courts there have ruled that the public defenders need workload caps and the state is in the phase of determining what those caps should be. In the interim, a lot of people are suffering in the courts.

Chair Hardesty:
Can you provide us with some specific information over the past 10 years about the use of the State Public Defender's Office by rural counties and how that has changed?

Mr. Carroll:
It was originally conceived that all 15 of the counties except for Clark and Washoe would participate in the State Public Defender Office. Little by little, the counties have gone off that system to the point where now the State Public Defender only serves White Pine County and Carson City County. Elko County has a public defender system but the other counties have moved to flat-fee contracts and are struggling with costs now that the Supreme Court, through an administrative rule, has banned a strictly flat-fee contract. The rest of the counties have now moved off the system because the State's commitment to the Public Defender has been lost over the ensuing decades.

Chair Hardesty:
As a matter of correction, Carson City County and Story County are the two counties currently served by the Office of the State Public Defender. Over that period of time, the funding for the rural counties was provided at 80 percent by the State, but it has eroded, with the State participating at a lesser and lesser amount. Is that correct?

Mr. Carroll:
That is correct.

Chair Hardesty:
Can you comment on what jurisprudence or case law has developed concerning the legal obligation to provide indigent criminal defense between the State and the county?

Mr. Carroll:
The Gideon decision places the obligation on the States under the 14th Amendment. It has never been asked of the Supreme Court if states can offload that obligation to the counties. What is clear is that the states still hold the obligation. At the very least, they must have an apparatus to ensure that counties are not only able to provide such obligation, but that, in fact, they are doing so. Nevada has no apparatus to do that, which

is the main focus the Commission would be doing. Many experts believe that if the question was asked of the U.S. Supreme Court, they would say the states have an obligation to fund indigent criminal defense because counties have a hard time doing so. Generally, the counties most in need of indigent defense services are the ones least able to do it, so the same indicators of high crime—high unemployment, low property values and people moving out of the county—are the same factors that indicate a greater need for indigent defense. Since there is greater poverty in these counties, a greater number of people will qualify for services. It is an unfair burden on the counties. Our friends at the Nevada Association of Counties have been working quite diligently on this. Their counterparts in other places like Michigan, Idaho and Utah have all been instrumental in making the case that this is a state responsibility. Even though they are unwilling to share a portion of the funding responsibility, the state must pick up the bigger portion.

Holly Welborn (Policy Director, ACLU of Nevada, Inmate Advocate):
Is the Montana legislation similar to what is being proposed here today, creating a statewide commission and addressing rural counties, or is it something different?

Mr. Carroll:
It is different because the Montana Legislature created a matrix based on what counties were currently getting back from the state in other funding sources. They made an adjustment to keep the county contribution at what it was in 2005. It now looks like a fully funded state system because all the funding decisions are made at the legislature so there is a fully integrated system with a commissioner overseeing it with staffed public defender offices in the main urban areas in combination with assigned counsel and regional conflict contract counsel in the rural parts of the state. It looks very different because in Nevada, where Washoe and Clark counties have made tremendous strides, they should be able to keep their autonomy and fund the system. However, the other counties cannot keep up, so the State needs to step in. So it is not quite the same between Montana and Nevada, but the hallmarks of having a commission setting standards have similarities.

Chair Hardesty:
Thank you, we can get that BDR from the previous session. Is it the same for 2017 as it was for 2015?

Mr. Carroll:
I believe it is, but let me check.

Chair Hardesty:
Let Mr. Anthony know that information. I will now open agenda item VII, a presentation on state sentencing commissions.

Kelly Mitchell (Executive Director, Robina Institute of Criminal Law and Criminal Justice, University of Minnesota Law School; President, National Association of Sentencing Commissions):

The Robina Institute has three primary focus areas—sentencing guidelines, probation revocations and parole release practices. I have been the executive director there for 2 years. Prior to that, I was the director of the Minnesota Sentencing Guidelines Commission after being an attorney and manager at the Minnesota Judicial Branch with varied experience. I was recently appointed the co-chair of the sentencing committee of the Criminal Justice section of the American Bar Association.

I was asked to talk about sentencing commissions in other states and sentencing guidelines. Page 2 of my presentation (Agenda Item VII A-1) shows most of the states with sentencing commissions. The light blue states have commissions with broad mandates to study criminal justice; the dark blue states have commissions with authority over sentencing guidelines. We have not studied Nevada yet. Colorado is another state with a commission that has a broad mandate over criminal justice, so that is what makes the two of you similar.

Commissions can be in any of the three branches of government, page 3 (Agenda Item VII A-1); the most common is in the executive branch. Most commissions are independent bodies, especially in the executive branch, where they are usually considered separate agencies. Utah is unique in that their sentencing commission exists underneath a broad criminal justice commission. It is independent from that broad criminal justice issue, but reports to the other commission and receives its staffing from the broader criminal justice commission.

Sentencing commissions come in all sizes (Agenda Item VII A-1), page 4. If the commission has a broader mandate, it tends to be larger and have more representatives from different areas. Smaller commissions tend to have a narrow or sentencing focus, focusing in on judges, prosecutors, defense attorneys, etc. Most commissions try to have representatives from all aspects of the criminal justice system (Agenda Item VII A-1), page 5. If it is a narrowly focused commission, it usually focuses on the parties directly involved in sentencing or supervision of offenders after sentencing. The broader focused commissions tend to include business interests, mental health officials, etc. In most commissions, the appointment power is shared across various officials. For example, the governor or chief justice of a state's supreme court or the legislature can all have a role in making appointments to the commission. Only five states—Arkansas, Massachusetts, Michigan, Oregon and Washington—have their governor making all the appointments.

A sentencing commission's staff size impacts what the commission is able to do (Agenda Item VII A-1), page 6. On this graph, Connecticut and Illinois, seen in dark red, are broad mandate commission states. The others in the graph have more of a focus on sentencing. The two largest staffs on the graph, Connecticut and Pennsylvania, are from states

affiliated with universities, which explains why their staff is larger. Some of their staff members have other duties within the university they are affiliated with.

Kansas, with 12 staff members, is the best example of a straight-up sentencing commission that only does that function. Most of their staff includes researchers, trainers, attorneys and the director. A small state like Delaware with only one staff member is limited on what it can do besides meet and be supported by that staff member. A state like Connecticut will focus more broadly on different aspects of the criminal justice system and will be able to do studies and provide reports. The size of the staff impacts the ability to carry out a commission's mandate.

What are those mandates? These main big ideas are listed in (Agenda Item VII A-1), page 7. The duties underneath those big ideas are listed on page 8 and I will cover the top four commission duties. These items are things your own commission has in its statute as its purpose. The first duty (Agenda Item VII A-1), page 9—collecting data, conducting research and publishing reports—has a more quantitative focus to aid data driven decision making within the state. Basically, the commission's role is to track how sentences are given out within the state and how long people are actually serving. This information is usually received from the courts at the time of sentencing. Some commissions are still paper-based and receive a sentencing order, a PSI, and they then enter that information into a database. Some commissions have direct integrations from the courts with the data coming over as it happens, populating the database in that way. Trends over time can be examined with this data (Agenda Item VII A-1), page 10. In this example, the number of felony convictions in Minnesota from 1981 to 2014 shows a trend. We can see the number of convictions going up and we can also see a sharp increase in the early 2000s and then a dip after 2006. That increase occurred when Minnesota created the felony driving while intoxicated (DWI) law. That had a direct impact on a number of felony convictions. Also at that time, methamphetamine was becoming the drug of choice in Minnesota and those convictions were going through the roof. You can actually see the impact of policy choices and other effects in these systems by tracking the data over time. When crime went back down, it was primarily after the pseudoephedrine law was enacted to put that drug behind the counter, which dramatically decreased methamphetamine convictions.

Other information can be obtained from tracking data over time, including race and ethnicity of felony offenders (Agenda Item VII A-1), page 11. In this graph, you can see that over time, black offenders have increased in proportion. If you knew the population statistics for the state, you would know that this is disproportionate to the state's general population. The same blips on this graph are seen as in the previous graph on page 10. That is because DWI and methamphetamine convictions were primarily white offenders.

When someone gets a sentence that is not recommended under the sentencing guidelines, that is called a departure and we track that (Agenda Item VII A-1), page 12.

This chart shows that in these five specific offenses, we have a very high departure rate so we can tell something is going on that the sentencing commission should take a look at. Is it the guidelines that are off? Do they not reflect what the criminal justice system sees as a fair sentence? Is there something wrong with the statute? Those are the types of issues the commission would address at a hearing once they saw this graph. The commission would report regularly on this data and could do so for other mandates if the Legislature were to give them a specific direction or question. That is another reason for collecting data and putting that responsibility for studying issues within a sentencing commission.

The second of the four commission duties I am focusing on is to review and recommend changes to criminal code, criminal procedure, sentencing policies and practices (Agenda Item VII A-1), page 13. This has a more qualitative focus where the idea is more toward serving as a source of expertise on sentencing issues. For example, Connecticut, a broad mandated commission state, was tapped with studying sex offender sentencing, registration and overall management, which their commission could do. In Minnesota, the commission was tapped with studying collateral consequences and making recommendations on that topic. Even though a commission is focused on sentencing, it might be asked to look at statutes and make recommendations, especially if there are emerging sentencing trends on the back end, indicating a need for change. Minnesota recently did that for drug laws because they had particularly low drug thresholds, resulting in a disproportionately high sentencing rate compared to other states and the federal government.

The third commission duty is the management of prison and correctional resources. It is almost impossible to do that without good data about how offenders are being sentenced, so this is an area where sentencing commissions often contribute and are tasked with developing the model (Agenda Item VII A-1), page 14, projecting the use of prison resources and, in some states, the broader use of correctional resources, including probation services, programming, etc.

In Minnesota, we used data to project prison population versus prison capacity (Agenda Item VII A-1), page 15. As you can see in the graph, the state prison capacity is around 9,500 inmates, but the projection is that by 2022 we will exceed that by about 1,000 inmates. We are currently exceeding it by about 500 inmates. This model was developed by the sentencing commission quite a long time ago, working in concert with the department of corrections and their data on release returns and probation revocations. Many states do this, including Pennsylvania, Virginia, Arkansas and North Carolina; most doing it independently or in concert with their departments of correction.

Often, commissions use the same data to produce fiscal notes. On page 16 (Agenda Item VII A-1) is an example of a fiscal note from Illinois. The idea is to put the data to use on sentencing practices and every time there is a proposed amendment to a criminal statute

or a new criminal statute or offense, the sentencing commission would produce a fiscal note showing what the impact is on prison resources. Depending on how good the data is, you can usually project the prison resources. Sometimes it is hard to predict jail, especially county jail data, depending on how well integrated the systems are. Some states project probation at the state level and others at the county level. In states where probation is delivered at the county level, it is harder to project unless the data systems are integrated.

I have seen the impact of this issue in Minnesota where our claim to fame is that we are being sued for our civil commitment of sex offenders. Once a sex offender gets through prison, if they are still considered to be a danger to the public, they might be referred for civil commitment. We have a large number of people who have been referred for civil commitment who are not getting out. The basis of the lawsuit says it is more like prison than treatment. When the lawsuit occurred, the Minnesota Legislature tried to adjust that by broadening the net of who would go to prison and how long they would stay there. When we projected the impact of that bill, it was going to be more than 1,000 beds per year. That was not something the Legislature could afford, so they are back to the drawing board and still trying to figure out how to manage these two populations.

I have seen another more common instance where a new crime was proposed and there was not any additional money in the budget that year to put it into effect, so if that crime was going to become real, something had to give somewhere. The proposed solution that year was to remove a few crimes from the definition of crimes of violence. We were able to see what the impact of that decision would be and that it would offset the creation of the new crime, so the Legislature did both at the same time.

The fourth commission duty pertains to sentencing guidelines (Agenda Item VII A-1), page 17. Whether a commission actually promulgates them or just recommends them depends on the scope of their authority. Since the federal guidelines are unwieldy and difficult, many people do not like the word guidelines. Some states instead refer to them as sentencing standards, structured sentencing, advisory standards, etc., but they are all still a system of recommended sentences.

What are sentencing guidelines? A system of consistent recommended sentences (Agenda Item VII A-1),page 18; one mechanism that can be used to implement determinate sentencing, which means it is certain at the outset. Parole does not have to be eliminated for a state to have sentencing guidelines. Sentencing guidelines are built through a combination of sentencing characteristics and offender characteristics (Agenda Item VII A-1), page 19. Every guideline system typically takes all the offenses assigned by the Legislature and ranks them in terms of seriousness. Less serious crimes are given a lower rank and vice versa. These systems typically give some order to other factors related to the offender's criminal history including past convictions for misdemeanors, felonies, juvenile offenses and whether or not the individual committed the crime while on

supervision for a past crime. Other factors can also be considered including probation failure, parole revocation, etc.

These offender characteristics are put on a grid or sentencing worksheet system (Agenda Item VII A-1), page 20. The Minnesota grid is shown here, ordered so the vertical column shows the offense seriousness with the least serious crime on the bottom. The criminal history score, the composite of all those things I mentioned earlier is on the horizontal axis going from left to right with the lowest criminal history score on the left. If the characteristics line up in a cell that is shaded, the individual is recommended for a probation sentence. If the two characteristics line up in a cell that is not shaded, the individual is recommended for a prison sentence; the length of which is in the cell.

I looked at the statute for this ACAJ Advisory Commission and I see there are some standards for sentencing when it was originally created as a sentencing commission. Many of those principles are on this grid. One that stood out was “extensive histories or violent predatory crimes should receive more serious sentences.” That would be reflected by the top of the grid. I also saw, “those with similar histories and similar crimes must receive similar sentences.” That would be reflected by the fact that as long as your characteristics match up in a particular cell, you will get a certain sentence. Also, it said, “No disparate sentences based on race, gender or economic status.” That is a typical characteristic of all sentencing guidelines.

The sentences on that grid are recommended and also put in place for typical offenses (Agenda Item VII A-1), page 21, like an ordinary burglary or car theft. There are always cases that are atypical, either the way the crime was committed or something about the offender leading the court to believe they are more culpable for that offense or less so. When those situations occur, most sentencing guideline systems allow for departure, meaning the judge is free to give a sentence other than what is recommended. When doing that, the judges will typically need to articulate on the record the reason for that departure.

The purposes of sentencing guidelines (Agenda Item VII A-1), page 22, generally show up in statutes but not all are created the same, something we call a continuum from advisory to mandatory (Agenda Item VII A-1), page 23. This means there is a degree of legal binding. On the mandatory end, sentencing guidelines are the recommended sentence and the judge is expected to utilize that. If the judge departs from that, he or she will have to articulate those reasons on the record. If the judge gives a greater sentence than recommended, the defendant can appeal. At the appeal, the role of the court will be to say whether the judge’s decision is reasonable. Usually there is deference to the judges, but sometimes the appellate court will say the sentence does not comport with the sentencing guidelines and they will send the decision back to be sentenced within the sentencing guidelines. On the other end, if the defendant is given a lighter sentence, in a mandatory system, the prosecutor can object and appeal that sentence. The same

review would occur and if found unreasonable, would be sent back for resentencing. That is the mandatory side of things.

On the advisory side, the guidelines may serve as just a starting point for the judge, who will not be bound by the guidelines and can impose any sentence up to the statutory maximum. In a very advisory system, the judge will not have to articulate reasons for imposing sentences outside of the guidelines and there will not be a right to appeal. Then there are all the states in-between. Some call their sentencing guidelines advisory but they allow appeals and will sometimes reverse sentences. Alabama has both advisory and mandatory guidelines; the mandatory guidelines are for the lower level offenses including drugs and property, and the advisory guidelines are for the higher-level offences. This duality allows that state to control sentences and their correctional capacity. Pennsylvania has advisory systems but they also have a greater right to appeal. Virginia is completely advisory with no right to appeal, but judges have to say why they depart from the guidelines, which gives their sentencing commission feedback about whether their sentences are reasonable. So the advisory to mandatory continuum is very real in the states.

The authority to modify the sentencing guidelines (Agenda Item VII A-1), page 24, depends on the scope of the authority. Although most are independent, there is usually some limit to their authority and some legislative oversight on the guidelines. The most common method is for the commission to develop recommendations, put them out for public comment through hearings, report these to the legislature at the beginning of a session and if nothing is done during that session, those guidelines will go into effect later that year. In Minnesota, the legislature has to enact a law to stop changes from going through. In other jurisdictions, the legislature might have to enact a law to affirm the changes, but usually there is that opportunity. These guidelines are generally not in statute; they might be administrative procedures or free-standing guidelines.

The second way things happen is where changes must be enacted into law. Kansas and Michigan have sentencing guidelines in their state statutes that can be changed by the legislative process only.

The third system uses guidelines that exist in administrative rules. Arkansas and Oregon have this system and have to follow the administrative rule process, most of which include a stop at the legislature that generally has a committee which addresses oversight of rules. If nothing is done, the rules go into effect, but if it needs to be brought to the attention of the legislature, that will happen. The District of Columbia has total independent authority to enact their guidelines. Delaware is in the other category, with a convoluted system we are yet to understand.

Of the 17 jurisdictions we have information on, seven still retain parole and ten have abolished it (Agenda Item VII A-1), page 25. Within the seven states that retained parole,

four of them have guidelines that set the maximum sentence. They use the guidelines to set the ceiling and then other processes within the state, either procedures by the parole boards or statute to determine what that first stage of eligibility is, but it cannot exceed the number set by the Court as maximum. In Pennsylvania, the guidelines set the minimum term and the judge then sets the maximum at up to two times the minimum term which becomes the range within which the parole board functions. Missouri and Utah have unique rules. In Missouri, all the judge does is set the in-out decision and whether the offender will be going to prison or probation. If it is prison, the guidelines show the typical time served, which is historical information and a signal to the parole board how much time the person serves. However, they are not bound to that number.

Chair Hardesty:
What are the best examples of the state model where there is a sentencing commission whose object is to set guidelines and modify those guidelines based on collected data?

Ms. Mitchell:
I would say the best examples are the older ones—Minnesota, Pennsylvania, Kansas and Virginia—all are states that pioneered the concept of guidelines and have sophisticated data systems in place which they use as feedback. I would have put Oregon into that category, but they have a public referendum process that has overridden almost all of their guidelines.

Chair Hardesty:
Are those states able to react on a timely basis on issues like departures by judges in sentencing or risks associated with an increase in prison population?

Ms. Mitchell:
In terms of individual sentences from judges, there is still judicial authority that is independent from any sentencing guideline system. For the most part, you would not say a sentence is wrong, but in a few instances, a sentence might be illegal. The question is more about asking judges why they chose a certain deviated sentence. So there will not be an instantaneous reaction to a specific sentence, but in terms of trends or sentencing areas, commissions can usually act a little quicker although one of their jobs is to not be reactionary. They have the benefit of experience and can look across time and if a heinous case comes up that causes outrage about sentencing, the commission is a good source to speak for why a certain sentence can be right and appropriate and how this heinous case is so different from the norm. When there are instances where sentencing does not seem to be going right in a certain area, the sentencing commissions have the ability to examine that and recommend changes.

Chair Hardesty:
Are those state systems also set to respond to political pressures on legislators to set huge sentencing ranges or over-incarcerate as a reaction to the issue of the day?

Ms. Mitchell:
That is one of the reasons a sentencing commission exists; to take that pressure off a legislature. The commissions can also educate the legislature and the public about reasons for certain sentences. For example, the sex offender issue in Minnesota right now could generate the easy reaction to just incarcerate everybody. Yet, the cases that typically drive policy in this area tend to be about scary, heinous cases, like a stranger kidnapping and murdering someone. In our commission, we know from our data that this type of crime represents 8 percent of all cases in the state; representing less than 30 crimes. We are able to provide that kind of statistical information to take pressure off when these cases come up and could potentially steer policy in a different direction.

Chair Hardesty:
In a state without guidelines, where do you begin? One would assume you would begin with significant data collection. Can you describe how a state considering this process would begin the process of creating a sentencing guideline commission?

Ms. Mitchell:
You are right about data collection. Most states that enact sentencing guidelines start with current sentencing practices by collecting data on how cases are being sentenced. This forms the baseline for where the guidelines might be. When you start to collect data, you will find a few outliers and things that do not make sense. Those are the policy decisions the commissions have to make up front. States that used historical data as the starting points were Minnesota, Virginia, District of Columbia, Kansas and Alabama. After collecting data on current sentencing practices, those sentencing commissions used their expertise to even out those few crimes where sentencing was all over the board. The commission would have to do the work of ranking the crimes by looking at each crime, figuring out what a typical case would look like and then determine how serious that crime is compared to another crime.

Chair Hardesty:
In the grid (Agenda Item VII A-1) page 20, it does not divide crimes by letter categories as we do. Instead, it takes each crime in the criminal code and fit it within either the ranked seriousness of the crime and comparing it to the criminal history that would warrant incarceration and a certain length. Is this commonplace?

Ms. Mitchell:
Not necessarily; it depends on how your felonies are defined in state law. Minnesota is a state where everything is either a felony, a gross misdemeanor or a misdemeanor; we do not have grades. Maryland and Arkansas have the felony grades like Nevada and what typically happens is that those grades will end up listed on the grid instead of specific crimes. One thing commissions had to do in those states was to ask the question whether some crimes are in the wrong grade that could be moved up or down, especially when they see what the sentencing practices are over time. If there is a felony C crime that is

regularly getting sentences that make it look more like a felony D, the commission can determine if it needs to be moved.

Chair Hardesty:
In those examples, is there a range for each grade? We do not have that range for any of our grades. It seems like rather than fussing over what category a crime ought to fit in, a more individualized assessment of a guideline would be to look at each crime and look at the criminal history within that crime.

Ms. Mitchell:
That is correct. It might be up to the legislature to decide where that decision-making process should be. Do they want to be more in control of how serious a crime is or are they going to give that choice to the sentencing commission? If the legislature wants to be more in control, they will probably want to continue the grading process.

Assemblyman Anderson:
What sort of methods do you use to input individual characteristics of offenders into the data? Is there an objective instrument or is it done by interview? On the front end of this process, the state is moving to objective, evidence-based data for bail, for example, so I am curious about the other input.

Ms. Mitchell:
Usually, you want it to be objective information that you can find in one of the state systems. For example, in Minnesota the criminal history is comprised of four things—felonies, misdemeanors, juvenile offenses and whether the person was already under status when they committed the crime. The first three categories are found in the criminal record which is available through our Bureau of Criminal Apprehension. The probation officers are tasked with completing the sentencing worksheets by doing a criminal records check and inputting that data. Minnesota has rules about some crimes being too old to be counted. About half of the 18 jurisdictions with sentencing guidelines might pull some of the older crimes off, so you have to know those rules, too. The statute comes from the statewide supervision system that lets us know whether the offender was on probation or parole or otherwise under the jurisdiction of the court at the time of committing the crime. Utah uses probation revocation as information that is available from the courts. Most states with this criminal history system try to make it data that is objective and available.

Judge Lidia S. Stiglich (Second Judicial District Court, Washoe County):
In states that have abolished parole, have they actually abolished parole? For example, the federal government has abolished parole but they have a complex system of supervised release that is a substitute for parole for that back-end supervision. Have the states abolishing parole adopted other systems for management on the back end of the sentence?

Ms. Mitchell:
Yes they have. The difference is that there is still an entity that decides the release date. In all the states that have abolished parole, you serve a specific portion of your time and then you get released on that date. There are always provisions for bad behavior that might extend a person's prison time. The main difference is that there is not an entity deciding a release date because it happens automatically. There is always a period of post-prison release supervision to help the person back into society. During that period, they will be supervised by agents within the state and might be subject to revocation if they fail to follow the conditions of their supervised period which is usually a percentage of their sentence or a standard time. In Minnesota, that standard time is one-third of the sentence after the first two-thirds has been served in prison. In other states, it is 1-3 years, a specific period of time tacked on to the back end.

Ms. Stiglich:
When I look at your grid (Agenda Item VII A-1) page 20, how you put your points in is offense based. When you look at the federal sentencing guidelines, while the particular statute informs where you start, you have the ability to move up and down the grid based on the offense characteristics. This gives judges the ability to say, "Hey, not every burglary is the same." How do your guidelines take into account the particular offense characteristics as opposed to the criminal history part?

Ms. Mitchell:
The federal system is the only grid system where that occurs. That information is brought into the sentencing hearing and might be the basis for a departure if it merits the aggravation or mitigation. You will always start with that base number in the cell of the grid, though. Alabama and Virginia use sentencing worksheets instead of grids. Each of those worksheets has some characteristics of the offense on it, which might come into play. Alabama's worksheets are pretty standardized but Virginia has a specific worksheet for every crime so they have figured out which factors predict the risk to reoffend which enables them to put those factors on a worksheet for other crimes. That is how some of the offense characteristics come into play for them.

Judge Kevin Higgins (Justice of the Peace, Sparks Justice Court):
If the legislature had a new crime, I would assume in some states the sentencing commission would decide which category it fell into so it would then go to the sentencing commission who would make a decision. In other states, would the commission show up and say they think it is a certain level of crime and then the decision is up to the legislature?

Ms. Mitchell:
I am not aware of any commission that will get involved on the front end. They will give the fiscal note impact on whatever the legislature is proposing, but they tend to try not to get involved in whether or not a crime should be enacted, because that feels like a

separation of powers issue. In other states, what the legislature does when they enact a crime is to set the maximum sentence. That is a signal to the commission as to how serious that crime is, based on other crimes sentenced to that same maximum. They can then look at the other elements like whether the crime does harm to property or to the person, and those factors all enter into the commission's ranking of the crime.

Mr. Higgins:
More than 20 years ago, we tried to categorize felonies in Nevada and then after 20 years' worth of legislative sessions, things have gotten put into categories maybe where they do not fit. I am not sure how we fix that. Is it a legislative function or a sentencing commission function?

Ms. Mitchell:
That might be feedback the commission would have to give back to the legislature. Commissions do that, especially as they have experience with how sentences are actually given out. They might discern a certain crime not to be as serious as the legislature is defining it because everyone is giving lower sentences, for example.

Mr. Higgins:
It sounds like most of this is very data driven. I think every district attorney and court in Nevada has a different data system, none of which talk to each other. What is the solution for that? Do some states have mandates for everyone to use the same system?

Ms. Mitchell:
The same problems exist everywhere. The key is integration and to get the legislature to fund integration for those systems so they can talk to each other and so that data can be shared. Also, make sure your data practices act allows the sharing of that information to specific entities. Sentencing commissions are usually right up front within their statute given authorization to get data from any of the other agencies that need it. Unfortunately, some commissions, like Kansas, with their paper-based database require much data entry to create a sentence tracking database. The better approach is to try to get integration so there can be a data dump.

Ms. Stiglich:
Why is there a reluctance to use the grid which adopts the characteristics of the offense? It seems like it has not developed in that way. The federal government is the only one using that approach. Why is that?

Ms. Mitchell:
In the early days, the barrier was more about simplicity and ease of implementation. The more you have to know about an offense to figure out where it goes on the grid, the more someone has to dig. Today, I would say the barrier is legal, especially if you are thinking about an offense characteristic taking that sentence up. The 2004 case,

Blakely v. Washington, decided that any fact other than a prior conviction which increases the maximum sentence has to be proven to a jury. That case resulted in *United States v. Booker* in 2006 which made the federal guidelines advisory because all the facts that take the sentence up the chain would have had to be proven to a jury if the system remained mandatory. Most states do not want to deal with it because it is not a workable system. In the states that are left that are mandatory, when those offense characteristics exist that really should result in an aggravated sentence, the states can deal with it because it is a small subset of information that will only affect cases where the crime itself was particularly egregious and that is a small number. You can create procedures to put those facts in front of a jury; it is not unworkable. But if you have to have those procedures in place to put the facts in front of a jury in every case to move up or down the grid, it becomes a more onerous system, which is why I think states are not considering that today.

Jorge Pierrott (Lieutenant, Parole and Probation, Department of Public Safety):
What is the time commitment asked for sentencing commissioners? Is it a full-time commitment prior to a legislative session?

Ms. Mitchell:
Most commissions meet annually; often monthly for a few hours each month.

Mr. Pierrott:
With the states that abolished parole, what was the impact on the parole and probation agencies? How did those states handle the change?

Ms. Mitchell:
Much of the parole abolition happened before my time. Nearly every state that abolished parole has a minimum parole system for a few crimes left on the table like murder, certain sex offenses and offenses that get a lifetime sentence. There is still some kind of process in place in those states to consider release. Some have moved that decision solely to the department of corrections and some have retained a small body that considers only those cases. As I understand it, in the states that abolished parole, they lived in two worlds for a while until the bulk of the cases sentenced previously were completed.

If you abolished parole, you would do it going forward, not going backwards. That way, anyone sentenced under the new system would be subject to release under the later law but those sentenced prior to that would still be subject to release by the parole board which would continue to function until the bulk of those previously sentenced individuals obtained release. Then you would transition to a new system, possibly with a small group continuing on in the role of a parole board for the few offenders who will always be left. It is probably a little chaotic in the beginning with the state in two worlds for a while. In Minnesota, we are 30 years past that point. I was talking to a judge recently who could not imagine a world where sentencing guidelines do not exist.

Mr. Pierrott:
Did personnel decrease because of the abolition of parole or did it increase on the probation side?

Ms. Mitchell:
I think that depends on the sentencing practices that are implemented. If the state decides to move to a system where community services probation is used more than in the past, you will have to shift your resources. If you continue with traditional sentencing practices, you will need some post-prison supervision. You cannot just release someone onto the streets. Probably, your numbers would stay about the same, at least until you get some experience with that new system.

Chuck Callaway (Police Director, Office of Intergovernmental Services, Las Vegas Metropolitan Police Department):
Back to that grid (Agenda Item VII A-1) page 20, looking at a felony DWI for example, assuming the criminal history score is counting convictions and not arrests, it looks like someone could have three felony DWI convictions, which in Nevada usually involves death or injury. If that is the case, it seems like the growing prison population to 10,000 inmates requires folks to have a number of previous convictions before they go to prison, so it seems like the growing prison population are people who should be in prison. If that is true, then it seems frustrating from law enforcement and victim perspectives to have people with six previous convictions on theft convictions before they end up in prison.

Ms. Mitchell:
Yes, those are convictions, not arrests. One thing not reflected in the grid is that the criminal history score is a composite score, so it is not a direct one-to-one relationship between a conviction and a number on the grid. Many states use a scoring system for each of the prior convictions, so felonies are scored higher and misdemeanors would score less. It might take more than one misdemeanor to get a point on the grid, similar to juvenile convictions except for the serious ones. In Minnesota, there is a mandatory minimum for DWI, so if you have a second or subsequent felony DWI, you will have to serve a certain amount of time in prison, regardless of what it says on the grid. There are a few offenses like that; the commission is making a policy statement by placing it where it is on the grid, but the mandatory minimum sentences override the grid.

In most systems, the legislature will sometimes enact a mandatory minimum sentence which will override the sentencing guidelines. On the bottom end, there are some times when an offender can commit a number of lower level felonies and not be subject to prison until they are quite a ways out on the grid. That is a policy decision the commission made and that the state has agreed with over time—that prisons should be reserved for the more serious crimes and that the lesser crimes should be handled in the community under community supervision.

Chair Hardesty:
The top level of the graph is not showing convictions; it is scores. As we learned in the pretrial release evidence-based practice system the Commission has studied, using evidence-based decisions, there is a scoring mechanism that provides predictors. The guideline being developed is not connected necessarily or strictly by convictions. There is a scoring mechanism which attaches to that conviction and takes into account circumstances surrounding that conviction. The example of the felony DWI is not three convictions and then you go to prison; it would happen sooner than that based on the scoring mechanism. It is important that this Commission, if we pursue this further, understand evidence-based practices that are used in developing the scoring systems being used in most states. Would you agree?

Ms. Mitchell:
Yes, there are multiple ways those scoring systems are developed. We have a book on that on our website, *The Criminal History Enhancement Source Book*. Also, it is a policy where the shaded part of the grid lies. The sentencing commission ultimately made that decision as to what point someone commits so many crimes that we think prison is the appropriate sentence for them. In Minnesota's case, on that bottom row of the grid, it takes a lot until the commission feels the offender has committed a prison-eligible offense. Other grids may be different.

Chair Hardesty:
Mr. Callaway spoke to victim confidence or frustration associated with sentencing. My understanding in talking with judges in states that have this system is that it provides a better predictor to victims, not just the accused. There is more certainty as to the outcome, subject only to departures established by judges with an explanation. Is that the case?

Ms. Mitchell:
Yes, because most of the sentencing commissions that have enacted guidelines and abolished parole have a state law in place saying how long you will serve. So the sentence you see on the grid is a real sentence. It is not a pronouncement that might be served differently later on; it is the actual sentence you will serve, providing better information to victims and to the defendant.

Chair Hardesty:
In states where those sentences exist, how do they deal with credits for time served and rehabilitative activity in the prison?

Ms. Mitchell:
That is handled in two ways. In some systems, the court pronounces your maximum sentence. The offender has the ability to earn time while in prison to push that release date back; this is the earn time model. In states that have eliminated earn time, it is more bad time you are earning, so there is a specific point at which you are going to be released

and the only thing that may move that release date is if you have disciplinary actions in prison and they might add in time within the maximum you have to serve.

James Dzurenda (Director, Nevada Department of Corrections):
In Connecticut, we did truth in sentencing which only affected those offenders that the sentencing commission deemed as committing violent crimes. Those offenders had to serve a minimum of 85 percent of the sentence the judge gave them. The earned credits could only give up to 15 percent of that maximum time. For nonviolent crimes, the offender just has to serve up to 50 percent of their time and corrections could approve someone for community release based on how they behaved in prison. They had to do 50 percent of their time and the rest of the time would be done under community supervision by the corrections staff, whether it was in a program, going to school, having a job, etc. Corrections would monitor it so they did not have to go to a parole hearing.

The only ones who went to a parole hearing were those under truth in sentencing, the violent ones, and those who were denied community release. So the parole numbers went down even though community release went up. It was not under parole supervision; it was under corrections supervision. It also relieved a lot of the parole hearing cases that were basically easy cases to be able to say you got parole. They were the nonviolent and non-sex offender cases; those that corrections would already have you out. So when they reached their parole hearing date, if they were going to have one, they were already out on community release being successful. It was just an administrative signature from parole; they did not do an actual parole hearing. The parole releases went down, but the community releases went up.

Chair Hardesty:
Judges in that state were dealing with setting the maximum sentence, period. That is what the sentence would say: this is the maximum sentence you are going to get.

Mr. Dzurenda:
Correct, and the sentencing commission, which I was a member of, would determine the rules that go for it. For example, what charges would have to serve 85 percent or more and which can do 50 percent. Then the law allowed the corrections department to make the determination of the release, not parole and not the sentence. After they did 50 percent of their time, if they were nonviolent offenders, corrections could release them to school, programs, a job, etc., doing wraparound services in the community rather than in prison.

Ms. Mitchell:
In states that enacted truth in sentencing in the 1990s, the percentages that Director Dzurenda just mentioned are set more often in statute than by the sentencing commission. They can be different, based on the severity of the crime, but often the statute determines what the minimum time is that needs to be served. It also gives the

parameters for earning credit to get to that minimum percentage. Usually, the department of corrections will determine how those credits can be earned. In the earned model, those percentages are usually set in statue. In the opposite model where you have to serve a minimum and you might serve more if you have some disciplinary actions, I have seen that set-in statute over being set by the sentencing commission.

I have submitted some additional articles from the Robina Institute for this Commission (Agenda Item VII A-2), (Agenda Item VII A-3), (Agenda Item VII A-4), (Agenda Item VII A-5) and (Agenda Item VII A-6).

Chair Hardesty:
This Advisory Commission has a budget of only around $2,000, so we may want to urge the Legislature to adequately fund this Commission so some of this work might reasonably be done. I have asked for some supplementary information from Ms. Mitchell which we will put on the agenda for the next meeting on September 27. One of those requests deals with the criminal history score as opposed to the number of offenses and how that scoring mechanism is developed and what factors are considered in the scoring system. That is important for the pretrial release process. States with this system used different factors on the scoring.

Regarding Director Dzurenda's comments, I am going to ask that we get the statutory construct of the Connecticut guideline process so there is a structure by which the Commission can work from. I will now open agenda item VIII, a presentation on the Shared Computer Operation for Protection and Enforcement (SCOPE) project.

Carmen Tarrats (Criminal Justice Information Services (CJIS) Manager, Shared Computer Operation for Protection and Enforcement (SCOPE) Administrator, Las Vegas Metropolitan Police Department (Metro)):
I was asked to give an overview of SCOPE, which is a 24-hour online computerized master name index (Agenda Item VIII), page 2. The system went live in 1968 and has information from as far back as 1957. At that time, there was no Central Repository for Nevada Records of Criminal History, so Metro became that criminal history repository since they own and maintain SCOPE and set up new agencies and users for access. Since SCOPE is not a criminal justice agency, Metro became the administrator and repository. At that time, it was the only computer system with all the criminal history data.

In the 1980s, there was a purge of the system, removing criminal history and noncriminal history data. We still maintain that information on microfilm. In 1987, the Nevada Highway Patrol, now the Nevada Department of Public Safety, became the criminal history repository but Metro is still the SCOPE administrator. That means there is oversight over who has access to the system. There are also agreements in place so there is an understanding that with access there are rules and procedures that must be followed.

In 2009, a major overhaul of SCOPE began as a result of the fact that Metro had an old 1968 mainframe, which Clark County advised was no longer reliable. In the upgrade, anyone in the criminal justice system had a say about what the new system should look like and include. In 2013, that project was completed with the implementation of the new system, SCOPE II (Agenda Item VIII), page 3.

There are 85 agencies with access to the SCOPE system, most of them concentrated in southern Nevada—police and sheriff departments, courts, federal agencies and more. Four counties utilize the SCOPE data—Clark County, Carson City County, Lyon County and Nye County (Agenda Item VIII), page 4.

The types of information contained in SCOPE (Agenda Item VIII) page 5, include personal descriptors, juvenile writ information, work applications, booking photos, alerts for things like victims of identity theft, lists of convicted persons and sex offenders; event reports like missing person notices and misdemeanor warning citations. There is also data on missing persons, protection orders that include stalking and harassment orders, weapon information which basically point to HR 218, the 2004 Law Enforcement Officers Safety Act, and Concealed Carry Weapons (CCW) applications. Finally, there is arrest and conviction information in SCOPE.

We would like to move away from having so many different systems, especially those that do not talk to each other. Part of the reason SCOPE is still around is because there is information in SCOPE that is either not in the Central Repository for Nevada Records of Criminal History or they are not accepted there (Agenda Item VIII) page 6. For example, stalking and harassment orders are only found in SCOPE. In northern Nevada, a different system besides SCOPE is used; I believe it is Tiburon. If someone is remanded back into custody, that is put into SCOPE, but not at the State level. If someone is rebooked on a charge at the jail, it goes onto SCOPE but not at the State level. Criminal citations are also only on SCOPE as are non-fingerprint data such as bench warrants.

In 2015, there were 16 million queries to SCOPE for information; 11 million of those were by Metro. As of December 2013, there were 4,819,448 records in SCOPE. After SCOPE II went live, Clark County maintained a Change Advisory Board (CAB). People from the courts, law enforcement agencies and other criminal justice agencies go over all aspects of SCOPE and consider issues, enhancements or things that need fixing with the system (Agenda Item VIII), page 9. The SCOPE CAB meets weekly and is very productive, ensuring that all concerns are resolved.

Assemblyman Anderson:
Can you explain the difference between the State's criminal history repository and SCOPE?

Ms. Tarrats:
Basically, the criminal history repository has all the arrest and conviction information from the entire State. When a person is arrested, they are fingerprinted and those prints are sent to the State where a record is created for that individual. As that person goes through the judicial process, at the time their charges are dispositioned, that information goes into the criminal history repository. The SCOPE system is mostly a southern Nevada system so it is not comprehensive of everything that a person might have within the State. The Department of Public Safety (DPS) will have additional information like CCW data where SCOPE only has pointers to CCW applications. The DPS also has sex offender information that SCOPE does not have.

Assemblyman Anderson:
Is it a duplication of efforts? What is the rationale for some agencies not to be in SCOPE and why have we traditionally had two separate systems? I worry about systems not talking to each other, as we have heard in this Commission. I know other states have this challenge too, and it has led to people being potentially released when they should not be released. Why do we have two systems?

Ms. Tarrats:
I fully agree with you. We have had those conversations, even in the SCOPE CAB meetings, because we recognize there are duplications. In an environment where we would like to streamline, it does seem to be a duplication of effort. Part of the problem is that we have some items here in the SCOPE database that they do not have at the State level and they are not able to accept that information at this time. Until we can get to a point where they are also able to accept all the data we are looking for, we have to keep the two systems. We are looking at streamlining. I did not get into the second piece in the SCOPE system, which is the wanted vehicle system. Even with that, Metro itself has taken away some of the entries and towed vehicle information. I was in a meeting in Carson City last week and we have had many conversations regarding the needs of the criminal justice agencies, and we would all like to get to one place.

Chair Hardesty:
What would that take?

Ms. Tarrats:
Some legislation, some more discussions and money. From what I understand, a lot of the reason they do not accept certain data at the State level and cannot move forward is because they are limited on funds. They are driven by what the needs are at the moment. I cannot speak on behalf of the state repository, but from the meetings I have attended, they are trying to get us to the point where we are compliant with some of the needs of the FBI. With their limited funds, they have to do these upgrades to get off these antiquated systems and move forward. We are hoping they can get the money in the future; but it boils down to that.

Mr. Callaway:
Having worked as a police officer most of my career, I have heard the term about redundancy of systems with the same information. First and foremost, SCOPE is very convenient for Metro because officers have direct access through computer terminals in their squad cars. That allows them to check things in real time, whether it is 1 a.m. or 1 p.m. However, they do not have that same access to the State's criminal history repository. Also, SCOPE contains information the repository does not have. I had a case in a casino where the victim said someone sitting at the slot machine is, "the guy who cheated me out of my money 5 years ago and there is a warrant out for his arrest." I went to the gentleman and asked him if he was the person in question and he said he was not. The SCOPE database showed that the person in question had a tattoo so I asked him to roll up his sleeve and, lo and behold, the guy did have the tattoo SCOPE said he would have. I would not have had that same level of access in real time with the criminal history repository. To me, it is not redundancy if it provides that service.

Assemblyman Anderson:
Which agencies are not on SCOPE and why not? Maybe the answer is just to get other entities to take up SCOPE.

Ms. Tarrats:
I cannot speak historically to why the northern Nevada area with its own system does not want or does not have that type of access. Those agencies have the same level of confidence with their system as we have with SCOPE. They are probably in the same boat as we are in that they would like to see a more statewide system than yet another system such as SCOPE.

Phil Kohn (Clark County Public Defender):
On our pretrial release committee, we ended up using arrests and not convictions over my strongest objection. I recall being told that people up north do not have the same confidence in the record keeping of the DPS, so that is why we went to arrests and not convictions. I do not know if that is true, but that was the discussion. Maybe this Advisory Commission should make recommendations to the Legislature that we should have one system that everyone has more confidence in like the SCOPE program, and not have two different systems that do not speak to each other as we do in the south.

Chair Hardesty:
That was an affirmative decision and it was made and based on the problems you indicated and that people on the committee studying pretrial release expressed. I would add that one thing that developed a few years ago is that it was discovered there were 20 years of convictions out of the Las Vegas Municipal Court that had not been reported to the State's criminal history repository. I think there were also some other district courts with convictions that had not been reported to the repository. Why would those

convictions have been picked up, at least in Clark County, by SCOPE, when they had not been reported to the repository?

Ms. Tarrats:
I would have to talk to a SCOPE supervisor to see how they get their information. I believe the court sends information to them as well. Why it did not make it up to the repository, I could not tell you. I know they had a new Terminal Agency Coordinator (TAC) at the time when they started sending them up. She had come from a law enforcement agency so she understood the other side of it. I believe that at that time the TAC recognized that data needed to be up at the State level for the use of all the criminal justice community. I would have to go back to find out that answer for you.

Chair Hardesty:
With respect to the confidence level issue, are those 20 years of convictions in SCOPE's records?

Ms. Tarrats:
I can tell you we do not have everything updated to real time, but it is a priority in the different agencies to get that disposition information in there as quickly as possible. Like many other agencies, there are staffing issues. It takes a lot of work, but it is a priority and is always on the radar for Metro. I cannot speak on behalf of the other law enforcement agencies.

Chair Hardesty:
Can you pose that question to your staff and maybe supplement your next presentation on that issue? I know it was an issue of record when Justice Pickering was Chief Justice. We tried to get it fixed. I do not know how current we are today but I believe Ms. Butler reported that we are more current today than we were before. Certainly, it is a huge concern that courts had not reported even felony convictions in some cases, for as long as 3 years. This problem was generated in part, at least at the district court level, by a misunderstanding between the court administrators and the district attorney's office as to who would report the convictions. The district court was thinking the district attorney's office was providing that information and the district attorney's office concluding that they were going to discontinue it because of the fiscal impact.

I also remember in those conversations 4 years ago that there was an inability of the courts to communicate their convictions electronically to the criminal history repository. They were communicating with paper and it created a huge staffing need. I believe Ms. Butler went to the Legislature in 2013 asking for a substantial budget increase to accommodate all the influx of paper convictions. What all this says is that we have at least three different criminal history repositories in the State and not all are current or reporting information occurring throughout the State and not all are reporting everything that needs to be reported that some law enforcement or criminal justice agencies feel need to be

covered. What this Commission should be concerned about is that if you are going to make recommendations about a lot of issues surrounding the criminal justice system, you have to have data. The most basic data, which are criminal background checks, seems to be weak and a disparate treatment around the State.

Eric Spratley (Lieutenant, Washoe County Sheriff's Office):
Washoe County law enforcement agencies including the Reno Police Department and the Washoe County Sheriff's Office and most recently, Sparks Police Department used to have access to SCOPE 10 to 15 years ago and then we all went onto this other record management system, Tiburon. I believe the reason we moved away from SCOPE is because in Reno we would run a guy and get information fast from Reno and our area. Information from SCOPE was huge because of the 40 million annual visitors to Las Vegas and all the people there and our dispatchers would be culling through all that information to see if we had the same person SCOPE had. I think we moved off it to get just information from the State, from the National Crime Information Center (NCIC) and the Nevada Criminal Justice Information System (NCJIS). If there were leads that developed from that we could always contact someone at Metro and SCOPE to access more information.

Chair Hardesty:
Do you get information from the rest of the State?

Ms. Tarrats:
We get information from the 85 agencies which either contribute to, or query SCOPE (Agenda Item VIII), page 4.

Chair Hardesty:
I am interested in the contributing agencies of information. Do those include agencies in the rural counties and Washoe County?

Ms. Tarrats:
We have agreements with Clark County, Carson City County, Lyon County and Nye County.

Chair Hardesty:
So Washoe County is not in there, nor is White Pine County, Elko County, Douglas County, etc.

Ms. Tarrats:
That is correct.

Julie Butler (Administrator, General Services Division, Department of Public Safety):
Prior to 1985, there was no criminal history repository in Nevada. We were one of the last states to have a centralized criminal history records repository. At that time, SCOPE was essentially the equivalent of a statewide criminal history records repository. In the 1985 Legislative Session, legislation created the state repository. We have a statewide mandate to be essentially the file cabinet of criminal arrest and disposition records statewide. At the time the repository was established, SCOPE maintained records at the local level for things that do not rise to the level of a serious offense. We were bound by the FBI to submit what they deemed serious offenses. The smaller offenses do not come to the repository but can go to SCOPE. For that reason, SCOPE serves to fill some gaps. For example, we are bound at the State level to keep a record of domestic violence protection orders but that does not address stalking, harassment or workplace violence. There are five or six other types of protection orders, but statute requires us to keep only the one type.

If we are looking at recommendations, I think it would be a step backwards if we scrapped the State repository and everyone went to SCOPE. We need a comprehensive look at what data elements everybody is collecting. We also need to figure out where the gaps are rather than saying we have no confidence in any of the systems. Everybody has invested millions of dollars into these systems and none of them are complete. It depends on what you are statutorily mandated to collect and the fact that you are only as good as the information reported to you.

As Justice Hardesty said, I did approach the Legislature in 2014 because we had a backlog of almost 900,000 dispositions that had not been reported to the repository in a 20-year time span. I do not know if those agencies were reporting to the local, but that is duplicate reporting then. If you report to the local and not to the State, we do not have the benefit of statewide visibility of that information. The State repository was established to be the central place to keep arrest and conviction information. I am confident in our arrest information because that comes to us electronically and is submitted in real time as those individuals are booked. Where I am not so confident is in the disposition reporting. I think all courts are reporting and there has been a huge improvement, but it is still mostly paper-based because there is not one centralized court system. We are working on an electronic information exchange with the Administrative Office of the Courts, but that only handles about one-third of the courts. In our largest courts—the Eighth Judicial Court in Las Vegas and the Second Judicial Court in Reno—we have tried with varying levels of success to get conviction information sent to the criminal history repository.

Chair Hardesty:
You acknowledged the concern I have, which is that none of the systems have a complete set of information needed by the criminal justice system. What would it take to have a repository where the system could have confidence that all the information is collected

and decisions could be made based on that information? As Mr. Kohn commented, when we were studying pretrial release, while the DOJ consultant indicated that determining someone's predisposition toward failure to reappear or likelihood to reoffend can be based on arrests, everyone also agreed it is better to have conviction information. The lack of confidence in that could lead to inaccurate scoring for individuals. What does it take to get Nevada in a position where we have a system that provides confidence to everyone and supplies all departments with what they need?

Ms. Butler:
I would respectfully suggest an Interim legislative study to take a look at the different systems out there and what data is collected by each, analyzing the gaps and then making recommendations on how to move forward. I would also recommend getting some idea of funding for the 2019 Session so we can look at it in a thoughtful and methodical way.

Assemblyman Anderson:
Are you familiar with what North Carolina does with its criminal records systems?

Ms. Butler:
Not intimately. Most states have a criminal history records repository and we all have relatively the same programs.

Assemblyman Anderson:
I bring it up because, and I may be sketchy on the details, but at some point there was a problem there where someone was released or not picked up. There was a warrant or some information that was not shared across jurisdictions. That makes me wonder how we would handle warrants in all these different systems if we had a potentially dangerous person who goes north after committing a crime in Las Vegas or vice versa. How could we be confident we have officers looking at the information they need in that circumstance? In North Carolina, some student body president was killed because data was not shared correctly. What confidence do you have in our system to prevent that?

Ms. Butler:
We have two options for law enforcement to have warrants visible; state and nationwide. We have a State warrant system; the NJIS has a warrants application where local law enforcement agencies primarily on behalf of courts are entering those warrants into that system. The other option, should they choose to use it, is to enter those warrants into the National Crime Information Center, which is the FBI's NCIC. That enables visibility of those warrants nationwide. To what extent our local jurisdictions are entering into those systems, I cannot say. We provide the mechanism for them to enter data into both State and national systems so there is that visibility.

Ms. Tarrats:
There are no warrants in the SCOPE system. They are only in the State and federal systems. The only ones entered are the juvenile writs. To the point Ms. Butler made earlier regarding getting rid of the criminal history repository, we are not looking at doing that either, because it is the means by which our State and other states have access to our criminal histories.

Mr. Kohn: Justice Hardesty, you and I have done this for 9 years and over and over again we hear that we just do not have enough information and that we have not gathered it. With all due respect to Ms. Butler, I do not know why it takes an interim committee for us to decide that every single court in the State should simply send you the Judgement of Conviction (JOC) or a record of a conviction and a misdemeanor to the State repository. I do not think we need a committee to know we have to have all our State's criminal history in one place. It just seems simple to me. I know the funding probably is not as simple, and I realize the numbers in the Eighth Judicial District Court of Clark County are huge, but I do not understand why they are not required to simply send every conviction to Ms. Butler's agency. That should be the same throughout the State. We have talked about this for 9 years and what we come up with is that we do not have enough information. This would be a simple way for us to know how many people are being convicted of felonies and misdemeanors. I do not need a committee to tell me someone has to know all this information in one place.

Ms. Butler:
We have a statute, NRS 179A.075, that requires all courts to report conviction information. It requires all law enforcement, prosecutors, parole and probation, corrections, etc., to report any piece of criminal justice information they collect to the Central Repository for Nevada Records of Criminal History. What I meant when I suggested an Interim study is if we are talking about coming up with one massive Statewide system, we have to know specifics—what data elements do you want to collect, how do you want to collect them, how do you want them reported, what system, how will they talk to each other, etc.

We already have the statute requiring everybody to report to us. Do they? We do not know what we do not know. We are simply the data dump, so if we are not getting the information, it is not available for others to use. We have come a long way since 2014 when I made my plea for staff for the dispositions, but I know there is a lot of information out there that we do not have. You know it too, because you deal with these records on a daily basis. This is not just a Nevada problem; it is a national problem. I go to regional and national meetings every 6 months and this topic comes up every time.

Chair Hardesty:
Since you cited protection orders, currently by statute only one form of protection order is required to be reported to you. Why would the other four or five protection orders need to

be reported? Is that something that has not been brought to the Legislature's attention before?

Ms. Butler:
Yes, and there is no statutory requirement for those other types of records to really go anywhere. There is not even a statutory requirement for law enforcement to serve one of the types of protection orders. There is a real gap there.

Chair Hardesty:
I think that what is important is that gaps exist, either through absence in statute or failure of the courts to communicate, and I want to identify the gaps. Based on your experience, have those gaps ever been identified by staff from SCOPE or Tiburon, etc.? Forgetting all the complexities in funding and computer technology, what are the gaps?

Ms. Butler:
In cooperation with the Administrative Office of the Courts, we did do a study on protection orders to specifically identify those gaps. In my tenure with the central repository, I have not done what you are suggesting.

Chair Hardesty:
Ms. Tarrats, have you done anything similar to identify gaps that exist in the collection of criminal history data?

Ms. Tarrats:
Only in the discussions we may have had in the SCOPE CAB meetings. Some of the data we identified as being in SCOPE and not at the State level, as I discussed earlier, are some of the gaps and the reason we still have SCOPE.

Chair Hardesty:
Detective Spratley, do you know whether Tiburon has done anything like this?

Mr. Spratley:
I do not know and I think it all comes down to the fact that we are pushing everything we think we can. We are getting all the warrants out of Las Vegas; we do have the access. So I am not sure that so many gaps are there. It is more if you want one system, all the different spokes of the wheel need to fit into that system. We have Tiburon as our main records management system and we also have different vendors for citations, for fingerprints, for facial recognition and all of those things. If we are collecting that data and it has to go down there, what is the connection to make that work? And then what is the connection in all the other counties? Right now we have the major things connected so we can share the stuff that gets the bad guys off the streets. But to be more thorough and for us not to have to call Metro to ask about a specific guy on SCOPE, just to go off the central repository, we would need a lot more of those connections identified.

Chair Hardesty:
How does one identify gaps that exist within the various systems? Perhaps this request for information could be made to Ms. Butler and her counterparts to see if there is a way to address that. Maybe you could get back with Mr. Anthony to give him the benefit of what you might have learned before our October work session.

Ms. Stiglich:
A concern I have is the amount of time it takes for the courts to get a warrant into the system. The concern is that in court you have issued a warrant but out on the street it takes so much time. We cannot put our own warrants into the system. So if we issue a bench warrant and we say someone did not appear—and it is a serious case, it is a no bail warrant—we have to prepare the warrant and prepare the paperwork. Some courts do it themselves, some send it off to the district attorney's office to be typed, then it comes back and then you have to find out who the original arresting agency was and you have to get it to them in the form you want. If it is the Gaming Control Board, that could be weeks, or it could be a Tribe or Reno Police Department.

Just because I have issued a warrant, it does not mean it is out there. They may know there is a warrant, but the officer who pulls the person over does not. These are serious safety concerns. Law enforcement may touch these people with warrants out on the street and miss an opportunity to bring them in. So I am a big fan of some sort of central place for warrants where the courts can say this is a court warrant. It is not the originating agency's warrant, it is a bench warrant. We should have a mechanism or some central place where we can get those warrants into the system as soon as possible.

Assemblyman Anderson:
My preference would be the most inclusive way to collect all the data. There has to be one system that can handle every single thing we collect which would get all that information to everyone. It is really important. I would hate for us, because of data systems that do not talk to each other and have incomplete data sets, to run into problems later. It seems silly that in an age of computers and great technology that we cannot come up with something better for the State.

Mr. Callaway:
For my own clarification, consider this scenario—it is 2 a.m., I have a possible fugitive and he is denying it is him. The only way I can verify him is through personal identifiers like tattoos or scars and for the sake of this scenario, I have no SCOPE. Currently, is there an avenue, through computer, phone call or something else for me to contact the criminal repository to get that detailed information?

Ms. Butler:
There is nothing now, but in the system we are modernizing right now, in the NCJIS modernization for the computerized criminal history system, that is a technology we are

moving toward. It is part of the FBI's Electronic Biometric Transmission Specification, which is their system specification for the latest and greatest in biometric technology, looking at scars, marks, tattoos, facial, palms, fingerprints, eventually iris and all different types of biometric and image capture. It is something we are working toward in our modernization program. We will be coming to the Legislature for funding to continue with phase 3 of a four-phase project. So, to answer your question, not yet, but hopefully soon.

Mr. Callaway:
When do you project that system to be up and running for access in real time by law enforcement?

Ms. Butler:
We anticipate going live with phase 2 of our modernization effort by the end of fiscal year (FY) 2017, but I do not think the scars, marks and tattoos functionality will be available until after the 2018-2019 biennium, assuming we get funding.

Chair Hardesty:
Whether it is in Clark County or anywhere else in the State, law enforcement is not able to access this at 2 a.m.?

Ms. Butler:
I took it as Mr. Callaway asking if there was a system that stored scars, marks, tattoos, etc. We can note on the rap sheet that there is a scar or a tattoo, but in terms of a lengthy description or an image, we cannot get that today.

Chair Hardesty:
Can a law enforcement agent or officer access your system from anywhere in the State at 2 a.m. and get criminal history?

Ms. Butler:
Absolutely; anywhere in the State or nationwide.

Chair Hardesty:
I will now open agenda item IX, a presentation on the effects of sealing criminal records on gun purchases and Brady background checks.

Mindy McKay (Records Bureau Chief, General Services Division):
Because my agency conducts the Brady background checks and a portion of the CCW permit checks, I am here to provide the information you requested at the August 3 meeting of this Commission. Our authority is listed on page 2 of my presentation (Agenda Item IX). The Point of Contact (POC) is listed on page 3. Note that the record must be sealed with all agencies prior to a person undergoing a Brady background check. When a seal order is received, it should be sent to multiple agencies for all the agencies that maintain

a record of that criminal history to seal their respective records management system that houses that information, including the central repository where we suppress those sealed orders. As long as everybody has received it who maintains a copy of that record and actually seals it, doing it prior to the person going to attempt to transfer a firearm, we should not be able to see that.

If the person goes through the Brady check before the record is sealed, staff will research all prohibitors (Agenda Item IX) pages 9 and 10. If the transaction is denied, a note is placed in a file indefinitely (Agenda Item IX), page 4. The retention period for denials is indefinitely which is true for the FBI's National Instant Criminal Background Check System (NICS) Index entries if the prohibitor is still valid. Some prohibitors, like temporary protection orders and warrants, have expiration dates.

The transaction can continue to be denied even if the record is sealed since the backup documents are maintained indefinitely as long as the prohibitor is still valid (Agenda Item IX) page 5. There are examples of this on page 5. At the August 3 meeting of this Commission, I noted that at the justice court level, people with a domestic violence conviction are sealed but still cannot get a gun so somehow the Brady check is catching that which was one of the reasons we were asked to present this information today.

Some of the older cases were not put into the FBI's NICS Index. If those people are processed through a Brady check today and we have all the backup documentation, staff will enter them into the NICS Index even if the record has been sealed. If all information is not received by the third business day, the transaction goes into unresolved statue (Agenda Item IX) page 6. Information is retained for 90 days while research continues for data leading to a final determination. If there is no final determination after 90 days, paperwork is shredded and no document exists for future transactions.

If the person goes through the Brady check and the record has been sealed after 90 days, staff will proceed. Since there is no backup documentation, the transaction cannot be researched or unresolved and the research file will be deleted (Agenda Item IX) page 7. Research files should be returned with the background check as the person is processed through a Brady check. Only the POC Firearms Unit staff can see the research files; CCW permits are not able to access those research files; the prohibition would only be visible in the FBI's NICS Index.

Regarding the restoration of rights, a seal does not restore the right to bear arms; it takes a pardon from the State Board of Pardons Commissioners. The FBI does not recognize the Nevada seal process as a restoration of the right to own a gun (Agenda Item IX A) page 8. Many people are not aware they need a pardon to restore their right to bear arms. Whenever someone contacts our unit, we attempt to walk them through this complex process.

The State and federal prohibitors to own guns are listed on pages 9 and 10 (Agenda Item IX). We are bound to not allow the transfer of firearms to individuals who fit into these lists. We welcome Commissioners and the public to come tour our facilities and get to know our processes.

Mr. Callaway:
Do you see a potential loophole in the current law where, if I was convicted of a crime which would prohibit me from possessing a firearm and then I went to a local sheriff's office to apply for a CCW permit, I seal my record, then apply for CCW permit, you said they do not have access to NICS? So is there a potential loophole where someone is not going to show as a convicted person when they apply for a CCW permit or pick up a firearm from a disposition unit at one of the police departments? Say, their gun is lost and then gets found and in-between they are convicted of a gun-prohibiting crime but they go to pick up their lost gun and get it. Is there a loophole here?

Ms. McKay:
There were a lot of elements in your scenario. To the local access to NICS for CCW permit issuance, the process for a CCW does include a query into the NICS Index. It does not include a query into the sealed records, but they do get to see the NICS index information we entered in there.

You talked about firearms being disposed of at a law enforcement agency where the person wants to go pick up their lost gun. At this time, there is no mechanism to run the Brady NICS background check, but we are working toward that. Hopefully soon in our NCJIS modernization phase 3 that Ms. Butler mentioned, that will include the necessary screens to extract that information prior to the firearm being returned to its rightful owner on behalf of law enforcement. They can run their own background check through the current NCJIS/NCIC systems; it does not include the FBI NICS portion of those systems.

Mr. Callaway:
Are you saying that in the case where I go to get a CCW permit with my records sealed, but without a pardon from the Governor, the sheriff's office should catch that based on the information they have access to? That I am prohibited? That although my record was sealed, I do not have a pardon so I am sill prohibited. Will they catch that?

Ms. McKay:
If it is sealed in all locations and you cannot see the information, they will not know that it exists. Therefore, you could get a firearm. If someone fails to seal it or it does not get sealed in time and someone does see that, then absolutely, you are prohibited from being in possession of a firearm. That does require a pardon. Does that answer your question?

Mr. Callaway:
I believe so. The way I understand it is, there is a potential loophole where someone can get a CCW permit although their record has been sealed and they do not have a pardon.

Ms. McKay:
Possibly.

Chair Hardesty:
I think the answer is, "Yes," which was part of the reason I wanted to have this presentation.

Ms. Stiglich:
One of the prohibitors is persons who are unlawful users or addicted to controlled substances (Agenda Item IX) page 8. One requirement for participating in specialty courts or being referred there is that a judicial finding is made that someone is an addict. How are we capturing those individuals? Are the courts supposed to be reporting that? Is it being captured at all?

Ms. McKay:
In multiple ways, including an arrest on a criminal history rap sheet, a warrant for drugs, etc. We often request arrest reports so we can get the nitty-gritty details in addition to what is on the criminal history; what actually occurred during the incident. That gives us important information to use in regard to that specific prohibitor. There are multiple places where the data could live. We reach out and request those different data elements to ensure we are doing a thorough background check before the firearms transfer.

Chair Hardesty:
I will now open agenda items XI and XII. I will ask Mr. Witherow and Ms. Brown to present their views on the elimination of parole and parole and grant rates. I asked both presenters to keep their remarks within 10 minutes based on their representation to me that it could be done.

John Witherow (President, Nevada Citizens United for the Rehabilitation of Errants (NV-CURE)):
I am here to make a proposal I assume this Legislature and this Commission is not yet ready to accept, but I hope you will be sometime in the future. My position is stated in a letter to the Commission dated August 31 (Agenda Item XI A-1). My recommendation would require a complete revision of Nevada's criminal sentencing system, including the elimination of the discretionary parole system, a change in the good time statutes, the elimination of the death penalty, replacing life sentences with 60-year sentences and more. The 60-year figure comes from the fact that a person is of age, 18 years old, when convicted of a crime and life expectancy is 78 years, so subtracting 18 from 78 gives you

60 years. That is a life sentence. Giving long sentences past life expectancy is a waste of time.

A good time system should be where the most serious offenses get 60 years and all consecutive sentences cannot cumulatively exceed 60 years (Agenda Item XI A-1) page 2. Offenders would get 50 percent good time at the start of serving their sentence which would ensure they are doing something to improve themselves or stay out of trouble. A person who commits a second serious offense after already serving 30 years will die in prison from the second conviction. What is the sense in giving him four life sentences and letting him out at 22 years, then he comes back with four more life sentences? Are you going to let him out again when he's 65? Do you want to rehabilitate people? What are you doing to give them opportunities when they are released from prison? You put $21 in a guy's pocket and a bus ticket home; what about a job and a place to live. We have people backed up in the prison system who have parole dates but are not getting out on parole because they do not have the money to pay $550 twice a month at a halfway house.

Mandatory minimum terms of imprisonment should be eliminated. There should be mandatory sentencing guidelines that the judge imposes as a sentence. Say it is a burglary that carries 10 years, the judge, by these sentencing guidelines, imposes a sentence of 8 years. We know with the good time system that is in place under my proposal, he would do 4 years in prison if he behaved himself. He would have the ability to appeal that sentence or the prosecutor would have the ability to appeal that sentence; there is no Parole Board involved deciding when the guy's getting out. We believe this proposal would reduce mass incarceration, save tax dollars and bring actual truth in sentencing to the criminal justice system.

All these proposals we are recommending (Agenda Item XI A-1) could save the State an estimated $100 million per year. Right now, you are keeping guys in prison that are serving longer sentences for longer periods of time and letting these short-timers go—burglars, car thefts, those in possession of a firearm. You are reducing the costs by putting their sentencing structures down, but you are raising the costs by keeping other people in the prison longer. Once a guy reaches 55 years of age, you are starting to pay for his medical treatment.

My organization, NV-CURE is a nonprofit surviving on donations. We are all volunteers, so if you want to investigate what I have to say, conduct a study on what I am bringing to your attention. I submitted seven letters from prisoners telling their feelings on the Parole Board which you can view on pages 17-37 of my submitted documents (Agenda Item XI A-1). Each one of them agrees that the Parole Board should be eliminated. I have also asked people to send letters to Justice Hardesty, each opposing discretionary parole in Nevada. I have contacted legislatures in 15 states using determinate sentencing but have not heard back from legislators about cost savings or problems they have encountered.

Someone should study this. Does it save money to utilize determinate sentencing versus discretionary parole?

There are many problems with the discretionary Parole Board in Nevada It is the only agency in the State or country that I know of where there is unlimited and unchecked discretionary authority to do whatever they please. In Nevada there is no possibility of obtaining judicial review on parole decisions; there is no right to parole, so there is no due process protection (Agenda Item XI A-1) page 4.

The Legislature exempts the Parole Board from the Open Meeting Law and the Administrative Procedures Act, NRS 233B, and that Act's Contested Case requirements. You cannot get judicial review of any of the regulations because the Parole Board is exempt. They can do whatever they want to do and there is nothing a prisoner or their family can do to change the decision of the Parole Board except to beg.

All the information received by the Parole Board is confidential and they do not have to disclose it to you. I went to the Parole Board in January 2001 and was told I was involved in terrorist activities. I denied it and asked what they were talking about. They said I could not know this because it was confidential. They also told me I was going to murder two people immediately upon my release from prison. I have been out 5 years and have not killed anybody.

Victims of a crime are allowed to have special meetings with parole officials that are off the record and confidential. The prisoner about whom they are giving information cannot even hear what is said (Agenda Item XI A-1), item 7, page 4. That is kind of ridiculous. A person should at least be able to know what information is being considered and have the opportunity to challenge the Parole Board decision or the information being given. For example, two brothers I know are in prison 33 years now for a murder. The victim's family goes to the Parole Board every time and tells them, "Oh, my son was not a drug dealer." The guy was 28 years old with 17- and 19-year-old kids that killed him in a drug deal. They were going to rob him. How was the person even there if he was not a drug dealer? Come on. Let the victim tell that to the family of these allegedly terrible guys who just killed him for no reason. Procedures for parole hearings have to change.

When I challenged the Parole Board in 2006, they cried that they had to do 7,000 hearings per year. There are 7 Parole Board members and they are making 7,000 hearings a year? Are those adequate, fair hearings? You cannot make intelligent decisions on 7,000 cases every year. It is just not possible in my opinion.

The political process has a lot to do with the discretionary parole system. Nobody wants to offend the victim. If they do not want the perpetrator out on parole; he is not coming out on parole. I have seen cases where when the victim appears at a Parole Board hearing, give up all hope of being paroled because it is not going to happen.

Get rid of the discretionary parole system and put in a determinate sentencing system. The sentencing process will be the victim's last opportunity to object or make a statement on the record, subject to all due process procedural protections. Let the judge make that decision based on sentencing guidelines the judge is required to follow. It is a fair system that gives a fair sentence to everybody with due process procedural protections in place.

The length of time a person spends in prison has nothing to do with recidivism rates. Whether you keep a person in prison for 2 years, 5 years or 10 years, it will not make a difference on whether he becomes a recidivist or not. Are we punishing people or rehabilitating them? We need to do something to help individuals when they get out and give them the opportunity to learn something while they are in prison. Many people go into prison uneducated with no skills or job abilities. Teach them to be carpenters, electricians, pipefitters, auto mechanics, etc. Many of the unions provide these programs already in apprenticeships; bring the unions into it. Teach a person a trade and provide employment when he gets out and that is where you will reduce recidivism and cut crime, not by locking them up and throwing away the keys.

Stop sending people back to prison for technical violations of parole. If I am supposed to provide my parole officer with my address and I move; are you going to send me to prison for that? Yes, under the current system and you will probably do 3 more years. The only people who should be going back to prison for parole violations are people who commit new crimes.

The U.S. incarcerates more people than any other country in the world with 5 percent of the world's population and 25 percent of the world's prisoners. Nevada incarcerates 724 people per 100,000 population, which is higher than average in the U.S. and much of the world (Agenda Item XI A-1) pages 5, 6 and 47-53.

We need to change people's behavior. You do not beat your kid because he did not learn how to do a math test; you teach him how to do it. People go to prison every day for trying to feed themselves or their family because they cannot get a job and they are hungry. This is not who you want to send to prison. You want to send violent people to prison, not the nonviolent guy who smoked a joint on the weekend.

The Vera Institute of Justice report I submitted (Agenda Item XI A-1) pages 54-70, also shows the cost of incarceration. Currently, Nevada is spending $20,656 a year to keep a person in prison which is pretty low compared to other states (Agenda Item XI A-1) page 56. Be keeping people in prison longer, the cost of incarceration will only go up because of health care for older prisoners. I have been after this Commission for 16 years to test every prisoner for hepatitis C. There are new drugs that cure it now. Right now, the pill regiment for curing it costs around $54,000. Nevada taxpayers are going to have to pay for treatment of every prisoner with that disease, and more as they age.

I spent 40 years in prison and I know what it is like and I know what prisoners believe. They do not want a discretionary parole system. They and their families want a sentence and to know how much time the prisoner will have to do and when will he get out. The day you go into prison in California, you know the day you will be getting out. That is how it should be here in Nevada. It is truth in sentencing. The victims also know exactly how much time the offender will be in prison for. I have submitted my PowerPoint presentation for the record (Agenda Item XI A-2).

Mr. Callaway:
I also support programs that try to get driver's licenses for offenders and set them up with jobs locally. At the Clark County Detention Center, we have the Hope for Prisoners program which we actively engage in with Pastor Jon Ponder. It has been very successful with graduations of people with education and jobs to set them up for success and reduce recidivism.

One comment, and I am not directing this at you, but I hear it a lot when we talk about the criminal justice system, we hear how the U.S. incarcerates more than any other country. While listening to your presentation, I pulled up some statistics on China, which has a much larger population than our country, and we have four times the violent crime and murder rate here than they do there. It also appears from this website that China has a militaristic court system so although we may incarcerate more people than China does, we do not want to turn to the Chinese way of criminal justice.

Mr. Witherow:
China incarcerates 118 people per 100,000, which is substantially less than Nevada. However, I understand that in China the appellate process takes 1 hour and if you are sentenced to death, you are dead within the hour. We want to eliminate the death penalty.

Mr. Callaway:
According to those statistics, we have four times the murder rate and violent crime rate than China, so maybe that warrants incarcerating more people.

Connie Bisbee (Chairman, State Board of Parole Commissioners):
Mr. Witherow might be surprised to find out that I agree with a lot of things he had to say. I need to point out the things I do not agree with. The Parole Board's relationship with victims and victim input is governed by our State Constitution and by statute, telling us they are special and they should be special. That was originally brought as a State constitutional change in 1979 and since it takes two Sessions to approve constitutional changes, it went through 1979 and 1981. Statutes and the Constitution tell us that we will indeed treat victims specially and we do so. They have rights to private information being provided to the board privately. Mr. Witherow commented about a victim talking about somebody and their two sons and he knows that because that victim chose to testify to

that publicly. The Supreme Court has found that those records held by the Parole Board are indeed confidential.

Regarding the letters he provided (Agenda Item XI A-1) pages 17-37, one absolutely attacks the victim's advocate and victims themselves and that is something we will not tolerate. One of the letters talks about a denial coming 2 weeks later, time-stamped and dated 2 days before his appearance. All I can think of is that someone time-stamped it as being received in the prison and they actually stamped a date that was incorrect. If you look at any of the orders, you cannot produce an order until after it has been voted on; you cannot vote on a hearing until it has actually been hailed and the actual time that order is produced and by who is on the order itself. I think that inmate was confused.

The Parole Board is subject to Open Meeting Law (OML). Any meeting of the Parole Board; any time we are in a quorum, that is subject to the OML and we comply with it. The court and the Legislature has declared us to be quasi-judicial when it comes to making decisions to grant or deny parole, so parole hearings are quasi-judicial and they are also open to the public and anyone who wants to come to the hearings can do so. The only part closed is deliberation and that is not because any Board member particularly cares to discuss what their decision is going to be. You will see that clearly on the order. That is because the Court has allowed it to be in private, but we rarely meet as a panel of four and it takes four to ratify any decision so it is of little value to deliberate in public when you have a hearing representative and a parole commissioner who stated how they were going to vote. Then, after the Board reviews it, there may be four people who disagree and change that order.

There is no dark space; we are pretty transparent. We are subject to regulation, just like everybody else. We have public workshops, just like everybody else. Politics have no place in how we make our decisions. In fact, I have never had a Governor or a Legislator try to ever influence how we vote. We occasionally get letters from Legislators or they appear at hearings and say they have a preference, but that is not an influence on our decision making.

I am not quite sure of the value of seven inmates wanting access to victim stuff, or discretionary parole be gotten rid of. They are already part of the system. If we go to a 50 percent system, as Mr. Witherow has suggested, just looking at the way it is currently, unless you are a lifer, you are already going to get 50 percent off the back end of your sentence anyway. So we are already looking at a 50 percent system. So if you get rid of discretionary parole, that 50 percent of the people who come before the Board and get granted would go away. On the basic numbers, using the $20,000 per year per inmate, if you even take away 3,000 parole grants, at 1-year denial because now they have to do the 50 percent rather than less than 50 percent, it is a cost of $60 million per year. I do not necessarily think that is a financial savings of any sort. Like I said, Mr. Witherow, you would be surprised that there are several things where I agree with you.

Mr. Witherow:
The victim's special treatment should end at the sentencing process where they are determining punishment. After the punishment has been imposed and the victim has had their say, we should be looking at rehabilitation. The victim has no place in that process. As for the claim that the Parole Board follows the OML, I refer you to 2006 to the claims of the Parole Board that they could not function if they followed that law so they closed down the Parole Board by the Governor's signature because they would not comply with OML.

I refer you to *Witherow v. State of Parole Commission*, in 2007, challenging the Parole Board on the OML and the due process procedural protections. The Nevada Supreme Court made a decision on one day saying there are no due process procedural protections because there is no right to parole. On the very next day, they made the decision that the Parole Board was not required to comply with the OML because they are a quasi-judicial proceeding.

The third point is the regulations of the Parole Board. It is required to comply with the regulation-making requirements of NRS 233B, however it is exempt from the contested case requirements under NRS 233B.039. As to the political influence, the victim provides that, not Legislators or anyone else speaking on behalf of the prisoner. It is when the victim comes in and says, "I do not want that man released," they are not getting released. That is the bottom line; that is the political influence because they do not want to offend the voter or the victim.

Chair Hardesty:
I will now open agenda item XII.

Ms. Brown:
I have provided over 700 documents (Agenda Item XII A-1) to show you why we need to drill down into the Parole Board, beginning with a list of ways to improve the Parole Board granting more paroles on pages 12 and 13. I have submitted my written testimony that I will now read (Agenda Item XII A-2).

Establishing a public integrity unit commission to look at wrongful convictions will reduce the prison population and reduce costs of incarceration. It will also lessen the Parole Board's agenda and save the taxpayer's money and result in freedom for the innocent. I want to add that I concur with NV-CURE, Ms. Jones and the others who spoke earlier.

Looking at Attachment 1 of my submitted documents, pages 26-35 on the Revised Index I also submitted today (Agenda Item XII A-3), this is what a Nevada Offender Tracking Information System (NOTIS) file looks like. It is from a wrongful death suit. On page 26, the green and orange underlined information became litigation. The Parole Board would not have knowledge of this. The first underlined item at the top of the page dated 01/14/1998, "Violation of Court Procedures," does not look well for the inmate if it is being

presented to the Parole Board. In the next section under External Movement History, it says 07/29/2009.

On page 27 (Agenda Item XII A-1), the top red-underlined entry is dated 03/21/1989, showing that Mr. Klein was entered into the prison system as a new commitment. On the same page, top middle, under Case Notes, the first entry is 02/05/1999, which is 10 years later. Did the computer glitch cause those previous 10 years to disappear from the NOTIS file? The aforementioned Violation of the Court Procedures in 1998 was because in 1998 Mr. Klein had filed a writ of habeas corpus in White Pine County. The judge there deemed it to be a frivolous lawsuit. The details of this are in my submitted documents (Agenda Item XII A-1). The case went all the way to the Nevada Supreme Court where they ruled in Mr. Klein's favor. But the violation is still reflected in the disciplinary action that went to the Parole Board.

At the bottom of that list on page 26, an entry on 01/18/2001 for "unauthorized use equipment or mail," was, I believe, *Klein v. Childress*. Mr. Klein appealed to the Nevada Supreme Court (NSC) and they dismissed the case, sending the decision and the remitter back to Mr. Klein. Officer Childress had returned it back, first because the NSC submitted it with no back number and then they sent it back with a back number and she returned it and said, "No such person." He sought litigation against that, which is what this entry is, because he was suing her. So when he went to send out his lawsuit, she said he was using the wrong name. that is not reflected in any of this, so when you have a disciplinary action submitted to the Parole Board or the Pardons Board and they have no way of knowing it has been litigated and won. All it does is make the individual look bad.

Back to page 27 (Agenda Item XII A-1), in the middle of the page where it says, "refused to sign fiscal agreement; no hire unless changes mind and signs agreement," that was the 1994, under *Klein v. Miller* but it also became consolidated under *Vignola v. McDaniel* which was a published opinion in the 9th Circuit Court of Appeals in 2003. This is in my submitted documents (Agenda Item XII A-1*)* under attachments 7 and 8, 17 and 18.

On page 30 at the bottom of the page to page 31, there is reference to Huston being the victim of a money scam. This was submitted to the Parole Board and made it appear that Mr. Klein did something to Mr. Huston. That became litigation in *Klein v. Helling*. In Attachment 4, (Agenda Item XII A-1) pages 57-66, you can see the letter from the Attorney General's Office dealing with the investigation saying there was no criminal activity but it remained in the NOTIS file. This is why the inmate must be able to see their file to check for accuracies.

I have provided the attachments of the administrative regulations and their code of ethics. In *Klein v. Bisbee*, they violated the code of ethics and the administrative regulations. I submitted a letter to a Parole Board commissioner that I hand delivered on October 2, 2008 and 2 weeks later they denied him a parole. That pretty much details the retaliatory

behavior from the July 10, 2007 due process hearing that he had which was ordered by the federal courts. With this computer glitch, on June 5, 2007, when they flipped it over into NOTIS, they put up a false felony charge. On June 4, 2007, that is the letter from the Attorney General's Office offering Mr. Klein a deal that if he does not litigate any further, he would be out for parole in 2008 if not before. He refused because it violated *Vignola v. McDaniel* which was the 1994 class action which he was a part of.

On page 33 (Agenda Item XII A-1), on 08/21/2007, it says, "when inmate notified in person that a new report needed to be done, he refused and stated, 'I don't want to see the Parole Board until court is complete. They aren't going to do anything anyway, but just try to cover their mistakes.'" The Parole Board asked for a progress report to be submitted. Mr. Klein said no; he was going to appeal the July decision. They brought him down but they did not have the progress report so they could not have held the hearing without it. They did and they denied him. It was retaliatory.

In attachment 18 under Stockmeier, I was asked by Pat Hines to attend his hearing. I got there early and waited and finally asked and was told that they had already had the hearing. When you are in a Parole Board hearing, they discuss it, you leave the room and they play music that day. Everybody but Mr. Stockmeier had music. So we knew they were in deliberations. It was a farce. I believe Mr. Stockmeier received another hearing but he was denied because he litigated. That is what I see. A pattern of retaliatory behavior to those who litigate against NDOC and the Parole Board.

In 2003, they offered Mr. Witherow a deal. He refused and finally got out in 2011. The Crew brothers are still in. Mr. Klein and others who maintain innocence have been told by the Parole Board that until they admit guilt, they will never see the street. The only way they get out is they have to die.

I have recommendations on ways to improve the Parole Board but they cannot continue the way they are. Look at these lawsuits. Most importantly, the inmates need to see their files because if they have years missing and false information is being submitted to the parole, they are being denied and that is costing the taxpayer's 1 to 3 years for their incarceration.

Chair Hardesty:
I will move agenda item X to next meeting on September 27 so we can add it to the context of the sentencing commission. Where we break three areas of crime types in category B felonies, I am adding the category of drug crimes consistent with the framework Senator Ford suggested at our last meeting. I will now open agenda item XI, public comment.

Craig Caples:
You referenced some workshops in October. What are those and are they open to the public? If so, when and where?

Chair Hardesty:
The work session is scheduled for October 12. The meeting is open to the public but the Commission will be debating the final recommendations to be presented to the upcoming Session of the Legislature.

Ms. Bennett:
On programming within the prisons, if an inmate is not eligible for programming because he has a college degree, he gets six days added to his sentence, so it is a punishment for not being eligible. Additionally, regarding the Eighth Amendment right to medical care, the inmate I mentioned earlier is not receiving medical care. He has a torn meniscus and a torn ACL in the same knee and he is taking 800 mg. of Ibuprofen three times a day as a treatment. He needs knee replacement; the orthopedic surgeon has told him that. When he slips and falls and passes out because he hits his head, if he calls a man down and it is not a life-threatening situation, he gets charged $80 and put in the hole. There is no medical care for him.

What is going to happen is that Nevada will pay to litigate when he files lawsuits for the lack of medical care he needs. We need funding for more programming, but it should not be a punishment to an inmate if he cannot work for health reasons. We also need more funding for the overburdened caseworkers who cannot possibly see the number of inmates they are supposed to see.

William O'Connell (NV-CURE):
I was pleased to hear the previous presentation about the sentencing guidelines. Nevada-CURE has come out in favor of determinate sentencing. After doing research and hearing the presentations today, I am happy to hear that a path to determinate sentencing is not something new we would be creating since there are other states that use it. I am glad we are not reinventing the wheel and we can learn by example from those other states to come up with new, more objective sentencing guidelines.

Ms. Brown:
If the judge writes the arrest warrant, then it goes into the computer system with all identifying marks and scans, it is possible they could just google it and your arrest warrant would come up along with those identifying marks? Is that a possibility? That way it would also be at an agency, because it has not been issued yet. Right? Is that what the problem is; that there is a delay once the arrest warrant is issued?

Ms. Stiglich:
The delay I was referring to was the delay from the issuance of the warrant before it is entered into the criminal databases so it is accessible by law enforcement. You cannot really scan and google them because they have identifying information…

Ms. Brown:
Not google, but I meant scan. If you did the arrest warrant and it went right into the computer system, then they could just pull it up and there it is and still pending some agency. Might save a day or two.

Ms. Stiglich:
Thank you.

Chair Hardesty:
Seeing no more people wanting to make public comment, I adjourn this meeting of the ACAJ at 3:27 p.m.

RESPECTFULLY SUBMITTED:

_____
Linda Hiller, Interim Secretary

APPROVED BY:

_____
James W. Hardesty

Date: _____

Exhibit	Witness / Agency	Description
A		Agenda
B		Attendance Roster
Agenda Item III A	Richard Francis	Written Testimony
Agenda Item III B-1	Florence Jones Crew	Submitted Document; *Reasons NV Paroles Are Not Granted*
Agenda Item III B-2	Florence Jones Crew	Oscar Goodman Letter
Agenda Item III B-3	Florence Jones Crew	Article: *Reducing Elder Incarceration and Promoting Public Safety*
Agenda Item III B-4	Florence Jones Crew	Article: *Life Without Parole*
Agenda Item III C	Lea Tauchen, Retail Association of Nevada	Written Testimony
Agenda Item IV	Linda Hiller, Interim Secretary	Draft Minutes of the August 3, 2016 Meeting
Agenda Item VI A-1	David Carroll, Sixth Amendment Center	PowerPoint Presentation: *Reclaiming Justice: A Review of the Nevada Supreme Court Indigent Defense Commission*
Agenda Item VI A-2	David Carroll, Sixth Amendment Center	Presentation Script
Agenda Item VII A-1	Kelly Mitchell, Robina Institute	PowerPoint Presentation: *Sentencing Commissions and Guidelines*
Agenda Item VII A-2	Kelly Mitchell, Robina Institute	*Varying Binding Effects of Guidelines—the Mandatory-to-Advisory Continuum*

Agenda Item VII A-3	Kelly Mitchell, Robina Institute	*What are Sentencing Guidelines?*
Agenda Item VII A-4	Kelly Mitchell, Robina Institute	*Timelines of Sentencing Commissions and Sentencing Guidelines Enactments: 1978 to the Present*
Agenda Item VII A-5	Kelly Mitchell, Robina Institute	*The Composition of Sentencing Commissions*
Agenda Item VII A-6	Kelly Mitchell, Robina Institute	*The Role of Sentencing Commissions*
Agenda Item VIII	Carmen Tarrats Shared Computer Operation for Protection and Enforcement (SCOPE)	Presentation: *Clark County SCOPE Overview*
Agenda Item IX	Mindy McKay, Records Bureau Chief, General Services Division	Presentation: *Effects of Sealing Criminal Records on Gun Purchases and Brady Background Checks*
Agenda Item XI A-1	John Witherow, NV-CURE	NV Cure Position on NV Criminal Sentencing System
Agenda Item XI A-2	John Witherow, NV-CURE	Presentation: *NV-CURE Position on NV Criminal Sentencing*
Agenda Item XII A-1	Tonja Brown	Submitted Documents
Agenda Item XII A-2	Tonja Brown	Written Testimony
Agenda Item XII A-3	Tonja Brown	Revised Index