MINUTES OF THE
2015-2016 INTERIM
ADVISORY COMMISSION ON
THE ADMINISTRATION OF JUSTICE
SEPTEMBER 27, 2016

The meeting of the Advisory Commission on the Administration of Justice was called to order by Chair Hardesty at 9:37 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
Mark Jackson, Douglas County District Attorney, Vice Chair
Connie Bisbee, Chairman, State Board of Parole Commissioners
Adam Laxalt, Attorney General, Office of the Attorney General
James Dzurenda, Director, Nevada Department of Corrections
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

COMMITTEE MEMBERS PRESENT (LAS VEGAS):

Senator Aaron D. Ford, Senatorial District No. 11
Senator Mark A. Lipparelli, Senatorial District No. 6
Assemblyman Elliot T. Anderson, Assembly District No. 15
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

COMMITTEE MEMBERS ABSENT:

Judge Kevin Higgins, Justice of the Peace, Sparks Justice Court
Lisa Morris Hibbler, Victim's Rights Advocate
Holly Welborn, Policy Director, ACLU of Nevada, Inmate Advocate

STAFF MEMBERS PRESENT:

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

OTHERS PRESENT:

Amy Rose, Legal Director, ACLU of Nevada
Kristen Knight Bennett
Wes Goetz
Anonymous Female
Florence Jones
Tonja Brown, Advocate for the Inmates, Advocate for the Innocent
David Carroll, Executive Director, Sixth Amendment Center (by teleconference from Boston, Massachusetts)
Michael Douglas, Justice, Nevada Supreme Court
David Barker, Chief Judge, Eighth Judicial District Court
Jim Wright, Director, Department of Public Safety
James Popovich, Specialty Courts Manager, Second Judicial District Court, Washoe County
Scott Pearson, Judge, Reno Justice Court
Kelly Mitchell, Executive Director, Robina Institute of Criminal Law and Criminal Justice, University of Minnesota Law School; President, National Association of Sentencing Commissions
Richard S. Frase, J.D., Co-Director, Robina Institute of Criminal Law and Criminal Justice; Professor of Criminal Law at the University of Minnesota Law School
Kristy Oriol, Policy Coordinator, Nevada Network Against Domestic Violence
Brett Kandt, Chief Deputy Attorney General, Office of the Attorney General
David Tristan, Deputy Director of Programs, Nevada Department of Corrections
Terri Albertson, Director, Nevada Department of Motor Vehicles
Tonya Laney, Administrator, Field Services, Nevada Department of Motor Vehicles
Dennis Osborn, Colonel, Chief, Nevada Highway Patrol, Department of Public Safety
Chris LaPrairie, Sergeant, Project Manager, Body Worn Camera Program, Nevada Highway Patrol, Department of Public Safety
Larry Pinson, Executive Secretary, State Board of Pharmacy
Yenh Long, Administrator, Prescription Monitoring Program, State Board of Pharmacy
Paul Edwards, General Counsel, State Board of Pharmacy
Robert Ochsenhirt, Detective, Las Vegas Metropolitan Police Department

Chair Hardesty:
I will open this meeting of the Advisory Commission on the Administration of Justice with agenda item III, public comment.

Amy Rose (Legal Director, ACLU of Nevada):
I am speaking on behalf of Commissioner Holly Welborn, who unfortunately could not be here today. I have her prepared remarks (Agenda Item III A) with our concerns about the category B offense study and sentencing reforms. On page 3 of Ms. Welborn's letter is a list of recommendations and observations. Among those four items, we want to ensure the guidelines provide a wide enough range for judges to impose a fair and individualized sentence that is not imposed based on a mandatory basis, and that people are given an opportunity to explain what happened so the judge can take into account the mitigating circumstances.

The second observation we have, on page 3 (Agenda Item III A) is that the Minnesota guidelines give defendants more of an opportunity to receive probation than the federal guidelines, which results in incarceration in about 90 percent of sentences. That state's system gives more deference to judges and allows offenders to be looked at more individually.

Third, in order for the ACLU to fully support a model similar to the Minnesota, the law will have to make clear what type of departures will be built into the system to allow a judge to take into account the individualized circumstances of the defendant.

Finally, an ideal system would exclude juvenile convictions from criminal history scoring to make sure juveniles have the opportunity to be rehabilitated with nothing held against them, going forward.

Kristen Knight Bennett:
I am an interested public citizen who cares about the human rights of inmates. *Nevada Revised Statute* (NRS) 212.020, covering inhumanity to prisoners, says that anyone guilty of willful inhumanity or oppression of an inmate can be prosecuted. So far, I am not seeing that happen and we have a serious problem with specific incidents of willful humanity going on, specifically at Southern Desert Correctional Center. There is also a problem with retaliation by correctional officers; one associate warden in particular. I can give you names. One sergeant who presides over disciplinary hearings at that facility does not allow inmates to call witnesses, which is their right to do. If they file grievances, they are punished and told by this sergeant that he is not going to believe anything the witnesses say and if they continue to deny the allegation, he will punish them more severely. This is a serious issue. I was under the impression that we have some kind of protection against these types of things happening because there is a law, but if the law is not enforced, we have no protection. I am asking you to do what you can to protect us and enforce these laws.

Also, regarding programming in the prisons, I spoke to Ronda Larsen, coordinator of the Family Services Division of the State Department of Corrections (NDOC) yesterday. I wanted to know where in the law it says that time can be added to an inmates' sentences if they are not programming or working. Because some inmates cannot participate in programming because of physical conditions, illness and the fact that there are not enough programs available for every inmate who wants to participate. She told me there is not a statute which specifically says time can be added but the projected day of release includes time for credits. So if an inmate does not program, that time gets put back on their sentence at the end of every month, meaning we have people with physical illnesses or conditions that are not being treated in the prison, plus they are being incarcerated longer. I would like to ask you to write an exemption for those inmates who cannot participate in programming due to physical conditions, even if they want to participate.

Wes Goetz:
They are talking about these lifetime supervision special condition rules. You cannot leave the prison unless you sign these. Some of them are unconstitutional. I want you to know this is what they do before you get out of prison. Now, you have so many people with these lifetime supervision rules and conditions and once you sign them, you are signing a contract, so if you violate these rules you can be sent back to prison. How many people are in prison because of violating these conditions that the Division of Parole and Probation (P&P) wrote up? I recommend a special committee to oversee lifetime supervision conditions. We need to stop the over policing of people on lifetime supervision because it is unreasonable. The NRS says nothing about fees for lifetime supervision, so why do I have to pay lifetime supervision fees for the last 7 years?

How many people on lifetime supervision filed a complaint against P&P through the Office of Professional Responsibility and all they did was give their complaints to P&P to investigate themselves? There needs to be oversight and the opportunity to file grievances like you can in prison. It does not mean you will always get your grievance. Like the previous speaker in public comment, the sergeant is not calling the witnesses. That happened to me in prison. It seems like anyone who complains gets retaliation.

Chair Hardesty:
Mr. Goetz, you are about out of time, can you wind up your remarks please?

Mr. Goetz:
It seems like P&P stigmatizes people on lifetime supervision. Why are we stigmatized?

Anonymous Female:
I am speaking anonymously due to the retaliation being suffered by us survivors of domestic violence. I would first like to acknowledge Attorney General Adam Laxalt for responding to the destruction of our children's abuse evidence. His response is that he

is going to ask for qualified immunity due to discretionary acts. Our argument to that is that destroying child abuse evidence is not a discretionary act.

Justice Hardesty, are you familiar with 1J1F?

Chair Hardesty:
I cannot respond to questions about cases or pending cases or decided cases.

Anonymous Female:
It is not a case; it a term, One Judge One Family, which is a practice occurring in the courts where, for instance, in the family division, which is what the F stands for, one judge is handling all the cases. However, the judges are not handling the protection order cases at the same time they are handling domestic cases; the T cases and the D cases in the Eighth Judicial District of Clark County's Family Division. This is creating a problem for abused children because a child may be awarded custody under the T case to the nonviolent parent, but under the D case, because it is not linked to the T case, under the D case, the child may be awarded custody to the violent parent. This has created quite a problem in the Eighth Judicial District. We are investigating other judicial districts throughout the State.

There is a law firm in Nevada called Shook & Stone. Attorney Julie Shook left the law firm and went to work for the government handling child abuse cases. Her husband, attorney John Stone, stayed on at the law firm handling wrongful deaths of children. This conflict of interest was never addressed. Attorney Julie Shook misrepresented children in child abuse cases and in the legal proceedings, she would not present photographs of the batteries to the children, medical records, police reports and affidavits of the abuse to the children. This put the children right back in harm's way where they were abused again, creating a revolving door in the courthouse. We went to the State Bar of Nevada about her and the State Bar was sued by Georgia Taylor, who works for the State Bar handling complaints about attorneys. Ms. Taylor, when she sued the State bar, she made an affidavit that under oath and penalty of perjury, she was not given any resources to investigate complaints about attorneys.

When the Nevada Supreme Court (NSC) gets an appellate case that is a 1J1F, they are not identifying them. The point being, there are cases out there, all these T cases that are not sent. The Register of Action on the cover page codes the cases as 1J1F. We would like to see the NSC start taking these 1J1F cases, take the entire situation of the child. Without doing that, under NSC rulings, the cases are being sent right back to the same judge who is not bringing into the court case files the knowledge of protection orders that these children have.

Florence Jones:
I supplied you with certified transcripts from the last meeting of this Advisory Committee (Agenda Item III B) regarding Chairman Bisbee's comments to a comment about good

time. I would like to call to your attention the NSC case, *Demosthenes v. Williams*, which clearly gives inmates sentenced after July 1, 1969 and before July 1, 1983 eligibility for flat and good time credits. I have two sons who fall into that category, so when that comment was made, I became concerned that possibly information was not being clear.

The other comment was with regard to the Parole Board hearings that Chairman Bisbee said are quasi-judicial. Wikipedia lists the seven factors that must be present for a proceeding to be quasi-judicial. I would like to know if any of those safeguards are being used by the Parole Board in their hearings. If so, which ones? I do not believe any are being used. Most of the information I was able to glean indicated that, at the least, they should be able to appeal their final parole denial. I think quasi-judicial is just a word and a label, not actually a function.

Tonja Brown (Advocate for the Inmates, Advocate for the Innocent):
Over the years, this Commission has been presented information about those who have been wrongfully convicted. In 2014, Rebecca Brown made presentation and more recently, the Rocky Mountain Innocence Center gave information. In that presentation, they did not factor in the non-factoring, which was 80 percent to 90 percent of the applications they receive are declined because without DNA, they cannot accept cases.

Nevada courts at times will allow DNA testing to be conducted, but then again, they are denying inmates who maintain innocence to have DNA testing. I recommend that the inmates have the option to have DNA testing conducted at their own expense. There are groups and family members who can fund this. They should not be denied, especially with advances in technology every year.

Regarding the Parole Board, unless you admit guilt you will be denied to expiration. This means if you have a life sentence, you will die in prison. Those who maintain innocence will never get out. This is why we need a public integrity unit.

The Legislature needs to mandate statutory language regarding Parole Board grants and parole to applicants when the objective risk assessment is low, they must let them go. At the September 12 meeting, I provided documents that included the Parole Board's risk assessment guidelines and some cases where the aggravating and mitigating factors were involved. I also spoke about inmates who filed litigation against the Parole Board being denied parole. In a recent case, *Anderson v. Bisbee*, the court agreed Ms. Bisbee had retaliated against Mr. Anderson because of two previous lawsuits. I believe there needs to be an oversight committee over the Parole Board or we need to eliminate the Parole Board.

The Legislature must create law that mandates parole granted to a life sentence with parole at 25 years, because after 25 years, the Parole Board is inherently altering the judge and jury functional life sentence order to a life without.

I have provided information where victims are being told by the Parole Board that their testimony and submitted documents are confidential. The inmate has no way of knowing what the victim says or submits is true or not.

Chair Hardesty:
As you note, at my direction Mr. Anthony has prepared a summary of various areas that have developed over the course of deliberations which the Commission will consider during its upcoming Work Session. Many of the suggestions on that list have been made by individuals during public comment.

I will now open item VI, a follow-up to a presentation made on Sept 12 by Mr. David Carroll concerning a BDR regarding the establishment of an indigent defense commission by the Legislature. We have Mr. Carroll on the phone, are you there?

David Carroll (Executive Director, Sixth Amendment Center (by teleconference from Boston, Massachusetts)):
I am here.

Chair Hardesty:
Between your presentation on September 12 and today, I asked for a bill draft that the Commission currently had in mind. I am told the Indigent Defense Commission chaired by Justice Cherry would like to make some revisions to the bill draft that was considered in the 2015 Legislative Session. The revisions would accommodate suggestions from at least the Nevada Association of Counties (NACO) and others as well. Is that correct?

Mr. Carroll:
Yes, that is correct.

Chair Hardesty:
My intent is to pass this to the next meeting. We will not be taking more testimony then, but we would request you to convey to the Commission members the importance of modifying the bill draft as you deem appropriate and to confer with NACO on their concerns. We will convey to Justice Cherry the request that the bill draft be finalized as closely as possible to the bill you are urging this Commission to pass on to the Legislature.

Mr. Carroll, if there is anything I can do to help connect all you folks to bring about a resolution of whatever the issues are, let me know.

Mr. Carroll:
Okay, thank you.

Chair Hardesty:
This Advisory Commission recommended in the last biennium that the Legislature support funding for the expanding of specialty courts in Nevada. I am grateful to the Legislature and to this Commission for having endorsed that recommendation. This Commission recommended adding $3 million per year to the budget from the State General Fund to help support the expansion of all forms of specialty courts throughout the State. I have asked Justice Douglas, the co-chair of the NSC specialty court funding committee and other judges and representatives who manage and operate drug courts in our State to give an overview of what has happened since the Legislature approved that funding. In our upcoming Work Session, I will ask the Commission to urge the Legislature to continue that funding into the next biennium based on the extraordinary progress these folks have made and the expansion they have achieved in the specialty courts. I will open agenda item V, specialty courts.

Michael Douglas (Justice, Nevada Supreme Court):
More than 20 years ago, Judge Breen and Judge Lehman, from the north and the south, were pioneers in the drug court business; they were the starters and they are considered rock stars today for what they did. Fourteen years later, the Legislature got involved by allowing us to receive funds from administrative assessments to fund our specialty courts. We have been moving forward since that time. However, we have had shortfalls over the last few years due to administrative funding shortfalls. I have submitted a document with a chart with revenue trends (Agenda Item V A-1). We have taken a hit to the point where you were not only good enough to give us $3 million for the expansion of our programs, but also to recommend that $1.4 million be given to us because of the shortfall this economic downturn created.

I speak to that because it goes to understanding the difficulty of specialty courts, which are difficult for two reasons. One is that we need consistency in programming so we can build an infrastructure to rely on. In the old days, it was real simple. The judge sat down, got a weekly report and made a decision. The drug courts and other specialty courts that are evidence-based, which is the national trend in programming, are a little bit more complicated. Especially the new mental health courts that require reports from those people involved in counseling and other hands-on programs which relate to those individuals once they leave the courtroom. The judge receives information from the staff, and from the people doing the follow-up. We have a problem, which goes back to our initial funding. We were going this on a shoestring. We made a commitment with our original funding that more than 90 percent of our funding would go to patient care, not for development of the infrastructure. That was great if someone was on probation, because P&P could supervise that person and give us reports. The counseling program could give us reports as to whether the individual was showing up and whether he or she met the requirements. The court itself could give reports as to whether the person appeared on their appearance days. But based on the new evidence-based system, a lot more information comes in and our infrastructure, in terms of a coordinator of that particular court, the people doing the check-ups on these individuals, and even the

issue of judicial officers supervising, has become critical. We have to put more money and pay more attention into that.

We are using a courtroom with their court personnel including marshals and attorneys and that is not in our budgets. It has created a strain in these days of limited cash flow. Recently, there was a statewide meeting in Las Vegas on the opioid epidemics. We chose not to participate, but if it goes forward and has an impact on the court, we are going to have to talk to Legislature about the actual cost of the program, not just the programming per participant. We have been lax to do that and that has got us into the state we are in today.

You were good enough to fund us that additional $1.4 million to get us even board again—$3 million for each of the 2 years. We unfortunately had to revert a pretty good chunk of money—$1.3 to $1.4 million—back in the first year. We expect to spend the full $3 million the second year. Very bluntly, the reason for it was our infrastructure was not what we thought it was going to be. We had to sit down with all our statewide providers and come up with a new funding formula that was not based on whether this was a good program, which goes to another issue of not being able to create new programs until we got this new money.

We were able to work out a formula whereby 68 percent of the funding went to the Clark County region, 17 percent went to the Washoe County region and 15 percent went to the rest of the State; the rural courts. In numbers, roughly $1.9 million went to Clark County, $476,000 to Washoe County and $422,000 to the rural courts. As I said, a large amount was reverted the first year, but we expect to spend the money the second year. Some of today's presenters will tell you the difficulty in immediately turning around and expanding their infrastructure to enable them to meet the needs of participants in the system.

Senator Aaron D. Ford (Senatorial District No. 11):
What was the reason for reverting the money this first time?

Mr. Douglas:
The $3 million was General Fund revenue. When that is funded to the court, unlike the administrative assessment dollars, if that money is not spent by us, it reverts back to the General Fund. So it was not lost; it came back.

Senator Ford:
Why did you not spend it?

Mr. Douglas:
We will cover some of that, but it was largely the infrastructure to create new programs. They were trying to go outside to make it easier because of the numbers of courts and people. In other courts, if you double the number of people, you also have to double the

amount of judicial time needed to oversee the program. This takes away the court time for the civil and criminal calendar. Additionally, they need another court coordinator for these additional people. They also need another team of attorneys to come in and represent. What we thought was simple became more complex because of the reality of this. We think we have it fixed and we are going to go forward, hoping that the next time we meet prior to the Legislature, we can report where we are today with the second year and hopefully we will have solved our problems.

Senator Ford:
What I am hearing is that it reverted not because you did not need the money, but because you could not find the personnel necessary to fulfill the obligations to make this an effective program.

Chair Hardesty:
When the Legislature approved the funding, there was a limitation on its use. It was to be used to expand participation and for direct provider services. So the specialty court funding committee and the courts around the State viewed that limitation as a constraint against their ability to shore up the infrastructure needs that various courts had which would have allowed those courts to expand that. One of the issues that will be presented to the Commission next time, if they will consider recommending the continuation of this funding, is to modify the appropriation language that allows more flexibility for the use of those funds to restore that infrastructure.

David Barker (Chief Judge, Eighth Judicial District Court):
The Nevada Supreme Court's Administrative Office of the Courts (AOC) through its specialty court funding committee has approved $652,438 for Adult Drug Court and $712,938 and $802,938 for Mental Health Court in FY 2016 and 2017, respectively. The documents submitted by Justice Douglas list further funding and program data for FY 2016 (Agenda Item V A-1). The vision was to open Mental Health Court to any court of any jurisdiction in Clark County to bring those who suffered mental illness or are continually in the justice system as a result, into Mental Health Court with the hope and aim of helping them stabilize and stay out of the criminal justice system.

Because of the relatively late start in FY 2016, the Eighth Judicial District Court did remit $1.167 million in unspent General Fund money. We thrived to be good stewards of the money you entrusted us with and followed specifically the direction of the Legislature on how to use that money which, as Justice Douglas just elaborated, proved somewhat problematic. Looking at FY 2017, we appear to be on track and using the funds, if allocated, as we anticipate. The expenditures for June, July and August of this year are shown in charts on page 1 (Agenda Item V B) for your review.

I preside over the Mental Health Court and I believe in the mission of specialty courts. I wanted to use my flexibility as Chief Judge to understand and help that program succeed. One of the visions we had was to find an expert, a doctor, who would go into

the jails and help identify individuals who suffered from mental illness and were brought into the justice system because of that illness, and try to help treat them through Southern Nevada Adult Mental Health Services. We needed a licensed clinical social worker to do that. It took us months to try to develop that procedure; to set up a protocol with the Las Vegas Metropolitan Police Department (Metro) to put that person in the jail so those folks doing their job there knew who this individual was and could help find people in the jail and get people into Mental Health Court. That protocol is basically something we are trying to create. We did not have the money for a long time. The structure of our grant was fairly limited and we wanted to be conservative in its application. We did not have the money long enough to really use it. Our projections are that for the next fiscal year, we will be able to use that money appropriately if it is allocated again.

This is a team concept and as the presiding judge, I rely on coordinators, two treatment providers and the Division of Parole and Probation (P&P) to actively engage with participants enrolled in Drug Court. At my meeting with P&P yesterday, I was told they are doing cutbacks because of staffing issues and that they are going to remove probation officers from Drug Court, Mental Health Court and Felony DUI Court because they do not have enough people. We are already way over national best practice numbers and they are telling me their reality is they cannot staff these courts. This will not work with this high-need, high-risk population if we do not have P&P officers in the mix. Frankly, it was dropped on my desk yesterday on how they sua sponte decided how they are going to staff these important programs. It would be nice for us to take the money if necessary, identify it appropriately, and use it to either supplement that or to at least talk about making sure that P&P could meet their responsibilities.

Also, I manage the Opportunity for Probation with Enforcement in Nevada (OPEN) program. These are high risk young men between 18 and 25 who, but for this OPEN program, would probably be headed for prison. The whole vision when District Judge Linda Marie Bell presented it to the Legislature was to work with NDOC and we would use Casa Grande as a starting location for these young men. Once they completed a program of treatment or staffing, we help them find jobs and point their lives in a constructive direction and then transition them into community. About 6 months ago, NDOC and Casa Grande stepped away from that, so right now I had to find an alternate source through Freedom House Sober Living to help us with the programming for these young men.

Specialty courts are a new animal, and we are literally on the cutting edge of how this is all supposed to work, but these are some of the frustrations we are dealing with. We have 342 people in Adult Drug Court and they are taking one of the parole officers away. It is terrifying. In our Felony DUI Court we have high-risk individuals in the community. But for this program, they would all be in prison, and we are losing a probation officer. It is very, very challenging. We need to sort out the money. We have

tried to be good stewards of the funding. We need some flexibility on how to apply it so we can make these programs work.

Mr. Kohn:
Judge Barker, The Mental Health Court has done a tremendous job. They are difficult clients; we deal with them every day in the Clark County Public Defender's Office. Justice Douglas, with all due respect, when I was hired in the Clark County Public Defender's Office 22 years ago, I was hired to work in the Drug Court. I had the opportunity to meet with Judge Lehman when he was going to Dade County to look at their model because it was then, and I think it is now, the gold standard for all programs regarding Drug Court. They assigned me to something else, so I never worked that long in Drug Court. As you were speaking, I was thinking about Drug Court in 1992 when it was diversionary and pre-plea, like it was done in most of the country.

Since then, Judge Lehman left and I remember Drug Court then being run by Judge Walsh, Judge Elliot in Family Court, Judge Glass, Judge Delaney, Judge Bell, Judge Escobar and now Judge Ellsworth. Unfortunately, we never did, as we never do in the court process, set up rules that are consistent from one judge to another. I do not expect there to be rules for how judges handle every criminal or civil case, but I think there needs to be consistency in Drug Court and there absolutely has not been. I am incredibly unhappy with the drug program in Clark County. I do not know how we got to this point, but Judge Ellsworth requires that everyone entering Drug Court is on probation. She prefers that they are on probation for the longest period possible, which is 5 years. Everyone who goes through Drug Court has to pay a $1,500 fee, whether they can afford it or not. They cannot complete Drug Court without paying that fee, which is in addition to their probation fees of $30 per month. One of the most troubling things to me is that since everyone has to plea, it is preferred by Judge Ellsworth that they be in custody while awaiting acceptance to Drug Court. I know that is not 100 percent, but that is the basic rule.

What drew my attention to this was that Metro, through the Clark County Detention Center (CCDC), requested that the Office of Criminal Justice Programs (OCJP) come and look and say why are we so overcrowded. One of the things brought up by the DOJ was that people are waiting in jail to get to Drug Court. That is not the best practice or what is done throughout the rest of the country. I do not think it is done in Washoe County. What I learned from people at the DOJ, from OCJP, is that we have to have an audit. Someone outside of Clark County has to look at our practices and say what the best practices are nationwide and what is best for Clark County.

We have had almost ten judges come and go, and since Judge Lehman did it for such a long time, we had nine judges in a very short time. The officers at the Clark County Public Defender's office does everything we can to avoid Drug Court, and we have 60 percent of the cases. If I have misstated some facts, please correct me, but I am so frustrated with where we are in Drug Court right now compared to where we were

heading under Judge Lehman. From what I remember from speaking with the late Judge Puccinelli and what he was doing in Elko County, we are so far off the rails because there are no standards and every judge does it the way they want to do it. The idea that everyone has to be on probation for the longest period of time is wrong.

Mr. Barker:
You said a lot in a few minutes. We have talked about your concerns on diversion. It is important to note that District Court Drug Court is not the only Drug Court that serves Clark County and the Eighth Judicial District Court. We have municipal courts, specialty courts, justice court and drug courts. I coordinate and speak with Judge Cruz who presides over that effort. My point is, what has happened in the Eighth Judicial Drug Court is that we have a very high-risk, high-need population so the justice process tends to weed out people who used to find their way to Judge Lehman's Drug Court for diversion and dismissal. Those people are now pleading to misdemeanors or going to Drug Court in Justice Court and finding themselves out of the court system or deferred that way.

District Court is high need with a high potential impact to the community. I do not want to say dangerous, but these are many hard core drug users who find themselves using again without appropriate programming. That includes potential incarceration at CCDC until they can dry out to the point where the experts working in drug court, as I understand it, feel they can reenter the community and have a chance at success. That is the reality of what we have with those 342 individuals. That does not mean there cannot be diversion in terms of diversion and possible dismissal. That is a component of the negotiation on the front end between the district attorney and the defense attorney working the case. I do not think Judge Ellsworth would get in front of, or should not get in front of, the spirit of that potential result. I had not heard about a 5-year maximum requirement on her side and the details and intricacies you outlined. I am more than willing to look into and sit down with you and Judge Ellsworth because your office should be taking advantage of the Drug Court.

Mr. Kohn:
With all due respect, we have had this discussion at many judges' meetings. I know we have more difficult people to work with. We keep violent people out almost exclusively; I know there may be some people who had a violent charge, but for the most part, people who have violent charges are not allowed in the Drug Court. What I am saying is that I do not believe I am an expert in this area, although I have watched it for 24 years, but I do believe that OCJP is right that we need someone outside of Clark County who does nationwide evaluations of programs. It will be my recommendation at this Commission's upcoming Work Session that before the State puts more money into this, we need an audit. I believe we have gotten so far off the rails in southern Nevada. It was at a judges' meeting that I heard Judge Ellsworth say she wants people on probation for the longest period. I recognize it is still the province of the sentencing

judge, but I suspect most judges will defer to her. When you talk about the deals, that is the problem.

The District Attorney's Office has always been opposed to diversion. It started with diversion and it got away from diversion. We need to bring in someone who can audit us and look at what we are doing compared to what the rest of the country is doing. All I am asking is that we look at best practices and see what we have done over the course of 10 different judges. You and I had some interesting discussions 2 years ago when one judge brought in a questionnaire that had never been used before. So we know, regardless if they were right or wrong, that is it up to each judge to put into effect those procedures they want in Drug Court without regard to a discussion of the whole. What I am asking is for an audit of the Eighth Judicial by a group to be chosen by the NSC, not by me or by the Legislature.

Mr. Douglas:
I do not think any of us would have a problem with an outside audit coming in. We are looking to enhance and improve the program. I will comment on your statements about diversion. Twenty-some years ago, it was a different time; it is almost like an entire world ago. Originally in the Drug Court program, a lot of it was diversion. However, that created a great inequity because the people going into diversion for the most part were able to pay for outside counseling. As we started placing those who could not pay, it became problematic. Let me put a step in between; infrastructure. Who is supervising these diversion people? So except for them missing a court date or a counseling date, we had no accountability. It did not make diversion a bad thing, but diversion was put forth for what we termed low risk offenders. The national drug court program changed and said we need to start looking at medium- and high-risk offenders; people who needed more supervision. Quite candidly, as a sentencing judge at one time in my life, some of the choices I had to make about sending someone to prison or putting them on probation was conditioned on putting them in a supervised program. One of the great tragedies we have been part of is that not only has our funding been limited, but the block grant funding we used to count on to our social service agencies so we could refer someone to the Salvation Army or Catholic Charities or one of the other programs, have dried up. Where do we send these people for a supervised program? Please understand, this program is not perfect, but it is still 53 percent successful in keeping these people out of jail. This means they can get a job, start a family and be positive again in their communities. I agree, this is a very complicated thing and our statewide drug court committee has been trying to work with how we program. In the beginning it was to let each area create its own program, but in the last few years we have been drawn into trying to adapt to, as you said, a standard. And as you are saying, we have not totally succeeded at that.

Senator Ford:
I was baffled to hear that P&P is going to be cutting staff on these programs and I wanted to hear why. Maybe the answer is, as Mr. Kohn just indicated, if everyone who

goes through Drug Court is required to be on 5 years of probation, it puts a strain on P&P. I am just guessing; I do not know.

I am also interested in understanding why is Clark County so different than, say, Washoe County? The phrase I heard was high-risk, high-need people in our program, but how different is our population here in Clark County than in Washoe County? Do they also have high-risk, high-need defendants there? If so, why is it they do not feel the need to have someone on 5 years of probation?

Mr. Barker:
I do not know the answer to that.

Chair Hardesty:
Perhaps it would be useful to ask Mr. Pierrott, Judge Stiglich and Vice Chair Jackson to comment.

Jorge Pierrott (Lieutenant, Parole and Probation, Department of Public Safety):
I want to clarify some comments made by Justice Douglas and Judge Barker. Parole and Probation (P&P), the drug courts and the mental health courts have a unique way of working with supervision when it comes to individuals in their programs. Many of these individuals must report to the courts and are being supervised partially by the court as well as by P&P, supervising in the field or in the community. We are not taking officers away from them; they are simply being placed under a low risk supervision unit. This is a group of officers who will supervise these individuals in the community and continue to work with the court. We are concentrating on what the national trends are; if the individuals have low risk, we are working with them through this unit. We will continue to supervise the high-risk individuals the same way we have always done. We are not taking the officers away from them; they are simply being moved to a different unit and being supervised in the community that way.

Mr. Barker:
It was my understanding that current staffing from P&P for Drug Court supervision is three officers in the field and one reporting in court as a matter of routine practice. I asked the question very specifically of Captain Ely. Frankly, it is not a lack of desire or understanding of the mission it is the fact that they do not have enough individuals trained and capable and they are triaging the reality of the staffing. But the bottom line was that they were moving one officer from Drug Court in the field and one from the DUI Court in the field, and that court was going to one. They were not going to touch the Mental Health Court; we have two there. It is a high-risk, high-need position. I have worked in this system for more than 30 years and I understand the challenges P&P has faced for decades, but that is what was reported to me yesterday very directly; no ifs, ands or buts.

Chair Hardesty:
If there is a communication breakdown, it needs to be cleared up, but Judge Barker is a pretty good listener. One thing that is clear is that these courts will not function without adequate supervision participation from P&P. If people are being pulled out, that is an issue.

Jim Wright (Director, Department of Public Safety):
Granted, we are trying to address our staffing needs and the service levels we are providing to all the courts and to the individuals under supervision. What I was advised about this change was, as Mr. Pierrott indicated, that it is just a shift of these specialty courts into a more lower risk module for supervision. We will go back and have staff clarify what that is, but we are not cutting staff; we are trying to hire staff. It is basically trying to cover these mandated service levels, either required or perceived, that we are trying to cover as best we can with the limited staff we have. We are making progress; we have two academies in play which will produce more P&P officers in the next couple of months. I apologize if there was a misunderstanding that we are cutting resources out of the courts; it is just a restructuring of how we can best use our limited resources.

Chair Hardesty:
Would it be out of line to request memo before the next meeting to clarify the staffing changes in the Eighth Judicial District with a copy to Chief Judge Barker as well? Judge Barker, if that is still an issue, please advise the Commission so we have that information from your perspective.

Mr. Wright:
Certainly; we will provide that.

Judge Lidia S. Stiglich (Second Judicial District Court, Washoe County):
With respect to Washoe County's District Court specialty courts, all the specialty courts are post-plea. We do not have a pre-plea diversion set up in the Washoe County District Court. If it is different in Justice Court, Judge Pearson is here and I am sure he can address that.

Most, but not all, of the participants in specialty courts are supervised by the Division of Parole and Probation (P&P). The period of time a person participates and is under supervision if referred to specialty court is a minimum of 12 months and a maximum of 36 months. Regarding your comment about people being put on probation for 5 years, under the Washoe County structure, if someone went into the program and was successful, that person would be off in a minimum of 12 and a maximum of 36 months.

James Popovich (Specialty Courts Manager, Second Judicial District Court, Washoe County):
In Washoe County, we served 53 participants over the last part of FY 2015-2016. Going into FY 2016-2017, we are projected to serve another 42, which would bring us to

95 total. We spent $96,000 and we also struggled. Going back to what Justice Douglas said about the original funding and the purpose of that funding, dedicated to help with participant care with professional services, whether it be drug counseling and testing, and not so much with infrastructure. That is exactly what we are working with this this new funding. We have a medication assistance treatment court. With that we needed to find a certified physician or addiction specialist psychiatrist to do evaluations and follow-ups to the medication piece. Many services are not reimbursable through Medicaid, which is where funding came in helpful for those providers as well as the drug testing. We have been underfunded in drug testing. Best practice states that drug testing should be at least twice a week for the duration of a program. For example, our existing Adult Drug Court is comprised of 300 active participants, so twice-weekly drug testing would cost approximately $500,000 per year.

We started a Youth Offender Drug Court pilot program in May 2015 to target individuals aged 18 to 24 years old who are suffering from opioid-related substance abuse disorder. We partnered with Northern Nevada HOPES and The Children's Cabinet, providing the academic, vocational development piece. This is a newly funded court, starting in July 2015 with funding. A year later, we have served 22 individuals in that court and this summer we had our first five successful graduates. We have 75 percent of participants employed while 68 percent live in stable housing, either alone or with family; and 32 percent are in transitional living.

What we see with that age demographic is that nearly 20 percent of those entering youth offender court have not completed high school. That is a big piece because if we were to put them into the job market, they need that degree to be employable and they need to have some skills. That is where Children's Cabinet comes through. To emphasize, covering these different courts and where the funding has been most useful, it is for case management services, medication and related services, whether it be a physician or psychiatrist. A lot of those services are Medicaid reimbursable, but there are gaps. For example, when our participants get more productive and start making a certain amount of money, they are dropped off Medicaid. If they are covered for their medication, for Suboxone, for example, to treat their opioid addiction, that provider has to find an alternate funding source.

Regarding specialty court funding and the criteria for specialty courts, I have been part of specialty courts since 2011 in Washoe County. What I have seen is that the Administrative Office of the Courts (AOC) has done a tremendous job incorporating the 10 key components of the National Association of Drug Court Professionals best practice standards into their funding criteria.

Chair Hardesty:
Could you provide the statistics on the number of persons in both the adult drug court and adult mental health court in Washoe County?

Mr. Popovich:
We have 300 active participants in adult drug court and 140 active participants in adult mental health court.

Senator Ford:
Is high-risk, high-need a term of art? If it is not, I am wondering whether that population is in Washoe County. I am trying to compare the reason why we need 5 years of probation here but Washoe County does not need that much for the same population there. What is the population of individuals in the Washoe County drug court system?

Mr. Popovich:
At least 25 percent of our Drug Court population would be high risk, high need.

Senator Ford:
Which is different here, because everyone in our Drug Court is high risk, high need. Is that right, Judge Barker?

Mr. Barker:
I do not know of the breakdown in Clark County. My general sense is that the majority of them would be, but I could get the answer for you.

Senator Ford:
I think the bottom line for me is, and you probably picked up on it, I would like to know if there is a difference between the probation requirement in Washoe County and Clark County for individuals who are similarly situated relative to their categorization of high risk, high need.

Chair Hardesty:
Has Washoe County been informed of any supervisory or participatory changes by P&P?

Mr. Popovich:
Nothing that we are aware of.

Mark Jackson (Douglas County District Attorney, Vice Chair):
Douglas County participates in the Western Regional Drug Court along with Lyon County, Carson City County and Storey County. Just like Washoe County, all our participants out of Douglas County in our Ninth Judicial District court are post-plea. I want to highlight a statement Judge Barker made about the plea negotiation process between the prosecuting attorney's office and the defense attorneys. I can tell you that 16 years ago when I started out as a prosecutor, I was more aligned with incarcerating our way out of all of these drug crimes that were occurring within our jurisdiction throughout the State. Over the years, working on statewide task forces and being a member of the Attorney General's Substance Abuse Working Group, there is no doubt

that my philosophies have gone to the other side—to prevention, education and treatment, knowing we cannot incarcerate our way out of this. In Douglas County, looking at our low level category E felony drug possession cases with no prior offenses, 100 percent of those cases either result in a misdemeanor or they would be an absolute diversion into Drug Court if the individual so elected. The timing for our diversion is the same as in Washoe County; from 12 months to 36 months.

Scott Pearson (Judge, Reno Justice Court):
For nearly 5 years, I have had the privilege of presiding over our specialty courts, one of which is usually ranked in the top four or five in terms of size of the 60 or 70 programs in the State; our Drug Court. In our Drug Court, our CCP program, 100 percent of those individuals are high need, high risk. Senator Ford, yes, it is a term of art—there are validated tools that will tell you whether someone is high risk and high need and best practices are to focus primarily on them because they cost the most to the community, both through incarceration, with the highest recidivism rates, which is high risk, and the high needs that includes the other ancillary services they require in the community.

In 2013, the Legislature did a great thing and passed Assembly Bill (AB) 415, that is community court.

ASSEMBLY BILL 415: Revises various provisions relating to criminal justice. (BDR 15-804)

It allowed for the first time a diversion program for misdemeanors. It was fantastic, but of course it came with no funding. The requirement was that individuals, in order to receive the diversion, had to go through a screening for mental health, substance abuse, housing, education, employment and whatever other needs they have. Basically, the way I explain it to those in the program, we are going to try and find out what brought you here and give you the help so you do not come back into the criminal justice system.

Washoe County stepped up and provided a prosecutor and a clinical social worker to screen all those individuals. Again, we are still lacking in the treatment. I just finished my most recent grant request to the AOC and it asks what are the biggest burdens or hurdles for the program. Quite frankly, it is, and always has been, funding and services. The services will come if we have the funding.

These are complex packages we are unpacking; these individuals that come to us. We need money for evaluations and mental health issues are a big part of it. If we just treat one side, we are not doing any good. So we luckily had that as well through Dr. Keating, a psychologist who works with us, but again, we need to be able to pay her. We primarily focus on younger people in our community court; those with heroin addictions who lack stable housing and who need structure and support. We have a Commercial Exploitation Court (CEC) for young women who find themselves involved in the sex

trade to feed their drug addiction, which is often heroin. Housing is incredibly important. We need a sober living environment with structure, and that is not free.

Monitoring the drug use is very important as we have to test for drugs and/or alcohol a minimum of 2 out of every 7 days, including weekends and holidays. Using a medical analogy, if you were getting cancer treatment, the only way to tell if it is working is by testing with at CT-Scan or MRI to see if the cancer has shrunk or is growing. We do not take drug testing away until the person graduates. To have staffing to test on weekends and holidays and around people's work schedules is very expensive. We need money for an effective testing program because it is the bottom line of telling us whether we are being successful with these individuals.

We have learned more and more of what is necessary with programming—dialectical behavior therapy, more recognition therapy, cognitive behavioral therapy—all in addition to the substance abuse group and individual programs. When Dr. Keating started working with me, she would hedge her evaluations on bipolar or some other diagnosis. She said, "Quite frankly, Judge, it's just how long this person has been using drugs. I don't know; I don't know if it's drug induced; I don't know yet what we are dealing with." So it takes a long time to help these individuals. We employ a Learn to Earn Program, resume building, GEDs, interview skills and pro-social activities, giving them something to enjoy in their lives other than drugs. It is not rehabilitation, especially with a lot of these younger individuals or the commercial exploitation females, it is habilitation. That is time-consuming, staff-consuming and resource-consuming.

Some medication can help, but that is expensive. One woman we were able to help because of the money you provided with the additional General Fund allocation is Shelby Blodgett who is in the Commercial Exploitation Court. She was beaten and abused, forced into the sex trades and shot in the back at one point by her pimp. While she was incarcerated, death threats were being delivered to her by female inmates from her pimp. We were able to get her out of State and into treatment 9 months ago. She is a completely different person. We would not have been able to do this without that funding you provided. As far as spending the money, I had much of the infrastructure in place so I was able to spend 75 percent to 90 percent of my allocation. But because of the red tape with the County—setting up the accounts, getting it on the agenda for the County Commission—I did not receive the money until January. So in 6 months I was able to spend most of that money. I am confident we will spend 100 percent of it because of the great needs we have.

With regard to best practices, Justice Hardesty, who was Chief Justice last year, made sure we addressed the best practices first thing, before any of the funding was allocated; to ensure that the top 10 key components were voted in by the specialty court funding committee and mandated for the program. While I share Mr. Kohn's belief that we all need to have outside people from time to time come in and look at what we do, and we should be welcoming that, it would not be appropriate or accurate in any way to

leave this Commission with an impression that the AOC is not on top of this issue with regard to trying to make sure the 60 or 70 specialty courts in the State are following best practices, using the money wisely and doing the best they can to help these individuals. Please do not take away from the remittance of this money that somehow we do not need it or that somehow we have enough. We do not. I could parade in these young individuals and their family members and they would thank you and ask for more help with their loved ones who are struggling with addiction and everything that comes with it. Your money is going to good use. We need more; not less.

James Dzurenda (Director, Nevada Department of Corrections):
For Judge Barker, next week will be my 6th month as Director of NDOC and this is the first I am hearing about the deferral from Casa Grande to Freedom House Sober Living and I will look at that. On the issues with the mental health courts, what I see as a problem on my end, which I am hoping we can resolve some of this as a community, is that the jails, prisons and community mental health have different criteria on for what is called the seriously mentally ill, or SMI population. I have not looked into the courts to see where that is, but all four of us should all be on the same page of what that criteria is so prisons are not doing different treatments than the community, especially when I go to electronic health records. Everyone should be on the same standardized system so we are treating everybody the same and the decisions factors I use in the prison should be the same in the community to keep continuity of care.

On September 6, I spent the day at the Second Judicial District Court in Reno, monitoring and observing the reentry courts and the drug courts. I did see an enormous impact that it made on these offenders, not only with them, but with their families in keeping them more successful. I am trying to find some ways where—if we do get corrections and the community does get these Second Chance Act grants from the federal government—we can use some of those funds to increase the drug courts. The more and the better the drug courts do, it saves my end money because we can reduce our prison populations. Also, the community goal is not just to get these offenders off their addictions for these drug courts; it is also to reduce the victimization in the community, which I witnessed at the 20 hearings I attended on September 6. It was really powerful. I support these specialty courts. I would love to reduce my population to reinvest some of our funds in the budgets that I have into the specialty courts because I know the impact it will make in the community by reducing victimization.

Mr. Douglas:
Thank you for your work on the specialty court programs. We will also submit the four relevant pages of that report (Agenda Item V A-2).

Mr. Kohn:
It is my understanding that there are 342 people in Washoe County Drug Court?

Mr. Popovich:
There are 300 active in Adult Drug Court at the Second Judicial District.

Mr. Kohn:
And there are 342 in Clark County, correct?

Mr. Barker:
That is what my numbers show.

Mr. Kohn:
I really believe in these programs and I want them to work but as Mr. Jackson says, they are always the product of a negotiation from the prosecutor and the defense attorney. My concern is when we enter into a deal with one judge and then another judge takes over the program, which has happened frequently down here, and all the rules change. Judge Stiglich, are there fees to be in Drug Court in Washoe County? Are they on a sliding scale or a fixed scale?

Ms. Stiglich:
There are fees in Washoe County; I will defer to Mr. Popovich because they are different for different programs.

Mr. Popovich:
This was voted on and approved by the judicial council last fall for Felony Drug Court participants; they must pay a minimum of $1300 and a maximum of $2300. Because of their needs, the decision was made to not charge participants for Mental Health Court or Veteran's Court. Some of the other courts, including felony DUI and prison reentry, gave some latitude to each court.

Mr. Kohn:
Is this based on the ability to pay or is it a flat fee?

Mr. Popovich:
It is a flat fee.

Senator Ford:
Is there a **j**urisdictional issue relative to veteran's courts in Clark County? Is there something the Commission needs to know about and/or deal with in the next Session of the Legislature?

Mr. Barker:
Yes. The issue on jurisdiction is whether or not Justice Court has the ability to administer a Veteran's Court. Current statute directs diversionary court for veterans to District Court primary jurisdiction. We in the Eighth Judicial District would support the Legislature's review and consideration of expanding jurisdiction to allow veterans to be

served in Justice Court, as they are, frankly, now, and in District Court as we do as well. In terms of administering that, I would even like to have the ability to use judicial resources efficiently in some capacity to find the best quality judge for each specialty court and focus participants to that court. I do not care whether it is a justice of the peace or a district judge—I want the best judge in that position to affect a good result.

Assemblyman Elliot T. Anderson (Assembly District No. 15):
Since the subject has been brought up by Senator Ford, myself and a few other people have been in discussions to draft that sort of a measure for the jurisdictional issue and also because there have been some conflicts in terms of the way the program is being run and what is in statute in terms of sentences that cannot be suspended. There has been some discussion with stakeholders to clear up those issues.

Chair Hardesty:
Is this a matter either of you would want included on the list for the next meeting?

Senator Ford:
If I understood Assemblyman Anderson correctly, a bill draft request (BDR) might be forthcoming from him and/or some others, so it would not be necessary.

Adam Laxalt (Attorney General, Office of the Attorney General):
As one of our bills, we have submitted the clarification of the expansion of jurisdiction beyond District Court as Judge Barker said. It is sort of happening in certain places, but we did submit a BDR to make it abundantly clear that it can be extended to all lower courts. We did not deal with a number of the other issues mentioned, so we may need to confer with some of the Legislators heading into the Session.

Chair Hardesty:
I will now open agenda item XII. At the last meeting we had an excellent presentation by Kelly Mitchell from the Robina Institute. I had several follow-up questions for her and we also have Professor Frase, who will supplement her presentation on 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):
One thing you asked for was what the experiences were from other sentencing commissions. I submitted a document titled, *Initial Guidelines Experiences in Other States* (Agenda Item XII A-1) that contains information from historical materials and discussions I had with people from several states to get a better sense of what was going on in those early days of sentencing commissions. The first thing to think about is why were the commissions formed and what were the reasons for pursuing sentencing guidelines.

Alabama was experiencing prison overcrowding and the federal government had intervened there several times. They just needed a mechanism to get better control of their prison population.

Kansas, on the other hand, moved to guidelines in an era when truth in sentencing was a predominant practice. They were motivated by that but they were also concerned there was racial bias in their system and that the crime classification the Legislature had developed was out of whack—property crimes were being categorized as more serious than violent crimes and they wanted a mechanism to correct that.

Pennsylvania sought to increase sentences. There, certain parts of the state were utilizing probation to a high degree and they were imposing very short prison sentences. That was not in line with what the state wanted. They sought guidelines to bring about uniformity in sentencing.

Washington D.C. was forced into it by necessity. They experienced extreme financial difficulties in the 1990s and the federal government assumed responsibilities for the criminal justice system. When they did that, the trade-off was that Washington had to move to truth in sentencing and had to find a way to abolish parole.

Virginia went to a sentencing commission because it was concerned with sentence disparity. So the reasons why commissions went down this road are varied, but guidelines were seen as possible solutions to all these potential issues.

How did they get started? Every state started by examining data and many engaged outside resources like the Vera Institute and the Urban Institute to help gather data that had never before been pulled together in one place. The goal in all states was to discern which were the pronounced sentences and how long offenders were actually serving. They also wanted to learn what the parole release factors were on the back end of those sentences and what factors drove those sentencing and release decisions. Many states found that in some cases the time served bore little resemblance to the time pronounced. Alabama, for example, had high prison sentences pronounced, but the actual time served ranged from only 10 percent to 30 percent. In contrast, Pennsylvania had higher time served; pretty close to the minimum sentence. The parole practice was a little closer to release on the minimum sentence date. There was also geographic or racial disparity in sentencing; differences from region to region and within racial groups. These factors all reinforced the states to continue with the sentencing guideline process to resolve some of those issues.

The next critical points are to answer the question of if you enact guidelines, how do you do it and should you abolish parole at the same time. In Alabama, it was not considered to be politically feasible to abolish parole. If they had done that, they would have had to reduce the sentences dramatically. So if the court was ordering a 50-year sentence but the offender was only serving 5 years, in order to abolish parole, you have to change

that sentence to 5 years which was too big of a change all at once for that state. Instead, they decided to enact sentencing standards to start to slowly move their bench to sentences which were closer to what the offender would serve in the parole system.

Kansas did abolish parole, but instead of completely eliminating the parole board, they changed their function, making it instead a prisoner review board that is responsible for ensuring that release plans are in place and handling violations and revocations.

Minnesota also eliminated parole but when they enacted guidelines, they did not do so retroactively. So their parole board had to remain in place for a few more years to address the prisoners who were sentenced under the old system. As the parole board worked through that group, eventually the need to have the board in place lessened. Following the enaction of the guidelines, the parole board reviewed all prisoners against the sentencing standards that were enacted and adjusted a few of those. There was a post-conviction process that occurred within the courts which reviewed the sentences of the majority of the other prisoners. About 1500 sentences were reviewed and 300 sentences were revised through that process. A couple of years after the enaction of the guidelines, the parole board function had diminished and they had moved through the bulk of the prison population so the Minnesota Legislature eliminated the parole board and transferred that release function to the Department of Corrections, a system that still stands today for the few indeterminate sentences in that state.

In contrast, Pennsylvania never thought about abolishing parole. They had practices where offenders were generally being released close to the minimum sentence so they did not feel that part of the process was out of whack. Instead, they wanted to bring more uniformity to sentences that were pronounced on the front end. Over time, they had a few instances where parole practices were more conservative than expected, after, for example, a high profile case. For the most part, they have been able to accurately predict what the parole will be for offenders. Basically, their model is to have the front end; the sentencing side and the back end; which is the parole side, work together.

Washington D.C. had no choice. When the federal government took over the criminal justice system there, they abolished parole for about half of the offenses. The local government did not think it made sense to have two sentencing systems in place, so it eliminated parole for the rest. The sentencing guidelines were put into place for all offenses.

Looking at developing the sentencing guidelines, there are three things that need to be done—rank the offenses to set the severity scale, develop a criminal history score and finally, set ranges within each of the cells on your grid. With regard to ranking offenses, Kansas was guided by three principals of harm—society's interest in protecting individuals from emotional and physical injury, private property interest and integrity of

government, institutions, public peace and public morals. They applied those three principals to every offense and that set the general offense severity for them.

I submitted a report from the Minnesota Sentencing Guidelines Commission to the Legislature in January 1, 1980 (Agenda Item XII A-2); outlining the method they used to establish their sentencing commission. They literally put every offense on an index card and had members rank them. Collectively, those were assembled into an order that was based on common agreement from the commission.

When Washington DC ranked its offenses, they looked at several factors including actual sentencing practices, which was a clue to them as to how severe the crime appeared to be to practitioner. They also looked at practitioner views of what the ordinary case was, the harm to victim and the community, the statutory penalties that were prescribed and finally to the commissioners own intuitive sense of the relative severity of the offenses. Ranking is iterative—you take a run at it, look at it and then take another run at it. Each of these jurisdictions went through several different phases to arrive at the final ranking they used within their guidelines.

With regard to developing their criminal history scores, Kansas had a discussion about whether their criminal history was a potential risk assessment tool that would tell them about the future likelihood of the offender to reoffend or whether it was something that measured the culpability of the offender, or how blameworthy they were. They decided that for them, it was culpability. Since their guidelines were grounded in the concept of just desserts, for them, they would focus on the culpability of the offender so they built their criminal history score around that factor. There are a number of policy decisions to make and Kansas actually held public hearings to talk through many of those decisions, which is partially how they arrived at their final scores.

Minnesota started with data, looking at the variables that had proven to be significant in their data analysis—the felony convictions, juvenile adjudications, and whether the person was under a custody status when they committed the offense. Minnesota added in elements they thought needed to be represented even though they had not been proven to be significant in the data. That primarily was the addition of the misdemeanors.

Finally, some information on setting sentencing ranges. Washington DC has the best description of what they have done; they chose to be descriptive. You have a choice to set guidelines that are descriptive based on historical practice or you can be prescriptive, meaning that you are setting the bar even though it may not resemble historical practice. Washington DC chose to be descriptive, looking at actual sentencing practices and choosing that their grid, since it is based on the ordinary offense, the ranges should represent the middle 50 percent of actual sentences imposed. So they “cut off the tails;” the outliers and the cases that were more and less severe than usual, focusing on that middle 50 percent. Judges could then depart if they chose. Alabama

chose to be prescriptive, with high sentences being pronounced. Since those high sentences were not what was being served, their guidelines were an attempt to try to start to bring those pronounced sentences more toward a normal range. They have not gone all the way, but they have tried to move the court in that direction through the use of their guidelines.

Richard S. Frase, J.D. (Co-Director, Robina Institute of Criminal Law and Criminal Justice; Professor of Criminal Law at the University of Minnesota Law School):

Criminal history, at least in terms of a score, is a unique thing in sentencing guideline systems so they vary tremendously. That is one of the things we have been studying in a criminal history enhancements project that led to the Criminal History Enhancement Sourcebook (Agenda Item XII B-1) to document all the different ways that guideline systems have defined and used criminal history scores.

The four topics I will cover are what goes into a criminal history score, how do those components translate into a category on the grid in the columns from left to right, how to the commissions decide what goes into their criminal history scores and finally, how does criminal history scoring relate to the use of risk assessment tools.

One of the basic components in these scores that every system includes are prior felony convictions, although they differ in whether they are just counting one point per felony or whether they are weighting them according to the seriousness of the prior felonies. There are also questions as to timing—if it is an old conviction; many jurisdictions have rules that say after a certain number of years they will not count an older conviction. On the other hand, sometimes a conviction is too recent to be included, particularly if it is a current offense. If there are multiple counts being sentenced all on one day, most systems do not count the multiple counts in any of the criminal history scores for any of those crimes. The other common components are prior misdemeanors, juvenile court adjudications and the concept of custody status—whether the offender was on supervision and it is usually post-conviction supervision but a few jurisdictions include pre-trial release crimes. Custody status includes crimes committed in actual physical custody if the individual is in jail or prison, but most of them are crimes committed while the person was on release in the community. A few jurisdictions also look at whether the person has had a prior release violation even if they were not in custody at the time of the current offense. They also look at whether the offender violated probation some time in their past or whether that person actually got a prison sentence for their prior felony, which helps to scale the seriousness of that offense.

All those common components are then given a certain number of points; obviously, felonies count more than misdemeanors, which a few jurisdictions do not even count. Adult felonies count more than juvenile felonies and juvenile adjudications are sometimes time-limited, so they do not count after an adult reaches a certain age. One jurisdiction does not count juvenile adjudications at all.

Then the question is, how do those points for the different components, added up to a total point score, translate to the column on the grid for criminal history? We submitted a document titled *Comparing Criminal History Enhancements in Three Jurisdictions* (Agenda Item XII B-2). On page 2 is the Minnesota grid, which is a fairly typical sentencing guidelines grid. In that system, the points translate directly into a column on the grid. So if one had a prior felony and it was of a medium seriousness, it got only one point and that would go into column one. That person might also have misdemeanors, juvenile adjudications, custody issues, etc. Notice that all of this score is capped in Minnesota at six or more points. To my knowledge, every guideline system has made a sort of normative decision that at some point that they are not going to keep running up the recommended sentence because a person has more points or a higher criminal history category. One reason for doing that is to make the sentence proportionate to the current offense. If you just keep increasing the recommended prison duration with every additional criminal history point, you could have somebody convicted of a low level crime who is recommended for a sentence equivalent to armed robbery or rape. That makes no sense, so it is capped at a certain number of points.

Some jurisdictions, instead of having a column that is the number of points, have a category within which there is a point range. For example, in North Carolina, category I is either zero or one point and the highest designation, category VI, is 18 or more points. Each is a range of points; not always just the number of points. Some jurisdictions have more qualitative or descriptive sorts of criminal history scores. In Minnesota, for example, to get into column 3 halfway across the grid, page 2 (Agenda Item XII B-2), in Kansas and Oregon they would say they are not just going to add up the points no matter where they came from, there had to be at least one violent crime before an offender qualified for a cell that far across the grid. This is also a way of prioritizing how we use prison; to make it clear that we mostly want violent offenders in prison, not high prison sentences driven by a large number of minor, nonviolent crimes.

How did they decide on the makeup? Kelly talked a bit about the different ways of constructing a score and also the different rationales for the score. Of the two basic rationales—the risk rationale where a person with a higher criminal history score is expected to have higher risk of recidivism and the just deserts or retributive culpability model which says a person is more blameworthy for their current offense if they have more prior convictions—whichever one you pick would have implications for what components you put into the score and how you weight them. Kansas had the strong just desserts culpability model and Minnesota has gone back and forth a bit. In recent years they emphasized increased culpability for the repeat offender and there are also statements in the earliest documents which recognized that criminal history also serves for crime control related goals as a proxy for risk. Being higher risk people, they need more deterrents and incapacitation and closer supervision.

Some jurisdictions, without even identifying the rationale, said they needed a criminal history score because judges have always considered prior records. Almost every

jurisdiction that had any data used it as a starting point for constructing criminal history scores. Once they found out what the prior practice was with respect to criminal history, that determined the criminal history score. Other jurisdictions tweaked the prior practice by making a normative prescriptive policy decision that, in Minnesota, for example, prior misdemeanors should be counted and given at least a little bit of weight because they thought it was the right thing to do, even if judges had not been doing it consistently before. It is a mix of data and historical descriptive policy making. One can always look at some other sentencing policy goals like examining the racial impact of a particular set of rules, something more and more jurisdictions are doing. If we know that a certain group of offenders has a certain kind of prior convictions, they will run up higher scores and we want to then ask if we care if our criminal history score model has a strong racial disparate impact. That takes us back to ask what is the score doing for us; what is its purpose and if we think the criminal history score is a proxy for risk, is it really a proxy for risk.

Finally, how does criminal history relate to risk assessment tools? In a jurisdiction like Kansas and to some extent, in Minnesota, where their focus was on culpability, they did not have to ask that question; they just determined that repeat offenders are more culpable and that they would either model what the judges had done or have their own assessment of what kinds of prior records make an offender more culpable. If you are basing it on risk, make sure anything in the score that increases the total score and therefore increases the severity of the recommended sentence is adding risk prediction value, not just taking up prison beds. That leads to the question of whether, and to what extent, sentencing commissions have actually validated their criminal history scores as risk assessment tools. It is something we are trying to promote.

To my knowledge the only jurisdiction that did that from the very start was the federal commission. When they were setting up their federal guidelines in the 1980s, they looked at prior sentencing practices but they also wanted to know if a score based on those practices was going to predict risk. They compared offenders with a score under the new model and the Salient Factor Score, which the U.S. Parole Commission had developed. They found that their criminal history score correlated with the Salient Factor Score, therefore they decided they could have something that is a criminal history score and have some confidence that it correlates pretty well with recidivism risk. In recent years, the U.S. commission has revalidated their score. In one case, they dropped a component of their score; one that said if you committed a crime within 2 years of being released from a prior sentence, you will get an extra point. They found that did not add any risk prediction value; it just used up more prison beds, so they dropped that component. They are now about to release some new studies to drill down further into how different parts of criminal history scores predict risk.

Virginia has a sentencing guideline system that uses risk assessment tools two ways to let some people out of prison who would otherwise be recommended for prison if the tool shows they are very low risk. They also have a high risk for sex offenders. That

comes after the basic guidelines process has been worked out. First, they compute the offense severity and the criminal history and that gives them a recommended sentence. If a person is recommended for prison, then these risk assessment tools kick in, causing up to 25 percent of the prison recommended offenders to be eligible for probationary sentencing. It is added on as a further step in the process; it is not incorporated into the criminal history score.

The bottom line is that every criminologist will say that as a general rule, the more prior convictions somebody has, the higher the risk to reoffend. You still want to know about the particular score components and the very old convictions and old offenders. One of the problems of criminal history is that unless you have a fairly strict limit on old crimes, you could have someone 55 years old and aging out of criminality, but they are recommended for a severe sentence based on things they did 20 years ago. That is a case where criminal history scores fail as a proxy for risk assessment because they do not factor in an offender's current age or anything else about his or her current situation—if they are married, have a job and children to support and have been treated for the chemical dependency that caused their convictions in the past.

Chair Hardesty:
Ms. Mitchell, you identified reasons why certain jurisdictions initiated a sentencing commission approach, but it sounds like even though there might have been a particular reason for Alabama or Kansas to initiate it, there were other benefits that came with the enactment of that approach. Is that correct?

Ms. Mitchell:
I would say so. Most commissions are formed for the express purpose of developing sentencing guidelines, so it is really the guidelines themselves that bring those other benefits—uniformity in sentencing and proportionality so the sentence matches the crime and the criminal history of the offender, hopefully reducing racial disparity but we have seen that there are continuing issues in that area.

Chair Hardesty:
Also, those guidelines provide better predictability to the defendant and to the victim as to the time an individual will serve in prison.

Ms. Mitchell:
That is correct. The most predictive guidelines are the ones that are in determinate states where there is no parole on the back end, but even in states where that occurs, guidelines can bring more certainty to the term the offender will serve. The other benefit to the state is the ability to predict the prison population and to control those correctional resources because you can predict what those sentences will be and what the actual terms of service will be on the sentences.

Chair Hardesty:
Professor Frase, is it correct that in Minnesota, the experience with respect to the development of the criminal history score was something developed by the sentencing commission with input from various stakeholders?

Mr. Frase:
Yes, the commission, like all state commissions, was designed to be representative of the different parts of the criminal justice system as well as having several public members, so they got input that way initially, just from the different constituencies in and outside the commission. They also had a very extensive series of public hearings around the state to gather input so they were not just sitting in a closed room talking among themselves. The composition of a commission is important. One of the problems the federal system has had is that there are only five voting members and I think they are all judges but there are no defense attorneys or correctional officers. It helps to have a large enough commission so it is a well-represented body in order to get input on everything you are doing.

Chair Hardesty:
In Minnesota and most other jurisdictions with sentencing commissions, they examine this on crime by crime basis; not confining their evaluation to try and fit crimes within categories that were ill-defined or not defined. Is that correct?

Mr. Frase:
Yes, we never had a felony class system they way many states have, but one could have constructed such a system using the statutory maximum, for example. They did not look at that initially; they put the 104 most frequent offenses on the cards and used an ingenious system to rank order first within categories of crimes—violent crimes, drug crimes, etc.—and then they clustered the 104 cards they had all ranked into initially 10 offense severity levels. They basically disregarded, at least in the initial ranking, the statutory provisions and went on the basis of not only their own rankings, they also looked at how those rankings compared to existing practices. Once they ranked the offenses, they had to make the further decision of how to draw a line between the cases that are recommended for prison, even in a typical case, and those that are recommended for probation. I think they tried to make sure the violent crimes were on the prison side of the line and that mandatory minimum terms were all in the prison zone, not the probation zone. They did take the existing law into consideration. The salutary effect of having a comprehensive reassessment of the whole group of crimes at one time gets you away from the crime of the week phenomenon where individual crimes are enacted or modified here and there in isolation. Rather, you can look at the big picture, set priorities and proportional rankings to look at all the crimes at once.

Ms. Mitchell:
I talked to the original research director for the commission and she emphasized that in the ranking process, they had to think about what is a typical case for that crime.

Sometimes a typical case is right in the middle, and sometimes it is on the extreme end. Some crimes are always horrific and a typical case is horrific, so you have to think of that case when you are ranking it. Some crimes have a typical case that is more standard and right in the middle, so you have to think of that case when ranking it.

Chuck Callaway (Police Director, Office of Intergovernmental Services, Las Vegas Metropolitan Police Department):
I certainly support programs that reduce recidivism and reintegrate people back into society and I firmly believe the punishment should fit the crime. We saw the grid at the last meeting (Agenda Item XII B-2) page 2, showing how the different point scores would equate to a particular sentence. One thing I am always concerned about is the impact on public safety, the impact on our officers out there enforcing the law, and the impact on our victims. For example, looking at the most recent Uniform Crime Reporting Program data that I have, the murder rate for this year compared to last year in Clark County is up 57 percent, rape is up 24 percent and robbery is up 6 percent. I just looked at a news article from Minneapolis, Minnesota and it says that, "families in Minneapolis struggle with safety concerns as violent crime continues to rise."

My question is, how long have these sentencing guidelines and the grid been in place in Minnesota? Has there been research done since it was implemented? Because just taking a quick look over the Internet to 2012, it appears that crime has been on the rise in at least the city of Minneapolis since 2012. Has anyone studied how this sentencing structure has impacted public safety? How many of these individuals who take advantage of this sentencing structure are repeat offenders? When I looked at the high level of the grid, I do not have concerns because obviously, those are your most serious crimes. When I look at the low level of the grid, I do not have major concerns either. But where I saw concerns was in the middle of the grid where, for example, under robbery, a person could potentially, based on their score, have three or four offenses before going to jail.

Also, if I heard Professor Frase correctly, some of the places where they use this grid, they are not considering misdemeanors or a crime spree where a person commits multiple offenses on one occasion, so how is that playing into the sentencing and has there been any study to look at the impacts on public safety?

Mr. Frase:
Everyone involved with sentencing realizes that public safety, above all, is the role of the criminal law. In Minnesota, initially the commission, because it had a culpability and just desserts model and also because of limited resources, did not try to assess how well its guidelines were achieving public safety. I looked at it in gross terms over the years and, except for some changes in Minnesota due to changing demographics, our crime rates have pretty much paralleled the national rates. We still have lower rates of violent crime than national, but higher than we used to. In the 1980s when national prison rates were going up rapidly, Minnesota's went up in proportion to its rising felony

conviction rate and the crime rate did not increase more than the national rate. That is kind of a crude assessment and I cannot say that this system has been validated as a public safety system. One of the overall goals of guidelines is to make sentencing more uniform and predictable. If you believe in deterrence—that punishment deters crime—the more certain the punishment, the better, so in that sense the predictable sentences increase their deterrent impact.

On the middle area of the grid (Agenda Item XII B-2) page 2, a simple robbery, which is like a purse snatching or theft from a person by force, is still a robbery. That person would need to have three criminal history points to be in the prison zone. But even if they are still in the gray zone, which is recommended probation in Minnesota—and this is perhaps the confusing thing about this grid—these are the prison sentences that are recommended. In the probation zone, judges have wide discretion to select quite a variety of probationary conditions, including jail up to 1 year, so a person in that gray zone can get up to a year of jail even though they are not going to prison. We use jail sentences heavily, definitely more than the average state. If you look at our total incarceration rate, it is well over 9 percent in Minnesota. More of those people are getting jail sentences than state prison sentences, but very few people are getting no custody at all and a certain number of people in the gray zone, even though they are recommended for probation, the judge has the power to depart from that recommendation and say this person has already failed on probation in the past so it is a waste of time to put them on probation and instead send them to prison so they can execute the prison sentence, not just suspend it. Even if they give probation with a suspended sentence, about 15 percent of people in the gray zone get revoked to prison.

Chair Hardesty:
How long has this commission been in place? It is not a new experience in your state; your report to the Legislature when it went into effect was in 1980.

Mr. Frase:
Right, that was the year the guidelines first went into effect, in May of 1980.

Mr. Callaway:
I do find it a little unsettling that this model has been in place for 36 years and there has been no validation or study to look at how effective it has been.

Senator Ford:
I want to make certain we do not draw parallels where there are no proven causes and effects. We are seeing increases in crime from burglaries to homicides in Clark County, but I have not seen anything that indicates those increases in crime are committed by ex-offenders. So I do not know if it is fair to draw a parallel between the increasing crime here to a sentencing-based issue. In fact, I think some indicators are that the disbanding of the gang unit has some association with the increase. At least that is what has been reported. It would be interesting to note what the recidivism rate is relative to the

enactment of this commission. It does not sound as though we have that data, but is it available elsewhere in other states?

Ms. Mitchell:
The department of corrections does two types recidivism follow-up—they follow their prisoners to release and they produce recidivism results. In the past 6 years, they have been following probationers to get their recidivism rates. They do it more regularly and the sentencing commission does recidivism studies from time to time. I can think of one study when we were looking at changing drug sentencing in Minnesota where we did look at the recidivism of offenders for that purpose. The commission itself does not regularly produce recidivism data.

Mr. Frase:
I guess that is because the Legislature has been happy with the data they have. If they wanted to have the Minnesota sentencing commission do in-depth studies of recidivism and the guidelines and crime rates, they would have to provide the commission with additional resources but they have chosen not to do that.

Senator Ford:
It would be interesting to know what the comparison is between states not using sentencing commissions versus those that do; looking at recidivism rates of each and how ex-offenders operate once they have gone through both systems.

Another question I have is related to the discretion associated with moving to a sentencing commission approach. We all acknowledge that mandatory minimums, especially in certain crimes, has resulted in a discriminatory outcome relative to who is charged and who is in prison, etc. In that regard, allowing discretion instead of mandatory minimums is a better approach in my mind. I would be concerned about judges who abuse the discretion we allow them in terms of the ranges of punishment. I am looking at the document about the Connecticut Sentencing Commission with statutes and in Chapter 970, section 54-301 (Agenda Item XII C-1) on page 6, it references the Connecticut Sentencing Commission providing a report to the Legislature. That report does not include a demographic breakdown of how the judges are utilizing their discretion, whether it is the sex of the person or the race of the person, for example. Do we have states that employ oversight to ensure we have a proper and fair exercise of discretion when people are being jailed for similarly situated offenses?

Ms. Mitchell:
Yes. All commissions collect sentencing data. They also collect information about the offenders including their criminal history and the offense. Most commissions annually report back to their legislatures or at least produce reports on actual sentencing practices that are made public. They can tell you what kinds of sentences were given for what offenses, who got them, what the racial breakdown was, whether it is changing over time, are there trends with sentences getting more severe for a particular crime

area, etc. The annual report that the Minnesota Sentencing Commission puts out each year is usually about 60 pages with all that detail included.

Senator Ford:
That is helpful. I was looking at the Connecticut document and did not see a particular reference to racial breakdown in terms of demographics. I see promoting public policy of rehabilitating ex-offenders, safety of the crime victims and protection of property as an example of what the report would have, but I am happy to hear there are commissions out there which would report back on that issue. To be specific, I am talking about instances where a particular judge is giving 5 years in some instances more than he is giving 5 years in other instances, like giving more to African Americans than he is to non-African Americans for a crime with a 3-5 year sentencing range. A report on how those sentences are being handed down would be helpful for the Legislature and society as a whole and also for the Chief Justice and all the other judges to understand what types of differences are occurring within the courts so they could do some self-governing to ensure a little more equality.

Mr. Callaway:
Based on the numbers we get from the Clark County Detention Center, about 70 percent of the inmates that come in have been there before. I can easily get data for this Commission on the number of crimes we have had recently that involve people with criminal history. We had a recent incident at a Starbucks involving someone with a criminal history who killed another customer there. We also had an individual released from the prison system recently who shot and killed family members who took him in to provide him a home following his incarceration. It is not hard for me to find cases where an offender or reoffender is involved.

As to the gang unit being done away with, there is some misconception on that issue. We had 14 gang officers in our gang unit who were covering the entire city that includes more than 30,000 documented gang members. The sheriff made a decision through decentralization to push our resources to bureau commanders so they could take the resources from not only the gang unit but from other specialized units and address crime within specific boundaries and area commands. We still operate a gang intelligence unit and net teams that address gang activity, so it is a misunderstanding that the gang unit has been eliminated.

Senator Ford:
Of course we can point to anecdotes of ex-offenders recommitting offenses. The Starbucks incident yesterday was in my district and if we are talking about a guy who had a felony and was able to shoot someone, there are other issues related to our system that need addressing as to why he would even have a gun. The point I am making is that I wonder if there is a statistically significant correlation between the increase in crime in Clark County relative to ex-offenders committing crime? We can point to anecdotes, but until we have some level of certainty, I want to make sure we do

not automatically assume that is what is happening. This question is well placed before the committee and before the speakers because they will be interested in seeing what kind of correlation there is or has been.

Chair Hardesty:
At least under current practices in Nevada, it is not operating successfully if you accept Mr. Callaway's point that there is an increase in violent crime and it is being committed by reoffenders. I do not think that is a reason to disregard the approach taken for sentencing commissions; rather, it is a reason to study further what we are doing here and whether it is being effective for public safety reasons as well as other criminal justice reasons.

Assemblyman Anderson:
I feel like there is an anger problem. From my understanding of the Starbuck's incident, the shooter's credit card was declined for a coffee and the barista gave him a free coffee and yet he was still so mad he went back in and shot someone. I do not know what the Legislature can do about someone flipping out over getting a free coffee. I do not understand the world these days. I certainly think those of us who are in leadership positions who always resort to anger do not help anything. I think that is part of the problem; people are just angry. Obviously that is not the only reason; there are criminals out there who are going to do what they are going to do, but that incident really disturbed me. I do not understand a world where someone gets a free coffee and goes in and shoots someone. It is just senseless and stupid.

Looking at your matrix, Professor Frase, one thing we are doing in Nevada on the other end is we are considering objective, evidence-based bail. It got me thinking of what is in the grid score. You spoke of the criminal history score and what goes into that. What is the severity of the level of conviction offense? Is that just a policy judgement made by the sentencing commission? Is there some sort of objective measure that goes into that, say, crimes of violence add a certain amount to it?

Mr. Frase:
The original commission did a very comprehensive study, ranked the 104 most frequently prosecuted crimes into six offense-type categories—violent, sex, drugs, property, etc. Then those six piles were ranked and they took the most serious one in each of those and said ok, which of those six cards on top of the piles is the most serious of the six? That goes number one, etc., doing that process all the way to rank the 104 offenses. They were mindful of the statutory penalties and mandatory penalties, but they were giving a fresh look so it was not a formula, but it was a process with a lot of diverse input in terms of different constituencies represented. They were looking at the typical case, not the worst case. We wanted to give judges a starting point for typical cases and then they could depart for an atypical case with unusual facts. They ranked the offenses that way. You have to keep doing this; revising as you add crimes. That tends to be done one case at a time. At one time, the commission developed an

elaborate formula of severity ranking principles which were very interesting. I do not know if other guideline systems have done that. Every system has to have a way to reach consensus on how you rank the seriousness of typical crimes of very different kinds. It can be an apples and oranges problem to compare a drug crime to a burglary.

Ms. Mitchell:
That ranking comes into play in the criminal history score as well because prior offenses are often weighted according to the severity level of the offense. A low level property crime in Minnesota is going to get a half point and a more severe sex offense would get 2.5 to 3 points when you put it into that criminal history score. Not only does the offense severity matter today when you are sentencing, but it also matters to developing the criminal history score if they have prior convictions.

Chair Hardesty:
Thank you, we might want more information if there are questions from the commission. I am rather confident there will be recidivism rate information in the states that have sentencing commissions even though they may not have been studied in the context of the use of the sentencing commission itself. I have a document to submit from Nick Anthony, a Revised Proposed Regulation of the Chief of the Division of Parole and Probation of the Department of Public Safety (Agenda Item XII C-2)
I will open agenda item VII, a presentation on victim notification and domestic violence programs and prevention in Nevada.

Kristy Oriol (Policy Coordinator, Nevada Network Against Domestic Violence):
The Nevada Network Against Domestic Violence (NNADV) is a statewide coalition. We are not a service provider but we represent those who provide services in the State. We provide support to our member programs including trainings on best practices in domestic violence, assistance in finding financial resources and advocating for NNADV programs in the Nevada Legislature. We do federal work as well, which is where the majority of our program funding comes from.

Much of our work in the Legislature has to do with better addressing arrests and prosecutions in domestic violence and supporting programs that educate children on prevention of domestic violence, etc. We are becoming a dual coalition, which is exciting. Up to this point, Nevada was the only state without a sexual assault coalition, so we have been engaging in a lengthy stakeholder process over the past several years. We will soon become a network like so many other states have done and we will be changing our name at the first of the year to reflect the new coalition.

Of course, domestic and sexual violence do not occur in isolated circumstances. We know that in the vast majority of situations where you have domestic violence, there is also sexual violence occurring. We think becoming a dual coalition better represents the reality of these issues and will better address the services and the survivors in our State.

I submitted a document that includes our 2015 calendar of statistics. There are programs serving every county in Nevada (Agenda Item VII A) page 4, each with a 24-hour hotline, victim advocacy services and an emergency shelter. During 2015, more than 41,000 adults, youth and children received services from NNADV as seen on page 2 (Agenda Item VII A). This included close to 50,000 nights of shelter to survivors, more than 12,000 temporary protection orders and nearly 18,000 counseling sessions provided.

My handout also includes a census that our national network, the National Network to End Domestic Violence, provides (Agenda Item VII A) page 3. That organization asks every state to track on one given day, typically in September, a record of all the phone calls they received, the services that were requested, etc., to provide a snapshot of what is happening nationwide. Our results showed both good and bad results with unmet requests and people having to be turned away for services on the concerning side. We are doing a phenomenal job in continuing to try and meet those unmet needs.

The Nevada Arrest and Protection Advocacy Project (NAPA) is a project we have embarked on to address the consistently high numbers of homicides we see in Nevada related to domestic violence as well as many of the systematic issues we have been hearing from our survivors for quite a while about trying to access the legal system for relief (Agenda Item VII A), page 1. We partner with the Attorney General's (AG) Office and two domestic violence programs and receive some funding from the Office on Violence Against Women through the U.S. Department of Justice (DOJ) to work on what our systematic response to domestic violence looks like. We are assessing what is working well, what is not and what needs improvement, whether it is a change in statute, policy, procedures or better communication between organizations.

The grant from DOJ asked us to come up with team of experts in the field to establish best practices in Nevada. We have been doing listening sessions throughout the State with various conversations about what people see as the biggest issues around domestic violence. We have been in many communities at 30 listening sessions talking to law enforcement, prosecutors, defense attorneys, batter intervention programs and many others seen on page 1 (Agenda Item VII A). We have a table at all the upcoming judicial conferences so I encourage all the judges on the Commission to come visit us at the conferences and give us your thoughts and perspectives. We are taking all this information and putting together a report that tracks the themes we are seeing across the spectrum with the intention of presenting that information to our multidisciplinary team comprised of representatives from each organization. If you are passionate about these issues and would like to join us, please contact me to join our membership that will convene after the Legislative Session.

Chair Hardesty:
Can you expand on the listening sessions? How they are organized and who attends and do they include offenders?

Ms. Oriol:
The NNADV listening sessions are planned by us. We try to keep them contained for just the group we are speaking with so it can be an open environment where people can honestly share their experiences. We try to be very inclusive and make the meetings open to anyone who wants to attend. For the survivor groups, we sent invitations out to all our programs, asking them to contact all their interested survivors. We ask a variety of questions, primarily around the largest issues people are seeing. We ask about statutory challenges—statutes that support, hinder or conflict with their work. We did not have a specific listening group for offenders, but we are open to that if it were brought to us. We did have two groups of public defenders and defense attorneys and batterers intervention programs, so we are trying to get a full picture of what it looks like out there, not only for victims, but for those on the other side of the issue as well.

Chair Hardesty:
Are you finding any statutory suggestions from these that marry up with suggestions in other listening sessions?

Ms. Oriol:
Yes, and we are currently in the process of reviewing all the things that have come up. I do not anticipate that we will be working on anything for this upcoming Legislative Session. The purpose of this project is to ensure that our decisions are collaborative and that they take into account everyone's experiences. If there will be statutory changes, I suspect it will be more in the 2019 Session. There are themes that have come up and many can be shared so we can agree on some common solutions.

Chair Hardesty:
Will these themes all be reduced to a report?

Ms. Oriol:
Yes, that is what we are working on now; to produce a more aggregate report that protects the confidentiality of all our participants, then share that with the work group and then make that report available. Our plan is to have a summit at the end of the work groups to recommend to policy makers and other members of the public.

Chair Hardesty:
In the sessions with law enforcement, have they talked about the risk they are exposed to in responding to these calls and how they can be better protected?

Ms. Oriol:
We know that domestic violence calls are perhaps the most dangerous calls an officer can respond to. Many of our questions revolve around how we can better support them. There are strategies we can hopefully develop—better training, lethality assessments and ways to make sure victims are getting the services they need to try and limit those repeat calls.

Chair Hardesty:
What about your sessions with victims? What kind of themes are coming out with victims?

Ms. Oriol:
We have had three sessions with survivors where we hear a variety of issues. We ask the victims to talk to us from the point where they decide to call the police and if there is prosecution, etc. Much of the challenge victims feel is the great burden placed on them to constantly prove that what happened to them is the truth. It can be challenging for victims to enter the system when there appear to be so many barriers that want to push them away and back into the abusive situation. Those victims face barriers we had not anticipated in reporting abuse or successfully moving through a case. We are still trying to uncover the many reasons for that.

Chair Hardesty:
One of the many permutations in this area is the victim's ultimate recantation, which contributes to a lot of subsequent circumstances. I assume you are looking at how to address that and how to reduce the number of recantations.

Ms. Oriol:
Absolutely, that is a theme that has come up, both from victims and from prosecutors. In more than 80 percent of the cases, victims recant, not because they were not telling the truth, but more because of mitigating circumstances. Part of that is on the service delivery end. Where are the needs of survivors not being met? Is it because they will lose their housing, their support or their children? How can we improve that process and make victims feel safer?

Chair Hardesty:
Do you or will you correlate that information with rape victims who also end up in the same circumstances?

Ms. Oriol:
That is a great question. The project has primarily been focused on domestic violence, but the similarities are going to emerge in our discussions with the work group. We have not gotten to that point yet, but I see a strong correlation with what we will discover as best practices to help victims move forward with prosecution, whether it is for domestic or sexual violence.

Assemblyman Anderson:
I have seen this in other states and I am investigating a BDR for this coming Session. In some cases, nuisance statutes have been created to address the issue of victims calling the police too often. Are you aware of that issue elsewhere?

Ms. Oriol:
In many other states, it happens much more frequently. We have put this out to our membership because we are getting questions from our national partners. I have not been able to identify it as a huge issue in Nevada. I am certain it is happening, but we have not heard that in the listening sessions as a common reason why victims are hesitant to call law enforcement or are afraid of eviction. Generally, in the issue of domestic violence, it is a huge issue where victims are told if they call one more time they will be a nuisance and they will be evicted. Luckily, in Nevada we have some protections around housing. The U.S. Department of Housing and Urban Development has also developed some protections for victims in public housing.

Mr. Callaway:
Regarding the nuisance statutes, my understanding is that jurisdictions that have implemented them are geared more toward party houses, loud music and those types of standard disturbance calls that amount to a nuisance where eventually after so many times the police have been out there, the local jurisdiction can put a civil action against the home owner for the resources they have tied up. They are certainly not directed towards victims of crimes such as domestic violence where there would be any deterrence for someone to call and report a crime that has been committed against them. I just wanted to make that clear.

Brett Kandt (Chief Deputy Attorney General, Office of the Attorney General):
We have an important program administered by our office for victims called Nevada VINE, which stands for Victim Information and Notification Everyday. It is statewide automated system where victims can go online and receive timely and accurate information on the custody status of offenders or changes in that status, all aimed at promoting victim safety. Our office collaborated with law enforcement in other stakeholders and we utilize funding from the Bureau of Justice Assistance through the U.S. DOJ to implement the Nevada VINE program. This way, victims statewide can have the same access to timely custody status information by going online of by phone, registering a phone number or email address to receive updates on a specific offender's custody status. When a jail or corrections facility or a law enforcement agency enters a change on that offender's custody status, that change is sent to VINE through an interface and then the notifications go out to the victim. There is around-the-clock live operator assistance to assist victims in obtaining offender information or registering for the system. There is also a free app called VINEmobile where victims can check on offender custody statuses through their cell phones. We have fully implemented the VINE program, including all the jails and detention facilities in the State as well as NDOC, P&P and the Parole Board, so if an offender is up for parole, makes bail, has their supervision end or if a warrant goes out for them, the victim receives these notifications.

Since we began the program in 2010 through the full implementation we have now achieved, in June 2016, the Nevada VINE service has sent out more than 63,000 email

notifications, more than 1.1 million phone notifications that includes voicemail and texts to our more than 69,000 registered victims. This empowers victims with the essential information they need so they can take steps to protect themselves and their families.

Chair Hardesty:
How are victims placed in the system and at what stage do you get access to them?

Mr. Kandt:
The victims, their family members, or anyone who wants to monitor the custody status of a specific offender, can go online to VINELink or call and then the person can choose how they want to receive the notifications. The system is anonymous.

Ms. Stiglich:
When does an offender get put into the VINE system?

Mr. Kandt:
The offender enters the VINE system the minute they go into custody and are booked into a local jail or detention facility.

Connie Bisbee (Chairman, State Board of Parole Commissioners):
The Parole Board has worked with the Office of the Attorney General for several years while this was getting implemented. I went in and entered a couple people and it worked beautifully. When there were movements made or something happened, I got the notifications.

Senator Ford:
How do the offenders get out of the system?

Mr. Kandt:
Anytime the offender is no longer in the custody of any of the agencies that are part of this system, they would come out of the VINE system.

Senator Ford:
So they get arrested, then booked and they are immediately in the VINE system?

Mr. Kandt:
That is correct.

Senator Ford:
Then once they are released from the system, they get out of it? What if they get released the next day? Do they get off the system the next day or do they stay in until the charges are released?

Mr. Kandt:
You are correct. They stay in the system until their case or matter has been resolved. If they serve a sentence or are under supervision, they stay in the system.

Chair Hardesty:
I will now open agenda item X, a presentation on the status of photo IDs for prison inmates and the issuance of driver's licenses and ID cards.

David Tristan (Deputy Director of Programs, Nevada Department of Corrections):
This subject came up as a result of a presentation I made recently where I said we are going to try and implement a system that will ensure inmates will get their State ID cards from the Department of Motor Vehicles (DMV). That raised some issues so I went back and looked at *Senate Bill 423 of the 77th Legislative Session* which was passed in 2013 and became effective January 1, 2014.

SENATE BILL 423: Revises provisions relating to offenders. (BDR 16-1112)

As a result, Administrative Regulation (AR) 701 implemented by the Department of Corrections (NDOC), identifies that body as providing ID cards for inmates and Senate Bill 423 states in part that the NDOC will provide a photo identification card and will also provide information and reasonable assistance in acquiring a driver's license or identification card from the DMV. Getting a driver's license and State ID is critically important to a parolee reintegrating into society and trying to obtain all the services available. Discussing this with the DMV administration, I learned that it is relatively simple for an inmate to get a duplicate driver's license or ID card when the inmate already had a driver's license or State ID card before entering the NDOC system. The issues arise when the inmate does not have a current driver's license or State ID card.

One problem we face is that a number of inmates have aliases, making their true identification difficult to ascertain for NDOC. We have to use the name the inmate is committed to us by the courts, so even though we know what their aliases are, their NDOC ID card with a photo is based on the name by which the inmate was committed to us. If the inmate was committed to us with a name other than their true identity, their NDOC ID card would be under a different name, making it more difficult.

The other problem we have is that we cannot mandate inmates to get birth certificates. We provide information to them at intake relative to obtaining a number of different documents including birth certificates. If they want to avail themselves of that service, we will assist them. We also provide the same information as the inmate gets ready to either parole or discharge. In my short time here, I have seen situations where inmates simply do not want to avail themselves of getting their birth certificates. The other problem we have is that we do not have the resources or staff to be able to take an inmate to the DMV to assist them prior to their release so we can assist them prior to release by obtaining the documents they may need—birth certificates, social security

cards, etc. That way, the inmate can go to the DMV in person and get their State ID or driver's license.

There are other factors inmates struggle with and I understand this. They are already in trouble and may see themselves in a hopeless situation and if we do identify their true identity, we may find that they have holds, warrants or detainers in other jurisdictions or states. They may owe restitution or back child support, so sometimes they do not want to cooperate with us. That is not common, but it does occur. One of my goals is to create a system where upon intake there will be a form the inmate fills out that accepts or rejects our offer to obtain their birth certificate and other identification materials. Right now, because we do not have it in any kind of a system, I cannot tell you how many inmates really need and want our assistance to obtain this data. We will make every effort we can to set up a system on both the front and back end of the inmate's stay to help these individuals obtain their identification. I have submitted a document with details of NDOC's involvement with obtaining IDs for offenders leaving our custody (Agenda Item X A-1).

Mr. Kohn:
Are fingerprints obtained from inmates?

Mr. Tristan:
Yes, as soon as they come in, they get fingerprinted and we get their rap sheet as well.

Mr. Kohn:
So when you get their fingerprints, do you also get their born name?

Mr. Tristan:
Yes, we get their also-known-as (aka) names, listed as aliases. We still have to use whatever name they were committed to us by the court as their official NDOC identification.

Mr. Kohn:
I understand that, but in terms of on the back end, letting them out, no matter what name they use in the court process, you can determine through one of the fingerprint systems what their real name is. Am I right?

Mr. Tristan:
Yes, we may be able to do that.

Mr. Kohn:
I think it is incredibly important that people leaving prison get an ID card that does not say Department of Corrections on it. I have always supported this and think it is a great idea. I can only imagine that when people first enter prison they are not as cooperative as they are probably going to be on the back end. When they enter prison, they are

probably mad at me, at the court and at everyone but themselves. I would hope that we would work more at the back end when they recognize they are getting out and they will not be able to get a job, cash a check or do most anything without a proper State ID. So cannot the fingerprints give you the right name?

Mr. Tristan:
Yes, we need to follow that up, I believe. I would have to check with the Attorney General's Office, but I believe we cannot issue them a card that says that person is now this other person unless we have validated that with some other document like a birth certificate.

Eric Spratley (Lieutenant, Washoe County Sheriff's Office):
I represent the Nevada Sheriffs' and Chief's Association. We have to have proof of identification before that card is issued because somebody with no criminal history that commits a felony and maybe pleads to it and ends up in prison under the name they state without us ever proving their identity, can then get official identification issued by our State and could leave behind their whole past. Fingerprints will only identify those who have been fingerprinted before where we have proven their identity. If they have never committed a crime and end up in our prison system, they could use this change in the law to create a whole new identity and merely do a few years in prison. We have to be careful of that before we issue those cards.

Senator Ford:
I receive Mr. Spratley's statement loud and clear; I get it. What do we need to do as a Legislature to help you to confirm identity, even beyond fingerprinting so we can ensure that offenders are incarcerated under their real name and will get an ID under that name?

Mr. Tristan:
The only think I can point out is that NRS 209.511 uses the word "may," which is permissive in terms of getting their true identification. I am not proposing legislation, but there are some pieces of legislation where the wording is permissive instead of mandatory.

Senator Ford:
Does anyone know the history of this? Has anyone ever tried to get the Legislature to help confirm identities of those incarcerated?

Mr. Spratley:
Reading that statute, NRS 209.511, subsection 1, paragraph (f) says, "When an offender is released from prison by expiration of his or her term of sentence, by pardon or by parole, the Director Shall provide the offender with a photo identification card issued by the Department and information and reasonable assistance relating to acquiring a valid driver's license or identification card." The part that was changed in

2013 is, “a photo identification card issued by the Department.” So the “shall” is that the prison system will do that and then they will help DMV get the individual a card, but there is nothing in here that says they have to have proof of identification like a birth certificate before issuing that. So there is a bit of a loophole and some demands put on the NDOC to make that happen.

Senator Ford:
I have not fully thought this issue through, but it seems to me worthy of consideration. I cannot think of a reason why we would not require an inmate to get a birth certificate before he or she can get a State-issued ID. Maybe we could think about finding someone who could sponsor a BDR.

Chair Hardesty:
I have it on the agenda for this Commission to make a recommendation in that regard. I think that the point Mr. Spratley makes is valid that we need to address this loophole. From my experience dealing with this subject since 2007 or 2008, this has always seemed to be an ongoing area of frustrating for those trying to get IDs, as well as a frustration for the DMV in trying to confirm IDs.

Yet, I do not fully understand why an individual in prison, after we go through all that we go through—criminal history background checks, fingerprints, etc.—cannot produce some form of identification that is acceptable if the same person were to walk into the DMV to get a driver’s license. I do think it is something we should require and it probably should not be limited to a birth certificate. There are other forms that can confirm people’s identity. Maybe incorporating those types of identification forms in the bill would help.

Ms. Stiglich:
My question is for the DMV regarding the acquisition of a duplicate ID, which is quicker. However, in many instances, people coming out of prison do not have the same address they had when they went into prison. It is my understanding that they cannot go through the duplicate process if they do not have the same address on the card. So for people coming out of NDOC, if it is possible that they can have their card amended since they did have a card going in. My understanding is that they have to start from scratch, get their birth certificate, etc.

Terri Albertson (Director, Nevada Department of Motor Vehicles):
With me today is Tonya Laney, Administrator for Field Services for the DMV. I think the information in my PowerPoint presentation (Agenda Item X B) will answer many of the questions raised today about how to obtain a driver’s license of ID card for those with an NDOC inmate card. The legislative history of this issue begins with S.B. 423 that Mr. Tristan referenced, allowing the opportunity for NDOC to create an ID card we could use as a primary source document for issuance of a Nevada ID or driver’s license (Agenda Item X B) page 2.

The corresponding Nevada Administrative Code (NAC) regulation, NAC 483.050 also requires the DMV to obtain additional documentation besides just the NDOC card for the issuance of the State ID or driver's license (Agenda Item X B) page 3.

The current process to obtain the State ID or driver's license is shown on page 4 (Agenda Item X B). We do understand and respect the necessity for individuals to have these ID cards or driver's licenses to access services.

How to obtain a duplicate copy a State ID or driver's license is illustrated on page 5 (Agenda Item X B). It is a simple process. As far as the change of address Judge Stiglich referenced, the process for them to change an address on an ID card would be no different than it would be for you or me. It is simply a matter of filling out the DMV application again and changing that address. In speaking with Mr. Tristan, one of the things we could do would be to provide the driver's license and ID card application forms to NDOC so they could include that in the packet for inmates being released. We also have the MyDMV portal where people can go online and create a portal account, which is one place where you can do an address change online.

To obtain an original driver's license or State ID card, if the individual does not have the ID card issued by NDOC, he or she will have to provide additional documents—social security documentation, immigration documents if applicable, two proofs of Nevada residential address and any applicable fees (Agenda Item X B) page 6.

To renew an expired driver's license, an inmate would have to go through the process shown on page 7 (Agenda Item X B). The information sheet provided to NDOC gives all the instructions and requirements for inmates to get their duplicate, renewal or original State ID or driver's license (Agenda Item X B) page 8. the documents they need to bring. For proof of name and date of birth, an individual must bring an original or certified copy of a U.S. birth certificate, an unexpired U.S. passport and the NDOC ID card. For proof of Social Security (SS), they need to bring their original SS card, a W-2, a paystub or an IRS Form 1099, each with the full SS number. For proof of Nevada residency, there are forms available on our DMV website that the individual can complete either in an agency or a shelter. We can also look at other standard proof of residency documents if available. The Certificate of Nevada Residency form is acceptable (Agenda Item X B) page 10. The form for waiving duplicate fees is on page 11 (Agenda Item X B) for released prisoners within the previous 90 days. The Relief Agency or Shelter Certification form is on page 12 (Agenda Item X B).

Overall, the process is not so much different than it is for non-offenders to obtain identification with the DMV. Federal Real ID requirements restrict all citizens to using only very specific documents. This is not an obstacle that is exclusive to former offenders. Current obstacles to former offenders are on page 14 (Agenda Item X B). The argument that you cannot obtain an ID without a birth certificate and you cannot obtain a birth certificate without an ID is actually false. Looking at the legislative history,

that was one of the beliefs; that the inmates were caught in a Catch-22 situation, but what we have found through our research is that they can obtain their birth certificate with their NDOC inmate ID card. There must be a certain level of validation required otherwise we compromise the identity verification process with the DMV. How to obtain a birth certificate goes back to the fact that individuals may use their NDOC inmate ID card to do this (Agenda Item X B), page 15. The individual can use their probation documents in conjunction with that if they do not want to use their inmate ID card.

Historically, the DMV's purpose was to provide a driver's license that proves one has both the knowledge and skills to operate a vehicle. In today's world, that has completely changed and our paradigm is no longer that. The reality is that now the DMV serves as keepers and provers of identification. We understand the importance of this process and the transparency behind it. There are other agencies proposing legislation to enact similar ID cards for their released individuals. We will work together to improve the process for all parties involved. To Senator Ford's point, I have not addressed this in any specific detail as far as the Legislature is concerned, but I would hope we could be involved and actively engaged in any conversation or potential legislation that would compromise our ability to not issue a card to someone who has not been able to prove their identity to us.

Chair Hardesty:
You mentioned that there had been research done that the birth certificate and ID card were not both required and that inmates are not caught in a Catch-22. Is that just in Nevada?

Ms. Albertson:
Our research was just in Nevada because in order to get a State ID, they have to be a Nevada resident. They do not have to be born here. We can extend our research to see how other states are accepting this documentation.

Chair Hardesty:
That would be very helpful because as the NDOC director can probably confirm, we have a transient population in our prison system, so I can see inmates there trying to get their birth certificates from, say, Louisiana or other states.

Mr. Dzurenda:
Just for information, 28 percent of our population out of the 13,500 inmates are transient and not from Nevada. Also, the most difficult are those from other countries and areas where we are having difficulty with us ever getting a birth certificate. For example, Puerto Rico requires their birth certificate to be obtained in person. If we enact laws that say we have to provide something, we have to be careful that we can actually do it. We are not going to be able to fly an offender to Puerto Rico with an escort just to get his birth certificate.

Every offender is issued a photo ID the second they come into NDOC because that is how we identify them while they are in our custody.

Mr. Kohn:
On page 9, (Agenda Item X B), the list of documents acceptable to prove a Social Security identification includes a W-2, paystub or Form 1099. I am wondering how many people who have been in prison for 5 to 10 years have any of those? Is that going to be a bar to getting a driver's license?

Ms. Albertson:
Those are just some documents acceptable to us. We do not limit it to just one. We work as much as we can to the extent that we have to feel comfortable that the individual before us requesting a Nevada driver's license or an ID card is who they say they are. We cannot, nor should we, issue those credentials without that validation behind it. We have small circumstances under which we would make an exception, but it is a rarity because of our duty to make sure the person is who they say they are.

Mr. Spratley:
Any loophole created by the change in statute in 2013 statute still exists with the NDOC but I applaud the DMV for taking a rigid stance on making sure they have the right person before them before they issue that card. The loophole is essentially closed on the DMV end and still a lot rests with NDOC.

Ms. Albertson:
Again, the DMV would be more than happy to sit down and work with stakeholders on this to make certain we accomplish the goal which is that we understand and respect the importance of these individuals to have a driver's license or a State ID card.

Mr. Callaway:
The Clark County Detention Center and Metro are looking at legislation this next session to allow us to do this as well because it is a win-win. It is a win for the officers in the field who may encounter someone after they have been released. If they do not have identification and cannot verify who they are when an officer is questioning them, it is problematic. It is also a win for the offender who has been released because now they can cash paychecks. It appears the DMV is using due diligence to ensure that people are not getting false IDs through the system. To me the part where there is a breakdown is that, number one, it is voluntary. I am not suggesting we make it mandatory, but when someone is released, obviously it is incumbent on them to have to go to the DMV with the documentation and actually get the card, which a lot of offenders do not do, unfortunately. That is where I think programs like HOPE for Prisoners is very important because it closes that gap and it assists directly with offenders when they are released to get them assistance to the DMV including any documentation they might need. Programs like that ensure that individuals will follow through when they are released.

Ms. Albertson:
During our conversations with Mr. Tristan from NDOC, he recommended that we create a form where an inmate could complete and request whether they wanted assistance with that. We took one step further and said that if they would include that form in the packet with the inmate, when they brought it into the DMV, we could validate that the person actually showed up. That way, there would be some statistics available about how many inmates wanted our assistance in getting their birth certificate to get an ID or driver's license. We could then validate that form, mail it back to NDOC as a tracking mechanism to chart what percentage of inmates are following through.

Chair Hardesty:
I will now open agenda item VIII

Mr. Wright:
Senate Bill (S.B.) 111 from the last Session of the Legislature was sponsored by Commission member Senator Ford and was approved and signed into law by Governor Sandoval.

SENATE BILL 111: Requires the use of portable event recording devices by certain peace officers employed by the Nevada Highway Patrol Division of the Department of Public Safety. (BDR 43-618)

This bill required uniformed peace officers with Nevada Highway Patrol (NHP) to wear a portable event recording device, or body worn camera (BWC), while on duty. Additionally, NHP was required to develop and adopt policy and procedures governing the use of the BWCs. We were also required to come before this body and provide a status report on the progress of the BWC program. I have submitted a document that includes the NHP directive on BWC use which was developed by researching other policies and best practices for this directive (Agenda Item VIII).

Dennis Osborn (Colonel, Chief, Nevada Highway Patrol, Department of Public Safety):
After the 2015 Session ended, we hit the ground running with S.B. 111 by selecting Sergeant Chris LaPrairie as our project manager. He is the sergeant of our research and planning group and an expert in this field at this time. He and his troopers have done an excellent job. We established an executive committee within the Department of Public Safety (DPS) which also included members from our technology division, Enterprise Information Technology Services (EITS) as well as the State Purchasing Division that walked us through the process. We also utilized the Las Vegas Metropolitan Police Department (Metro) to provide input and help Sgt. LaPrairie get started.

We released a Request for Information (RFI) in December 2015. With the submittals we received, we created a scoring system and selected three vendors of criteria that met

with our requirements. We did a testing phase from March to July this year where the biggest lesson we learned was that we need an integrated system. The NHP already had dash cameras before the requirement of BWCs from S.B. 111. The body camera is an enhancement to what we already had in place. Either camera alone—dash cams or body cams—do not give the complete picture of an incident in the field. That was one of the biggest things we learned. We were able to work with records retention for what we define as a nonevent—which is a contact where there is no evidentiary value, such as a trooper stopping with a broken-down motorist where they change a tire—to make that a 30-day retention record instead of a 90-day retention record.

This is critical because we have learned that data storage is an enormous expense and factor with video record storage. The directive document you have been given (Agenda Item VIII) is our 10th revision. Depending on what vendor we end up with, there could be slight modification to this current version of the directive. We sent out a Request for Purchase (RFP) in August and will have a committee evaluating the submittals and hope to have the top contenders identified soon. If they are vendors we have not tested, it could take more time. We hope to have a final selection for a vendor by October 19 and will go before the State Board of Examiners on December 13, hoping to have a vendor selected and ready to roll by the January 2017 deadline for the implementation required by S.B. 111.

We have videos of various events in the field that illustrate the different angles we see. This first video (*see archived meeting video on Nevada Legislature website*) was from a shooting incident in Las Vegas a month ago today. The trooper was equipped with only the dash camera.

The video shows a stopped car in the road at night from behind. The driver quickly runs out of the car and behind it to the right, carrying a bag. The trooper can be heard talking on his radio and then there is shouting out of camera range. There are loud noises, rustling noises, then several shots are fired and the trooper says, "Shots fired." More shots are heard. The trooper repeats, "Shots fired, shots fired, [unintelligible] down."

Mr. Osborn:
In that video, you can see that if the trooper had the body camera, it would have captured the actual shooting event. The trooper retreated from the driver's side of his vehicle to the right rear corner where there was gunfire from the suspect first, and then the trooper returned fire, hitting the suspect where he did die on scene. We missed the shooting, however, only seeing the video from the dash camera point-of-view (POV).

The next videos show an incident with both a dash camera and a body camera. The first video footage shows the POV of what the body camera recorded.

The video is at night, sirens sounding, police radio conversations heard. Next shot is a vehicular pursuit behind another emergency vehicle with siren and lights activated.

Mr. Osborn:
The next videos are field of view demonstrations from actual body cameras that we tested.

First video is daytime, camera shooting wide angle view of the right side of a pulled over vehicle with two passengers on a busy freeway. Trooper cautions driver to be careful pulling into traffic. It pulls forward. Next view is trooper POV walking back to motorcycle. Crash heard, passing vehicle from freeway hits second police motorcycle, knocking it over and the other trooper who had been standing next to it off toward the left. First trooper walks toward the crash scene.

Second video is POV from second trooper standing next to his police motorcycle behind the vehicle that had been pulled over, looking toward it. The first trooper is on the passenger side of the vehicle and the two police motorcycles, emergency lights blinking, are directly behind the car as freeway traffic whizzes by the scene. Second trooper is standing on the right of his motorcycle and pivots to left to get something out of a bag set on the back of his bike. Cars are whizzing by. A gray van passes, then a red station wagon, then a flash of a light blue car comes by as the trooper's hands are still in his bag atop his motorcycle, a small black car passes, then a light blue sedan clips the bike, the trooper jumps back, the bike falls on its right side. Looking back toward the pulled over vehicle, a helmet rolls by to the right, debris flies into the air, the sedan moves on. Troopers walk toward each other.

Mr. Osborn:
In this next video, we see different viewpoints from the cameras. Some had a narrow POV, some were wide angle. One vendor had the camera in the middle of the trooper's vest. We also tested videos for quality at night with all the flashing lights and limited natural light. We also found that tall or short officers could get different videos, depending on their height, so we wanted to factor that in.

Since we started this testing process, we have been amazed at how fast technology changes and how fast the vendors are getting the integrated systems in place. Integration is the key, because if there is only a body camera, it misses things the dash camera sees and vice versa. We identified a lot of pros and cons and are on task with the requirements of S.B. 111 by having this directive in place and approved and implementation on schedule for January 2017.

Ms. Stiglich:
Who determines what is an event and what is a nonevent? Could a member of the public request that something you have deemed to be a nonevent be retained?

Mr. Osborn:
We defined that in the directive (Agenda Item VIII) on page 2; whether there is evidentiary value. If the public asked us for a copy of a contact, we have been very

generous with giving those out. Our Attorney General's Office has given us advice to be pretty liberal with those public record requests.

Ms. Stiglich:
If a case is generated, is the tape automatically considered an event and then retained beyond 30 days?

Mr. Osborn:
Yes. Basically, at the end of a contact, the trooper in the field categorizes it there on the scene through the system. Each one is a little different, but the trooper will deem if it was an arrest, a traffic stop with citation, a traffic stop with warning, motorist assist, etc. There is a standard categorization at the end of each contact that the trooper fills in. it would then be automatically saved for the corresponding retention record.

Mr. Kohn:
On page 4 of the directive (Agenda Item VIII), under number 6, Viewing and Use, letter c, number 8, it says, "By court personnel through proper process or with permission of the Director of Public Safety or the authorized designee." If one of our lawyers wants to look at it, how do we obtain that?

Mr. Osborn:
We have typically done that through discovery and the District Attorney's (D.A.) Office.

Chair Hardesty:
Is there any reason you could not add defense counsel to the list?

Mr. Osborn:
I do not see a reason why we could not add it.

Chair Hardesty:
It would certainly help on discovery issues and the like.

Mr. Kohn:
Here in Clark County, it is a struggle and sometimes we need this for the preliminary hearing. It would help us solve or resolve the case and do a better job in the preliminary hearing. The D.A. does not have to give us discovery before a preliminary hearing, so this would really help if you would provide that to us when you make it available to them. Is that a problem?

Mr. Osborn:
It does not appear to be a problem. We could probably add that in the next update.

Senator Ford:
I want to commend the department on their diligent work on this. Anyone in the Legislature knows the testimony my middle son gave, asking that we pursue this after seeing a lot of the, frankly, young African American males being killed by police officers. It was a great cooperative engagement I had with the police officers, the Press Association, the ACLU, and I have heard nothing but great things about the department on this.

Mr. Dzurenda:
How long do the batteries last on these? If you go on a case that is up to 6 hours long, what happens?

Chris LaPrairie (Sergeant, Project Manager, Body Worn Camera Program Nevada Highway Patrol, Department of Public Safety):
It really depends on the vendor. Some companies maybe last 6 hours on a charge, to others that last an entire shift or a shift and a half. It also depends on the options one chooses. One vendor provided a standard battery whereas another provide a larger battery that lasted longer.

Chair Hardesty:
Does the wide angle skew what you are actually seeing, making the choices between narrow and wide angle an important factor?

Mr. LaPrairie:
Yes; obviously, the wider angle you go, the more of a fishbowl look you get. Part of our RFP was that we wanted to get a field of view from 95 degrees up to 145 degrees. We felt anything below 95 degrees, as you saw in the video, would be too narrow and would not capture what we thought was necessary. Anything above 145 degrees showed too much distortion on the outside of the video.

Chair Hardesty:
How do you solve the height issue?

Mr. LaPrairie:
That is going to be trial-and error and up to the officers to play with the device and see what works best for them individually according to their stature.

Mr. Osborn:
That is again where the integrated system is the answer because we have troopers who are 6-feet, 7-inches and troopers who are 5 feet tall. Even if we miss something with a body camera, if we have the dash camera, you might still be able to see the events.

Chair Hardesty:
There is so much action taking place. Just seeing the body camera from Charlotte, North Carolina this week, people are moving around so you are not getting a clear view of the whole incident under any circumstances.

Mr. Jackson:
On page 4 of your directive document (Agenda Item VIII), the prosecuting attorneys are also not on that list. What I wanted to explain was that here is an issue that comes up in these cases. Not everything that does occur is necessarily something that would be submitted for prosecution. Cases come to the D.A. offices either by an arrest or through a submission. Until there is a charging decision made by the prosecuting attorney's office under a Nevada Supreme Court case, *Donray v. Bradshaw*, that information is not subject to public disclosure. If an individual is to make a public records request because the matter is still under investigation for the actual charging decision, that remains confidential. By providing video in some of those instances to the defense at the same time the prosecution is getting it, without even a charging decision being done by the prosecution, we are maintaining the confidentiality over that. But it would not prevent the defense or the D.A. from turning that matter over for public view, which can cause a lot of issues.

As everything else that happens through the discovery process, we have laws in place. Mr. Kohn and I both sit on a statewide commission regarding the rules of criminal procedure, chaired by Justices Douglas and Cherry, and we have had debates about discovery in Nevada. Let us work it out through that commission before you just start adding that to this document.

This was the right place to start, with DPS, and I appreciate that our senator recognized that and that it was not just put on all 17 counties. To a certain extent, this is a pilot program. If you look at Illinois, that state has stopped doing this as of this year because of all these public record requests coming in regarding these videos. Everyone making requests for them and the administration over it became cost prohibitive in Illinois so they could not carry it out anymore. It comes down to not just the cost of the cameras, but the data storage costs so much. I have a case management system and we receive videos and audios from agencies, including DPS, and I am aware about how expensive it is to increase the data storage by purchasing additional Storage Area Networks (SANS) base on terabytes and how much this data eats that up. Can anyone discuss what you are looking at as far as the cost related to the data storage based on the number of NHP officers between the dash cams and body cams?

Mr. Wright:
This is a concern. You are right, the data costs are impacting these programs. There have been several articles in the last weeks about larger departments shelving these programs because they cannot afford the data storage costs. We have talked with EITS

about this—what their storage capacity is for us, what it potentially could cost, or if we go through a vendor like a cloud solution, what that would entail.

Mr. LaPrairie:
It depends on what vendor we go with. If it was cloud-based, we have been quoted various prices. Some vendors provide unlimited data. One quote was $79 per month per officer, which is just under $1,000 per year per officer times 465 officers. That would be a pretty hefty price tag and that is just for body cameras. If we go with an in-car camera system with cloud storage, that is an additional charge. If we go with a server-based vendor, then you are looking at the storage cost of burning and storing the DVDs and all those associated costs.

Mr. Osborn:
To Mr. Jackson's questions, as far as the *Donray v. Bradshaw* argument and adding the prosecutor or the defense on to this directive (Agenda Item VIII), this policy as we update it will be reviewed by the AG's office. I would defer to them to make the legal decision on that. Also, from everything we are being told by Metro with more than 900 body cameras being use on their officers in Las Vegas, they have not realized the public record requests that we all thought would come with these programs. We have had the dash cams in NHP for more than 8 years and we also have not realized an increase in public record requests for those videos. I think it was feared initially, but the biggest key to these programs and why departments start and then end their implementation is because of the data storage.

Mr. Callaway:
At Metro, we have been working to equip our agency with body cameras since 2013. As a result of a recent collective bargaining agreement, we expect to have them all our uniformed officers who interact with the public equipped with body cameras within the next couple of months. Also, our Special Weapons and Tactics (SWAT) and canine personnel will be equipped as well. To the point of the public records requests, at the last Legislative Session, Senator Ford and Assemblyman Mumford both had language in their bills that protected us by saying you could not make blanket requests because what we saw in other jurisdictions like Illinois, was that people would say they wanted every video a certain officer was in, for example. The Nevada law says it can only be incident based, rather than blanket requests. I think that is one reason we have not seen the large influx of requests we thought we would see.

Senator Mark A. Lipparelli (Senatorial District No. 6):
In looking at the policy that was adopted, how has this been married up against the dash cam policies with respect to time of retention?

Mr. LaPrairie:
A lot of the body worn camera policy was tailored off our in-car video policy, especially with who can view it and the retention schedule; all that mirrors each other.

Chair Hardesty:
I will now open agenda item IX. As we worked through the discussion on category B offenses, Chuck Callaway made a good point that we should receive information regarding controlled substances and the various issues surrounding law enforcement's encounters in this area. Thank you to Chuck and to Nick Anthony for setting this up.

Larry Pinson (Executive Secretary, State Board of Pharmacy):
I am a pharmacist and was asked to review Nevada's scheduling of controlled substances. Basically, the schedules are numbered I through V (Agenda Item IX A), with the lower numbers representing the most strictly controlled drugs. The Schedule I drugs seen on pages 1-11 (Agenda Item IX A) are considered contraband—heroin, spice, bath salts, etc. These drugs have no medical use.

The Schedule II drugs seen on pages 11 to 14 (Agenda Item IX A) are the heavier narcotics which represents the most easily and commonly abused drugs that also have a medical use—oxycodone, morphine, Demerol, Ritalin, amphetamines and most recently, hydrocodone, which is the number one abused drug in the world. Our country gobbles up 99 percent of all the hydrocodone manufactured worldwide.

The Schedule III drugs on pages 14 to 18 (Agenda Item IX A) are the lesser narcotics like Tylenol with codeine, barbiturates, anabolic steroids, etc. The anabolic steroids includes growth hormone and testosterone which body builders were abusing and ending up with liver tumors.

The Schedule IV drugs on pages 18 to 21 (Agenda Item IX A) include most of the sleepers like benzodiazepines such as Xanax, Ambien, tramadol, etc. The Schedule V drugs are the least controlled, many with small amounts of narcotics such as Lomotil which is used for diarrhea. It is not very easily or commonly abused because there are ingredients that make a person very uncomfortable.

How do we determine where a drug will be classified? It is based on three things found in NRS 453.166 and the next four sections after that—addiction potential, dependence potential, both physical and psychological; and legitimacy of medical use. For example, look at NRS 453.176, Schedule II tests. It lists three definitions: first, "The substance has high potential for abuse;" second, "The substance has accepted medical use in treatment in the United States, or accepted medical use with severe restrictions;" and third, "The abuse of the substance may lead to severe psychological or physical dependence." Those are the tests we use to figure out where a drug falls.

The U.S. Congress has delegated scheduling authority to the U.S. Drug Enforcement Agency (DEA). In Nevada, it was delegated to the U.S. Board of Pharmacy with the caveat that State scheduling should, at minimum, mirror federal scheduling. It is not uncommon for one entity to schedule before the other, so if the federal government schedules something we have not scheduled yet, we will make regulatory changes to

mirror their scheduling. In Nevada, we are seeing a lot of abuse of Soma, which is part of the holy trinity of oxycodone, Soma and Xanax. Those three things with a little alcohol is the holy trinity. It is a muscle relaxant and a useless drug, so we decided to schedule it a couple years ago. The DEA followed suit a year or so later. Conversely, the DEA was the first to schedule hydrocodone and we soon after started the regulatory process and scheduled it in Nevada. Currently, the DEA is looking at a drug called kratom, an opiate-like drug from a tree in Malaysia. We will probably take a look at that.

How does the Board of Pharmacy schedule a drug? Since it is by regulation, the process is no different than crafting any regulation. We begin with a discussion item, then comes the mandatory workshops and public hearings, all looked over by the Legislative Counsel Bureau. Finally, the Legislative Commission's Subcommittee on Regulations has to approve it. The more obscure drugs get to a workshop through law enforcement. Here is a scenario: the police pick up a young, impaired person with an unidentified substance. The substance is brought to the crime lab to be analyzed and identified. Sometimes that is not possible. If the substance turns out to not be scheduled, it can be difficult to prosecute someone for being under the influence of something you cannot even identify. That is why we work with crime labs—so we can begin the process of scheduling drugs that police departments are seeing more and more of on the streets.

In 2008, we started getting reports from Europe of new hallucinogens in plant material being used by youth over there. These were synthetic cannabinoids like the spice-type drugs. In 2009, we started seeing similar reports for a chrystalline substance known as bath salts. A year later, they migrated from Europe to the U.S., coming in through the southeastern U.S. as usual. One way we monitor the movement of these substances is to look at poison control data in Mississippi, Alabama, Arkansas, etc. It always starts there and then migrates across the country. In 2010, the cannabinoid poison calls were around 2,000. By 2011, the calls were up to 6,000 and bath salts calls went even higher. That year, we began to get reports from law enforcement in Nevada that they were picking "something" up on the streets. It turned out to be these two substances.

When we try to schedule a new drug, we have to ask what it is. For example, are bath salts something we can get at a store to pour into a bath? We did not know much more than the fact that these little packets of white stuff were being sold. The same was true for spice drugs, which are essentially tetrahydrocannabinol (THC) put into plant material and sold in little packages at truck stops and head shops. It turned out that all of these were compounds that some chemist at a university was working on as a cure for, say, Alzheimer's or be a perfect sleeping pill, etc. We do not want to interfere with this type of scientific research by making everything illegal, so it takes some thought to schedule these drugs. Should we make all hallucinogens Schedule I? If so, we have to take glue, paint thinners, screen savers, etc. all off the market because kids will sniff anything to get high. The spice compounds were being worked on by John W. Huffman from Clemson University, so all those drugs have his initials, JWH.

One of the challenges with chasing these compounds around is that they are huge molecules, so as soon as you outlaw one, the creators can make a small chemical change, creating a new compound that is now not scheduled. At almost every board meeting, we have some drug going through the regulatory process and it is working. The use of bath salts and the cannabinoids has declined because of those efforts. Secondly, the education part is huge since kids are smarter now and we can educate them on the dangers of these substances.
The latest craze we are seeing is promethazine with codeine, which is Phenergan with codeine, the grape cough medicine most of us have probably taken at one time or another. It is a Schedule V drug and is used all over the country and very popular in Las Vegas. It is worth about $700 for a pint on the street. We have had robberies and burglaries of this liquid that the kids drink with a Jolly Rancher hard candy in it. we need to address this substance now and are wrestling with changing it to a Schedule IV so we can track it since we do not track Schedule V drugs.

Finally, there was something on the agenda about the Connecticut drug law reforms, which is Public Act No. 16-43. That is their version of our S.B. 459 which the Nevada Legislature passed last Session.

SENATE BILL 459: Establishes an opioid overdose prevention policy for Nevada. (BDR 40-1199)

Yenh Long (Administrator, Prescription Monitoring Program, State Board of Pharmacy):
Both the Connecticut law and the Nevada law Mr. Pinson just mentioned took effect in October 2015. One way the two laws are similar is that in both, the dispensers must report their controlled substances dispensations to the Prescription Monitoring Program (PMP) by the end of the next business day. Also, prescribers must look up patients in the PMP before writing controlled substance prescription for anything in Schedule II through Schedule IV. In Connecticut, it is for more than a 72-hour supply, so they must query the patient. In Nevada, prescribers must query the PMP when writing for a new patient or if they are changing a course of treatment. Third, prescribers in both Connecticut and Nevada can have delegates or agents query the PMP for them, but the prescriber must review the report. Another way the two laws are similar is that emergency responders can now carry opiate antagonists like naloxone which can reverse an overdose. In Nevada, we extend it so pharmacists can now provide an opioid antagonist to a patient without a prescription.

Some of the differences between the Nevada and Connecticut laws are that in Connecticut the insurance policies are not allowed to require prior authorization for naloxone. Nevada does not have this. It would make it easier for a patient to obtain naloxone. Another difference is that in Connecticut when issuing a prescription for an opioid drug for the first time for outpatient use, the prescriber shall issue not more than a 7-day supply. Nevada does not have a limitation on how many day's supply a

prescriber can write for a patient for the first time for outpatient use. Lastly, the difference between the two states is that if a prescriber is writing a patient a prescription for a Schedule V controlled substance, which are not tracked by the PMP, for continuous or prolonged treatment, the prescriber or agent must review PMP not less than annually.

Mr. Pinson:
The Connecticut law also requires veterinarians to report to the PMP, which Nevada does not require. We have seen incidents of people using their pets to get benzodiazepines like Xanax, saying their dog is nervous.

Mr. Jackson:
I recall your previous testimony before this Commission last interim about how 99 percent of all the hydrocodone made in the world is being consumed in the U.S., and also that the U.S. makes up about 6 percent of the world population, yet we consume 80 percent of all opioids manufactured in the world. Based on testimony before this Commission and the Substance Abuse Working Group chaired by the Attorney General, it was not long ago that the PMP program was voluntary. I recall that 35 percent to 38 percent of all retailers or pharmacies in Nevada were participating at that time, so I applaud your efforts and that of the Legislature in enacting S.B. 459. While there is that requirement of the reports, do we have 100 percent participation by pharmacies in Nevada complying with the PMP requirements?

Mr. Pinson:
We always had 100 percent of the pharmacies reporting. It is the law, and if they do not report, I am on them. The problem is with the practitioners or prescribers reporting to the PMP. It was voluntary with this group until S.B. 459 made it law as of October 2015. They have to look up the patient in the PMP before prescribing a controlled substance.

Ms. Long:
Before S.B. 459, we only had about 60 percent of our prescribes registered for the PMP. If you are not registered, you cannot query any patients in the PMP. Since the passage of S.B. 459, we work with other licensing boards and we have 80 percent to 90 percent of prescribers registered for the PMP. We have a compliance coordinator and a statistician for a Harold Rogers grant. We are going to educate people and get them to start using the PMP.

Mr. Jackson:
So, we are at less than 100 percent of the practitioners, but we want 100 percent. Are you anticipating you will implement enforcement before the beginning of the next Legislative Session in February 2017?

Ms. Long:
Yes, we anticipate 100 percent compliance with registration with the PMP by the next Session.

Mr. Pinson:
She might be a little more optimistic than I am. In Nevada, to prescribe a controlled substance, you need two things—a controlled substance registration from the Board of Pharmacy and that allows you to get your DEA registration from the federal government. You need those two things before you can prescribe anything. We are talking about prescription drug abuse. People are prescribing these drugs so if we are going to cut it down, we have to cut the prescriptions somehow. Why not make it mandatory for anyone who signs up with us for the controlled substance registration to first sign up with PMP? If you do not sign up, you do not get it and you cannot write prescriptions. Some doctors do not need controlled substances so they do not prescribe them; that is fine if they do not sign up. But those who write prescriptions for controlled substances, you are supposed to be looking. It just seems like a simple fix to me.

Chair Hardesty:
One of the topics this Commission was asked to look at by the Legislature was the status of the implementation of medical marijuana. From my recollection of the presentation we received, there seemed to be very little control by the organization that is set up to issue and regulate medical marijuana facilities on the issue of prescriptions. I assume, based on this review, that the Board of Pharmacy does not involve itself in prescription control of medical marijuana use. Is that correct?

Mr. Pinson:
Yes. Marijuana, medical or otherwise, is still a Schedule I drug for the federal government. It is contraband. Any pharmacy that puts in a contraband drug loses their DEA license. They cannot even sell cough medicine. The Board of Pharmacy basically has nothing to do with it; it is a whole different agency. Until the federal government changes the scheduling of marijuana, there will always be a hassle from state to state.

Chair Hardesty:
So people prescribing medical marijuana for medical purposes would lose their ability to prescribe other scheduled substances. Is that what you are saying?

Mr. Pinson:
No. nobody has gone that far, but if you look at it, there is the possibility. The doctor does not really prescribe the medical marijuana; the doctor is prescribing a card. The person then takes the card to the dispensary, so it really has nothing to do with the actual DEA license holder prescribing a contraband drug. I am not an attorney so I have a hard time figuring out how something can be legal and illegal at the same time.

Chair Hardesty:
Whether it is legal or illegal at the state or federal level, I am concerned about who is checking on the issuance of those cards and the basis for which they are being issued and if they are addressing quantities in those cards. That does not seem to be addressed. Would you agree?

Paul Edwards (General Counsel, State Board of Pharmacy):
The statute is written in a way that the Board of Pharmacy is expressly carved out from having any jurisdiction over medical marijuana. I do not know what the Department of Health and Human Services is doing to address the issues you raised. These are valid issues, but I do not know the answers.

Chair Hardesty:
Are there any other controlled substances prescribers can issue a prescription for that is not regulated?

Mr. Pinson:
Not to my knowledge.

Robert Ochsenhirt (Detective, Las Vegas Metropolitan Police Department):
I have been with the Las Vegas Metropolitan Police Department (Metro) for more than 19 years, spending the large portion of my career investigating narcotics. I have a presentation that illustrates the seriousness of trafficking offenses and why I believe it should remain categorized as it is now (Agenda Item IX B), page 2. I am speaking of traffickers, who are those who prey on the citizens of our communities by selling narcotics; not the casual users or people fighting addiction. I believe putting narcotics traffickers in prison and keeping them there for the majority of their sentence will have a positive impact on our communities.

The mindset of the narcotics trafficker is illustrated in a case I included on page 3 of my presentation (Agenda Item IX B). In 2007, we arrested individuals with 12 pounds of methamphetamine and $311,000 in U.S. money. The only reason they did not have more meth was because they could not get more from their source in Mexico. At that time, people arrested for drugs in Clark County were, a lot of times in my opinion, getting a slap on the wrist. One of the arrestees said during his interview with Parole & Probation that he expected he would get probation, a slap on the wrist and get deported. We learned a lot from this drug bust about the mindsets of these traffickers; that it is a joke that they would not be prosecuted severely. We now have a different approach to having our people prosecuted and we are getting better sentencing as a result.

The next page includes photos of a young couple in East Liverpool, Ohio last month passed out in the front seat of their car with a 4-year-old child in the back seat. At around 3 p.m. while a school bus was unloading in a residential area, this vehicle

swerved in and came to a stop in the middle of the road, page 5 (Agenda Item IX B). After the school bus left, the car remained. Police were called and this is what they saw, page 4 (Agenda Item IX B). The couple had overdosed on heroin. They lived, but we talk about offenders targeting users who are victims and we also have the young child in the car who is a victim in this situation.

A few years ago there was a major heroin epidemic in Henderson at Green Valley High School. It was called the black plague and was well known in the school, with an estimated 30 percent of the student body using illegal narcotics, primarily heroin, methamphetamine and cocaine. Half of those students were obtaining illegal narcotics from what was described as a "Mexican Dispatch Center." An individual the Henderson Police Department interviewed said the traffickers were targeting the high school students with free drugs at first to establish the addiction. If the students did not have money for the narcotics, sometimes, sexual favors were exchanged for the drugs, pages 6 and 7 (Agenda Item IX B). Why is this important? Because we are talking about users, yes, but the traffickers are targeting our community and our children.

The next few pages illustrate some of the drug-crime related things we are seeing on the street including seized weapons, narcotics and more. On March 15, 2015, at the Otay, California Port of Entry (POE), we seized 19 pounds of meth and 2.4 kilograms of heroin, page 9 (Agenda Item IX B). Why is this important? Because our investigation determined that this load vehicle and its contents would end up in Las Vegas.

Another seizure at the same POE, this time with 11.86 grams of heroin found in a spare tire is shown on page 10 (Agenda Item IX B). This was also coming to Las Vegas.

On August 4, 2015, two pounds of methamphetamine was seized in Muscle Milk bottles, sent by U.S. mail from San Diego to an undercover person in Las Vegas, page 11 (Agenda Item IX B). This illustrates the creativity from these organizations to avoid detection.

In September 2015, a courier showed up at an address at East Warm Springs and Eastern Avenue in Las Vegas with 20 pounds of meth in his vehicle's spare tire, page 12 (Agenda Item IX B). This kind of bust happens any given day for Metro.

On October 1, 2015 another courier was busted, this time on Boulder Highway, with 20 pounds of meth in a spare tire, page 13 (Agenda Item IX B).

This past March, we seized a package going from Las Vegas to Miami, Florida with 4 kilograms of meth, page 14 (Agenda Item IX B). The smart UPS clerk figured out something was going on and opened the package and then called us.

In June of this year, we used a search warrant at this address in northeast Las Vegas and found meth and firearms, page 15 (Agenda Item IX B). What we see often with

these high level traffickers is weaponry, whether it be to protect their money and investment or to protect themselves from other high level traffickers operating in the same areas. Later that month, we found one pound of meth in a house in east Las Vegas, page 16 (Agenda Item IX B).

On August 10, at a house near Tropicana and Mountain Vista we found 30 pounds of meth in a car that came up from San Diego, page 17 (Agenda Item IX B). In the kitchen drawer at that residence, we found just under a kilogram of heroin. Five days later, we used a search warrant at a house in west Las Vegas near Summerlin where we found a cooler buried in the back yard that contained several pounds of methamphetamine and 11 handguns. Of those handguns, three were reported stolen; two in Las Vegas and one in California.

Statistics on overdoses in Schedule I narcotics resulting in deaths in Clark County in 2016 to date are shown on page 15 (Agenda Item IX B). Under the 101 meth deaths on that chart, one was a fetal death, dying in the coroner's office.

People ask about why 4 grams of a Schedule I controlled substance is the bottom end of trafficking. Typically, someone who has that amount of narcotics has more than personal use, based on dosage units, page 20 (Agenda Item IX B). I have heard the argument that a hard core user can use 10 grams of something, but we have not seen that. If someone has 4 grams of a Schedule I controlled substance, that is several doses to sustain a habit more than a day or two. However, heroin and methamphetamine addicts usually buy in the morning and at night every day; they do not usually have a stash on hand.

In southeast Las Vegas, searching a residence with a warrant uncovered more than a pound of meth, a quarter kilo of cocaine, some marijuana and two handguns, page 21 (Agenda Item IX B). This repeat offender jumped out of a second-story apartment window to avoid apprehension by law enforcement. Another repeat offender was arrested in February with 17.7 grams of cocaine and one handgun (Agenda Item IX B), page 22. We recovered six firearms, body armor, ski masks, gloves and some marijuana from another address in the southeast part of Las Vegas, (Agenda Item IX B), page 23. You can start to see where the narcotics offenses can begin to venture in to other criminal enterprises like robberies.

On page 24 (Agenda Item IX B) is a list of the statistics from the enforcement group I am a part of. It is not the entire Metro narcotics section. We had 155 pounds of meth seized, 20 kilos of heroin, more than $584,000 of currency seized, etc. We also seized 2,540 grams of GHB, which is the date rape drug. No one typically ingests GHB on their own as a recreational drug; it is used to dose someone to lower their sexual inhibitions and commit other crimes. On page 25 (Agenda Item IX B) is our 2016 year-to-date statistics. We are already 10 pounds above where we were in 2015 for meth seizures

and tied with the heroin seizures. Remember, this is just our enforcement group, not the whole city.

If you think of other crimes that have a drug nexus in southern Nevada or any other city, if someone gets addicted to a substance and cannot afford to pay for it, what are they going to do? They will commit burglaries, property crimes, theft, robbery, etc. If a burglar goes into a house and steals a firearm or other goods as part of a theft, he might use it as a payment for their narcotics. Now you have a trafficker with a stolen gun. It is a vicious cycle that keeps going.

We have talked about the costs of specialty courts to take care of addicts, treatment, education and prevention, but what about the costs to the homeowner who has to pay their deductible for a break-in, to replace their property, etc.? What about the victim who is robbed at gunpoint with the emotional and physical toll they pay? These are the costs the drug traffickers inflict on our communities. They go in to prison, do their time and come back out and they are typically going to offend again. It is like you cut one head off and two heads grow back. When we take people off the streets who are trafficking narcotics, someone is in their place the next day doing the same thing.

You may have heard about the house fire at Lamb and Charleston last year where an individual was bound up, tortured and murdered in his house and the house was set on fire. What if that fire jumped the property lines and took out more houses? We believe trafficking is a serious crime and needs to stay on the books as it is.

Chair Hardesty:
Do you maintain statistics on the number of defendants who will give information for a reduced sentence?

Mr. Ochsenhirt:
We do not. I would refer to any District Attorney's (D.A.) office in the State for that information.

Chair Hardesty:
Does Metro have authority to enter into those kinds of arrangements without the D.A.'s approval?

Mr. Ochsenhirt:
I am going to say no, because I always tell defendants it is between them and the D.A. to make a deal, not me and that the judge has to accept that arrangement.

Mr. Callaway:
I am not a narcotics detective, but I believe the current process is that when someone is taken into custody for one of these drug crimes and they are cooperative and lead us to

a bigger fish, we pass that information on to the D.A.'s office. That office can consider that information or not when they go into court, but we do not make promises.

Chair Hardesty:
Are the approaches taken with respect to the substantial assistance provisions in the trafficking statutes different in the various judicial districts in the State?

Mr. Callaway:
That is probably correct, based on other inconsistencies. I cannot speak for how other entities do it, but I would assume that there are inconsistencies.

Chair Hardesty:
In Clark County, is an individual who is willing to provide substantial assistance required to plead before doing so as a condition to getting the benefits of providing substantial assistance or do they have to provide the information first?

Mr. Callaway:
Typically, the way it works is that the narcotics detective would work that individual so the person would provide information. They would be booked in on their charge, then give information to the officer working the case. That officer would then follow up on that information through undercover operations or controlled buys and then search warrants would be obtained. If, at the end of that process, it showed that the information given was good and that the person being booked in was cooperative, it would be passed on to D.A.'s office.

Chair Hardesty:
I understood that the approach to substantial assistance is different in the jurisdictions around the State. From your perspective, Detective Ochsenhirt, because we have different levels of trafficking that are measured by different grams of weight for the most part, what is the rationale of the range of grams defining the top three schedules of illegal drugs?

Mr. Ochsenhirt:
I think it goes back to the question of does the punishment fit the crime. If there are 4 to 14 grams, that is low level trafficking while 14 to 28 grams is mid-level trafficking and 28 grams on up is high level trafficking. It is proportionate to what you have. I think they are appropriate for the Schedule I controlled substances.

Chair Hardesty:
Do you make a distinction between someone who is a mule who is driving a car and they have narcotics that could even be over 28 grams, putting them into the highest trafficking level? Should that individual be subjected to the mandatory life sentence? Can you distinguish between a mule and a trafficker?

Mr. Ochsenhirt:
There is a definite distinction between a trafficker who is typically running an organization that includes runners, deliver people, stash house operators, money collectors and mules. The defense that, "Oh, my client is just a mule, he did not know what he was doing," will not always hold water. For example, if someone says, "Here is $5,000 for you to drive this car from a house in Los Angeles to a house in Las Vegas," it is hard for them to say they did not know what was going on. A normal person would say, "Wait a minute, something is amiss here." I think those people are as culpable as the trafficker because you have to know; you should know, what is in that vehicle. At least you should know that it is probably something you should not do.

Chair Hardesty:
My question is should that individual be sentenced to the same length of imprisonment as the trafficker?

Mr. Ochsenhirt:
Yes, because without the transport person, the drugs do not get there. They are as important because the trafficker has now engaged someone else in his conspiracy to bring narcotics to a location.

Chair Hardesty:
The financial impact to the State turns out to be very substantial.

Mr. Kohn:
I agree with everything you say until you say the guy with 29 pounds of methamphetamines is just as culpable as the guy bringing 29 grams into the state who may have been amiss by not asking more questions. Say it is not $5,000 but rather $100, because if you are poor, you are poor. When that guy bringing in 29 grams who should have asked more questions is charged in the same way the guy with 29 pounds or even 290 pounds, that is what is troubling a lot of us. We looked at the drug laws in the first session of this Advisory Commission back in 2008. I was troubled then. I have not tried a drug case in more than 30 years, but I am really troubled when you tell me that trafficking at 4 grams, which is nonprobationable is anywhere near the guy taking 29 pounds. That is where you lose me and why we need more reasonable laws.

Maybe we need harsher laws for that guy with 29 pounds, but when you tell me 4 grams is still probably for sale, I do not disagree. But that guy with 4 grams is more likely buying some; using some and buying some and selling some. It is wrong, but to be nonprobationable, I really struggle with it. I am not troubled by anything else you said, but I would like us to get together and say, "Who are the guys we are really aiming at, and who do we need to give 10 years to life and who do we need to punish less and who is it that is just buying and selling and using because they cannot afford to do it without stealing?" With all due respect, I appreciate and agree with what you are doing, but that is where you lose me—when we are not trying to differentiate the very worst

versus the people who have a drug problem because of those guys and now the only way they can afford to feed their habit is to sell some.

Mr. Ochsenhirt:
I appreciate and understand what you are saying. I think those lower range offenders could be plead down into a different drug category that is probationable that fits the situation.

Mr. Kohn:
I know what Mr. Jackson is going to say in about 30 seconds. Show me a case where somebody went down on trafficking and really did. I agree; most 4 to 19 gram offenders are probably going to be reduced unless it is that guy who just says, "Screw you, detective, I am not going to help you because I am afraid of my dealer." I agree most of them will be reduced but they will not always be reduced. The law still requires that if they go down on it, it is nonprobationable. I want to work on a more reasonable drug system. We tried years ago and Metro was the one who said it could not agree with changing the 4 gram law. I do not disagree on the 29 pounds, but it is the lower ones I have trouble with.

Mr. Callaway:
First, I want to say I think all these cases are unique and judicial discretion should come into play since each situation is different. Regarding the mule situation, the mindset of some people involved in these types of crimes is that if we were to lower that crime for just being a mule, the drug trafficker then has no incentive to even have a mule. He can just drive the car himself, he could say he is the mule and you would then have a loophole where the primary trafficker does not need a mule. We have to take into account the mindset of these individuals we are dealing with when it comes to lowering certain aspects of the overall crime we are talking about.

Chair Hardesty:
I do not disagree, but the problem is that even from the lower end, the judge has no discretion. The situations are different, but when I was a district court judge some time ago, I saw a number of individuals who went to prison not just as a level 1 but as a level 3 and the facts were that the kid got paid $200 to drive from Sacramento to Salt Lake. He consented to the search that then produced a quantity of drugs that made him the highest level of trafficker we have. That individual went to prison for a period of time that is substantial. The taxpayers of the State need to ask the question of whether or not that is a prudent use of the prison space.

I do not doubt the fact that these drug dealers will take advantage of every opportunity to manipulate the process. But I do question the issue where all of this is driven by weights of drugs. I am just trying to understand what the basis is for the weights of drugs creating mandatory incarceration sentences and no judicial discretion to evaluate those circumstances where the facts might be different. Even if it is not probation, at

least the sentence is not going to be a period of 10 years to life or something, which some of these trafficking sentences are. Until we can have a conversation about driving all of these decisions only by weight without looking at the facts, we will not be able to make a distinction in this area. Mr. Pinson, from a pharmacy standpoint, what do these weights mean?

Mr. Pinson:
The weights are goofy in my mind. Sometimes it is the opposite of what you have been talking about. Just look at hydrocodone, a Schedule II drug that is big right now. In NRS 453.3395, to become a category B felony, you have to be caught with 28 grams. The tablets have 5 milligrams, so 28 grams is 28,000 milligrams which is like 5,600 tablets. In the upper end is 400 grams, which is 400,000 milligrams and that would be 80,000 tablets. Someone walking around with between 5,000 and 80,000 tablets is clearly not taking it for themselves. It is out of whack.

Chair Hardesty:
We are not attaching the weights to the drugs appropriately.

Mr. Pinson:
That is my opinion.

Mr. Jackson:
Looking at marijuana, it is not just the leafy substance. When we are looking at the weight of marijuana it will include the stems and the seeds. The 5 milligrams is the active ingredient within the pill, but it also includes the pill binder. So when we are talking about the weights of a substance, we are weighing the entire pill. So it would not be 28,000 pills; we are talking about 1 gram, the weight of a dollar bill, or a package of Sweet N'Low. That is what we are talking about for trafficking quantities in connection to the Schedule I and Schedule II substances. It would not be that many pills.

Mr. Pinson:
I thought it was active ingredient.

Mr. Edwards:
In talking to other prosecutors, it has been my understanding, and that has been the frustration they had, that it is the active ingredient being measured, not fillers.

Chair Hardesty:
I think it is active ingredient.

Mr. Jackson:
I have never prosecuted a Schedule II trafficking case. Pretty much everything we go after are Schedule I crimes.

Mr. Pinson:
Probably because you do not have someone running around with 80,000 tablets, if that is what it is.

Chair Hardesty:
One point Mr. Callaway made in a previous meeting is that our criminal statutes do not follow the trends in these drug uses. He made the point that what is currently the drug of the day might be a Schedule II or a Schedule III substance, yet we want to incarcerate for a longer period of time those people with a high quantity of those lower drugs; the opiates, etc.

Mr. Kohn:
These laws were passed in 1985 and we have not kept up. You mentioned GHB. To me, it should be a very small amount and you are in trouble, because you are right, no one is going to take that for the fun of it; it is going to be used against somebody. I have problems when we say 4 grams to 14 grams is still okay to make it trafficking. As Mr. Pinson said, then you will have tons of opiates and not be trafficking. I would like both sides to sit down and figure out how to make the laws passed 30 years ago, when we had completely different drug problems, relevant to 2016. It is typical of all laws; that they do not keep up with the mores and what is really going on in society. I want to have the discussion of how we can really protect our community and our children from drugs. I want to get the rights guys in prison and not just the guys who were a problem 30 years ago.

Mr. Ochsenhirt:
I agree completely. Putting the right people in jail for doing the wrong things is the goal.

Chair Hardesty:
How could we assess this? Would it be appropriate to attach weights to different drugs, based on the level of impact they have and the kinds of addictive qualities? What kinds of steps would you suggest? This process, like the sentencing commission, enables the State to be more current.

Mr. Pinson:
I had not thought about this, but it is an interesting question. I agree that this is a moving target because drugs change from year to year. It almost seems like you need a continuous commission made up of physicians, pharmacists, lawyers, judges and experts in this area.

Chair Hardesty:
Would it be beneficial if you had drug laws targeted at the kinds of problems you are facing?

Mr. Ochsenhirt:
I agree.

Assemblyman Anderson:
Maybe my question is more around the language we are using rather than the weights. You all do this a lot more than me, but is there a difference between trafficking and intent to sell? I keep hearing the phrase “personal use,” but to me, someone who is maybe a desperate drug dealer who came up from the streets selling what a trafficker brings them is different from the cartel that smuggles the drugs in across borders.

Mr. Ochsenhirt:
Yes. With trafficking you have a baseline of weight and with possession with intent you usually have a smaller amount of drugs with other factors present—criminal history, scales, baggies, items you would use to repackage for sale, etc. That is a letter offense below trafficking. There are definitely different tiers of individuals as opposed to the street level user who may be selling something on the side versus a trafficker.

Assemblyman Anderson:
I am getting flummoxed by the phrase “personal use,” because to me, it is that person who has 4 grams of a drug who is intending to sell, but not traffic the drug. To me, if I have to decide what is worse, I definitely think traffickers are a little bit scarier than some kid who is maybe dealing drugs. Does that make sense?

Mr. Ochsenhirt:
It does. There are people who will have 4 grams and that may be their own stash for personal use, but that is the exception, not the rule.

Assemblyman Anderson:
What I mean is that I do not consider someone who is selling the same as a trafficker. Maybe we are just using different words. I envision a trafficker as someone coming across a border, running a bunch of drugs. This is why I am trying to parcel out what it means to be a trafficker outside of weights.

Mr. Ochsenhirt:
I think it has a lot to do with the weights, to be honest. We talk about someone who is trafficking versus someone is selling and it goes back to the weights, the schedules and the label of someone who is a trafficker; not what you think of in the movies with drug trafficking organizations here or in another country. We get locked onto that term. I use it because that is what I deal with—people who traffic in the sense of what is against the law in Nevada for weights. It could be someone who just sells and they sell a trafficking amount of weight. There are different distinctions and different levels on the books. I agree that certain weights and certain drugs might warrant a sliding scale on sentencing. I would not oppose a sliding scale on sentencing or mandatory minimums. We are living and breathing and laws change. I am not so naïve to think that what was

good 20 years ago is still good today, but as the law is written now, that is where I get the terminology on trafficker by going back to the weights associated with it.

Assemblyman Anderson:
Is there an average weight that you would expect an individual user versus someone who is maybe a street dealer versus someone who we would think of as doing this while involved in a cartel at a higher level?

Mr. Ochsenhirt:
Just looking at the breakdown, 4 grams to 14 grams is typically what we have encountered that is a low level, street level person selling narcotics. From 14 grams to 28 grams is a mid-range seller. Above 28 grams, depending on the drug, is your higher up players with access to more than 28 grams. Usually, if you have 28 grams, you have more somewhere else or you have the ability to get more. This is based on my experience; it is not a hard and fast rule. If you are talking about 28 grams versus 28 pounds, you can do the same damage with 28 grams as you can with 28 pounds. Obviously, 28 pounds is a bigger scale.

Assemblyman Anderson:
Out of all those groups, is there one group that might potentially be saved with the hope for some sort of community resource intervention? Do you think the street level dealer is beyond redemption? Is there anything we can do to get them off the street without putting them in jail?

Mr. Ochsenhirt:
I think there is, but I do not want to make a blanket statement that all people who are sell narcotics are bad and are unable to be rehabilitated. I think it is a case-by-case situation because what might work for one person might not work for another.

Chair Hardesty:
I appreciate your input on trends in Clark County. Do you still encounter Mom and Pop making meth in their garage? Is that still a frequent occurrence in Clark County?

Mr. Ochsenhirt:
We are not seeing it now. We have not seen the epidemic we saw 15 years ago with 350 to 400 meth labs each year. I think a lot of that has to do with the precursors that have been scheduled and controlled. Also, the mass production has shifted to Mexico. That is the climate of narcotics, so we do not see a lot of the bathtub meth, Mom and Pop labs. It is still happening, but on a much smaller scale. We see more indoor marijuana growers than methamphetamine labs.

Chair Hardesty:
What drugs are the drugs of trend in Clark County right now?

Mr. Ochsenhirt:
Based on availability and price per unit, it is meth. You saw the statistics from the last 2 years (Agenda Item IX B), pages 24 and 25. Our enforcement group has taken more than 300 pounds off meth the street since January 1, 2015. From a Schedule I standpoint, I think meth is still the number one drug out there as far as availability based upon cost, etc. Meth used to sell for $18,000 per pound, but now you can buy a pound of meth for $3,000. Someone can take that and double and triple it to sell. Cocaine is expensive again. Other drugs in Clark County are opioids and that leads into the heroin resurgence because people get hooked on opioids and then cannot get them anymore so they turn to heroin because it is easier to get. We used to rarely ever see heroin, but now it is everywhere because of that relationship to opioid use.

Chair Hardesty:
In Clark County, how frequently are you seeing doctors who are prescribing drugs not being adequately controlled or watched with respect to the opioids and similar medications they are prescribing?

Mr. Ochsenhirt:
To be fair, that is not the area I typically work in. We have a section of the U.S. Drug Enforcement Agency (DEA) and a squad in our department that does nothing but diversion, doctor cases, overprescribing, pharmacy cases, etc. Since I do not do that, I do not have the information but I could get it for you.

Chair Hardesty:
It would be helpful to have this information statewide. The recent Governor's seminar on this subject was focused on the prevalent use or availability of those medications and the addiction that results.

Mr. Pinson:
Through the Prescription Monitoring Program (PMP), we know who writes what and how much and who gets it. One thing we have decided to do is to identify the top 20 prescribers in the State and send those names to their licensing board. The number one prescriber in the State was a nurse practitioner, so we sent that name to the State Board of Nursing. That person is then contacted and asked about his or her prescribing pattern. If the person cannot satisfactorily convince the Board that what he or she is doing is appropriate—maybe the specialty is pain management or oncology, for example—then something is going to happen. One thing that maybe could be built into the law is that instead of just using weight, use weight and/or dosage units. That would make more sense to me. For example, if we are looking at the Schedule II drugs, if we are just talking straight weights, a milligram if Dilaudid is equivalent to 10 milligrams of hydrocodone, which is equivalent to 50 milligrams of Demerol. They are all different, so to pick a weight makes no sense. It needs to be fixed.

Chair Hardesty:
I think the concerns of the Commission are similar. The question is, do we not address the drugs with the appropriate weight, or as you might even suggest, dosages? That would make a difference in the way we establish lengths of sentences and culpability.

Mr. Edwards:
There are some distinctions in NRS 453 that make the distinction between someone who has possession of these drugs as opposed to someone who is selling. For example NRS 453.336 and some subsequent statutes make a clear distinction between someone who possesses. The penalties attached to that are in occurrences—first time occurrence, second time occurrence, etc. The weights do not appear there at all. As you move through the statute, it gets into weights. As to the distinction that is being discussed here about whether there should be a distinction between someone who is selling a very small amount to support their own habit versus someone who is trafficking on a wholesale level, I do not see that the law makes that clean distinction. The weights attempt to get at that, but it is understood that the weights may or may not be the correct way to measure that. As a matter of policy, there may be a good reason to make an additional distinction between someone selling a small amount versus someone selling a large amount, but currently the language says that if you are selling, you are trafficking. I think most of us agree that someone selling just to support their habit is in a different category than someone who is shipping it in by the carload.

Chair Hardesty:
Again, the weights and dosages are relevant. For example, the date rape drug quantity is important because it is minimal. I could see a drug that leads to rape having a pretty serious sentence attached to it with a low dosage and a low weight.

Senator Lipparelli:
Is there an age range the suppliers are after? Where I am particularly concerned is in schools—middle school, high school and college—and whether there are enhanced penalties for trafficking to those people versus those outside of schools. Do they represent an outsized portion of the demand side?

Mr. Ochsenhirt:
We deal with the higher level players, so I may not see who they sell to at schools.

Senator Lipparelli:
I am particularly concerned because I am involved in the university settings and I know this has become a pretty serious issue for the administrators and that they are not well equipped to handle the students who are coming forward to report the technique you mentioned before where the dealers will give free drugs, get people hooked and then they can continue to go get those repeat customers. I am wondering if the 17 to 26 year age range of college students represents the outsized target market for the dealers and if there is something we could attach in legislation to address this.

Mr. Ochsenhirt:
I do not have enough information to accurately answer the question of who the target ages are. We do not typically ask that question when we arrest dealers and traffickers. They will sell to anybody. I think the upwardly mobile section of our society, the college kids, will be more involved in the heroin, pills, club drugs, ecstasy, MDMA, etc. That is an important target group for us to focus on. That is what the criminals are focusing on, the young, impressionable kids. I am not sure what you can do legislatively to protect them. I know there are enhancements to sentencing if someone sells within a school or in a certain geographic boundary, but as far as protecting that group, it should be considered.

Mr. Pinson:
As far as who is using what at school levels, at the elementary, middle and high school level, they are pretty much experimenting with alcohol and marijuana. You have all heard about the farm parties, where everybody brings whatever pills they can get and they throw them all in a bowl and then take some.

At the university level, most of the trouble we have seen has to do with the amphetamine-type drugs because they are trying to use Ritalin and those types of drugs to stay up and study. Then they get hooked on the stuff.

The typical opiate user is a 40-year-old white person, a white collar person.

Mr. Edwards:
In NRS 453.3345, there are enhancements for sentencing for certain drug-related things that occur around schools. It goes up to include properties that are a part of the higher education system, so it would reach onto the college campuses.

Patrick Guinan (Principal Research Analyst, Research Division, Legislative Counsel Bureau):
Connecticut recently made some revision on some of their drug possession laws. I want to make a distinction right at the outset that we are talking just about possession. In July of last year, the state passed some changes to sentencing for drug possessors, essentially replacing their penalty structure for drug possession crimes which, up until then, had handled possession as a felony for just about anything. The new structure in Connecticut has made possession of any drug including a half ounce of marijuana or any other illegal drug, a Class A misdemeanor that is punishable by a year in prison, a fine of up to $2,000 or both.

They removed the felony penalties for possession of smaller drugs. That has no impact on selling, intent to distribute, manufacturing, etc.; it is just possession. They also changed the rules for second and subsequent possession, so a judge or a court is now allowed to suspend prosecution for a second offense and order treatment for a drug dependent person in lieu of jail. They are allowed to punish a third, or subsequent

offense, as a “persistent offender,” subject to a category E felony, which in Connecticut is a 7-year prison term and a fine. They also allow judicial discretion for alternate sentencing and in the instance of a third or subsequent offense, a judge is required to impose a mandatory prison sentence and probation, but the judge can decide the length of those, rather than it be a mandatory minimum. Those are the three main changes to the possession rule in Connecticut.

By changing these possession laws from felonies to misdemeanors, a lot of other things also occurred—the offender no longer loses his or her right to vote, is no longer disqualified from serving on jury duty for 7 years and is no longer subject to having his or her conviction considered as a factor for denying, suspending or revoking state-issued licenses. The actual legislation, House Bill 7041, was passed during Connecticut’s special session last summer (Agenda Item IX C-1). I have submitted a statement on that legislation by Connecticut Governor, Dannel Malloy, which was part of what he termed his “Second Chance Society” initiative (Agenda Item IX C-2). This was the first round of legislation that went through last year. He had another round of legislation that he put out this year, intended to deal with bail and juvenile sentencing, but it did not succeed.

Some of the other changes that resulted in changing the possession laws from a felony to misdemeanor also affected juveniles in that they could be charged with one of these crimes as an adult unless they are being tried under the persistent offender rule. So a juvenile who is charged with one of these misdemeanors is necessarily going to be charged as a juvenile unless they are on a third or subsequent offense. This bill specifically points out that it in no way alters existing provisions concerning manufacturing, distributing, selling, prescribing, compounding and any of the things that would come along with the larger trafficking penalties.

In addition to lowering the penalty from felony to misdemeanor, the bill also made changes to parole and pardon provisions in Connecticut laws. Changes were made in the size of the Connecticut Board of Pardons and Paroles and the number of members who serve on it (Agenda Item IX C-3), page 4. In essence, they reduced the size of the part-time membership by about 10 people and increased the size of the full-time membership by one person. This was a cost-saving measure. Other changes required that three Board members be present at parole hearings and that the vote to approve parole had to be a majority vote. There are now provisions in place to allow for a parole hearing to take place without the inmate being present as a measure to expedite the parole process.

The bill also expands access to an existing expedited pardons process for anyone convicted of a nonviolent crime, so if you are qualified for the expedited process, you can also receive a pardon without a hearing, unless the victim requests a hearing.

This bill also reduced the penalty associated with drug possession near a school or daycare, which is similar to what we have in Nevada (Agenda Item IX C-4). Previously, the sentencing was consecutive; now it is concurrent, so it is a little more lenient. This is for possession only.

Finally, a judge is now allowed to impose less than a mandatory minimum sentence if there was no one hurt during the commission of the crime and if there was no use or threat to use physical force or a deadly weapon and the defendant was unarmed at the time. So there is a little more leniency built in. This is only allowed one time and the defendant must show good cause for the leniency. The judge has to state the reasons for imposing that more lenient sentence and departing from the mandatory minimum (Agenda Item IX C-5).

I have also submitted a document with information on the fiscal impact of the Connecticut law change (Agenda Item IX C-6). In your discussion earlier about structuring penalties for trafficking and selling differently, Connecticut does make a distinction for drug sales made by a person addicted to drugs versus drug sales made by someone who is not addicted. The penalties shift on a scale based on that data.

Chair Hardesty:
The remaining items on today's agenda will be on the agenda for the Work Session. I will now open agenda item XV, public comment.

Ms. Brown:
On the identification and driver's licenses you were discussing earlier, within the last year, a man in his 30s, born in Texas and never been arrested, had a screw up on his birth certificate. He got his first driver's license in Nevada, moved out of state and then when he came back to Nevada, they discovered his birth certificate had a typo on it, so he could not get a Nevada driver's license. Through much effort, his mother was able to get his Texas birth certificate corrected from Adam to Adan, which was the man's given name. He is Hispanic, so that might be an issue for some of the Hispanic inmates coming out.

Also, regarding the mental health issue, a person was recently committed to the Sparks Mental Health hospital. He was in a situation and when his attorney was trying to listen to what was happening, she called for a psychological evaluation on him. He was then deemed unfit to stand trial. I contacted his attorney and said, "Hey, listen, they deemed him unfit to stand trial. Did you or anybody even check into what he was saying? Because it would have been so easy to just google what he was saying." He claimed he was a bounty hunter. His brother had been murdered and he wanted justice. The information he was provided came from the Reno detective who was telling him who they believed was responsible for his brother's murder. He sat in Sparks until the Public Defender's office finally started to understand that what he was staying was true. He had a new evaluation and he has now been at Washoe County and they are going to

file a motion to dismiss. There needs to be something on checks and balances with the psychiatrists who are examining the mental health issues.

Chair Hardesty:
Seeing no one else wanting to make public comment, I adjourn this meeting of the ACAJ at 4:17 p.m. Mr. Anthony has prepared a memo under agenda item XIV with possible recommendations that we will be discussing at our next meeting, our Work Session (Agenda Item XIV).

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	Amy Rose, ACLU of Nevada	Letter from Holly Welborn
Agenda Item III B	Florence Jones	Public Comment
Agenda Item V A-1	Justice Michael Douglas, Nevada Supreme Court	Specialty Court Program Revenue Trends (September 20, 2016)
Agenda Item V A-2	Justice Michael Douglas, Nevada Supreme Court	Specialty Court Summary
Agenda Item V B	Chief Judge David Barker, Eighth Judicial District Court	Eighth Judicial District Court Specialty Court Funding Update—AOC General Fund Allocation
Agenda Item VI		Senate Bill 451 from the 2015 Session
Agenda Item VII A	Kristy Oriol, Policy Coordinator, Nevada Network Against Domestic Violence	Nevada Network Against Domestic Violence's 2015 Calendar of Statistics
Agenda Item VII B	The Southern Nevada Family Justice Center	Overview of the Southern Nevada Family Justice Center
Agenda Item VIII	Jim Wright, Director, DPS	Nevada Highway Patrol Division Directive Manual
Agenda Item IX A	Larry Pinson, State Board of Pharmacy	Nevada's Scheduling of Controlled substances
Agenda Item IX B	Robert Ochsenhirt, Detective, Las Vegas Metropolitan Police Department	Presentation on Drug Trafficking
Agenda Item IX C-1	Patrick Guinan, Legislative Counsel Bureau	State of Connecticut, House Bill No. 7104

Agenda Item IX C-2	Patrick Guinan, Legislative Counsel Bureau	State of Connecticut Governor Dannel P. Malloy Statement on Second Chance Society
Agenda Item IX C-3	Patrick Guinan, Legislative Counsel Bureau	Fiscal Note on the State of Connecticut's HB 7104
Agenda Item IX C-4	Patrick Guinan, Legislative Counsel Bureau	Analysis of the State of Connecticut's HB 7104
Agenda Item IX C-5	Patrick Guinan, Legislative Counsel Bureau	Comparison of the State of Connecticut's HB 7104 and Nevada Drug Possession Penalties
Agenda Item IX C-6	Patrick Guinan, Legislative Counsel Bureau	LCB Memo on Connecticut Drug Sentencing Reform
Agenda Item X A-1	David Tristan, Nevada Department of Corrections	ID Cards for NDOC Inmates
Agenda Item X A-2	David Tristan, Nevada Department of Corrections	Request for Waiving Duplicate Fees
Agenda Item X B	Terri Albertson, Director, DMV	Presentation on How to Obtain a Driver's License or ID Card for Those with an NDOC Inmate Card
Agenda Item XI		McNeill vs State of Nevada
Agenda Item XII A-1	Kelly Mitchell, Robina Institute	Initial Guidelines Experiences in Other States
Agenda Item XII A-2	Kelly Mitchell, Robina Institute	Minnesota Sentencing Guidelines Commission
Agenda Item XII B-1	Richard Frase, Robina Institute	Criminal History Enhancement Sourcebook
Agenda Item XII B-2	Richard Frase, Robina Institute	Comparing Criminal History Enhancements in Three Jurisdictions
Agenda Item XII C-1	Nicolas Anthony, Legislative Counsel Bureau	Connecticut Sentencing Commission
Agenda Item XII C-2	Nicolas Anthony, Legislative Counsel Bureau	Revised Proposed Regulation of the Chief of the Division of Parole and Probation

Agenda Item XIII A-1		NRS Sections for Category B Felonies
Agenda Item XIII A-2		Category B Felonies for Additional Study
Agenda Item XIII B	Nevada Department of Corrections	Inmates Serving Prison Sentences Under Certain Category B Felonies
Agenda Item XIV	Nicolas Anthony, Legislative Counsel Bureau	Possible Recommendations That May Be Proposed During the Work Session to Be Held October 12, 2016
Agenda Item XV	Paul Corrado	Public Comment

* Exhibits have been placed in the order specified on the agenda.