

**MINUTES OF THE 2017-2018 INTERIM
ADVISORY COMMISSION ON THE ADMINISTRATION OF JUSTICE**

March 28, 2018

The meeting of the Advisory Commission on the Administration of Justice was called to order by Chair Steve Yeager at 1:06 p.m. at the Grant Sawyer Building, Room 4401, 555 East Washington Avenue, Las Vegas, Nevada, and via videoconference at the Legislative Building, 401 South Carson Street, Room 4100, Carson City, 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):

Assemblywoman Lisa Krasner, Assembly District No. 26
Christine Jones Brady, Deputy Public Defender, Washoe County
Julie Butler, Representative, Central Repository
James Dzurenda, Director, Department of Corrections
Mark Jackson, Douglas County District Attorney
Adam Laxalt, Attorney General
Al McNeil, Sheriff, Lyon County
Judge Jim Wilson, Carson City District Court
Natalie Wood, Chief, Parole and Probation

COMMITTEE MEMBERS PRESENT (LAS VEGAS):

Assemblyman Steve Yeager, Assembly District No. 9, Chair
Justice James W. Hardesty, Nevada Supreme Court, Vice Chair
Senator Aaron Ford, Senatorial District No. 11
Chuck Callaway, Police Director, Las Vegas Metro
Kymberli Helms, Victims' Rights Advocate
Amy Rose, ACLU of Nevada, Inmate Advocate

COMMITTEE MEMBERS EXCUSED:

Paola Armeni, Representative, State Bar of Nevada
Judge Sam Bateman, Henderson Justice Court
Connie Bisbee, Chairman, Board of Parole Commissioners

STAFF MEMBERS

Bryan Fernley, Commission Counsel, Senior Principal Deputy Legislative Counsel,
Legal Division, Legislative Counsel Bureau

Victoria Gonzalez, Deputy Legislative Counsel, Legal Division, Legislative Counsel Bureau

Angela Hartzler, Secretary, Legal Division, Legislative Counsel Bureau

Jordan Haas, Secretary, Legal Division, Legislative Counsel Bureau

OTHERS PRESENT:

Paul Corrado

Aaron Dicus, Corrections Officer, Nevada Department of Corrections

Tonja Brown, Advocate for the Inmates, Advocate for the Innocent

Clyde Means

Len Engel, Director of Policy and Campaigns, Crime and Justice Institute

John McCormick, Assistant Court Administrator, Administrative Office of the Courts

Judge Elizabeth Gonzalez, Eighth Judicial District Court, Chief Judge

Denise Parker, Specialty Courts Administrator, Eighth Judicial District Court

James Popovich, Specialty Courts Manager, Second Judicial District Court

EJ Maldonado, Specialty Courts Coordinator, Western Regional Specialty Courts

Michelle Feldman, Legislative Strategist, Innocence Project

Michelle Ravell

Assemblyman Steve Yeager (Assembly District No. 9, Chair):

I will now open the third meeting of the Advisory Commission on the Administration of Justice (ACAJ). I will open agenda item III for public comment.

Paul Corrado:

I am currently a volunteer at the Nevada Department of Corrections (NDOC). A couple things come to mind. First of all, meritorious credit. Sometimes people will take classes, and those classes are not necessarily always accurately placed on their records. Now, maybe it's 1 in a 1,000, but with 14,000 people in the system, I think it would be a really good idea to perhaps do a mini audit on something and just see if there is a problem, and if it is, the magnitude of it, because all of us have an interest in making sure that people do not stay in prison any longer than they absolutely have to. Even the meritorious credit associated with things like—for instance, I taught a course in Thinking for a Change, which is a National Institute of Corrections course. Last year it was 55 hours of class, and it was a 30-hour credit given for that. Many times there is more than there appears to be in terms of credit. For parole, when someone gets their board, to me, as soon as they're eligible to leave, they need to leave. Sometimes they can't afford it because they can't afford a halfway house or wherever they can go. Director Dzurenda's going to look into that because we talked earlier, but I think the bottom line is that we should try all mechanisms that are available to us to reduce the population in prison that is rightfully not necessarily there.

Also, if you would please, someone in the Legislature put in something so that when it comes to workman's comp, right now you spend \$5,000 a year for me as a volunteer. I would like at least to have the option of declining that workman's comp \$5,000, and I'd rather put it into something like laptop computers or whatever. At least give me the option, because in doing this work since 1994, I have not been accosted or whatever. If you want to go the opposite way, you can always go the federal way and they give you a radio and a panic button and all the rest of it. The only people I'm really afraid of in the last number of years are the people who are addicted to violence. Those are the people who scare me, and I've only been around three or four of them in my entire career, the real addicts. Most of the time, I don't see them in a setting—and maybe it's because I'm 6 foot and 250 that they don't care, and a Vietnam vet. I'd really like to see some way to use and get people to have access to laptop computers. I say that because in prison they have the time to learn to keyboard and outside they don't, and none of us in this room would allow any relative, grandchild or child to graduate from eighth grade without knowing how to keyboard, and yet these people who some of them have been down or away from society for 20 or 30 years can't keyboard. You can't even get a job anymore unless you can keyboard, and that's really the bottom line.

Also, in terms of violence, there are about 14,000 people in the prison system at this time, and according to the latest statistics that I was able to get off the web, approximately 6,000 of them are in for violent crimes. Now, to me, the only course that I have ever heard from the inmates that has been not just positive but enthusiastic has been alternatives to violence. The alternative to violence project is Friday night, Saturday and Sunday. I don't know if it's a course or an experience, but I know that they come back and it's amazing to me that these people who are often not positive about their life in prison are absolutely 100 percent positive about this course. I would like to make sure that course is placed as a priority among other people.

Lastly, if you want to know from the inside out what the prison system is like, sort of to be in it, there's a book called *30 Years Behind Bars*. It was by Dr. Karen Gedney, who retired last year from the NDOC system, and this is a good read. It's a fairly fast read, and it's, to me, interesting. Not just because I'm in there, but because I believe it can help you give perspective to the experience that people have there. Thank you for your attention, and hopefully some of these issues will be dealt with.

Aaron Dicus (Corrections Officer, Nevada Department of Corrections):

I'm a correctional officer at High Desert State Prison. I've written to many legislators in the past about safety concerns. It is my opinion that the most important things we need immediately are safety equipment: stab vests, Tasers for line staff, not for responding staff when the incident's already under control. Our uniform allowance hasn't changed in 20 years and needs to be doubled to cover the cost of the items we need. We need stab vests. We don't have them. If we could do a program where the Department were to pay half and the officers were to pay half, it would greatly help with our safety. They would need a program like that because our uniform allowance that we have now

wouldn't be able to cover the price of one vest. A vest costs about \$600 for a decent quality vest, and our uniform allowance is \$500 and change, so it would eat up the entire year. Plus, law enforcement equipment tends to be expensive.

As far as long term, it is well known that it has to do with the budget. I believe this is two-fold. First, our officers start at \$16.86 an hour, or at \$20.38 down to \$16.67 for employee-employer after the first contribution, where in the valley, doing the same job in what's to be a safer environment because inmates in jail are either not guilty, or if they are guilty they're guilty of misdemeanors or felonies under a year. They have a lot more to lose than an inmate who is confined to custody for life or long-term confinement for severe crimes. We don't need to match the pay, but they need to close the gap. There's a severe problem with retention for our staff in NDOC. We lose officers left and right. They go to other agencies, or they just feel that it's not worth the money to deal with some of the problems that we have to deal with there. It's a far drive to most of the institutions. It's a lot of wear and tear on your vehicle. There are a lot of people willing to do violence, and for not a lot of money, considerably less than our counterparts in town. We're always understaffed. We have nowhere near the positions needed to run this place. For example, if an inmate goes to the hospital, we must pull staff from the yard. This is being changed now. They're moving positions from around the state to the south to help cover that, but there's still not a good relief factor for covering these positions, which causes overtime. Also, another issue that causes a lot of overtime is the NDOC is the largest agency in the state and we also have the most service members in the Reserves or National Guard or Air National Guard, a high concentration, but there's no relief factor to cover these positions. When employees who are also service members go on drill status, deployments or annual training, there's no coverage for these positions. There's not enough staff for it. With these changes, we may be able to solve the majority of our retention problems, saving the state money while also making our Department safer for staff, inmates along with public safety.

Chair Yeager:

Ms. Brown, we do have a written statement that you provided (Agenda Item III A-1). If you could perhaps summarize that for us, please?

Tonja Brown (Advocate for the Inmates, Advocate for the Innocent):

I will try. I want to make a couple of corrections with this as well. I also supplied "Tonja Brown's Exhibits in Support of Her Discovery and Petition for Review" (Agenda Item III A-2). I don't know what I was thinking, but it's petition for exoneration. I want to clarify that. Tonja Brown is an advocate, and I'm in support of agenda item VIII and I look forward to hearing Ms. Feldman's presentations from Innocence Project. I have provided this Commission with my recommendations on discovery and a petition for exoneration (Agenda Item III A-1), along with the supporting documents as to why we need to eliminate the statute of limitations rule on discovery and the strong need for a petition for review (Agenda Item III A-2). I've previously mentioned, we also need a

public integrity unit commissioned to look into wrongful convictions. In the first of the exhibits, exhibit one of the discovery, you can see the defendant's November 4, 1988 motion for discovery. In 2000, a court order was granted ordering the Washoe County District Attorney to turn over the entire file on the case. I will point you to the bottom of the right-hand corner of the document that the District Attorney has Bates numbered 173 through 175. You will see on the documents the hand-written notes the prosecuting attorney Ron Rachow in which he was declining to turn over the evidence, including the exculpatory evidence. In exhibit two, Mr. Rachow's memorandum describing what he considers discovery, followed by exhibit three, Judge Peter Breen's 1988 court order to turn over the evidence. In June of 2009 when the file was turned over, there were over 200 documents in the file. All of the evidence was favorable to the defendant was withheld. The evidence supported the defendant's case of mistaken identity. Mr. Zarsky was also suspected in three other crimes. The defendant never stood trial nor was he ever convicted of those crimes. In fact, the defendant had been cleared in those three claims, all hidden from the defense because it was not turned over in discovery despite a court order to do so. Exhibit four, Edmond Wade Green's post-conviction petition requesting genetic marker analysis of evidence within the possession of custody of the State of Nevada. It would be years later Mr. Green would receive the information regarding Mr. Middleton to have DNA testing conducted against the evidence found in Mr. Middleton's file. Actually, it was his storage unit. The testing was not conducted, and Mr. Green is simply asking to have it done finally. Judge Walker in his footnotes states, "Mr. David Middleton was charged and ultimately convicted of the murder of two women whose bodies were found around the same time as the victim here, Roberta Bendus. There's no evidence that David Middleton was ever a suspect in Ms. Bendus' murder." I would like to make a correction on exhibit five. The correct date is March 15, 2017, where I presented these exhibits and more to the Assembly Judiciary, who were hearing the Assembly Bill (A.B.) 268 Exhibit O to allow inmates to have DNA testing at their own expense. As a reminder, this was my 2016 recommendation to the ACAJ that they passed. Mr. Green waited until the law went into effect July 1, 2017 and on November 9, 2017 submitted a new petition for DNA testing. I refer you to Mr. Green's 2016 petition and more, exhibit specifically five. It's marked exhibits two, three and four. I assume Mr. Green just submitted his 2016 petition in 2017. This is not unusual for a court to do this. I have seen this many times over the years when a petitioner is pro se. The court simply sides with the district attorney or the attorney general. In most cases I have seen the court simply ignore the grounds that have merit and are reversible. As you can see, Mr. Middleton was a suspect in this murder, and Mr. Green was convicted and has always maintained his innocence. In exhibit six, Mr. John Franklin Smith received this information years after his conviction. Mr. Smith could not afford to hire an attorney to represent him. The last I heard, he was still in prison, and this was during the deposition of his victim who recanted her testimony that it wasn't rape, it was consensual sex.

Chair Yeager:

Ms. Brown, I need you to wrap up, please.

Ms. Brown:

And I will save the rest for later. I do concur with the prison staff, what he had said. There are issues and there are safety concerns and you should find additional funding to support staff with NDOC.

Clyde Means:

I served 11 years and 9 months incarcerated in this state. I'm going to give you a little scenario, and I'm typical. The gentleman, he served 7 years and 9 months. He's going to go to the Parole Board. He meets with a caseworker. The caseworker says, "Your risk assessment shows you had a negative one point." He goes before the Parole Board. First off, they make mistakes in what the presentence investigation report (PSI) shows, 32 of them. Then after that, they correct those mistakes and then they re-adjudicate him. They're wearing black robes. They don't go into what he's accomplished while he's been incarcerated. They re-adjudicate him. They don't see if the gentleman has earned a GED (General Equivalency Diploma), maybe a high school diploma. What has he been doing with his time? Has he been kicking rocks, which is the traditional term of inmates? Kicking rocks, which means doing nothing, maybe playing softball and the like. He then receives notification he's been denied. Ms. Bisbee came here last time and says, "I know who's guilty and who's going to reoffend." Unless she has a crystal ball—and this happens time and time and time again. It is time that we go to—like California, you have an in day and you have an out day. With an out day, as the corrections officer said about violence, you'll reduce it. If I'm risking that possibility of leaving on day X, I'm not going to do those things that are going to have me spend more time. But with these life sentences that have not been defined what a life means, people can serve 15, 20, 25 years and have no hope. Why then not do what I need to do to survive? I ask you to go and present to the Legislature, let's define what a life sentence—you do your bottom number and you go out on parole. If you expire your sentence, now Parole and Probation has no jurisdiction over you. I have lifetime supervision, and for 5 more years until I apply, which I can have the lifetime taken off after that. But I'm a productive member of society, very productive. I'm building a custom home here in Las Vegas. I want to thank you for your time, for listening.

Chair Yeager:

Seeing no further public comment, I will now close agenda item III. I will now open up agenda item IV, which is approval of the minutes of our February 2, 2018 meeting. Committee members, you should have a copy of the draft minutes (Agenda Item IV). Hopefully someone had a chance to look at them online as well. At this point, I wanted to ask if any members of the Commission had any corrections to the minutes of the last meeting. I will tell the Committee I had a chance to review them as well. They looked very good as usual. Our staff does a fantastic job with the minutes. But it's very possible that I missed something, so anyone have any corrections on the minutes?

Natalie Wood (Chief, Parole and Probation):

I just want to confirm that the Committee members received the clarification letter. A question was asked last session from Assemblywoman Krasner that I wanted to clarify in regards to the types of reports that the Division provides the Parole Board, and I did so in writing. I just wanted to clarify that.

Chair Yeager:

Thank you. I can confirm that. I know I received a copy in the mail, and I believe Mr. Fernley had emailed a copy of that to the other Commission members. I also think it was uploaded with the materials for the last meeting, so it should be publicly available as well. I don't see any other comments on the minutes.

ASSEMBLYWOMAN KRASNER MOVED TO APPROVE THE MINUTES OF THE
FEBRUARY 2, 2018 MEETING OF THE ADVISORY COMMISSION ON THE
ADMINISTRATION OF JUSTICE.

COMMISSIONER CALLAWAY SECONDED THE MOTION.

THE MOTION PASSED UNANIMOUSLY.

I will close agenda item IV. Next, we will take things a little bit out of order. We still have Director Dzurenda who will answer some questions, but I did want to give a chance for some of our other presenters who have made special arrangements to join us here today to be able to present. I'm going to go to agenda item VI at this point, which is a presentation and discussion of the Justice Reinvestment Initiative. Before we get started, I did want to publicly thank Vice Chair Hardesty for making this happen today. As many of you on this Commission know, Justice Reinvestment is something that this Commission's been working on for a minimum of a couple of years, and potentially longer. But we have an exciting opportunity in front of us here in Nevada, and that's what this presentation is about, to tell us a little bit about what Justice Reinvestment is, what it can do for our state and where we go from here. Again, thank you for taking the time to come here today and present.

Len Engel (Director of Policy and Campaigns, Crime and Justice Institute):

Thank you all for the invitation to come here, especially Justice Hardesty, who has been dogged in his efforts to get a better understanding and focus attention on Nevada for possible justice reinvestment and engagement. Recently, Justice Hardesty asked us to come out and meet with individuals, legislative leaders, to discuss the interest that

Nevada has in inviting the Justice Reinvestment process to take a look at Nevada and determine whether it might be a good fit. So, the opportunity to present to this Commission came up, and we saw this as a great opportunity to share some of the activity that has occurred over the past 10 years in the Justice Reinvestment process throughout the country. I'll give you an idea of what this might look like if the state engages in this effort and then answer any questions that you might have today or in the near future. We have our information on the back, so feel free to reach out (Agenda Item VI).

In the presentation, we've just sort of laid out an overview of what are the characteristics of the national criminal justice landscape that sort of drove the interest in developing Justice Reinvestment and a process of comprehensive criminal justice reform for states to reexamine their criminal justice systems with the objective of getting a better return on their public safety and criminal justice investment. The Justice Reinvestment process, the Justice Reinvestment effort, is a public-private collaboration between the Bureau of Justice Assistance (BJA) and the Pew Charitable Trust. It's been going on for several years and has engaged states throughout the country, I think since about 2010. Basically, the state applies and is accepted by the two groups, BJA and Pew, and what the state basically signs up for is a 1-year effort. The process includes data and system analysis, data from the department of corrections, about 10 years of data, data from the courts, the administrative office of the courts (AOC), an understanding of—we do an analysis of the drivers of the prison population, decision points, get an understanding of what's happening in counties to the degree possible, and then sentencing information from the courts. It's followed by a policy analysis and development phase of the process which is driven by a group of state criminal justice leaders, and then a development of a series of recommendations based on the data, based on the evidence and the research about what works to reduce recidivism. That is then delivered to the legislature at the end, usually in November. The legislature is encouraged and the governor is encouraged to file legislation to the degree necessary to effect the recommendations from the state stakeholders. The process as I indicated is about 1 year long. The technical assistance through Justice Reinvestment is provided by the Crime and Justice Institute which employs us. We work with the state over that period to help them understand the data and the problems of the state, and then manage, sort of facilitate, the recommendation process and then assist in the movement of legislation through their legislative process. There's a second phase to Justice Reinvestment, and that is an implementation phase. That is funded by the Bureau of Justice Assistance. States that pass comprehensive criminal justice legislation are eligible for a 2 to 3-year effort that assists them in implementing the policies that were passed during the first part of this effort. We are also the technical assistance provider for the BJA for that process as well, and we have a group of folks who work on trainings, implementation of various aspects of the new policies that were passed. That usually lasts as I said about 2 to 3 years.

A little bit about us, on slide six (Agenda Item VI), that describes the background, the relationship that we've had, the Crime and Justice Institute, with Pew. We've been

partners in the Justice Reinvestment effort since 2010. On slide seven, you'll see a snapshot of the states that have engaged in Justice Reinvestment, both the adult and juvenile level. What we are talking about today is primarily Justice Reinvestment focused on adult reform, the adult corrections system, but there is also a process that focuses on the juvenile justice system as well. The states in blue are states that have gone through this process and passed legislation. The states in yellow, Kentucky, Tennessee, Alabama and South Carolina, are states that we are currently working in with our collaboration with Pew and the BJA. The background that sort of drove this interest in establishing a Justice Reinvestment process was begun around 2008 when there was an analysis done by the Pew Charitable Trust and a report that tried to understand the number of people that were incarcerated across the country and the growth that had occurred in the corrections system over the past two generations, about a 40-year period. The report found that 1 in 100 adults were behind bars as of 2008. As you can see in slide 9, this was a dramatic increase since 1972. This sort of was a call to arms, and people across the country looked at this and said this was a fairly extraordinary growth in incarceration and wanted to get a better understanding of what this meant. Further analysis by Pew found that 1 in 31 adults were under some form of correctional control. That is folks that were either in prison or jail or under parole or probation. Again, an extraordinary number, an extraordinary increase since 1980. As you all know, when you lock up this many people, there's a corresponding increase in costs. On slide 11, you'll see the increase from 1991 when the country spent approximately—this is state correctional spending, it doesn't include the feds. In 1991, the states spent \$19,000,000,000 on corrections, and that increased to \$52,000,000,000 in 2007. A fairly costly increase in the use of incarceration, in addition to the extraordinary number of folks that were locked up. So what did we get for this increase in both human capital and financial costs? Basically, very little. The rate of new crime committed by people who have been involved in the criminal justice system did not really change between 1994 and 2005. Extraordinary spending, a lot of people locked up, but really no change in recidivism. Some examination of the research—and this is research that was not available when the policies that drove those increases really occurred. Sentencing policy, parole and release policy that became very strict in the late 1970s, 1980s and early 1990s. The research really did about the value, the outcomes, of incarceration were not really available at that time. Over the past 20 years though, there's been a wealth of research that has tried to identify what we get for incarcerating someone, and what we get for incarcerating somebody who is a low-level nonviolent offender versus a violent offender. There have been a lot of analyses on the value of incarceration over the past 20 years that has helped inform this process, Justice Reinvestment, and the criminal justice policies that spring from it. One thing that we hear often is that, when you look at the increase in incarceration, you see a similar decrease in crime over that period of time, so the natural assumption is that there was a direct correlation between crime going down and the use of incarceration. Researchers have looked very closely at that question and concluded that incarceration can be credited with about 10 to 20 percent of the reduction in crime. The majority of the causes of the crime decline over that period are largely because of policing practices, security measures, changes in drug markets, the waning crack epidemic. Those

characteristics are the things that largely drove the reduction in crime over that period. Incarceration clearly had an impact on that and helped in reducing crime, but it was not a significant factor. Additionally, when we look at research on incarceration and recidivism—

Senator Aaron Ford (Senatorial District No. 11):

A question regarding slides 13 and 14 indicating that incarceration accounts for 10 to 20 percent of the crime decline (Agenda Item VI). You note a few items here that have greater impact on the decline. You say improved police strategies, technology, personal security habits, demographic shifts and changes in drug habits, which you just articulated. Could you offer some examples of the improved police strategies, if you know, that have led to the decline in crime. Secondly, I'm interested in understanding who this National Research Council is. Oftentimes we get studies from different entities and organizations and they have a left or right bent. I'd like to know, is this an organization that is respected as being a neutral/bipartisan, or what type of bent would this organization be considered to have?

Mr. Engel:

My best understanding of the National Research Council is that it's a handful of researchers that are part of a government-appointed organization that have no political bent. This is a research-driven group. They do research on a lot of different subjects and are seen as experts in those various areas.

Examples of police strategies or law enforcement strategies that assisted in the crime decline, community policing was a significant one. The CompStat program, data-driven policing behavior that largely came out of New York City but then spread across the country. Those are two that had a fairly significant impact on crime, especially low-level crime. Things like that where law enforcement was more engaged in the communities in which they were policing and investigating crime. They were among those that had a role in reducing the crime.

Chuck Callaway (Police Director, Las Vegas Metro):

Over the last few years, we've actually seen an increase in some crimes, in violent crime in particular, so law enforcement is still using community policing. In fact, our agency now has a community engagement team that's even more actively involved in community policing than we've ever been. Every officer on our agency is assigned to do community policing. In fact, when you graduate from the Police Academy, that's part of your on-the-job training, your Field Training Officer (FTO) training. In addition, we're constantly getting more and more technology. We have body cameras now, we have our Fusion Center, we have NIBIN (National Integrated Ballistic Information Network) technology to trace evidence. We have more technology emerging every day. With an increase in community policing, an increase in technology and these strategies, how do

you account for now crime rising, if those were the very things that reduced crime in the first place?

Mr. Engel:

That's a good question. I think there are a lot of people looking at that, both in law enforcement, in government. Researchers are looking at that now. Given what we've seen over the past 3 or 4 years is that an increase in violent crime, especially in certain urban centers around the country, I think it's got some people scratching their heads wondering, "What are we not doing now that we were doing 10 years ago when violent crime was decreasing?" I don't have a good answer. Policing, that area, is not something I look at, but it's clearly something that a lot of people both in and outside of law enforcement are looking at to try to get a better understanding.

Senator Ford:

I appreciate that question. In fact, I have another one to augment what Mr. Callaway just indicated. I understand your contention that crime has declined, but what about technological crimes, for example? As I understand it, there has been an increase in technological crimes that are not being accounted for under the current systems that the federal government uses to track crime, as well as the states use to track crime. Do you have any insight as to technological crimes, whether it's identity theft, whether it's people using ransomware to do things technologically that aren't maybe being reported, but even if they are being reported they aren't being tracked because the system that we currently have doesn't have the apparatus capable to track it? Can you speak to that a little bit?

Mr. Engel:

Very little. The crime data that we look at is typically the Uniform Crime Reporting (UCR) data. There are also the victimization surveys. Those have fairly—over the past 15 years or so, they've continued to decline, the UCR data, the UCR crimes, to the degree that those new technological crimes are part of that. I think it largely depends on how they're reported and how they're defined in each state. Theft and property crimes, they're a UCR crime. How the state defines those new crimes, credit card fraud or identity theft, things like that, I think the reporting of that will depend on how the state reports it, how they collect that, how they define it. In the states we've worked in, we've seen states sort of just getting to the point of sweeping in identity theft into their property crimes, so whether that crime was previously considered a property crime 10 years ago and now it's considered a property crime, that could change the data trends. But what we see is that those offenses that are reported as property crimes have continued to decline. There are pockets of increases around the country, but generally, offenses reported as property crimes, whether they include those or not, and they typically are now reported as theft as I understand it, they've continued to decline. I can't speak to what the likely increase in those crimes, whether that is a shift from other types of

criminal behavior that these folks would engage in to identity theft. I don't know the answer to that. But what we see across the country is that reported property crime has continued to decline.

Christine Jones Brady (Deputy Public Defender, Washoe County):

In terms of the other factors, do you either control for or take into account factors such as access to education, employment, health, daycare or other kinds of supervision, youth programs, that might be out there? Do you also look at factors such as access to weapons or firearms?

Mr. Engel:

Very good questions. My understanding of the analysis, they took into account many of those characteristics, changes in parenting, in early education, availability of healthcare. But I think what they focus on, what are the known, largest drivers of the crime reduction? I think all of those things play some role, but I think when the researchers sort of distilled all the information they had, they focused on what are those characteristics that we can identify that had a direct correlation to the crime decline? I think that's how they landed on these. When you think about demographic shifts, I think those are things that bring in a lot of different factors that you mention. I think those are harder to connect though to the effect on actual criminal behavior, whereas policing activity you can draw a closer parallel.

Al McNeil (Sheriff, Lyon County):

I don't have the presentation in front of me (Agenda Item VI), so I'm trying to listen and trying to draw a visual representation of what you're trying to describe. As you describe crime decreasing in the 1990s and the early 2000s, most of the rural or smaller communities in Nevada started seeing crime increases during that time period. Conversely, I think that crime is increasing in our urban areas and crime is decreasing in our smaller communities such as mine, significant crime reductions. I think Carson City and Douglas County are seeing the same things during the same time periods. We try to define recidivism and criminal mindset, are we really just displacing it from one sense or another, as we get smarter always behind the power curve and pushing it? But my real question is, when we throw out dollar amounts from yesteryear or a decade ago, I haven't seen any significant increases in my department with personnel, but my overall costs are increasing because of wage and benefit costs of employees and operational costs such as the technologies to run my dispatch center, so those are driving up our costs. I don't know if there's really a—is your chart showing a correlation as to dollars from 10 years ago as to relative comparability to dollars spent today, and also really defining what recidivism is, because there are so many different definitions out there that are challenging for everybody. I don't know if I really asked a question, but I've got some speculation, suspicion, on some of these charts and data being thrown out there.

Mr. Engel:

Yes. Without a question to answer, I get what you're saying. Your law enforcement costs, costs to court systems, costs to prosecution, the public defender, those are not costs that are woven into this. The increase in corrections costs are costs of the department of corrections primarily. These are data reported by the state, so it's typically the department of corrections boss. That's the number that we see a significant increase over this 30-year period. But they don't take into account the changes in the costs to court systems, law enforcement, and the other elements of the criminal justice system, which we agree have likely increased, not just because of cost of living, but also because there are different strategies. I think the cost of running a police department now with all the technology is very different than it was a generation ago.

Senator Ford:

I want to bring you back to your main point, which is incarceration vis a vis recidivism and its percentage, if you will, effect on whatever reduction in crime or whatever the increase in crime. The impact that incarceration has on it. In your professional judgment though, do you still believe that, notwithstanding the fact that we see an increase in crime, to the extent we're talking about recidivism, incarceration has less of an impact on recidivism than these other things you've already highlighted, including the police strategies and the technology and the personal security habits, those that Mr. Callaway and his officers are employing? Do you understand my question?

Mr. Engel:

I think so. Recidivism as was just articulated I think is a very difficult thing to get around. Recidivism in the community is very different than recidivism for the department of corrections, and what we're reporting here is recidivism based on department of corrections' type of definition, which is a return to prison for some reason within 3 years of release. That's typically the data. When we talk about recidivism, that's typically the definition and the data that supports that. There are other types of recidivism based on technical violations and things like that that are different measures, but because the department of corrections is typically the focal point of this, how successful do they prepare people for the community, and what can we expect from their behavior after they're released? That's what we look at.

Senator Ford:

I see a bifurcated issue here. On the one hand, slide 13 talks about incarceration has limited impact on crime decline (Agenda Item VI). We're hearing testimony right now that crime is not declining. We're seeing an increase in crime. That slide aside, the next slide, slide 14, talks about the relationship between incarceration and recidivism. My question is more along the lines of more related to slide 14, and the question is do you

still believe that, relative to recidivism, incarceration has less of an impact on recidivism than do other ways of addressing crime?

Mr. Engel:

That again has a more complicated answer. It depends on the type of offender. We know that recidivism has a specific effect. For the period that the person is incarcerated, they're not recidivating. They're not committing new crime. But when researchers look at the data of people who are released from prison, depending on the amount of time they stayed and depending on what their criminal history was and what the instant effects were, what we see is that people who have low-level types of offenses, people who, typically nonviolent, do worse or no better if they were given a non-custodial sanction, if they were given probation or some diversion program than if they went to prison. Prison for those offenders has been found to have what they call a criminogenic effect. It actually increases their likelihood of criminality because they're engaged in relationships with fairly antisocial people, not that they weren't connected to prosocial people in the community, but prison is probably the most antisocial collection of individuals in society. You do time, you spend 2 years with them, you're likely to come out with a significant change in the people you spend your time with, your attitude, things like that. Those are criminogenic factors that drive future criminal behavior. For low-level people who go into prison and whose behavior prior to going to prison is driven by mental illness, addiction, things like that, they're made worse by the experience of prison compared to supervision.

Senator Ford:

So, otherwise stated, for purposes of reducing recidivism, you believe researchers have indicated that diversion programs, like we're going to hear about later on today, have more of a positive effect on reducing recidivism for low-level offenders than does incarceration?

Mr. Engel:

I do.

Senator Ford:

Alright, thank you.

Justice James W. Hardesty (Nevada Supreme Court, Vice Chair):

I wanted to offer just a comment for the rest of the Commission. These are great questions. Part of the reason that I invited Mr. Engel and his colleagues to come to Nevada is because Nevada is one of four states that are being considered by the Justice Reinvestment group to provide resources to answer the very questions in

Nevada that you are asking. The slides, Sheriff McNeil, are showing federal statistics. What I'm interested in and what I've heard for years sitting on the Advisory Commission and now on the Sentencing Commission as its Chair is that we in Nevada would like to assess our data, we'd like to assess our issues, and we'd like to formulate policies that help us understand the cost effectiveness of our criminal justice system and avoid issues like recidivism and other areas that could be improved upon. This group, if Nevada were selected, would receive the benefit of staff support, data review, data analysis, things that many of us have talked about before but haven't had in front of us. This is a resource. There are lots of questions that one could ask Mr. Engel today, but the benefit of him being here it to consider selecting Nevada against Tennessee, Colorado and New Mexico, and I've already told him Nevada's best, for what is really an extraordinary financial opportunity for us, an analytical. We would formulate our questions and work closely with Justice Reinvestment and the Crime and Justice Institute to assess our data and help formulate answers to those very questions. This is what we've needed for a long time in order to make comprehensive, intelligent decisions as it relates to Nevada.

Judge Jim Wilson (Carson City District Court):

I don't know if those written materials (Agenda Item VI) include references to the studies that you've been talking about, criminogenic effects, those things. Do your written materials contain references to those, or could you provide references to those?

Mr. Engel:

They have the source of the study, but I can definitely send you additional studies. We have more comprehensive slides. Many, many more slides.

Judge Wilson:

I would appreciate that. Thank you.

Chair Yeager:

We will make sure that this presentation gets distributed to everyone and that it gets uploaded to the website as well. I think what would be helpful at this point, we've sort of gone through some questions, but maybe if you could, and Justice Hardesty alluded to this, but just give us a real sense of, if Nevada were selected as a Justice Reinvestment site, what does that mean? What can Justice Reinvestment provide for the State of Nevada to help us make better decisions?

Mr. Engel:

I could run through a couple slides. We have sort of a case study, a handful of slides on what we did in Utah. Utah was a Justice Reinvestment state in 2014. I could lay out

fairly briefly what happened in Utah and sort of connect the process. It's slide 20 and 21 (Agenda Item VI). So, Utah was selected to be a Justice Reinvestment site in 2014. We worked with the Commission on Criminal and Juvenile Justice (CCJJ), which is a standing body in Utah. We analyzed their data. They had asked for the Justice Reinvestment effort for a reason a little bit different than most states that request Justice Reinvestment. Utah had an old and decrepit prison. They don't have many people incarcerated, 7,200 when we went there. They have a very old prison that houses about 65, 70 percent of the population, and they wanted to build a new prison. The question for them was, "What size prison do we build? Do we build a prison for our population today, or a population in 10 or 20 or 30 years? We want to know what we should do. We want to build a prison for the long term." They invited us in to help them answer that question, but they pretty much knew that their population was growing. As you'll see by slide 21, we typically start this process after analyzing the data by understanding where the state has been and their trends and where they're going, so we do a projection analysis as well. I understand that you have an outside organization that does DOC projections for the state. We did one for Utah, and it projected a fairly significant growth for Utah over the next 20 years. They were going to add 2,700 beds to their prison population at a cost of \$500,000,000. The decision was made by CCJJ that led this effort to try to avoid that growth and to build a prison that was close to what their current population required rather than build for projected growth.

We set out to figure out what was driving their current growth. As you can see, it increased from 5,800 in 2004, 10 years later it was 7,200. They were on an upward trajectory and they wanted to know what was driving that. On slide 22, we took a look at the characteristics of the population admitted to prison and found that 63 percent of those who come in the prison door were for nonviolent offenses, primarily property and drug offenses. On slide 23, we looked at the top 10 offenses at admission. The number one offense coming into the prison system was possession of drugs. This had declined over the past 10 years, but it was still the number one offense at admission. Seven of the top 10 offenses were nonviolent. This gave them some idea of who was coming into their prison, but it wasn't telling them much about how long they were staying. So, we took a look at the lengths of stay, how long people were staying once they got there. Over the previous 10 years, every offense category, person offenses, sex offenses, property/drug, all the sentences for those offenses had increased. Although, lengths of stay, the amount of time they served had increased. Not only were there more people coming in, high numbers, more than 50 percent of the population, admitted to prison were for nonviolent offenses, but they were also staying longer than they had 10 years ago. We identified two possible areas for policy adjustment. They then looked at other characteristics of the population coming in. On slide 25, they looked at the folks who were on supervision. This is a significant driver in many states. People are on supervision for probation or parole, they violate the terms of their supervision and they get sent to prison for their violation. For Utah, two-thirds of the people coming in were coming in for having been on probation or parole. They were coming in for some form of revocation, either a new crime or a technical violation.

The thing that we heard—in addition to doing a data analysis, we also do a system assessment. We try to understand the corrections system, the prison system, as much as we can about the jails, the characteristics of community supervision so that we can help develop a baseline of understanding for the taskforce we work with. We talk to folks on the taskforce and outside in the field to understand why the data is showing us this level of increase. One of the things we heard a lot about is that folks who come into the court system who are arrested have serious mental health, drug addiction, other characteristics that drive criminal behavior that the communities can't handle, and the option became to send them to prison. We had judges off the Wasatch front, out of the urban centers in Utah tell us that if they want to get somebody some treatment, the only place to send them was to prison. We sort of did an audit of the available programming for people involved in the criminal justice system and found there was a limited amount of services to address these characteristics, and they were all located primarily in the urban areas. So, folks especially in the outlying areas didn't get much access to that, so you had judges who were largely put into a position of "Either I let this go and he's untreated and gets minimal supervision, or I put him in prison and he hopefully will get something, but at least he'll be off the street."

With those findings, the Commission set out to identify on slide 27—based on these findings, they looked at the number of offenders admitted for nonviolent offenses, especially for drug possession. The Commission recommended that the state defelonize the first and second drug possession convictions. First and second drug possession would become misdemeanors, third drug conviction would become a felony. This was a recommendation of the Commission. Additionally, they addressed the characteristics of the criminal history score. They were a sentencing guidelines states, so this criminal history score had a significant effect on who went to prison and for how long. They recommended some changes to the criminal history characteristics of their sentencing guidelines. For the increased length of stay, they recommended changes to sentencing guidelines that reduced the amount of time a person could go to prison. They made fairly significant changes to the grids that recommended certain periods of incarceration based mostly on nonviolent offenses. They also standardized earned time credits in the community so that people could earn their way out of the prison door, and then once they got into the community, they could earn a reduction in the amount of time they had to spend under supervision, basically encouraged positive behavior and program completion. Then for the question about the significant issue about the availability of resources, they made a number of reinvestments. Obviously part of Justice Reinvestment is the reinvestment of resources that would have been spent on the bricks and mortar prison, putting those—if we're affecting the people going in or how long they're staying in a positive way, can we do something different with the money we would have given to the department of corrections to address this growth. They committed to put money into treatment and supervision, drug courts, mental health courts and veterans' courts, other treatment centers. They also tried to systematize vendors, the quality of treatment and care that vendors provided to offenders in the community.

The result of the recommendations on slide 29 was, if they all passed, they would avert virtually all of the growth. Instead of growing to nearly 10,000 beds, they would, by 2033, 20 years from that point, their population would be around 7,500. This package of reforms was drafted into legislation and it passed the Utah Legislature and was signed into law. Part of the Justice Reinvestment effort is to also engage in communities outside of the legislative effort and outside of agencies to get them interested in this, so we had a very broad group of interested parties. We have an example on the last two slides, 30 and 31. The Sutherland Institute is a conservative policy think tank in Utah. The Libertas Institute is a libertarian group, and the American Civil Liberties Union (ACLU) is the ACLU. All three of them came together and were incredibly effective at moving their constituents and keeping the problem statement foremost in the minds of policymakers.

Chair Yeager:

I want to thank you for being here and presenting, and I think this presents a wonderful opportunity for the State of Nevada. We for a long time on this Commission and other commissions have been asking for Nevada-specific data to help us make decisions about how best to go about criminal justice. I think this provides a wonderful opportunity for us. I look forward to moving on in this opportunity, and I'll tell Commission members, I know there are probably a lot of general questions that we can ask today, but keep in mind that as this process moves forward, if Nevada is fortunate enough to get selected, we're going to have Nevada-specific data that we can ask about. My hope would be that this Commission would be able to make requests about the kind of data, the things that we would like to know about to help us make decisions. With that being said, I know we could go on for a long time today, but if you have specific questions for our presenters sort of about the process, I think that would be appropriate today. What I don't want to get too much more into is very specific questions about data from national or from other states, because the hope is that we're going to have Nevada data so we'll be able to make the decisions that are appropriate for the State of Nevada. With that being said, while we have our presenters here, are there questions generally about how this process works or Justice Reinvestment?

Mr. Callaway:

My question is, to the point made by Justice Hardesty earlier about data, and I have been one of the persons on this Commission over the years that has been frustrated at times about a cursory look at data or a top-level look without getting down into the weeds, so my question is kind of related to three of your slides. Number one, when you guys looked at Utah, and in your chart you said 60 percent of their offenders were property related, or nonviolent offenders, did you get down in the weeds on those numbers and look at how many of those folks had been in the criminal justice system a number of times prior to finally the judge saying, "Okay, I've had enough of you. You're going to go to prison even though it was a car you stole or even though it was a house you broken into. You've been in my courtroom 13 times. It's time to send you to prison."

Because on a cursory level, we can look and say, “Well, 60 percent of these offenders are property-related,” but if we don’t get down in the weeds and see what their particular criminal history was and how many times they had been in the system prior to going to prison, we don’t get a picture of that. Related to this also, and my questions are all interrelated, but when it comes to slide 29 where it talks about—and I don’t know how long it’s been in effect in Utah, but have they started to see results, whereas when we look at this chart 29 where it shows a decrease in a number of beds, how do those beds relate to crime rate? Okay, they’ve cut their bed population, but has crime decreased? How many of those folks that are out because of this program that would have otherwise been in study have now reoffended? The reason I bring that up is because in our violent crime over the last year or so that we’ve seen, there have been a number of offenders that were the subject of Proposition 47 in California where we found out, hey, this person should have been in the criminal justice system in California, but they were released early under Proposition 47 and now they’re here in Nevada committing violent crime. I’m curious about how that interrelates, bed numbers versus actual crime rate and getting down into the weeds on the data, because I think that’ll be important when we look at Nevada to see how the impact is here in our state.

Mr. Engel:

Yes, a very important question. To the question about the weeds of this, the slide that I showed you was admissions. That is what they came into prison for. But we go very deep. That’s the first question that is asked by most everybody on the Commission is, “Okay, so who are these guys? No one goes to prison for possession offense.” Not exactly true, but we get into the weeds, so we look at criminal history scores, we see if they’ve ever had a violent crime conviction, how many prior nonviolent crimes? We looked very deeply at—for Utah, the sentencing guidelines had all that data available, so we knew where they were in the grid, so how many people went to prison who were grid level 3J compared to different levels? That was basically told us about their criminal history. But we do look very specifically at that, so we’ll come out based on hundreds of slides of data that broke out here’s the number of nonviolent offenders admitted, here’s the number/percentage of nonviolent offenders admitted who have never been convicted before, here’s the number who have been convicted of at least one violent offense or two nonviolent offenses. That’s broken out, and it’s usually in that discussion where they come to some understanding of, “Well, here’s the population we want to target. Why are we sending these people to prison if we’re expecting this outcome?” Overlaid on the data is also a lot more research than you saw, and all sourced, that tells us, “Here’s what you can do to get a better outcome. Here’s what you can expect if you send them to prison based on what we’ve seen over the past 20 years. Here’s what you can expect if you put them in the community and you have this level of supervision and certain treatment available.” Those are the things that drove their decisions and their recommendations. Their recommendation to de-felonize possession, it wasn’t, “Wow, we’re sending possession offenders to prison.” It was a lot more analysis of, “At what point do we draw that line?” They talked about drawing the line at four crimes, and the fifth one becomes a felony rather than a misdemeanor. They weren’t comfortable with

that after looking at the data to see how many people had priors and what this would do to treatment resources in the community, because we had vendors, treatment providers, who were also involved in this process who said, "Well if you're going to put all these people in the community, we're going to need more money to serve all these folks." All of that is part of this process, and a lot of people weigh in. There was another question?

Justice Hardesty:

Before you do that, Mr. Engel, if I could interrupt, and Mr. Callaway's question is very important here. I had a meeting with these folks obviously before we invited them here, and for the rest of the Commission members, for your information, they have four or five staffers that they bring to the state. They put them in a room with all the criminal history data, all the PSIs, all the background associated with that individual. This is a deep dive into the information. This isn't a 30,000-foot or even a 10,000-foot fly over, this is a very deep dive study, and that's why this is particularly attractive, I think, to get really hard data.

Amy Rose (ACLU of Nevada, Inmate Advocate):

First, I just want to say thank you very much for being here and giving this presentation, and thank you for the work that you do. I think this is so important that we spend time and money and our energy into looking for alternatives to incarceration, and try to find what's actually going to work and to benefit and help our community, and it sounds like you're the perfect people to do that, so thank you for being here and thank you for considering Nevada. I hope you choose us, because it sounds like a very useful tool for the state. Most of my questions actually have been answered, but I was just interested in how you stay involved in the process through the legislative session, and it sounds like your organization or people from your organization continue to help push the recommendations that you give to us to help them pass and to answer questions, and it sounds like you also build some type of coalition with lots of different members from the community to make sure all the different concerns are heard. Is that right?

Mr. Engel:

It is right, yes. We come in obviously at the beginning of the process to understand the data. We are basically asked to work as staff to the commission or the taskforce, whatever the vehicle is. We're considered staff, so we have access to data, we have access to individuals. We interview folks across the state in all these different areas just to understand the system, and then we sort of process it and present it back to the taskforce so that everybody has a foundation or understanding of how this system works, and there are folks who have expertise in the department that have less understanding of how community treatment works and things like that, but throughout that process, the stakeholder engagement is very important to us because we leave the state. We put a bill together, it passes, we assist in implementation. It's up to the state to continue this effort, so it needs support. It needs folks, it needs Nevadans to be

committed to this for the long term. It's not a change for change's sake, it's a new way of doing business, whether you're the department or whether you're a judge or public defender or prosecutor, you're looking at this differently. The goal is to assist decision makers into understanding the data and the system to the degree that it can affect the decision they make for public safety. I think there are hits and misses sometimes, but overall I think it's worked fairly effectively and the people we're engaged with, as Justice Hardesty mentioned, our staff, we don't live here to the degree we can vote, but just about. You get pretty sick of us by the end of the legislative session.

Ms. Rose:

Thank you, I appreciate that. I'd also like to offer—it sounds like our friends in Utah with the Utah ACLU provided some support. If you do come here, I hope that you will reach out to the ACLU here as well, and we'd love to provide any type of support that we can.

Mr. Engel:

Absolutely, thank you.

Julie Butler (Representative, Central Repository):

When will a decision be made as to whether or not Nevada is successful in its application?

Mr. Engel:

We are basically in the last month of meeting with state leaders and stakeholders in each of the states. We expect that there'll be a formal request from Nevada's state leadership probably in the next 3 or 4 weeks. Based on our experience and our work, we will then present to the Bureau of Justice Assistance and Pew to support this request for technical assistance for Justice Reinvestment, and we hope it will happen before the end of April.

Ms. Butler:

Thank you. When you were talking about studying the system, what exactly were you talking about? Is it an information technology (IT) system, just overall from cradle to grave the criminal justice cycle from arrest to prosecution to incarceration to parole? What were you talking about studying?

Mr. Engel:

It's typically broader than the corrections system, so it's basically from the interaction in court, depending on the request. There are states that request analysis of their pretrial system as well, so it can include an analysis and assessment of the pretrial system,

arrest processing, detention, release, all the way up to release on parole or max out. The system is, broadly, the criminal justice system, but it's typically depending on the request. Some states have only wanted this examination to focus on the prison system so it starts at intake, but if Nevada was to request an examination of what is happening in the pretrial process, that could be part of that as well.

Chair Yeager:

In the interest of getting through our agenda, I think we'll close the presentation there. I want to again thank you for being here and assure the committee members that this is just the beginning of the conversation, and I know that if Nevada is lucky enough to be selected, we're going to have a lot more conversations as this process goes forward. Again, I want to thank you for coming today and talking to us about what this process is, and we certainly look forward to working together in the future.

Mr. Engel:

Thank you.

Chair Yeager:

With that, I'll close agenda item VI, and we're now going to move onto agenda item VII, which is a presentation on specialty courts in the State of Nevada. My understanding is we have four different presenters: the Administrative Office of the Courts, the Eighth Judicial District, the Second Judicial District and the Western Region as well. I think the order I'd like to take this in is we'll start probably with the AOC to kind of do a more general overview, and then I believe we'll probably hear from the Eighth, then the Second and the Western Region. Hopefully that works for everybody. I will let everyone know that we have about an hour budgeted for these four presentations. I know you've provided us with a lot of information. We certainly appreciate that, but it's completely appropriate to summarize, and also very interested in the recommendations that any of you might have for this Commission in terms of our report to the Legislature and how we can help specialty courts continue on the course that they're on.

John McCormick (Assistant Court Administrator, Administrative Office of the Courts):

First, I'd like to say that Chief Justice Douglas is sorry he couldn't be here, but he had a previous engagement. Looking at the faces on the Commission, I think most of you have probably heard an overview or seen some sort of presentation on Nevada specialty courts, so in the interest of time I will kind of power through this (Agenda Item VII A). Just suffice it to say that Nevada was at the forefront of the drug court movement with Judges Lehman and Breen. Over the years since the inception of drug court, we've had over 700 babies born drug-free in the state because of the work of our specialty court programs. According to the National Association of Drug Court Professionals, drug

courts, specialty courts, do in fact save money kind of community or society-wide from reduced victimization, lower healthcare costs, incarceration and everything else.

What I'm going to focus on primarily here is the history of specialty court funding in Nevada. There are two primary funding sources for specialty courts here in Nevada. We have fee-based funding which includes administrative assessments. There's a dedicated \$7 administrative assessment on misdemeanor violations in Nevada Revised Statutes (NRS) 176.0613. That provides \$7 for specialty courts, and 12 percent of the amount of administrative assessment revenue from the regular administrative assessment in NRS 176.059 that goes to the Supreme Court is used for specialty courts. Additionally, since 2013, there is a \$100 fee on misdemeanor DUIs pursuant to NRS 484C.515, and that revenue also goes to fund specialty courts. You can see that primarily we have relied on that fee-based funding, and you can see as represented on the chart it's been fairly static and dipping down as of late. During the 2015 Session, the Legislature appropriated general funds to support specialty courts, and this was the first commitment of general funds, which we are most appreciative of, to assist specialty courts, so we were able to bring on some new programs and serve an addition around 900 participants a year with that general fund commitment.

This next slide (Agenda Item VII A) is a closer look at revenue sources since Fiscal Year 2013. As you can see, in 2013 and 2014, revenue declined, 2015 was basically static, 2016 you see the big increases because of that general fund commitment from the Legislature to assist programs. However, this year we're looking at fee funding going down a bit and specialty court assessments going down a bit, so again kind of leveling off or going down a little bit. That's kind of a more in-depth look at revenue. Also, bond forfeitures, which I neglected to mention, are in the fee-funding pot, if you will. Sometimes you'll hear somebody refer to that as A.B. 29 money because A.B. 29 was the bill that initiated the specialty court administrative assessments. If I slip up and say A.B. 29 money, I mean the fee-funded pot.

This next slide shows, and not surprisingly I think, that the programs throughout the state representing the various regions of the state ask for more money obviously than we are able to provide to support their specialty court programs. Over the last 3 years, the average amount asked for is about \$9,800,000, and we are able between the funding sources to allocate about \$5,500,000 without adding new programs. That's as far as the fee-based funding. General fund funding, it didn't take long for more money to be requested than we had. Initially though, this did allow for the creation of new programs, which was the first time we'd been able to add new programs in quite some time. We did initially have a little bit of reversion with this general fund money because it took us a while to get everything up and running as far as the distribution. We've taken a regionalized approach to distributing these funds, which lets the individual courts that have specialty court programs have the say in where the money goes and what programs it is devoted to.

We fund 34 programs with our fee funding, again that A.B. 29 number, 15 in Clark County, 9 programs in Washoe County and then 10 programs in the balance of the state. Fee funding, I would be remiss if I didn't point out that it is not the most stable funding source due to the up and down nature of administrative assessment collection because that relies on offenses, tickets and then adjudication and the ability of courts to collect that money on the back end. But again, it's how we have been funded. Obviously, again, the general fund appropriation has afforded us with the ability to create or to fund programs, and we fund 14 in Clark, 7 in Washoe and 13 in the rurals. We have been able to increase the amount of participants or clients that we're serving, and the total amount of new programs created was 22 with that general fund commitment. Some of the courts in our state also get federal funding. A lot of that is through the Drug Court Discretionary Grant Program, which is administered by BJA as well. We're starting to see that the counties and cities are starting to take in money as they are able to support these programs. I think everyone's kind of on board with the idea that these programs do reduce not only prison days but jail days at the local level as well. As you can see here, there has been federal funding received in all the regions across the state to help supplement the funding that we have. Again, federal grant funding is not a long-term sustainable source of funding for these. The Drug Court Discretionary Grant Program, I think the max you can get is 3 years and then you're done and you have to sustain it in some other manner. We can get programs up and running or start new initiatives with federal funding, but that's not a long-term strategy to sustain a number of these programs.

Specialty court addresses a number of issues, obviously societally and my colleagues here next to me will tell you more about the specifics of the program. But in Nevada currently, our top five drugs of choice for specialty court participants are methamphetamines, alcohol, heroin, marijuana and then other opioids. Specialty courts don't just address substance abuse, obviously they address mental illness, alcohol abuse, DUI, family matters, veterans' courts, so they address a number of different societal issues or issues of criminality. We have youthful offender programs in both Clark and Washoe County to focus on individuals who are entering the criminal justice system, not the juvenile justice system, for the first time and hoping to divert that behavior so they are not repeat customers, because in this business I don't think any of us want repeat customers. In Fiscal Year 2017, Nevada admitted across all our programs 2,975 individuals. We graduated 797 people. Again, nine drug free babies were born. Our graduation rate was 65 percent, which is right around our long-term graduation rate, which comes in—and this is the average for all programs in the state—at around 69 percent, which is just slightly lower than the national average.

Nevada's demographics, as I'm sure you're all aware, the population has increased in Nevada, and with that obviously comes a greater need for programming and services. Clark County is the second fastest growing county in the country after Maricopa County in Arizona, so the need for programming there is particularly acute. Also, we have seen, it's kind of interesting, an increase in serious criminal case filings, so felony and gross misdemeanor level case filings broke 18,000 for the first time in the last fiscal year and

are up 4 percent through 2013. We've actually seen misdemeanor case filings go down a little bit during that same period of time. All the caseload data is all available in the Annual Report of the Nevada Judiciary. I think I forwarded it over, but I would be happy to do it again if I haven't given it to this Commission specifically.

Finally, in line with the Chair's request, these are kind of some very broad, high-level requests that we have for additional resources or recommendations that the ACAJ could make. One need we're facing is we have the money and we devote the money primarily to treatment and providing services for the participants, but we're getting in a position where we need additional funding to provide for court staff, to facilitate monitoring participants in the programs. We're also starting to see a need for more after-care after people graduate to keep them kind of on the path, as it were. Also, we'd really like to start more intently collecting recidivism data for our specialty court programs. We're getting better data with our statewide drug court case management system, but again, we'd like to focus on recidivism, and that obviously will take additional resources and we'll have to define recidivism and do a number of things. Another thing that we've kind of focused on is some way to improve the interface between the trial courts' case management systems and our statewide drug court case management system to potentially reduce a little bit of double data entry and to also allow for more utility in both systems. Additional after-care, I think I mentioned that, but I think that's kind of a need statewide for any sort of people exiting the criminal justice system. Obviously there's been focus and justifiably so on the increase in opioid abuse, so if there's a specific need to address that from a specialty court perspective, we would hope for additional resources to do that. Again, we don't have enough treatment capacity, substance abuse, mental health treatment capacity in the state in both the urban and the rural jurisdictions. It may just be felt more acutely in the rural jurisdictions. That kind of goes into our next suggestion, to increase funding for state and community programs that provide wrap-around services for participants after discharge. With that, I am happy to answer any questions.

Senator Ford:

Thank you for this presentation. We in the Legislature have heard from Justice Hardesty on several occasions, other justices of the Supreme Court, district court judges, about the needs obviously of the specialty courts when it comes to funding and otherwise. We've also heard a lot about the successes of specialty courts. I think it was General Laxalt's law enforcement summit in November when we had a presentation during that time period from some specialty court judges as well about some of the successes that they've seen. Just earlier this month I was talking to Judge Blake in Washoe and I got to visit their courts. We're hearing some great stories about the successes. My question relates to the last presentation and how it relates to this presentation, and it is—you may not be able to answer this, because I heard you talk about recidivism needs a second ago, but are you seeing locally here in our state the success relative to recidivism? I know you're not tracking it as much as you can, but do you have any anecdotal evidence relative to the success from the recidivism perspective? And by the

way, this question will be for others who present as well that have information, that'd be great to know, because again, I'm interested in understanding the public safety perspective on this thing to see if it's more appropriate to be utilizing these types of courts for public safety perspectives from a recidivism standpoint than incarceration generally speaking, number one. Number two, maybe my math is wrong. I used to teach math, and maybe I did it wrong on this, but on your Fiscal Year 2017, you said the graduation rate was 65 percent? My division of 797, which was the number of graduates, by the number of admitted students of 2,975, doesn't equate to 65 percent. Can you talk to me about how you got your graduation rate there? Am I missing something?

Mr. McCormick:

I'll address the graduation rate question first. Oftentimes the program takes longer than a year and people are admitted across the entire year.

Senator Ford:

Oh, okay. Like DUI takes 18 months, for example? Okay, I get it.

Mr. McCormick:

Yes. We don't say, "Okay, here are the 3,000 participants in the beginning of the year and then we graduate the 700, whatever the number was, at the end of the year." It's kind of a rolling average, so that would be, of the participants who completed their specialty court program or were discharged from the specialty court program during the year, that was the graduation rate for that number of individuals, not for the overall new admission rate.

Senator Ford:

Okay, that makes sense.

Mr. McCormick:

And we can provide more data on that, additionally. Also, like I think you indicated, some of the folks next to me here who are more on the ground are going to be probably better able to provide some of that anecdotal information on recidivism. From the statewide level, that's what's reported to us, that they don't see these folks more than once after they successfully complete the program. But again, that's one area we really want to look at, because it's difficult to track participants after they're discharged because they move around the state or those kind of things, as well as accessing criminal history and that type of thing to check on folks. That is one area that we do want to focus on, and I think that's an issue that the Sentencing Commission additionally is looking at, and maybe there's some room for sort of some cross-

pollination, for lack of a better term, there. But again, I would defer to Mr. Popovich and Mr. Maldonado and Ms. Parker and Judge Gonzalez as to their experience with recidivism.

Senator Ford:

Alright, thank you.

Ms. Rose:

Thank you very much for the presentation. I have a technical question, and I'm not sure if I missed this in the presentation when you were talking. Do participants pay a fee to participate in any of these specialty courts? It seems like there are all these different areas of funding, and I'm not sure if they pay individually or how much that is and how that works and what the burden on the participant is.

Mr. McCormick:

That is kind of all over the map. In the Serious Offender DUI Program, the felony DUI program, there's a statutory requirement that participants pay for the vast majority of that. A lot of programs do charge a fee to participants, and that's viewed as a best practice, actually, as it increases participant engagement in the program, gives them a little skin in the game. Those fees are set by the local level programs. Generally, I think a lot of programs are very sensitive to the fact that they are working with, for lack of a better term, indigent populations and try to assess fees that are appropriate and reasonable to the means of the population.

Ms. Rose:

Do you know, and maybe this is better suited for the individual courts, if people who are indigent, if there's some type of evaluation if they would like to participate but they just don't have the means to, if there's some type of waiver for those participants?

Mr. McCormick:

Generally, that decision would be examined and made at the local level. But yes, anecdotally, that's my understanding is that occurs in many programs. We have been discussing at the state level potentially kind of firming some of that up and looking at a sliding fee model or some other mechanism. But again, like I said, the practitioners in the weeds are going to be better able to answer that question for their particular programs.

Sheriff McNeil:

Thank you for the presentation. One of my questions, and Senator Ford already asked that question, was about my math was off too, and I'm like, "How is that possible?" When I look at revenue streams and I see revenues from writing tickets, I always have a concern because, well we need more money, write more tickets. From a law enforcement standpoint, we just don't want to go down that road. When I look at funding—and I've got several questions—I saw that there was private funding. Where's that coming from? I also want to know if we've looked at marijuana as the rainy-day fund and funding treatment programs for specialty courts, because there is a direct correlation from marijuana use and then going into the criminal justice system and being diverted out, I think, to help do that. The one thing I'd like to know is, \$8,500,000 operating cost, how's that being spent? Is that wages and benefits? How much of that is in treatment? What are your operating costs? I don't know. I mean, we throw out a number, \$8,500,000. I'd just like to know what that is. But I think one thing that you look at, if you've got a graduate rate of 795, I just did some quick math, that's \$10,000 per graduate at \$8,500,000. What does that compare to the cost for incarceration? Those are the types of numbers that I think should be presented out there, because from a fiscal standpoint that's important. The last thing is on the fees, the user fees. I understand the skin in the game, but I can tell you, I have a real issue with, when we have somebody paying \$25 a week, it doesn't sound like much to me or you when we get paid fairly well. But when they're unemployed or they're on low income or minimum wage, that's 10 percent of their gross income every month, and are we adding another fiscal burden on them trying to complete the program to the point where they just give up in frustration?

Mr. McCormick:

As far as the sources of private funding, I don't have that information handy. That's down to the individual level courts. We'll get that and get it over to you, because I don't want to make stuff up and be incorrect on that. As far as diversion of marijuana revenue or tax revenue, that was discussed briefly when that legislation was being considered by this body and it was not a choice that the Legislature made at that juncture. Operating costs, again, to get down to the exact percentage, I'll have to look at our funding budgets and give you that. But anecdotally, the vast majority of it's going to treatment, it's going to drug testing and services for the participants. The counties and cities have done a pretty terrific job of absorbing a lot of the costs, the staff time, etc. through their existing folks to help out these programs, but we're now getting to the point that we're kind of maxed on using our existing resources. But like I said, particularly with that \$3,000,000, the vast majority of that was devoted to treating actual participants in programs, not heavy on the operation. Cost versus incarceration, I'm sure the Director probably knows better, but the last time I knew it was about \$24,000 to keep someone in NDOC for a year, so 24 versus 10, I think there the cost savings are fairly obvious. Also, we have the cost saving hopefully at the local level as well with jail days and those types of things. It costs what, \$154 a day or something if I remember to keep somebody

in the Clark County Detention Center (CCDC), so you also are saving the county that money. The user fees are quite honestly a concern I have as well, but it hasn't necessarily been litigated from any equal protection perspective, not saying that it will or should or anything like that, but again I think focusing on user fees and that sort of sliding fee or some other more unified statewide methodology for that is probably something we need to be working on.

Chair Yeager:

Okay. In the interest of time, we'll hear from the Eighth Judicial District Court next. Feel free to address any of the questions that were asked of Mr. McCormick if you have more specific or Eighth Judicial District-specific information. Again, thank you for being here with us and thank you for your patience.

Judge Elizabeth Gonzalez (Eighth Judicial District Court, Chief Judge):

I also oversee our mental health court program and our civil commitment program, so I had experience directly in our specialty court programs. With me today is DeNeese Parker, who is our specialty court manager who will be providing you with an overview of our programs, because I gave an overview at the legislative session last year and I thought you'd like to see a different perspective from someone who's actually in the weeds. For those of you who serve in the Legislature, I want to thank you for the funding for our veterans' court administrator in Senate Bill (S.B.) 445. We have put that to good use in our veterans' court program and we appreciate that funding from the Legislature. Currently, we have about 1,100 participants in our eight different programs in the Eighth Judicial District Court specialty court programs, and Ms. Parker will go through all of the statistics for you. We had 366 graduates out of our programs last year. Many of our programs take 3 years. In our mental health court program, we not only focus on treatment but we provide case management services and housing for many of those individuals, so the cost per participant in mental health court is much higher than some of our other programs, and because many of those individuals have significant limitations in their ability to be employed, we of course try to make sure that we are not adding to their burdens by seeking additional expenses from them. But there is always an attempt to try and get them to have some participation, some skin in the game, as Mr. McCormick talked about.

As for needs, Ms. Parker will probably hit this, but the biggest needs that we see down here in the south are additional inpatient beds becoming available for treatment, and for those individuals who are intensive, outpatient programs for their substance abuse problems, having sober living facilities where they can live in at an affordable rate. From an end perspective after we finish with Ms. Parker's presentation, if you'd like me to talk about those needs some more I'd be happy to, or Ms. Parker can address them as part of the end of her presentation.

DeNeese Parker (Specialty Courts Administrator, Eighth Judicial District Court):

As Judge Gonzalez stated, we are serving 1,100 participants currently (Agenda Item VII B). For our specialty court programs, we currently have Adult Drug Court, Felony DUI Court, Mental Health Court, Juvenile Drug Court, Family Treatment Court, which is the Department of Family Services involvement, Child Support Treatment Court, Veteran's Court and OPEN (Opportunity for Probation with Enforcement) Court, which is currently not a funded court, but we consider it one of our specialty courts.

The purpose of drug court programs is to increase public safety. For anyone that's worked with a specialty court, we have very intensive supervision within our courts to reduce criminal recidivism, improve quality of participants' lives, restore positive community involvement and save money. Specialty courts are less expensive than detention. It reduces criminal justice costs and increases productivity of participants.

The benefit of specialty courts is to develop a recovery or intense system of care. That's our purpose. Within that, we provide substance abuse counselling, mental health counseling, co-occurring treatment, sober transitional housing, intensive outpatient treatment, residential treatment, case management services, mentor within Veteran's Court, Family Treatment Court, Juvenile Drug Court, probation supervision for our gross misdemeanors and our felony participants, drug testing, medication management and medically assisted treatment. With that, we have regular court reviews, which has been studied and shown that without judicial oversight, 70 percent of substance abusing offenders drop out of treatment.

For our eligibility criteria, our two largest courts are Adult Drug Court and Felony DUI Court. For Adult Drug Court, there needs to be involvement in the criminal justice system, identified drug and alcohol abuse disorders. Violent criminal history can disqualify an applicant, and then a history of drug sales or drug trafficking can also disqualify a participant. All of the applications are considered on an individual basis, and the review takes into consideration the totality of the applicant's criminal history. In recent months, I have heard that we don't take violent offenders. That's not a correct statement. That's why we have changed some of our documents to state that it's decided on an individual basis. What we look at is the type of the violent offense, the history of the applicant, and we take each case as a case by case basis. The same goes with drug trafficking and drug sales charges. For Felony DUI Court, there needs to be an identified alcohol substance abuse disorder. Again, we take into account their criminal history and their trafficking or drug sales history, and 3 felony DUI charges within 7 years within no prior felony convictions. For Mental Health Court, there's an involvement in the criminal justice system, clinical documentation of a severe mental illness (SMI) diagnosis, history of hospitalizations, history of treatment services and symptoms primarily driven by the mental illness. If the criminal history was driven by the mental illness, that's what we look at. For Veteran's Treatment Court, they need to be a veteran from the U.S. military, they need to qualify for Veterans Affairs (VA) services, the service-related substance abuse or mental health, and no or low level history of,

again, violence, no sexual offenses or crimes involving children. Currently, in identifying these participants, Adult Drug Court, Mental Health Court and Veteran's Court, we are working with the Clark County Detention Center and NaphCare, the provider within the detention center, to identify and treat the participants early on. Since the Clark County Detention Center and NaphCare receive the applicants before we do, when their doctors are going in and prescribing the medications and meeting with them, they are now being able to send us kind of a screening so that we can reach out to the attorneys to say, "This person could potentially qualify for this court."

Senator Ford:

You're on Mental Health Court, that's what you were talking about, right?

Ms. Parker:

Correct.

Senator Ford:

Okay. It relates to something that Judge Gonzalez mentioned a minute ago, that one of your biggest needs is beds. I'm trying to understand one of the issues here, because as I understand it, for example, Freedom House has beds available, but for some reason we can't get our mental health court participants into those beds. Can you explain for the Commission what the issue is? Is there something legislatively that needs to be contemplated to help facilitate that, or is something else going on here?

Ms. Parker:

There are multiple kinds of answers towards that. My last conversation with Freedom House was they have 20 open beds. However, there's no funding to place the participants into those beds.

Senator Ford:

When you say funding, is that state funding?

Ms. Parker:

Currently, the money that—we partner with Freedom House for three different—it's further into the presentation. We have SAPTA (Substance Abuse Prevention and Treatment Agency) funds. Under that, we place our participants when it's available, but we only cover 14 inpatient beds a month. That facility currently has 20 open beds, there's just no funding to place—under our funding, anyhow.

Senator Ford:

So do you need state funding? I see some nodding heads. I'd just like to hear it for the record. What do you need in order to help utilize the 20 vacant beds?

Ms. Parker:

We need funding for those 20 vacant beds.

Senator Ford:

And how much do you need? Do you know? If not, I can get back to it.

Ms. Parker:

I can give that to you. I could probably calculate it in a few minutes. It's \$110 per day per residential bed for inpatient treatment. Under our SAPTA grant, we have three different levels. We have the coordinated care level, which is supervised, assisted, kind of sober living. Then we have what's called the Freedom House project, which is intensive outpatient treatment plus housing. Then we have the residential placement of inpatients, which is \$110 per day. The Freedom House project is \$41.15 per day. That's intensive outpatient treatment plus housing. The coordinated care is \$28.22 per day.

Senator Ford:

It'd be helpful to get an actual number of what you would need in order to be able to utilize the vacant beds that you have available so that we can continue to augment the program and utilize its benefits.

Ms. Parker:

I can get that to you guys.

Just a quick statistical overview. This is just nationally, according to the National Drug Court Institute (NDCI) (Agenda Item VII B): 75 percent of drug court graduates remain arrest-free at least 2 years after the program, we reduce crime by 45 percent more than other sentencing options. One of the newer things that has come out based on the research is that we have the greatest effects for high-risk offenders, so in the past it has been seen that offenders with antisocial backgrounds, treatment didn't work. We're showing that it does work when it comes to treatment courts because of the intensive supervision, behavior accountability plus the evidence-based treatment. Additionally, drug courts reduce drug use. Drug court participants are 20 percent more likely to decrease their alcohol and drug use than non-drug court participants, substance misusers, and then drug courts save money

These are our specialty courts' 2017 statistics, along with our current active participants. To go onto more of our statistics, our SAMHSA (Substance Abuse and Mental Health Services Administration) grant has an evaluator with it in which we evaluate the participants under that particular grant, so it would be residential at WestCare. What we have found is that 42 percent of the people that go onto our SAMHSA grant for inpatient treatment, their number one drug is methamphetamines, 26 percent are opiates and 24 percent are heroin. Of those participants, 45 percent have experienced past trauma. Again, just to note that our OPEN Program is not currently funded. The OPEN Program is for 18 to 26-year-olds. It's intensive supervision. Currently, we partner with Casa Grande, but we don't have any treatment money at this time.

We have done two recidivism studies for our courts. One was our felony DUI program. It was from 2001 to 2014. What they found was there was a 67 percent graduation rate, 33 percent discharge rate and a 12 percent DUI recidivism rate, and the recidivism rate is based upon convictions. I just want to note that our felony DUI program is 36 months.

For our Mental Health Court program, there was a Mental Health Court study done in 2010. I believe it looked at 2003 to 2006. There was a 40 percent graduation rate, a 40 percent discharge rate with there being 20 active participants at that time. What that found was there was a reduction in crime while in the Mental Health Court program. The people that graduate the program, there was a felony reduction of 89 percent, an 83 percent misdemeanor reduction and a 78 percent overall arrest reduction. Just to note, the reduction rate is calculated by adding the pre and prior arrests, then subtracting the arrests while in the program post-program and post-study arrests. The difference is then divided by the sum of the pre and prior.

Just to talk about a few more of our program outcomes that are current, under our SAMHSA grant, on our last biannual report which was completed in October of 2017, 86 percent have completed treatment, 100 percent remain crime free 6 months post-intake—they're still in the Adult Drug Court program, they're just post that original intake when they entered inpatient—and 41 percent had increased employment. Six months post-intake, 51 percent of the participants did not have stable housing. That's something we're going to come back to. Per our SAPTA report for this fiscal year, Fiscal Year 2018, our first 2 quarters of Fiscal Year 2018, 102 participants have become employed through our coordinated care program. When we place them into coordinated care, on top of that they get case management, employment services and hopefully find employment.

This is our current funding for Fiscal Year 2018 looking at our grants (Agenda Item VII B). Our SAMHSA grant is \$325,000 per year, which is expiring on September 30, 2018. This is a grant that we use. We've partnered with WestCare and we use it for residential treatment. Our SAPTA grant will expire June 30, 2018. We receive \$1,000,000 per year. Under the SAPTA grant is where we have partnered with Freedom House currently for the coordinated care providing sober living, and then we've partnered with Freedom House for inpatient and the coordinated care plus the intensive outpatient treatment.

Additionally, we have a Justice Assistance Grant (JAG) that funds one coordinator, and then we have client-funded for our Fiscal Year 2017 of \$442,225. That's from the assessment fee that has been placed upon the participants within the program. Currently our only programs that have a participant fee associated with them are Adult Drug Court, Felony DUI Court and Veteran's Court.

What we have found is that it's \$155 a day to house one inmate in the Clark County Detention Center. On average for our Adult Drug Court clients, it's \$5,800 per participant for the entirety of the program, so that's what we're averaging per participant when it comes to treatment. Our SAPTA grant for residential services has saved the Clark County Detention Center—that's the three housing programs--\$862,020 for the first 2 quarters of this fiscal year. Then Felony DUI Court's costs are paid by the program participant, averaging \$554.50 per month.

Senator Ford:

I just want to see if I can understand where the 20 vacant beds fit in on this, for example. Is my assumption correct that those 20 vacant beds, there are at least 20 people at CCDC sitting in there for \$155 a day that might be able to utilize those vacant 20 beds that are cheaper for the state and for the county? Is that a fair statement?

Judge Gonzalez:

That is an accurate statement. We have a large number of people on our waiting list for all of our courts for inpatient.

Senator Ford:

Okay. I'll just reiterate, give me some numbers please, what you need.

Judge Gonzalez:

I will be happy to send you the numbers after we get back to the office.

Senator Ford:

Thank you.

Ms. Parker:

Again, we just want to thank everybody for S.B. 445 in which we received the \$98,356 fiscal appropriation for Fiscal Year 2018 and Fiscal Year 2019. We currently have 55 participants in our Veteran's Court. That cost savings over 2 years is \$77,231.

Here are some of the numbers I think you were probably looking for (Agenda Item VII B). Mental Health Court currently has 42 individuals on a waitlist, and 83 percent of the Mental Health Court applicants that are on the waitlist are homeless. For our housing, we have a waitlist and a shortage of funds for sober housing. For our residential treatment, and this is a snapshot from January 2018, Westcare had a waitlist of 75-plus males and 40-plus females awaiting treatment. The CCDC had over 65 inmates awaiting treatment behind bars. Freedom House at that time had 21 males awaiting treatment. I received an email today from WestCare stating that there are no more SAFTA funds to place individuals into those inpatient placements, so those participants will not be placed until July 1, 2018 for the new fiscal year. I also received an email from CCDC today stating that 14 people have been waiting over 100 days in CCDC for treatment beds. Ten of those participants were going to WestCare. There are currently 20 open beds at Freedom House that we do not have funding to send these participants to. One of the things that has started to occur is the pressure to do more with less, and then without having the ability to look at our effectiveness, our recidivism rates, and to really study out programs, we don't know if we're becoming less effective trying to do more with less. The other thing is, best practices show for probation officers in specialty courts that there should be no more than 50 participants per caseload, and 30 in Mental Health Court. Currently, our Mental Health court officers have a 55 to 1 ratio, our Felony DUI officers have a 90 to 1 ratio and our Adult Drug Court officers have an 85 to 1 ratio. Coordinators have over a 100-participant caseload, and best practices are for a 50 to 1 clinical case management caseload. Again, we're lacking the evaluation and data regarding recidivism rates.

Some of the future goals that we would like, we recently wrote and applied for two SAMHSA grants. One was for housing. We were looking at transitional housing and the plan to turn it into permanent housing for our Mental Health Court participants. The other grant was for residential treatment and intensive outpatient treatment with a housing component. We also need a decrease in referral time, the time from CCDC to treatment. We've recently tried to partner with, it's called the FUSE (Frequent Users Systems Engagement) Program, agencies that have money to house homeless people that have been determined as homeless. However, within that homeless definition, they cannot be incarcerated for 90-plus days. Once they've been in CCDC for 90 days, they no longer fit the homeless definition. We'd like to increase intensive outpatient programming with a housing component, increase supervision thereby decreasing the caseloads of the coordinators and the probation officers into—monitor and evaluate specialty courts and really increase our evaluation component.

Senator Ford:

I just want to hear what you just said a minute ago. Can you repeat what you just said about the qualification vis a vis incarceration time?

Judge Gonzalez:

I chair the Criminal Justice Subcommittee on Mental Health and Homelessness, and we meet monthly to discuss issues that are common to those populations. On our Committee are members from health and human services with Clark County people from this FUSE Program, which has a grant to provide housing for homeless and members of CCDC as well as our specialty court staff. The definition of homelessness will not cover anyone who has been incarcerated for a period of 90 days. If they've been incarcerated, whether it's in the NDOC or CCDC, for that period, their clock starts over before they can be called chronically homeless. Hospitalizations also affect that, so those who have been in our involuntary commitment proceedings and have been committed also may not be eligible. Those are grant-based definitions from Housing and Urban Development (HUD), so that's why we are struggling in trying to find ways to assist that population that is homeless, especially those that are paroling out of the prison system and don't have any place to go. I know they are working at Casa Grande with some transitional resources on that, but it is an issue for the referrals that are being made from the jail to the FUSE Program that is trying to operate this grant.

Senator Ford:

Okay. These are HUD-based definitions, meaning these aren't Nevada statutory definitions that we can change or put exceptions in for, is that right?

Judge Gonzalez:

That is correct. I also understand some of the definitions come from private grant sources, but they use the same definition as the HUD grant for this.

Adam Laxalt (Attorney General):

Thank you both for great work in these specialty courts. They are incredibly important, and I'm certainly a big proponent of them, so this is just a question of unpacking a stat. If you go to the statistical overview slide (Agenda Item VII B), "Drug Courts Reduce Crime," I'm just curious, the top line says 75 percent of graduates remain arrest-free, and then lower down it says it's only a 10 to 15 percent reduction in recidivism. Can you kind of unpack why that gap is so large for me?

Ms. Parker:

Yes. I actually have the study with me. I could send the study. I believe, "75 percent of Drug Court graduates remain arrest-free at least 2 years after the program," they're probably defining, "average approximately 10 to 15 percent reduction in recidivism," I believe the 75 percent is looking at the graduates, whereas the 10 to 15 percent reduction in recidivism is looking at participants. But I can get those studies and I can send those to you.

Attorney General Laxalt:

Okay. Thank you. I was hoping the answer wasn't, "They all got arrested after 2 years."

Sheriff McNeil:

You know, I do run a jail and I know what my cost for prisoners each day costs, and I would caution using a flat rate like that as to what it costs, because it truly only costs me about \$7 a day to feed them per prisoner, unless that prisoner eats up some medical costs. Whether I have 100 or 200, my costs are still the same every day. But my real question is, the Family Treatment Court that you've got there, can you expound on what that is? I haven't heard that one yet on the specialty court side.

Ms. Parker:

The Family Treatment Court is, the referral source comes from the Department of Family Services. When Child Protective Services gets involved with a family because of allegations of abuse or neglect, that caseworker within the Department of Family Services determines that there is an issue with substance abuse, then they are referred into our specialty court which is the Family Treatment Court. It's not one of our criminal courts.

Specialty courts provide humane and cost effective justice and effective alternatives to incarceration. Specialty courts have been shown to work. They're better than jail or prison and they're better than probation and treatment when alone.

Chair Yeager:

I know under our felony sentencing structure, I believe the outside time that someone can be on probation is typically not to exceed a fixed 5 years. Or there are situations where drug court or other specialty court participants sort of bump up to the end of that supervision period and we have a supervising judge asking for more time for them to be supervised? If the answer is yes, what option, if any, does the court have?

Judge Gonzalez:

The answer is yes, there are incidents where someone is bumping up against that time, especially where we have received someone in our specialty courts from a probation violation as a result of a potential revocation hearing where they've been reinstated with additional conditions. Sometimes there's a forfeiture of good time credits as part of that process, and sometimes as the participant begins the program, the participant will agree to extend their probation up to that 5 years. But we typically cannot go beyond that 5 years unless there has been something unusual that has occurred, because 5 years is the maximum time we can have someone on probation.

Justice Hardesty:

First a comment and then a question. You have listed on your slide about current needs “lacking evaluation and data regarding recidivism rates.” Like Mr. McCormick previously spoke of, the specialty court programs do not have adequate staffing to be able to track recidivism rates, is that correct?

Ms. Parker:

That is correct. Right now, our coordinators, their caseloads are so high, they’re higher than best practices. To have them sit and poll, or have anybody poll the SCOPE (Shared Computer Operation for Protection and Enforcement) or the National Crime Information Center (NCIC) to see if somebody’s left if they’ve picked up new charges to look at the recidivism rates, we just don’t have the manpower right now.

Justice Hardesty:

The comment I wanted to make is, for those of you new to the Commission, the Advisory Commission recommended to the Legislature in 2015 that the Legislature appropriate \$3,000,000 a year towards specialty court funding, which was the first time in the history of specialty court funding that the Legislature had appropriated money from the state general fund. This decision followed a presentation to the Advisory Commission from Oregon, who had adopted a similar business plan. In that state, their initial investment in the specialty court programs from the state general fund was \$15,000,000. At the most recent Sentencing Commission meeting, we received presentations from the Oregon Sentencing Commission and their staff. The Oregon Legislature has found their investment to be so impressive and the results so impressive that the Oregon has increased their investment to \$40,000,000. I would be happy to share with the Commission the statistics that were presented at the Sentencing Commission, but the point I want to make is that these programs have had considerable success and they’ve been able, as a result of that funding, to be able to check the other side, so to speak, what is occurring on the recidivism rate side of this issue and make sure that folks are still remaining drug free.

A couple of other quick comments about the numbers that Sheriff McNeil talked about. First of all, the amount per participant, while one would look at the annual budget and say, “Well, that might equate to \$10,000 per participant,” that actually isn’t a correct calculation. As previously noted, the 67 percent graduation rate is measured against the number of people in the program and those who graduated based upon their entrance date, and those period extend longer than 18 months, and in some cases like felony DUI, 36 months. So, the more appropriate calculation is the amount of money that’s budgeted for those that are connected to the program from start to the time that they graduate, less those that have been washed out. That number is closer to about \$5,000 per participant rather than \$10,000.

The other issue that I wanted to mention is that I don't know that it's the case that we have an accurate account of available beds, but I am concerned that we have resources available and we can't access them, and we can't access them because they're underfunded. But what's particularly alarming is the supervision rates. If we expect these programs to be effective, we're not going to be successful if we have supervision rates of the kinds of rates that Clark County has to have here, and I think the Second Judicial District has rates that are pretty substantial as well.

Ms. Parker:

If I could just add one more thing to the evaluation component, if we could come in and really evaluate for our grant, for SAMHSA, one of the things that we can really look at and evaluate is the success rate of somebody who goes through inpatient versus the success rate of somebody who goes through intensive outpatient with a housing component, because there's a very big difference between the dollar amount per day for those two programs. If we could look at and evaluate the effectiveness of them, we'd have a better idea of how many people to put into inpatient versus intensive outpatient with the housing component.

Ms. Rose:

Thank you very much for your presentation. It's great to hear about all the good work that the specialty courts are doing and all the people that they're helping. In terms of admission to the specialty courts, is it solely within the decision of the presiding judge? Does the district attorney have the ability to object to that? How does that work?

Judge Gonzalez:

Depending upon the program, the answer is yes. In Mental Health Court, we frequently have the district attorney objecting to certain violent offenders that we may have made a judgment call that we can take the risk to take that particular individual given the medication issues that we're facing. But in many situations in Clark County, we do not see individuals who are being diverted to the court presentencing because the district attorney's office is unwilling to agree to that program. In those cases, the sentencing judges, as part of the sentencing on probation, are placing a condition of probation as participation in that program. Once the participant has been identified for the program, whether it is through a negotiation with the district attorney's office or through a sentencing recommendation by a judge, they then go to an intake committee that we have with each of our specialty courts which look at each case individually to make a determination as to whether that particular participant is appropriate for the court. I will tell you, we have some individuals that present a challenge because they are too mentally ill for our drug court program and yet their substance abuse problem is too significant for our mental health program, and we struggle with how do we help those individuals, especially now that we're losing the ability to have inpatient beds for those. Each of those individuals is judged case by case by our specialty court teams after the

referral, whether it's a referral from the public defender's office, the Clark County Detention Center or the judge.

Ms. Rose:

Thank you, I appreciate it. Thinking about just going back to how much people have to pay to participate, I don't think it was on the slides, but I think Ms. Parker said it was the Felony DUI Court they have to pay for, \$554, that was on the slides. Then the Veteran's Court and which other courts? Which courts do people have to pay for?

Ms. Parker:

Currently, Felony DUI Court, Adult Drug Court and Veteran's Court assess each participant at \$1,500 for a court fee. The Felony DUI Court participants, they pay for their own treatment. They pay a large portion of their own treatment, so that's where the \$554.50 a month—they have to pay for an interlock, they have to pay for a percentage of their drug testing, they have to pay for a percentage of their treatment, and then on top of that, the \$1,500. However, based upon needs, that specialty court team can waive that fee.

Ms. Rose:

Thank you, I appreciate that. Can you tell us some of the reasons that people don't graduate from the program? Either if you have data or just some anecdotal information you can share with us to think about maybe how we can improve those graduation rates?

Judge Gonzalez:

Many of the individuals who are unable to successfully complete the program don't have the commitment to go through the program, because it is a hard program. All of the programs are hard and they take a lot of hard work. I think the studies from the substance abuse counseling side show that it takes a lot of touches for individuals to hit that substance abuse counseling for them to be able to really make the commitment to make a change in their lives. So while we can offer opportunities to those participants, many of the participants have not hit the point in their lives yet that they're willing to make a change. I think that a lot of it is that's the problem. There are others anecdotally that have behavioral issues that we can't resolve and can't have involved in our program, people who have had some issues with arson, and we can't have individuals starting fires when we have a supported living arrangement with other participants. There are those kind of other anecdotal stories, but in large part, I think many of the participants who are admitted to those programs don't realize how tough it's going to be and aren't willing to be there for the long haul. But I'll let Ms. Parker from the therapeutic side answer that question.

Ms. Parker:

A lot of the termination numbers that you see or the termination rates that you see come from bench warrants. You'll have a lot of participants, just as Judge Gonzalez just stated, that come into the program, they'll relapse, they'll realize they can't do this or they don't want to do this, and they will bench warrant. We have people that come in and have three bench warrants, but we keep giving them that change at treatment. In order to be terminated from one of the specialty courts, whereas it's the program kind of terminating them, that would be if they falsified a drug test, sometimes new charges. Again, that's on a case by case basis, but a lot of those numbers that you see are really bench warrants where people are terminated, or they've received new charges.

Ms. Rose:

Just one clarification, when you say bench warrant, what you mean is they haven't shown up to something so a bench warrant is issued because they're not participating, is that what you mean?

Ms. Parker:

Correct. They'll bench warrant and then not return in a year or 2 years, 3 years, those types of things.

Ms. Rose:

Thank you, I appreciate it.

Ms. Jones Brady:

What about Medicaid? How much of the treatment, both mental health and substance use, can be paid by Medicaid, if any?

Ms. Parker:

We do. If our current providers take the appropriate Medicaid, they will bill Medicaid before they bill the courts. For our Mental Health Court program, we have a contract for services, but all of the treatment originally goes out based upon that participant's insurance. Their mental health treatment and their substance abuse treatment, we'll go use their insurance first. However, with insurance like Medicaid, they dictate the amount of service. They'll only approve a certain amount of sessions or for a certain length of time.

Ms. Jones Brady:

Does that also cover their medication for mental health medication?

Ms. Parker:

Correct. For our Mental Health Court participants, yes, where their insurance covers it. Also, when we have them released from the Clark County Detention Center, we ask for 2 weeks' worth of medications so we can make sure we get them on their insurance and there is no lapse in medication.

Chair Yeager:

Seeing no further questions, thank both of you for being here. I know how hard specialty courts are and how labor intensive they are. I had the pleasure, I think it was last week or the week before, of attending one of the graduations down here in Clark County, and would certainly recommend to any Commission members if you're able to make a graduation in your respective area to go. It really is meaningful to see the change, and I think it really brings specialty courts all together.

We still have presentations from the Second Judicial District Court and the Western Region. Again, I want to thank you for being here. Let us know about ways in which your courts operate differently and what we can do for you as a Commission in making recommendations to the Legislature.

James Popovich (Specialty Courts Manager, Second Judicial District Court):

There's a lot of content in this presentation, so I'm going to skip over a lot of that content, a lot of the small print, touch on some of the highlights (Agenda Item VII C). We have 10 specialty courts in the Second Judicial District Court, dating back to 1994, serving over 700 active participants. That does include folks that have absconded on bench warrant status. At the 18-month mark of being on bench warrant status, we terminate those participants. That's our policy with those.

Moving onto Mental Health Court, Mental Health Court was started in 2001. It was a national learning site in the mid-2000s. Northern Nevada Adult Mental Health Services also there provides housing, behavioral health services, medication, psychiatric services and case management services for those folks. What we've found with the mental health, as it was alluded to and spoken to at the Eighth, is that it is imperative that we focus on accepting those folks that do have a serious mental illness paramount to their substance use. We have found that well over half, if not two-thirds, of those in our Mental Health Court do have a co-occurring substance use disorder. For the Mental Health Court budget, salaries and benefits at the Second Judicial District Court for Mental Health Court are 100 percent paid for through county general fund dollars. Salaries and benefits, as we go through these slides, relate only to court staff. We're not speaking of the dedicated deputy public defender, deputy district attorney, treatment or Parole and Probation, for that matter. There was a study done from 2007 to 2009, jail day savings for that court. It found that there were 65 percent cost savings when

comparing graduates 1 year before their Mental Health Court participation and 1 year post. With that comparison, there was a cost savings of 65 percent.

Moving onto Veteran's Court. Similar to Mental Health Court, Veteran's Court, the VA provides housing, behavioral health, medication and case management services. Multijurisdictional court like Mental Health Court, therefore we take cases from the regional limited jurisdiction courts. There must be an established nexus in Veteran's Court between the mental illness, alcohol or drug use or post-traumatic stress disorder (PTSD) and the veteran's military service or readjustment to civilian life post-service. To clarify those acronyms on the salaries and benefits (Agenda Item VII C), an SCO is a specialty courts officer. We have seven Specialty Courts Officers that work for the Department, work for the Second Judicial District, the Specialty Courts Manager and then an administrative assistant. Most of our specialty court officers supervise more than one court, so we've allocated their salaries and benefits accordingly.

Moving onto Adult Drug Court, our largest court, it was the first criminal specialty court in the Second Judicial District. The first docket was held in July 1995. Judge Breen was the judge who started this court. Folks are sent to our Adult Drug Court—there are two ways they're ordered to our court: one as a condition of probation, and the second from an executive branch deferral of prosecution, meaning the defense and the district attorney must agree for that. It's not a judicial decision at that point. The condition of probation is a judicial decision on eligibility and appropriateness.

Moving onto Diversion Court, Diversion Court started in 2000. We call that Drug Court Light. The idea with Diversion Court is that, under NRS 453 and NRS 458, we have folks that are lower risk, lower need. They're going to be eligible for dismissal upon successful completion. Staff at the Second Judicial District this last fall became certified in administering a validated risk assessment, the Ohio Risk Assessment System. It's the full seven-module assessment that we are administering to our Diversion Court and our Adult Drug Court participants. Our goal is to segregate those two populations in accordance to best practice standards, the Risk-Needs-Responsivity model, which was designed by Doug Marlowe at the National Association of Drug Court Professionals (NADCP). In segregating them, their dockets, tailoring their treatment, and of course tailoring their supervision accordingly with their risk and need. We're building that database. Again, we started in December and January administering those. We've got a lot of requirements as we go through these slides. To clarify, NRS 453 and NRS 458 both allow defendants the diversion program, and NRS 453 relates to drug crimes and NRS 458 relates to other crimes, non-drug crimes, so to speak. Under NRS 458, a substance abuse disorder, there must be a diagnosed substance abuse disorder as the primary diagnosis, unlike NRS 453. Here are the exclusions under NRS 458. We walk through a few more there. The difference between Diversion Court, NRS 453 and NRS 458, again, is the crime committed. I do want to make a recommendation as I move through here. There'll be a few of them. One of them is some of the language in the statutes. It's archaic. At a time when it was written, it was under the previous Diagnostics Statistical Manuals (DSM) III and IV, when we referred to substance abuse,

substance dependence, we refer to addicts, the proper terminology being substance use disorder. A suggestion would be for us to walk through those statutes, and not only look for some of that language that can be modernized so to speak, but possibly anything else that can be revised.

Then we move onto the budgets for Adult Drug and Diversion Court budgets. According to the Specialty Court Funding Committee and approval of the Judicial Council in 2015, there were minimums and maximums that were set depending on the type of court as far as participant contributions and assessed fees. For drug courts, for felony drug courts, that assessment was a minimum of \$1,300, maximum of \$2,300. When we look at the line item with participant contributions, that is where that assessment is coming from for our drug court. Due to the participant contributions, this is one of the only courts where it's a wash. Expenditures are meeting our revenue on that. A need that we have found—we show on this budget nearly \$500,000 for substance abuse counseling. That's level care one. That's outpatient up to 9 hours. That model was adopted 15, 20 years ago. We're looking at that model simply because not every participant fits that level of care. As has been spoken numerous times today, long-term housing is what's needed, funding for long-term housing. So many of these folks, the time it takes for the brain to heal, the time it takes for them to develop positive, prosocial activities, for them to become employed, for them to find stable housing outside of that, it takes far longer than 30 days, 60 days, which is the majority of some of these residential programs. I'll refer to a program like Crossroads, 90 days, upwards of 180 days. There are other long-term programs that we use in the Washoe region, 6 months, 12 months. We do find better success with those programs simply because they're under the care of those treatment practitioners for that much longer. They're able to undergo and express their struggles that they're having with staying clean and sober. When they're pushed out after 30, 60 days back to an outpatient level, it's really tough to get a handle on them, very little continuity of care, certainly when we're looking at their recovery-oriented spectrum of care.

Moving onto Felony DUI Diversion Court, minimum 36 months, maximum 60 months. One of our more successful programs. I would assess the fact that it's a longer program. We have monitoring, we have treatment, we have supervision for these folks for a minimum of 36 months, whereas most of our other courts are 12 to 18 months. We have received an Office of Traffic Safety grant for this court, which has helped us offset one of our court supervisor's salaries. As it was spoken to, these participants pay for all of the required services based on statute when it comes to substance use treatment, drug testing, ignition interlock device, and of course the SCRAM (Secure Continuous Remote Alcohol Monitoring) monitoring bracelet.

Moving onto one of our two newer courts and one of our two state general fund-funded courts, the Medication-Assisted Treatment Court, participants are eligible to participate in this program from any of the other specialty courts. Along with the Western Regional Drug Courts, these were the first specialty courts in Nevada designed to specifically treat opioid users with medication-assisted treatment. This was our response to this

opioid epidemic. Since its inception in December of 2015, 90 percent of all graduates have remained arrest-free in Washoe County.

Moving onto our second general fund-funded court, Youth Offender Diversion Court. It is just that. It is a diversion court. You either must be NRS 453 or NRS 458. It targets the population of 18 to 24-year-olds struggling with an opioid use disorder. We also do offer medication-assisted treatment for this court. Of the graduates in this court, 89 percent have also remained arrest free in Washoe County.

Moving onto our non-criminal drug courts. In 1994, the first Family Drug Court in the nation under Judge Charles McGee. In 2007, it was part of a foresight national study and demonstrated its leadership. Its adherent to best practice standards after its been in existence for 13 years continues to do so. In 2010, similar to what was seen in Adult Drug Court in 2000 with Mental Health Court carved out, there was a need to carve out the population and address the folks that were struggling with a serious mental illness within Family Drug Court. Similar to Mental Health Court, we partnered with the Northern Nevada Adult Mental Health Services (NNAMHS). They provide the housing, medication, behavioral health services, case management for Family Mental Health Court. As far as the budgets, we do receive A.B. 29 fee funding for this upwards of \$69,000. We expect the Human Services Agency, formerly Social Services, to not continue their funding of \$72,000 past this fiscal year. Therefore, we're looking at adopting another treatment model which would include a direct partnership with the managed care organizations, Anthem, Silver Summit and Health Plan of Nevada (HPN), in order to assure that we had continuity of care that we need, which has actually led to us contracting and adopting the single and dual-provider model over 20 years. The comfort and really the benefit of having one provider at the table who understands what's going on with every participant, that may not be the case if we so to speak farm out these treatment services to the community. That direct partnership with each managed care organization (MCO), assuring that there's care coordination, again, progress notes weekly and dialogue that can go both ways. That will most likely be the model that we will adopt there, and potentially some of that Human Services HC funding may be able to be devoted towards some of the longer term housing that these folks desperately need.

Last but not least is our Prisoner Reentry Court. It does not receive A.B. 29 or state general fund dollars. In partnership with the NDOC and with their assistance we have found that there was a 92 percent rate of graduates the last 4 years that did not return to prison in Nevada. That's a huge success. It is actually our most successful court. Possibly the institutional remission, the motivation they have coming out of prison once they reenter, numerous factors probably contribute to the success of these folks. Again, a high level of supervision. We have a great relationship with Parole and Probation, and that level of supervision and the level of care over the stay of 12 to 18 months does contribute to this. I will note one thing. The Second Judicial District has partnered with the Department of Health and Human Services' (DHHS) Biostatistician team over a year ago in hopes that we could share data and look at a way to track recidivism along the

lines of what DHHS was doing with seeing how many folks landed in the emergency room, the same folks in the emergency room, tracking them across numerous tracking points. There have been some successes and headway made with that initiative. The DHHS Biostatistician team has partnered with the Department of Public Safety (DPS). My understanding is the server and system have been in place and they're looking at receiving regular extracts from the Central Repository in order then to cross reference that with folks that have graduated from the specialty courts. Hopefully that become a statewide initiative. It certainly sounds cost effective and supplements greatly needed. As we go through these courts, the one question I received the short 3 years I've been at the court is what are the outcomes? Where are these folks 2, 3 years from graduation? Again as you saw, we had a few courts I was able to touch on, but we need statewide stats. Ideally, we need national stats. How many folks will skip over to California or Sacramento and commit a crime? We need to see how successful these courts are. We know how they are, we just need to be able to demonstrate that with some better recidivism tracking.

Chair Yeager:

On the Prison Reentry Court, is that what is commonly referred to within the prison as the 184 Program?

Mr. Popovich:

That is correct.

Chair Yeager:

It sounds like, and let me know if you think this is the case, is the Second Judicial District the only district that you know in this state that's running Prison Reentry Court?

Mr. Popovich:

That's correct. My understanding is the Eighth Judicial District and the Second Judicial District both started one in 1999. Right now, currently, my understanding is we are the only one in operation.

Ms. Rose:

Just a question similar to the question I had asked the other speakers, just in terms of how much individuals have to pay for a program in Washoe County or in the Second Judicial District. If you can just kind of talk a little bit about what the individual responsibilities is for participants, and if there's a fee waiver, how that's assessed, and what happens if they don't pay or can't pay?

Mr. Popovich:

According to the specialty court funding criteria, my recollection, Veteran's Court, Mental Health Court, that's up to the discretion of each court in each district as to how much, if any, fees they assess. Felony Drug Courts, a minimum of \$1,300, maximum of \$2,300. Felony DUI Courts, I believe a minimum of \$500, if I recall. Those are the minimums and maximums for those different types of courts. We do not assess a fee for our Mental Health Court participants nor our Veteran's Court participants. For those folks that can't pay, that have demonstrated that they can't pay, the first thing we do and what is incorporated and integrated throughout our programs, budget classes are offered. We have a local bank that comes, provides some financial counseling helping these folks get going with that and really learning how to budget their money. We do that earlier on in the program simply because at that point, then we have 12 to 18 months to work with that. If they do demonstrate financial hardship, in one of the last couple phases of the program, then we do offer them a program where they can apply for a fee waiver and those are granted.

Ms. Rose:

Thank you, I appreciate it. I just have one last question that's really specific and not necessarily something that you had talked about. We at the ACLU obviously get all types of intake from different people, and one of the things that we had heard about is that as a condition of participation in the Drug Court program that certain—I don't know if it was the court program itself or if it was certain judges—were requiring the women participants to take pregnancy tests. Is that something that you know about, or is that happening? Is that actually a criteria for participation? I obviously did not see that listed anywhere in the presentation today.

Mr. Popovich:

No, that's not a practice that I'm familiar with at the Second Judicial District.

Ms. Rose:

Thank you, I appreciate it.

Assemblywoman Krasner:

Thank you for your presentation. I'm looking at the slide that's titled "Youth Offender Diversion Court," and it states that the requirements include diagnosis of opioid use disorder. Are there programs for you 18 to 24 for other drug addictions, whatever they may be, methamphetamines, cocaine, marijuana?

Mr. Popovich:

Yes. With these folks being diversion status, if they don't fit the eligibility criteria of having a primary diagnosis of opioid use disorder, they do then go directly into our Diversion Court.

Assemblywoman Krasner:

Since this is specifically for 18 to 24-year-olds, what about youth that are under 18? Are there diversion courts or drug courts for those persons under 18?

Mr. Popovich:

Right now, all of our courts are 18 and older, adult courts.

Assemblywoman Krasner:

There aren't any diversion courts or specialty courts for persons under age 18?

Mr. Popovich:

Not at the Second Judicial District.

Mr. McCormick:

The juvenile justice system is decidedly different than the adult justice system and is primarily based on diversion and creating probation conditions and working with the alleged delinquents or children in need of supervision. There are a number of programs that aren't necessarily called specialty courts per se at the juvenile justice level, but there's an intense level of programming to help juvenile offenders.

Chair Yeager:

Thank you again, Mr. Popovich. Let's go to our Western Regional Specialty Courts. Anything you'd like to add on or any asks you'd like to make of the Commission?

EJ Maldonado (Specialty Courts Coordinator, Western Regional Specialty Courts):

I won't go over the eligibility criteria of our programs because they are very similar if not the same for both the Second and the Eighth. I will give a brief program history, but prior to doing that if I can take you to the first page of my handout (Agenda Item VII D). A correction on page one, last paragraph, second sentence. There was just one slight correction. Where it says "defendants with a history of violence," we would just notate that's on a case by case basis. With the Western Regional Specialty Courts, in 2001 is

when we first started in five counties. That would be Carson City, Storey, Douglas, Churchill and Lyon Counties. Back in 2004, we went ahead and volunteered and took Mineral County at no extra cost accepted from any sources of funding. In 2015, we were lucky enough to receive some general fund money to start up a Medication-Assisted Treatment Court, as well as fund our DUI Diversion Court that had already been going, and also included a Mental Health Court that we are currently participating in, Churchill County, Lyon County and Mineral County.

If you go to the second page, I will go ahead and list all the funding, and at that time I'll just go over it briefly with each program. Our Drug Court operates in six counties: Carson City, Douglas, Churchill, Lyon, Mineral and Storey County. We currently receive the fee-funded pot, or the A.B. 29 funding, of \$400,064 per year. Half that cost goes back to treatment, with those split up into \$825 per admission into the Drug Court program, and \$1,000 is slated for every residential treatment bed that we do provide. With our Drug Court, I do also want to include that we have a Family Drug Court, albeit it's one participant, and it's currently in Churchill County. The reason that we don't have any additional funding is because we utilize the same treatment provider. We utilize the same treatment modalities that we would in the Drug Court, but of course it's not part of the criminal court based on it being an NRS 432B case. We're basically providing judicial oversight for the district court on that case. With our Drug Court, we have three contract providers: the Community Counseling Center here in Carson City, New Frontier in Fallon and Rural Nevada Counseling in Lyon County. The Community Counseling Center also provides the treatment in Carson City, Douglas and Mineral Counties.

When it comes to our residential treatment facilities, our 30-day programs, we utilize Vitality Center, both in Carson City and in Elko, and New Frontier. When it comes to long-term care, we utilize Salvation Army and others. We try to stay as a local region up here without using any of the resources down south. Even when it comes to Mineral County and Hawthorne, we really try to move everybody up to at least the north resources that we have available to us. Currently, our waitlist for residential treatment is anywhere between 2 to 4 weeks, our long-term is anywhere between 6 to 8 weeks, but we have seen waitlists as much as 3 to 4 months on our long-term care. When we look at incarceration while waiting for residential beds, there are times that we do deem it appropriate to keep them in there for safety purposes. However, if they've remained in custody for a period of time, and most of the time once they start reaching about the 4 to 6 week period, we'll have our treatment providers go back in, assess their level of care, find out if they're eligible, if they can meet that criteria to come back out and reengage in intensive outpatient services. We will let them do that and still utilize a residential treatment bed if it does come available.

Our DUI Diversion program we operate in all six of our counties. We currently receive \$18,700 per year from the general fund. That cost only covers Lyon, Churchill and Mineral Counties. Carson City receives \$35,000 and they also share that cost with Douglas County to operate their DUI Diversion programs. However, we provide judicial oversight.

Our Medication-Assisted Treatment Court, we've had it, again, since November of 2015. It operates in all six of our counties as well. It's general fund-funded, and we look at \$63,450 per year. That covers 25 admissions per fiscal year at \$1,500. What that \$1,500 covers is the Medication-Assisted Treatment assessment and evaluation through the doctor. It also starts them out with the medication. Our participants really do rely on at least coming into the program on Medicaid coverage. Of course, as they get through the program and they become employed and they start making money and lose the eligibility to do Medicaid, we always look at a sliding scale and we work with the providers at that time.

Our Mental Health Court operates in Churchill, Lyon and Mineral Counties. Both the First Judicial and the Ninth Judicial District Courts have their own specialty courts that cover the Mental Health Court, so we only operate in the three counties that I mentioned. We receive \$33,450.

I know there were some questions about caps and what our participants pay, and I'll go ahead and go over that at this time.

Drug Court, at this time we don't look at any caps that we have as far as our program can or cannot take. We have seen some limitations in funding. We've received the \$400,000 for a number of years at this time. Our numbers have fluctuated. Last year, we did experience an influx in people coming into our program, which showed that we were pressed at least for what our program could handle financially as far as the admissions going back to the treatment providers specifically. However, we were still able to work with that and not deny anybody into our program. Our participants pay \$25 per week, and that's directly to the treatment provider. No money goes to the court itself. Any of the additional costs that do come as far as treatment delivery are either covered by Medicaid, if participants have private insurance or any type of SAPTA money that the treatment provider may receive. Our DUI Diversion program, much like the Second and Eighth, is all self-paid. We don't provide any money, at least from the courts, to any treatment provider to cover any of the costs. The participant works with the treatment provider on a sliding-scale fee and/or any type of insurance they may or may not have. Medication-Assisted Treatment, they still pay the \$25 per week as well, because we couple not only with the Medication Assisted Treatment services through our physician that we have, they also do groups, testing, individual sessions through our contracted treatment provider, and that covers that cost as well, much like it does with the Drug Court. With our Mental Health Court, because we're still seeing, and although I'd say it's between 88 to 90 percent of the people who come into our Mental Health Court have co-occurring, we always still have them go through our contracted treatment providers, not only to provide testing but still to provide any type of support, because the majority, if not all of the people who have come into our Mental Health Court at this time, have some history of substance use disorder, or at least substance use, so we try to provide every level of support that we possibly can.

To answer the question about whether we deny people treatment or what happens if they are unable to cover that \$25 cost, they're never denied. If they can't pay, we do look at trying to waive those fees towards the end of their program. We do work with them. The treatment providers work directly with them on budgeting and also making a payment plan to try to help them through the program and help pay. We also do fee review towards the end of it if they still have the possibility or at least the means to pay the bill but can't pay it by the time that they're done with the program, we'll keep them at least and do a fee review to help them to get through that and give them still that level of support that they may or may not need.

With the statistics, we currently have 314 in our Drug Court, and this is as of the Second Quarter (Agenda Item VII D). I apologize; our Third Quarter numbers will be here within the next week since we end that here in a couple days. We've had 77 new participants and 58 graduates. Our Medication-Assisted Treatment court currently has 27. We've had 10 new and we've had 1 graduate. Our Mental Health Court currently has 11. We have 5 new and 5 graduates over the first 6 months. Our DUI Diversion, overall we had 69 in all five counties, 18 new and 8 graduates. So, with a grand total of 421 that we cover in the Western Regional Specialty Courts in all five of our programs, 110 new clients and 72 graduates.

I do want to say as far as recommendations that I'd like to present to the Commission, there's no doubt that working in a rural area that we have much that are resources in an urban area in the state. We complain quite a bit, and I know that our complaints don't go unheard, but I know they're always still about the same, about supported housing, about more resources for treatment, and especially with ancillary services to support those existing resources that we have, because our county resources are getting taxed, whether it's social services or even state mental health. I really would just like to send home the message that we in the rurals do need more services to cover the people. We want to keep people in our areas and not farm them out, whether it's to the Second Judicial District Court which we do quite a bit when the resources don't meet the needs of the participants. And we're thankful for the Second Judicial District to be able to do that, but at the same time, we want to keep people in our service area as much as possible. I'd be happy to answer any questions.

Justice Hardesty:

What is unique about the Second and the Western Region is that the judges that are providing your services are senior judges. They're funded through the senior judge program. I just wanted the Commission to be aware of that. What is that rotation? Could you tell the Commission about that?

Mr. Maldonado:

Yes. The rotation at this time is, I think we've worked it down, and I can have Mr. Popovich help me out on this, but we've worked it down to about every 8 to 10 weeks at

this point. The rotation goes between Judges Blake, Breen and Schumacher. They preside over the Western Regional on a Monday, and then they preside over all the other specialty courts Tuesday through Friday for the remainder of the week. What we've been really fortunate with this collaboration since 2006 is the fact that we can share each other's resources, and especially with people moving in and out of different counties because all these counties are so close to each other, but it provides us at least with a lot of continuity of care within the entire Western Region, and actually probably makes it even more of a regional program, so to speak.

Ms. Jones Brady:

So then, who covers Nye County?

Mr. Maldonado:

Nye County is covered by Judge Wanker, if I'm not mistaken. I do believe she still covers that court as well. Prior to all the redistricting back when, now that Mineral County's in the Eleventh Judicial District, she was still presiding as a district court judge in Mineral County as well, but when that redistricting happened, she has now been separate, but I do believe she still covers Nye County.

Mark Jackson (Douglas County District Attorney):

Thank you very much Mr. Maldonado for your presentation. Thank you so much for all the great work that the Drug Court program has done in my county, Douglas. I wanted to make sure that I did understand the headings to the columns on page two and the total participants, the new and the grads. Those are the numbers from July 1, 2017 through December 31, 2017?

Mr. Maldonado:

Yes, that is correct. That is from the first two quarters of this fiscal year.

Mr. Jackson:

Senator Ford has asked a lot of individuals today that have testified the recidivism rates. Do you have that information for the counties?

Mr. Maldonado:

At this time, we don't have any hard data or anything of that nature. I know that it's a conversation that we've been not only discussing with the Administrative Office of the Courts but also trying to partner with the Second Judicial District Court on trying to get those numbers, and it's something that we're going to be actively doing here, hopefully by the end of this fiscal year. I don't know if it's going to be possible because of the

resources not only that we have, but we'd be taxing a little bit of the resources in the Second Judicial District Court at this time.

Chair Yeager:

I want to thank you two for your presentations and for the great work going on in specialty courts. We appreciate you being here. If we have any other additional questions, we will be sure to follow up with you.

We're going to close agenda item VII. Just to go through a little bit of scheduling, as everyone can tell, our specialty court presentations took a little bit longer than we anticipated. What I'm going to do, just as a lay of the land, we're going to next go to agenda item VIII, which is the Innocence Project. We're going to hear from them, and then following that, we're going to go to agenda item IX and hear about victim programs. We're probably going to need to roll a couple agenda items from this meeting to the next one, which would be Director Dzurenda under agenda item V. Also, apologies to Ms. McKay. I know you've been up there waiting, but it looks like we're probably going to have to roll agenda item X, as well as agenda item XI. We're going to take those two presentations, and then we'll do public comment. Just so the Commission knows, I actually have a graduation to get to around 5:30 pm for the Metro Citizens Police Academy, so if we have to end a little bit earlier today it's entirely my fault. I apologize for those who were here for those agenda items.

I will now open agenda item VIII. We have Michelle Feldman from the Innocence Project. I want to welcome you back to the Commission.

Michelle Feldman (Legislative Strategist, Innocence Project):

I'm going to try to keep this short and to the point. The Innocence Project is a national organization that works to exonerate wrongfully convicted people, and we work with our local partners at the Rocky Mountain Innocence Center, which takes cases here in Nevada. Our focus is really looking at wrongful conviction cases and seeing what went wrong and then making policy recommendations based on that. Today, I'm going to be focusing on two recent exonerations that just happened in Las Vegas last year, DeMarlo Berry and Kirstin Lobato, and then I have Michelle Ravell here with me who's going to just speak for a few minutes about the personal impact of Kirstin Lobato's wrongful conviction.

DeMarlo Berry was wrongfully convicted of robbery and murder in 1994 in Las Vegas, and he spent 22 years in prison for a crime he didn't commit (Agenda Item VIII A-1). Relay, the contributing factors were eyewitness misidentification, and there was a jailhouse informant named Richard Iden who said that he heard Mr. Berry confess to him when they were both in jail. The testimony of the jailhouse informant was false, and the state is required constitutionally to turn over any benefits that are given to a jailhouse informant in exchange for their testimony, and the prosecutor disclosed some

of that. They disclosed that Richard Iden got a plea deal in exchange for his testimony, but they failed to disclose a number of other benefits including free meals and airfare that was paid for him and also other charges that were dismissed. The Rocky Mountain Innocence Center, they took this case, and in 2013 the real perpetrator, Steve Jackson, confessed. The following year, Richard Iden, the jailhouse informant, recanted and he admitted that he lied in his testimony and he disclosed the other benefits he was given, which were never told to the defense. To the credit of the Clark County District Attorney's Office, their Conviction Review Unit reviewed the case. They found that it was consistent with innocence and they dismissed the charges and he was exonerated last year. I know Senator Ford was there to see it. The reforms here are really jailhouse informant, safeguards and also removing the time limit on new non-DNA evidence, which I'll get to in a little.

Kirstin Lobato was wrongfully convicted of murder in 2001. She spent 16 years in prison. She was 18 years old at the time and she was living about 3 hours outside of Las Vegas and somebody in her hometown called the police and said Kirstin Lobato was bragging about her crime in Vegas, so the police went up to investigate and they interrogated her. They reported only parts of the interrogation, so there was really critical context that was missing, including her claiming that she didn't commit the crime, and also the details that she was disclosing were not consistent with the murder that she was being investigated for. There were also other factors. There was a jailhouse informant that said she heard Kirstin confess to her. There was also the State Medical Examiner, which put the time of death in this very narrow window of the day when she didn't have an alibi. The Innocence Project represented her and they got testimony from three different medical experts that said the time of death was wrong, it had to have happened right before the body was discovered, otherwise there would be these insects called blowflies all over the body. Kirstin Lobato had an airtight alibi during that time, so she couldn't have committed the crime. She was officially exonerated on December 29, 2017.

Based on these two wrongful convictions, we recommend these three reforms: reporting of interrogations, safeguarding against jailhouse informant testimony and also removing the 2-year time limit on new non-DNA evidence. Recording interrogations, we advocate for that. The Innocence Project—because it's the best-known safeguard against wrongful convictions that are stemming from false confessions. Here in Nevada, 5 out of the 13 exonerations listed on the national registry of exonerations involved a false confession. As I mentioned in Kirstin Lobato's case, only parts of the interrogation were recorded, and there was critical context that was left out. The statements that were recorded sound really incriminating and the prosecutor said that it was a confession to the crime, but it actually wasn't. She was describing an entirely different incident. There are other benefits to the entire system because it just improves accuracy and transparency, which helps everybody. For the innocent, it deters against any illegal or coercive tactics that might lead to a false confession. It ensures defendants' rights are protected, and it also alerts factfinders if a suspect has mental limitations or other vulnerabilities that would make them more susceptible to falsely confessing. For law

enforcement, it provides really the strongest evidence possible to secure a conviction, and it also reduces motions to suppress by the defense because there's no doubt about what happened during the interrogation, and everything is done above board. Also, it protects officers against untrue allegations of misconduct. Really, the best way to implement this practice is through a law, because the law ensures uniformity throughout the state and it also ensures that there's an enforcement mechanism. Policies are a great start, but the problem is that there's really no enforcement, so if a detective decides to not record an interrogation, there's no legal consequence. Nationally, there are 24 states now that require recording of certain interrogations. All federal law enforcement agencies, including the Federal Bureau of Investigations (FBI), are required to record interrogations for all crimes. The most recent states to pass laws are Kansas and Texas, and they passed laws in 2017. The great thing about these laws was that they were supported by the prosecutors and the law enforcement associations because these groups really felt like it was in their interest to get the strongest possible evidence, and also that juries had just come to expect interrogations to be recorded and they were pretty suspicious if they weren't. In both states, there are large jurisdictions and really small agencies, and we were able to address cost concerns by allowing audio-visual or audio-only recording, and a tape recorder can be purchased for \$30. Compared with the cost of a wrongful conviction, we're seeing multi-million dollar civil payouts throughout the country. It's really a protection for departments and taxpayers.

Nevada doesn't currently have a law that requires recording interrogations. We worked with former U.S. attorney Tom Sullivan to survey agencies last year. We heard from about two-thirds of them, and the good news was that all the agencies said that they were recording interrogations in some form, but there were really no uniform practices. Only five agencies said that they had written policies. The agencies varied in the kinds of crime categories that warranted recording, and also some agencies said that it was completely at the officers' discretion about whether or not to record. Last year, Assemblyman Yeager introduced A.B. 414 that would require recording of interrogations for the most serious crimes, for homicide and sexual assault, and this only would apply to interrogations that are custodial and in places of detention. There were a number of good-cause exceptions and a jury instruction was the consequence for not complying. The bill passed the Assembly, but it died in the Senate. There were concerns from law enforcement and prosecutors, but I'm really glad to say that thanks to Chuck Callaway, we had a really positive roundtable meeting. We met with the defense, the bar, as well as the Attorney General's Office, the Las Vegas Metro Police Department, the Washoe County Sheriff's Office, the Washoe and Clark County District Attorney's Offices and the Police Chiefs Association in January. We talked through the bill and really talked through what parts were problematic, and we came up with some changes that could be made to make it work for everybody. Just really quickly, we talked about adding another good-cause exception if the court determines that recording is impractical. We talked about removing the burden on the prosecutor to show that a good-cause exception applied. We discussed removing the preference for audio-visual recording, and then finally just making a more specific definition of a place of detention. I really appreciate

Chuck Callaway for setting up the meeting and for working so collaboratively. I'm really hopeful that we can come up with something that works for everyone for next session.

The next issue I'll touch on is jailhouse informants. Jailhouse informants pose a number of problems. They're incarcerated individuals that report either information or offer testimony on their fellow inmates, and they usually expect to get some kind of benefit in return, usually leniency in their cases or some other special treatment. The first problem is that they pose a big threat of wrongful convictions. Here in Nevada, 3 of the 13 exonerations listed on the national registry involved jailhouse informant testimony. There's also the potential threat to public safety. Of course, we know when an innocent person is in prison, the real perpetrator can be out harming others, and that's what happened in the DeMarlo Berry case, which was really—the conviction was due to a jailhouse informant. The real perpetrator in that case, Steve Jackson, who later confessed. After the crime, he went onto commit and be convicted of another murder in California, and that probably would have been prevented if Mr. Berry's wrongful conviction had not occurred. Then there's also a public safety threat of when a jailhouse informant gets leniency for their crimes, the victims in their case don't necessarily get justice. The third problem is that they're incentivized to lie. Jailhouse informants have a lot of motivation to fabricate testimony, and it's not typical for them to get details on the news or from other inmates or from people on the outside, and there's really little consequence if they're caught lying because they're rarely charged with perjury. Finally, there's a threat of lack of transparency and possible constitutional violations. The U.S. Supreme Court has said that jailhouse informant benefits and impeachment information have to be disclosed to the defense before trial, and that's so the defense attorney can raise issues of reliability and credibility to judges and juries. But that doesn't always happen in practice. This is just the Giglio case, the Supreme Court decision that said government witnesses—that the prosecutors have to disclose impeaching information on government witnesses, and they expected that prosecutors would set up systems in their offices to easily track and disclose that information (Agenda Item VIII A-1). But in DeMarlo Berry's case, several of the benefits that he was given weren't turned over to the prosecutors.

The three safeguards that we recommend for jailhouse informants are requiring prosecutors to establish a system to track and disclose jailhouse informant impeachment evidence, pretrial reliability hearings and jury instructions, and required tracking and disclosure system to really help the whole system. For the courts, it ensures that there's uniformity throughout the state, and it also reduces time that's spent litigating discovery and also post-conviction allegations that there was a constitutional violation. For defendants, it ensures that their constitutional rights are protected and that issues of jailhouse informants' credibility and reliability can be raised to the judges and juries and that those factfinders can then make a proper assessment of their testimony. For prosecutors, the benefit is that creating a database provides easy access to information so they can really assess whether or not to use a certain jailhouse informant, and it also protects them against later allegations of misconduct and constitutional violations.

Last year, Texas passed a law that requires prosecutors to track and disclose specific information on jailhouse informant witnesses. The law was based on a policy created by the Tarrant County District Attorney's Office after it had a number of wrongful convictions involving jailhouse informants. The law was based on a recommendation by a commission that included the Texas County and District Attorneys' Association and the Texas Commission on Law Enforcement, as well as judges and lawmakers and defense attorneys. The law requires that every prosecutor establish a system to track the use of and benefits provided to jailhouse informants, and that system can be something as simple as a Microsoft Word document or an Excel spreadsheet, so there's really no cost. The law specifies the evidence that has to be disclosed before trial regarding a jailhouse informant witness. They have to disclose the benefits that were offered, their complete criminal history and any previous jailhouse informant activities and the benefits offered in those cases, and any other issues that are related to credibility. There are some other states that also have enhanced disclosure requirements before jailhouse informant testimony can be admitted. The high courts in Florida and Oklahoma have specific requirements.

The next safeguard for jailhouse informants we recommend is pretrial reliability hearings where the judge really acts as a gatekeeper to assess whether a jailhouse informant is reliable before the information is heard by the jury. We recommend that because judges have a better understanding of the incentivized system than jurors. There's been research done on how juries interpret jailhouse informant testimony, and they mistakenly believe many times that the state would only put on a jailhouse informant as a witness if they were sure they were telling the truth, and that's not always the case. The other benefit is that it enforces disclosure requirements and it makes sure that discovery happens in a timely manner. Illinois requires pretrial reliability hearings before jailhouse informant testimony is admissible in capital cases, and we have a bill right now that would expand that to homicide and sexual assault cases, and the bill already based their state senate and it passed their house judiciary committee, and when the legislature gets back in a couple weeks, we expect it to pass the full house and go onto the governor. Here in Nevada, the Supreme Court said in the D'Agostino v. State case that in certain instances, there has to be a pretrial reliability hearing before a jailhouse informant testimony is admissible.

The final safeguard for jailhouse informants is jury instructions. California, Connecticut, Oklahoma and Utah have specific jury instructions that tell jurors to give greater scrutiny to a jailhouse informant's testimony and lays out the key factors that they should consider when they're assessing their testimony.

The final reform is the time limit on introducing new non-DNA evidence of innocence. Right now, there's a 2-year time limit here in Nevada for a person to introduce new evidence after they've been convicted, even if there's no way that evidence could have been found in that time. There's no time limit for introducing DNA evidence, but most cases—DNA's only involved in 10 percent of criminal cases, and the vast majority of wrongful convictions are overturned with new non-DNA evidence, so this 2-year non-

DNA evidence time limit is a huge problem. Nevada's one of only five states with this absolutely time limit, so it's an outlier. There are really two limited options in the state for introducing new non-DNA evidence. The motions for the new trial statute is really the appropriate place to introduce new non-DNA evidence, but it has the 2-year time limit. It's been really difficult for the Rocky Mountain Innocence Center to do its work because of this. There's a new evidence standard in this statute that's pretty conservative. It says that the new evidence has to be material, non-cumulative, it could not have been discovered with due diligence, it has to have a reasonable probability that the defendant would have been acquitted if the evidence had been admitted at their trial. It can't just be impeachment evidence, and it has to be the best evidence that the case admits. There's another way to introduce new non-DNA evidence through state habeas, but that's not a very good option in innocence cases because the new evidence has to be linked to a constitutional claim, and sometimes there's just no constitutional violation, like in DeMarlo Berry's case when the real perpetrator confessed, that was just straight, new evidence. The Rocky Mountain Innocence Center has been forced to kind of shoehorn new evidence claims into state habeas. Also, in the Lobato case, the Nevada Supreme Court said that state habeas doesn't provide a freestanding claim of actual innocence. Some other states have said that their state habeas laws do provide that, but the Supreme Court has said that doesn't exist here. Finally, there is a time limit in state habeas to get 1 year after your appeal, and that can only be overcome if you meet this extremely high standard of showing that there's a fundamental miscarriage of justice. So really, the motions for new trial statute, that's where new evidence claims should be brought, but because of this 2-year time limit, it's really difficult, and it's especially hard in cases where the new evidence is new scientific advancements that undermine or discredit forensic evidence that was used to convict people. We're seeing in cases across the country that some forensic science that was once thought to be reliable have major problems, but it's taken decades for the new scientific evidence to come out and for new guidelines to be established. These are just some of the categories: arson, hair microscopy and bullet lead analysis that have shown to be really flawed and have led to wrongful convictions.

This is just showing that Nevada's a real outlier in its time limit for introducing new non-DNA evidence (Agenda Item VIII A-1). Twenty-nine states have no time limit. The other states either have a time limit with a due-diligence exception or a time limit that starts from when evidence could have been discovered, not from the date that the person was found guilty, which is the case here in Nevada. We recommend removing the 2-year time limit in the motions for new trial law, and also a provision that clarifies that that new science that undermines forensic evidence used to convict somebody should be considered new evidence. We often hear when we're dealing with this issue that there are concerns that there will be a flood of litigation, but that's extremely unlikely because the motions for new trials statute, there's this really conservative standard for new evidence, and these are just all the standards that have to be met before the court will accept the claim. Also, a number of states have recently removed the time limit for new non-DNA evidence, and the petition numbers have been pretty minimal. In Utah, they passed a law in 2008 and there have only been 13 petitions filed. In Maryland, they

passed a law in 2009 and the court of appeals said that 27 to 28 petitions are filed every year. In Virginia, 18 petitions were filed since their law passed in 2004 through 2008. Texas and California recently passed junk science laws which just clarify that new evidence includes new science that shows that forensics used to convict someone were flawed. The petition numbers there have also been very minimal. In Texas there have only been 25 petitions since the law passed in 2013, and in California there have been about 13 petitions filed since their law passed in 2014. Just 2 weeks ago in Wyoming, the Governor signed new law that removed its 2-year time limit on introducing new non-DNA evidence. There's no time limit now on introducing new evidence of innocence, and the law also included a junk science provision.

So again, these are just the three laws that we're recommending, the three policy reforms (Agenda Item VIII A-1). Now I'll turn it over to Michelle to talk for a couple minutes about the Kirstin Lobato case.

Michelle Ravell:

I've spent the last 16-plus years working and advocating for the exoneration of Kirstin Lobato. The first time I heard about her was when my 22-year-old son came home and told me that he had just met the woman he wanted to marry. He'd never said anything like that before. I had lost count of the years and the girlfriends that had gone before, so I knew she had to be a really special person. I was so thrilled to hear this come out of his mouth. I just kept thinking about weddings and grandchildren and all the things that you think about when your son decides he wants to get married. Then disaster struck, and Kirstin, who goes by her middle name Blaise, was arrested for the murder of Duran Bailey. At the time, I had faith in the justice system and I thought this would all sort itself out. There has to be something here, whatever, whatever, whatever. But as I got to know her, I became convinced that she was innocent, and sat through the trial and 12 jurors found her guilty. I was devastated. I knew that she didn't do the crime, and I knew that I had to fight for her, but I'm not an attorney, I'm not a lawyer, I'm not anybody. I'm just somebody's mom. Over the years, Blaise became like my daughter. It's so hard to explain the impact that her wrongful conviction had on me, on her, on her family, on my family. On the 16 years of my life that I have spent every waking moment, every minute piece of time I could find on the internet, on social media, whatever, whatever, trying to raise awareness, trying to understand, trying to make an impact. She was only 18 years old when she was convicted, and she was at the prime of her life. She lost a close relationship with her father and her stop-mother. They were completely destroyed by her wrongful conviction. Blaise was just a teenager, and she needed her family and she needed people around her who loved her and cared about her. Her parents lived 3 hours away. In prison, you're not given unlimited visits. She lost the bond that she had with her younger sister. They had been very close all throughout their growing-up years, and she lost my son. She told my son, "You have to get on with your life. You can't sit around and wait for me to come out of prison." Blaise is one of the most caring and compassionate people I know. She'd always say, "I can't live in here and live out there with you." That was her way of protecting the people that she loved. She figured if she

pushed us all away it wouldn't impact our lives so much. But the reality is, all of us spent that 16 years of her prison sentence with her. The most upsetting this was seeing the impact that her incarceration had on my nephew Timmy, who I have been raising since he was 2. Blaise and Timmy had a very close, very wonderful relationship, but she didn't want him to see her in that situation. She didn't want him to remember her in prison. She didn't want to build her relationship with him from the standpoint of watching him walk out the door after visiting while she had to stay there. She's finally been proven innocent, and now she has to start her life over at 34 years old. She really wishes things could have been different. She could have married my son and had me son lovely little grandchildren. She could have built a career. She could have had her own home and her own life. She would have gained the knowledge and experience and insight into who she was and what she wanted out of life and what her goals were. But all these opportunities were taken away from her.

She's used her first months so far of freedom reconnecting with her family, and she's in Tennessee right now visiting with her sister and hopes that they can rebuild that relationship that they had when she was younger. She spent a lot of time with her father and her step-mom and her grandma, and she's living with me, so I'm doing my best to help her overcome 16 years of imprisonment for something she didn't do and finding a way to have a new, normal life. No one got justice. No one. The real perpetrator got away with murder, and who knows what other crimes have been committed by that person? We all know, including Blaise, that none of you can give us back those 16 years of her life. But Nevada needs to do whatever it can to prevent this from happening to someone else's child. If the police had been required to record her entire statement, this probably wouldn't have happened. If there had been systems in place to protect against jailhouse informants, she wouldn't have been convicted. If the new evidence law didn't have a time limit of 2 years on it, she probably would have been exonerated a lot sooner. We have to learn from this tragedy and make things better.

Chair Yeager:

Thank you for your testimony. Commission members, I'll let you know that our presenters for agenda item IX, victim notification, have graciously agreed to be rolled to the next agenda, so I want to publicly thank them for that. But that does leave us with a few minutes for questions if anyone has them for Ms. Feldman.

Mr. Jackson:

Both of you, thank you very much for your testimony. Ms. Feldman, I want to start off by thanking you. I think that the work that the Innocence Project has done in bringing some of these cases forward is exactly what we all want as part of the criminal justice system, and also I've spoken with you on the phone on several of these issues and I want to thank you for sitting down and working with law enforcement and prosecutors in connection with the recorded interrogations. I hope that that process is something that you'll reflect upon on the other two issues that you just brought up. I would try to offer up

to you that that may be an avenue that you may want to explore, sitting down and discussing some of these issues. With respect to DeMarlo Berry, again, neither one of these cases are out of my jurisdiction, and correct me if I'm wrong, Ms. Feldman, but didn't Mr. Berry successfully litigate the untimely successive habeas claim because our statutes and case law did in fact work in that case?

Ms. Feldman:

I appreciate your kind words, and the great thing is that actually at this roundtable, we talked about all three of these issues, so I'm glad that the conversation has been started and I think there are a lot of different ways to address these issues, and I'm looking forward to continuing engagement with all of the law enforcement and prosecutors in the state.

For Mr. Berry's case, I wasn't his attorney, but what I do know is that he filed a state habeas claim, and then the prosecutor filed to have it dismissed, and it was dismissed. Then the Rocky Mountain Innocence Center appealed to the Nevada Supreme Court and they did grant the state habeas. But all that does is that it removes time limits then to bring about the constitutional—it basically takes all the time limits to provide the constitutional claims. Had the Clark County District Attorney's Office not agreed and not done the right thing and said that this person's innocent and they should have the conviction dismissed, this poor, innocent man would have spent many more years in prison than I think this 2-year time limit already did keep him in prison additional years while the state habeas claim was rejected and then appealed, and then it would have taken many more years to get through litigation. That's why we're encouraging the state to consider changing the motions for new trial statute, because it's less litigation and less court resources, frankly, spent for everybody. Thanks to the Clark County prosecutor for setting up this Conviction Review Unit, but not every prosecutor's office—we need laws in place so that we can't just depend on the individual personalities and policies of a prosecutor's office that won't be there forever.

Mr. Jackson:

Would you agree that the reliability of the evidence on these new claims is something that should be explored by both sides as we kind of walk through this, because I will tell you that I know that the prosecutors, not just across this state but all of the states, and even where you're pointing to some of those successes where there were time limits on these claims, have dealt with a lot of inmates bringing forward and just alleging that there's this new evidence, throwing those buzzwords out there, and all that they're trying to do is to drag in what were otherwise procedurally barred habeas claims. There should be some standard as to what is the reliability? Just because someone says something doesn't necessarily mean that it's true yet, and so it needs to be investigated. The prosecutors will look at it, law enforcement will look at it. Would you agree with me?

Ms. Feldman:

Oh, absolutely. We don't want frivolous claims either. We want the meritorious claims to come to the forefront. The good thing is that, in the existing law, the motions for new trial statute, there is that built in case law standard that the evidence has to be non-cumulative and could not have been discovered with due diligence, and it has to be material and a reasonable likelihood of an acquittal. So, the good thing is that it's built in, but of course, we're happy to—different states have approached this in different ways, and actually the Wyoming law that was just signed, we had a working group of the Attorney General's Office and the Prosecuting Attorneys' Association and the Criminal Defense Bar that came up with a proposal and everybody endorsed it, and that's really how we got it done. We would love to replicate that process, because I think there are a lot of different options for how this could get done.

Mr. Jackson:

I have numerous other questions, but I know that we are hurting on time. I don't know if you will be coming back, or if it's something that I can reach out to you offline or work through the District Attorneys' Association.

Ms. Feldman:

Please do.

Mr. Jackson:

Thank you.

Ms. Feldman:

Yes, that would be great. I would love to keep the conversation going, and I think there are many ways to address this issue.

Chair Yeager:

Thank you Mr. Jackson for that, and I would encourage—I didn't see your contact information on the presentation, but I certainly can distribute that to Commission members if there are follow-up questions. Another option is we could have you back, if nothing else by phone, at a future meeting, unless you want to come out to take advantage of our good weather. We could have you back for a question-and-answer at that point. I certainly would ask, and it sounds like this is happening, that these issues sort of be vetted with criminal justice stakeholders. I think when we do that, we end up with a better product, and I'm encouraged that these discussions have already started. Please let me know if I can help in any way in those discussions. Again, I want to thank

you for coming out here to Las Vegas and presenting, and I want to thank Ms. Ravell for being here as well and for your work on this issue.

Ms. Feldman:

Thank you, and I'm always happy to come back to Las Vegas. Please feel free to distribute my contact information, but I'm happy to continue this and come back.

Chair Yeager:

Thank you so much. We'll go ahead and close that particular agenda item, and I'm now going to open it up for our second round of public comment.

Ms. Brown:

I just want to briefly touch on what Ms. Feldman said. Normally, in these types of procedures, the attorney is afforded a direct appeal. They get the attorney after that. They do their post-convictions, their writ of habeas corpus, and they're in pro se, which means they are as their own attorney. I just want to say that recently I attended a motion to dismiss in which the plaintiff was in pro se and the defendant had an attorney. How refreshing it was for this judge to say the truth, and that is the plaintiff who was in pro se was going to be treated the same as if they were an attorney, going to be held to the same standards as an attorney. These particular people were private citizens, and what I'm saying is that when you're dealing with inmates, they are treated as though they are an attorney, and they are not an attorney and they are held to that standard. Courts won't admit to it. Fortunately for me, I heard the judge say this to the plaintiff. So, there's no doubt in my mind that when these inmates are fighting for their lives, they are being held to the same standard, and a lot of these cases, these judges will dismiss those grounds that are trying for resolution that are reversible. Okay, so maybe the language isn't properly done in these petitions, and maybe this evidence is mentioned. They don't have the evidence, but then the evidence shows up in court, but guess what? It's 2 years after the statute of limitations, because the hearing is now 3 years down the road.

Mr. Means:

I previously spoke. Now I'm going to speak about what has affected me directly. I have here the Nevada Department of Public Safety—this is on the internet. This form—I live in a community, a homeowner's association (HOA), of 578 people. This was distributed to 577 other people. The registry is making some people wish to have vigilante justice go forward. They're taking away from law enforcement. When I found the individual that did this, the woman's in her seventies. Her son happens to be also a registered sex offender. When I went to law enforcement, they acted as if, well, you got what you deserve. This needs to come off the internet. I am one point away from being a Tier One, which means I would not be on the internet. The reason I'm not a Tier One is

because when I was going through counseling, which I've completed successfully at Red Rock, there was not a letter sent with me when I went to the tier assessment, and that left me as a Tier Two. You're creating a situation—I'm sure the idea was wonderful. The internet's wonderful, but you hear so many bad things about the misuse of the internet. It is time to take it off. Law enforcement any time can pull me up. They pull me over, they pull up that I'm a registered sex offender. That's fine. I have no problem with that. But the public doesn't need to know what's going on. Not only does it jeopardize my life, but it jeopardizes my wife and anybody else. Basically, I was going to come here today with a white T-shirt on with an S and an O on it and a target on the back, because that's how I feel. They know where I live and everything. Put yourself in my place. How would you like to go out and not know if some individual is going to get a whack idea in his head, "I'm going to go out and kill sex offenders." I'm a target with this, and 578 people in my HOA community know about it. And I've confronted them. I said, "I served my time. I served 11 years and 9 months." I paid my dues to society. I was taught as a child, you commit a crime, you pay your dues, and you get on with your life. Not with this. It's time to pull it off the internet. How many people have been killed? I want to thank this Commission for what you do in allowing me to speak as Joe Citizen, and I want to thank you for your time.

Chair Yeager:

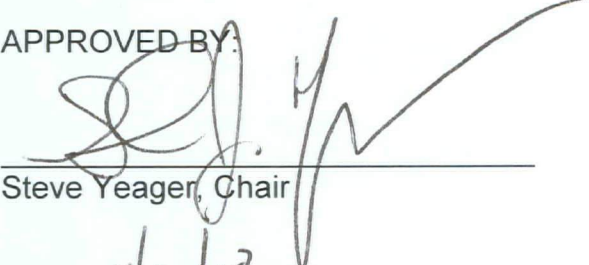
Seeing no one else, I will close public comment. Commission members, I do believe we have the next meeting scheduled, April 30 at 9 a.m., so we'll pick up where we left off. Again, want to thank the Committee members for your attention, your participation and your patience today. We are adjourned at 5:04 p.m.

RESPECTFULLY SUBMITTED:



Jordan Haas, Interim Secretary

APPROVED BY:



Steve Yeager, Chair

Date: 4/30/18

| Agenda Item | Witness/Agency | Description |
|----------------------|---------------------------------------------------------------------------------------------|-----------------------------------------------------------|
| A | | Agenda |
| B | | Attendance Roster |
| Agenda Item III A-1 | Tonja Brown | Public Comment |
| Agenda Item III A-2 | Tonja Brown | Public Comment |
| Agenda Item IV | Jordan Haas, Interim Secretary | Draft Minutes of the February 2, 2018 Meeting |
| Agenda Item VI | Len Engel, Director of Policy and Campaigns, Crime and Justice Institute | Protecting Public Safety and Containing Corrections Costs |
| Agenda Item VII A | John McCormick, Assistant Court Administrator, Administrative Office of the Courts | Specialty Court Review |
| Agenda Item VII B | DeNeese Parker, Specialty Courts Administrator, Eighth Judicial District Court | Eighth Judicial District Court Specialty Courts |
| Agenda Item VII C | James Popovich, Specialty Court Manager, Second Judicial District Court | Second Judicial District Court Specialty Courts |
| Agenda Item VII D | EJ Maldonado, Specialty Courts Coordinator, Western Regional Specialty Courts | Western Regional Specialty Courts |
| Agenda Item VIII A-1 | Michelle Feldman, Legislative Strategist, Innocence Project | Presentation on Wrongful Conviction Reforms |
| Agenda Item VIII A-2 | Michelle Feldman, Legislative Strategist, Innocence Project | Wrongful Conviction Reforms for Nevada |
| Agenda Item IX A | Nicole O'Banion, Ombudsman for Victims of Domestic Violence, Office of the Attorney General | Presentation by the Attorney General's Office |

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| Agenda Item IX B | Kristy Oriol, Policy and Communications Coordinator, NCEDSV | Presentation by the Nevada Coalition to End Domestic and Sexual Violence |
| Agenda Item X | Mindy McKay, Records Bureau Chief, Records, Communications and Compliance Division | Presentation by the Central Repository |