MINUTES OF THE 2017-2018 INTERIM
JOINT MEETING OF THE NEVADA SENTENCING COMMISSION AND THE ADVISORY COMMISSION ON THE ADMINISTRATION OF JUSTICE

August 2, 2018

The joint meeting of the Nevada Sentencing Commission and the Advisory Commission on the Administration of Justice was called to order by Justice James Hardesty at 9:03 a.m. at the Legislative Building, Room 4100, 401 South Carson Street, Carson City, Nevada, and via videoconference at the Grant Sawyer Building, Room 4401, 555 East Washington Avenue, Las Vegas, Nevada.

Exhibit A is the Agenda, and Exhibit B is the Attendance Roster. All exhibits are available and on file in the Research Library of the Legislative Counsel Bureau.

MEMBERS OF THE NEVADA SENTENCING COMMISSION PRESENT:

Justice James W. Hardesty, Nevada Supreme Court; Co-Chair
Senator Nicole Cannizzaro, Senatorial District No. 6
Senator Ben Kieckhefer, Senatorial District No. 16
Assemblywoman Jill Tolles, Assembly District No. 25
Scott Burton, Professor of Criminal Justice, CSN
Chuck Callaway, Police Director, Las Vegas Metro
Dennis Cameron, Representative, State Bar of Nevada
Chris Hicks, Washoe County District Attorney
Magann Jordan, Victims' Rights Advocate
Karin Kreizenbeck, State Public Defender
Adam Laxalt, Attorney General
Keith Logan, Sheriff, Eureka County
Tegan Machnich, Chief Deputy Public Defender, Clark County
John McCormick, Assistant Court Administrator, Administrative Office of the Courts
Elizabeth Neighbors, Ph.D., Statewide Forensic Mental Health Program Director, Division of Public and Behavioral Health
Stefanie O'Rourke, Major, Parole and Probation
Jon Ponder, Representative, Offender Reentry
Jeff Segal, Bureau Chief, Attorney General's Office
Judge Jennifer Togliatti, Eighth Judicial District Court
Holly Welborn, Policy Director, ACLU of Nevada, Inmate Advocate

MEMBERS OF THE NEVADA SENTENCING COMMISSION EXCUSED:

Assemblyman Ozzie Fumo, Assembly District No. 21
Christopher DeRicco, Chairman, Board of Parole Commissioners
James Dzurenda, Director, Department of Corrections

Judge Scott Freeman, Second Judicial District Court
Donald Soderberg, Director, Employment, Training and Rehabilitation

MEMBERS OF THE ADVISORY COMMISSION ON THE ADMINISTRATION OF JUSTICE PRESENT:

Assemblyman Steve Yeager, Assembly District No. 9; Co-Chair
Justice James W. Hardesty, Nevada Supreme Court; Co-Chair
Senator Aaron Ford, Senatorial District No. 11
Paola Armeni, Representative, State Bar of Nevada
Judge Sam Bateman, Henderson Justice Court
Christine Jones Brady, Deputy Public Defender, Washoe County
Chuck Callaway, Police Director, Las Vegas Metro
Kymberli Helms, Victims' Rights Advocate
Mark Jackson, Douglas County District Attorney
Adam Laxalt, Attorney General
Al McNeil, Sheriff, Lyon County
Amy Rose, ACLU of Nevada, Inmate Advocate
Judge Jim Wilson, Carson City District Court
Natalie Wood, Chief, Parole and Probation

MEMBERS OF THE ADVISORY COMMISSION ON THE ADMINISTRATION OF JUSTICE EXCUSED:

Assemblywoman Lisa Krasner, Assembly District No. 26
Julie Butler, Representative, Central Repository
Christopher DeRicco, Chairman, Board of Parole Commissioners
James Dzurenda, Director, Department of Corrections

STAFF MEMBERS

Nicolas Anthony, Senior Principal Deputy Legislative Counsel, Legal Division, Legislative Counsel Bureau
Bryan Fernley, 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
Tonja Brown, Advocate for the Inmates, Advocate for the Innocent

Patricia Adkisson
Jennifer Noble, Chief Deputy District Attorney, Office of the Washoe County District Attorney
John Jones, Chief Deputy District Attorney, Office of the Clark County District Attorney
Anna Clark, Chief Public Defender, Office of the Clark County Public Defender
Jordan Davis, Deputy Public Defender, Office of the Washoe County Public Defender
Katelyn Cantu, Deputy Public Defender, Office of the Washoe County Public Defender
Mindy McKay, Records Bureau Chief, Records, Communications and Compliance Division
Maura McNamara, Policy Specialist, Community Resources for Justice
Colby Dawley, Deputy Director of Adult Policy, Crime and Justice Institute
Alison Silveira, Data and Policy Specialist, Community Resources for Justice
Len Engel, Director of Policy & Campaigns, Crime and Justice Institute
Garrit Pruyt, Deputy District Attorney, Carson City
Leslie Turner, Community Organizer, Make It Work Nevada
Tiara Moore, Field Organizer, Make It Work Nevada
Gary Peck

Justice James W. Hardesty (Nevada Supreme Court; Co-Chair):

I would like to call the meeting to order for the joint session of the Nevada Sentencing Commission and the Advisory Commission on the Administration of Justice. As everyone here knows, Chair Yeager chairs the Advisory Commission on the Administration of Justice. We flipped a coin about chairing this meeting and I lost, so at his request, I'll take the lead, but there will be numerous points along the way that we'll be moving back and forth between the two commissions as we work together to get through the agenda today.

Let's begin with the approval of the minutes from the April 27, 2018 meeting of the Nevada Sentencing Commission (Agenda Item IV). Do any of the members of the Commission have any edits, comments or questions about the draft minutes of the Nevada Sentencing Commission?

MR. MCCORMICK MOVED TO APPROVE THE MINUTES OF THE APRIL 27, 2018 MEETING OF THE NEVADA SENTENCING COMMISSION.

SENATOR KIECKHEFER AND ATTORNEY GENERAL LAXALT SECONDED THE MOTION.

THE MOTION PASSED UNANIMOUSLY.

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Alright, they're approved. Chair Yeager, the Advisory Commission?

Assemblyman Steve Yeager (Assembly District No. 9; Co-Chair):

Thank you, Chair Hardesty. I had an opportunity to review the minutes of the April 30, 2018 meeting (Agenda Item V). I did not note any corrections, but I want to ask any Advisory Commission members if there are any corrections to the minutes.

> MR. JACKSON MOVED TO APPROVE THE MINUTES OF THE APRIL 30, 2018 MEETING OF THE ADVISORY COMMISSION ON THE ADMINISTRATION OF JUSTICE.
>
> ATTORNEY GENERAL LAXALT SECONDED THE MOTION.
>
> THE MOTION PASSED UNANIMOUSLY.

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I did want to take a moment to thank staff for doing a tremendous job. It's not often that you have 75 pages of minutes that don't require any corrections, so I appreciate the hard work and the attention to detail.

Chair Hardesty:

I would like to open the meeting with public comment. As you know, we have a fairly substantial agenda, so I've asked Mr. Anthony to monitor the timing on this. We will make 3 minute available for public comment per speaker.

Paul Corrado:

I've been a volunteer in incarcerated settings since 1994. The following is what I'd like you to consider at some point in time. First, $95 laptops are available here in Carson City, as well as in Las Vegas (Agenda Item III A). Currently, a 12-inch by 12-inch television set in the Nevada Department of Corrections (NDOC) costs $325. I don't know if there's any kind of legislative barrier for these people to get a laptop, but it seems to me that none of the people who can hear my voice would allow their children or grandchildren to graduate from eighth grade without knowing how to keyboard. It's absolutely essential, even if you're just getting a job. I'd like to also propose that if you take advantage of it, I'll give you $2,000 towards that effort by the end of the year. Halfway house issues: it seems to be kind of incredible that you can get your board, you can get your parole, but you can't leave because you haven't got enough money for a

halfway house. I also propose a grant for the study of the integration of Holland codes, Myers-Briggs type indicator and John O'Connor Foundation aptitude testing, pre- and post-release. This could be an evidence-based PhD thesis. Identity theft is a problem in our society in general, but it's living hell for a prisoner, and those things have happened not only in the State of Nevada but also in Herlong, Susanville and other places. Annual credit reports are almost impossible for an inmate to get. They need to be made easier to get, and they need to be made at least 2 years before their end date, before they expire or are paroled. I'm going to jump to the last two things that I'm going to talk about, and one is the Alternatives to Violence (AVP) Project. I have never heard inmates say things about a program in such a positive and enthusiastic way, and yet there's no credit given for this. This is an incredible opportunity, I believe, and should be done the first year of incarceration and at least 2 years before the end of their term. Also, on bail, I would commend the people in Douglas County who I talked to, because they have an evidence-based and risk assessment associated with when they grant bail, and this to me is an intelligent way to go about it. I propose that you also take a look at a TED Talk by Robin Steinberg associated with bail and what they're trying to do to make that happen. The last is you pay $5,000 for me every year from the State of Nevada for me to be indemnified as far as workman's comp is concerned because I'm a volunteer in the prison system. At least make it an option. That would be 50 computers. I have not been in the years that I have done this work afraid, except once when I had to deal with someone in shackles who was addicted to violence. Otherwise, these men understand the ramifications of their actions, generally, and they don't go to these kinds of programs anyway. I thank you all for your time.

Chair Hardesty:

Thank you, Mr. Corrado. We have your list of suggestions (Agenda Item III A). That's been made a part of the record. Thank you for being here today.

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

For our recent, new members who have not been a part of the Advisory Commission on the Administration of Justice (ACAJ) since the very beginning, I would like to touch on some of the discussions that we have had over the years and why we need change in our laws and to create new laws. In 2007 began the discussion of eye-witness identifications. The third document that I have provided to you is a copy of the photo lineup used to get a positive ID from a victim (Agenda Item III B-1). This same photo lineup was shown to two former members of this Commission who positively identified number three, Mr. Klein, without any knowledge of what he looked like or the suspect. Nevada law enforcement agencies no longer use this type of lineup because it has led to wrongful identifications. The Innocence Project has given presentations over the years. Their studies show that those who are exonerated by DNA, 72 percent of those were convicted on eye-witness identification. I recall the Rocky Mountain Innocence Project's presentation had given their statistics. However, these statistics only dealt with

cases that the Innocence Project had accepted. They had no statistics on the 85 to 90 percent of the applications that they received and could not accept because the applicant had no DNA available for testing, which is required to be accepted for their help. The defendants are held to the same standard or higher than an attorney. They have to learn the law basically within 1 year. They are at a disadvantage compared to an attorney who has years of education and practice. The first document I submitted was from the Ninth Circuit Court of Appeals (Agenda Item III B-2). The Antiterrorism and Effective Death Penalty Act of 1996 (AEDPA) establishes a 1-year period of limitation which an individual seeking relief must file an application for writ of habeas corpus in prison. I'll go back to this, but this is in the documents where they're dealing with it, so I will skip it and give you some time. In some cases, the AEDPA has permanently damaged defendants, inmates who have always maintained their innocence. These inmates have raised ineffective assistance of counsel, prosecutorial misconduct, judicial error and jury misconduct in their post-conviction petitions and writs. I consider myself very fortunate compared to most defendants, inmates, because in the Nolan Klein case, I had the opportunity to be able to contact and have a conversation with one of the jurors and learned what it was that had convicted Mr. Klein. It came down to the jury had misunderstood what they thought they heard and them having to make a speculation because the judge's refusal to give them both defense testimonies. He gave them one. Mr. Klein would file a post-conviction petition raising 33 grounds that included judicial error and jury misconduct. The trial judge left 23 grounds unaddressed and he never addressed the judicial or jury misconduct. It was appealed to the Nevada Supreme Court, who upheld the court's decision. It was appealed to the federal court, who then sent it back to the trial judge and gave him the opportunity to address the 23 grounds. Basically, the judge did not do it. If he had, the conviction would have been overturned just based on judicial error and jury misconduct. No court has ever addressed those grounds. Mr. Klein filed writs of habeas corpus as well. By the time it made it to the federal court, he was now affected by the AEDPA. In 2009, Judge Brent Adams would order District Attorney Dick Gammick to turn over the entire file in the case. We would learn the truth, that the prosecutor had withheld the exculpatory evidence from the defense. In the file, there was information showing that the state's witness was paid for their testimony. She gave assurance that she could identify some evidence. He was communicating with the victim's attorney by their lawsuits. This is why I have my recommendations before you, and I'm asking that you do accept my recommendations, which was petitions for exoneration, so when there's no DNA available, it gives them the opportunity to seek their freedom, the discovery removal of the 2-year statute of limitation, and when the defendant is charged with a crime, the law enforcement agency must turn over the evidence to the defense, thereby leveling the playing field and preventing any Brady violations by a prosecuting attorney, and then a public integrity unit commission to look into wrongful convictions. Las Vegas has one. Fifteen other counties have no money at all to even do one. Washoe County, I did contact about 4 years ago, 3 years ago, the District Attorney's Office and was informed that the District Attorney wasn't interested. The answer was it didn't happen under his

administration, and then compensation for the wrongfully convicted. Now, I would like to go back to until my time is up what the first document is.

Chair Hardesty:

I'm afraid, Ms. Brown, that your time is up. If I might, to the point you were about to address, and I want to remind everybody and mention, as you no doubt know, that the documents you have submitted are part of the record here today, and so we have read those over. On the exoneration issue, I would like you to be aware of the fact that there is some interest of some other groups to deal with the subject of exoneration and compensation for those who are exonerated. I'll send you a note offline of the names of people who have contacted me and contacted another justice on the court who's interested in this subject.

Ms. Brown:

Wonderful. Thank you very much. We, the innocent, greatly appreciate it.

Patricia Adkisson:

Tonja Brown previously provided to this Commission documents from Michael Adkisson (Agenda Item III B-3), and I have a letter I'd like to read into the record explaining the importance of the documents dealing with part violations of law admitted to by the NDOC, including inventing a category F felony (Agenda Item III C-1). The NDOC admits to violations of law as a result of their administrative practice to categorize Nevada Revised Statutes (NRS) 193.165, use of a deadly weapon, as an offense, despite the clear designation by the Nevada Legislature that NRS 193.165 is no offense of any kind, see page 97. The admitted administrative practice, see page 130, is a desperate attempt to execute the judgment of conviction for literally thousands of Nevada inmates where the NDOC does not have an actual conviction to rely on and where no offense ever existed. The illegal administrative practice results in thousands of Nevada citizens being imprisoned without sufficient legal authority at a cost to the taxpayers of over $100,000,000 annually and opening the doors for civil actions. The 1973 Nevada Legislature recognized that the only way to accomplish the objectives of the bill for NRS 193.165 was to look at each individual crime, see page 68, otherwise there would be no relationship between the punishment and the crime, see page 72. Despite this acknowledgment and solely due to time concerns, the bill was adopted, see page 73. Following this, the 57th Nevada Assembly Judiciary Committee declared in response that the Senate amendment was a save-face move by the Governor and that the Senate amendment rendered this NRS 193.165 a do-nothing bill, see page 74. Because only the Legislature can define what an offense is and because NRS 193.165 is declared no offense, no conviction can result. See the conviction record where murder with a use is charged. The only conviction resulting is for the actual crime of the murder, see pages 124 and 125. In their analysis, the 1975 Nevada Supreme Court in Woofter

v. O'Donnell, the Court recognized that in order for a statute to meet constitutional scrutiny for imprisonment purposes, it must first be denounced a penal statute, see pages 12 through 14. In this instance, the failure to acknowledge that NRS 193.165 is no offense and therefore not a penal statute has created a constitutional crisis in Nevada. To date, there are three Nevada inmates that have presented this issue to the First Judicial District Court as a time-computation issue, first because there is no conviction pursuant to NRS 193.165 to challenge, as is required when seeking post-conviction habeas relief, see page 124. Second, the administrative practice by the NDOC is a clear violation of the separation of powers doctrine. The NDOC admits making up a whole new category of offense never contemplated by the State Legislature, a category F felony offense, see pages 134, 54, 55 and 56. This is not the first instance Nevada faces real problems with justice of convictions and the failure of the NDOC to follow the statutory language set forth by the State Legislature, see Williams v. NDOC. In Arizona, a similar situation now grips their courts and their citizens with uncertainty and physical liability resulting from their courts and department of corrections, completely ignoring the command by their legislature, see page 127. The difference is that in Nevada, there is no offense to be guilty of when considering NRS 193.165 and no conviction, because the 1973 Nevada Legislature did not adopt the amendment that would have provided for an enhanced term of imprisonment within the provisions of the actual crimes affected. Currently in Nevada, there is no penal statute that actually contemplates or provides for an enhanced term for use of a deadly weapon. Once an offender paroles or discharges the underlying sentence, there is no longer any offense to consider. The continued imprisonment solely as a result of the fraudulent administrative practice by the NDOC is a violation of NRS 200.460, false imprisonment. To date, three inmates have presented this issue to the First Judicial District Court. The Court refused to address the merits and chose to ignore the violations of law admitted by the NDOC and directed the petitioners to seek relief through post-conviction habeas, despite there being no conviction to even challenge. I'm including the exhibits with official government documents that prove the truth of what I have now notified this honorable Commission of. I remain available to assist in any manner if so asked. Sincerely, Michael Adkisson (Agenda Item III C-1). In conclusion, I would like to quote Thomas Jefferson, who said, "When lawmakers become lawbreakers, we have no law, only a fight for survival." This Commission is empowered to act in the interest of justice, and I ask that you take action as a concerned taxpayer. Thank you.

Chair Hardesty:

Thank you, Ms. Adkisson. If your remarks are not already part of the record, if you'd give a copy to the clerk there, we'll add them to the record.

Ms. Adkisson:

Thank you.

Chair Hardesty:

Seeing no additional public comment, I will close agenda item III. I'd like to defer to Chair Yeager to offer some initial introductory remarks, and then I'll add a few, and then we'll get started with the presentations today.

Chair Yeager:

Thank you, Chair Hardesty. I don't have too much to say, other than I think this is an extremely exciting start of a lot of hard work that you're going to hear a little bit about later, and I'm excited today that we could, for the first time, obviously, pull together the Advisory Commission and the Sentencing Commission to hear this overview of our criminal justice system, as well as some very important information about this initiative later on in the meeting. I want to publicly thank Justice Hardesty for his work on this issue. Those of you who have served previously on the Advisory Commission know how hard he has worked to bring this initiative here to Nevada. That didn't just start this year. It's been going on for several years now. He largely deserves the credit for making this happen, and he can tell you a little bit more about the history of how we got to where we are today, but I think I would be remiss if I didn't publicly thank him, and I look forward to the hard work ahead.

Chair Hardesty:

Thank you. I join Chair Yeager in the excitement that I have for the opportunity that's presented by having Nevada selected as a Justice Reinvestment state. It has been quite an effort to get the attention of the folks to select us, but that happened this year. There will be an announcement, I believe, by the Governor's Office today announcing Nevada's selection and extending to us this unique opportunity and extraordinary resource. The Commission staff and Chair Yeager and I have spent quite a bit of time over the past 2 months trying to develop an outline of where we're headed, and this agenda today is intended to share with the Commission members really kind of a start to the process that the Justice Reinvestment Initiative (JRI) will be involved in. We thought it appropriate to invite some really talented specialists in the criminal justice area to give an overview of the criminal justice system. For some on this Commission, that might be redundant or hearing stuff that they know about, although you might hear some things that you hadn't known about, and for others, I think it will be a worthwhile background to put in context what is coming later in the meeting and this fall. As an overview, we also are hearing from Mindy McKay to give us kind of an overview and a status of the Criminal History Repository, which has been an issue that we've had on previous agendas but haven't been able to get to. Ms. McKay, we appreciate your patience and thank you for being here today and sharing with both commissions an area that is extremely important to both. Then, we had asked the Division of Parole and Probation to provide some updated statistical information, and we asked Deputy District Attorney Garrit Pruyt to share with us follow-up information regarding the application

and use of sentencing credits in our criminal justice system. To all of those presenters, I want to express my sincere appreciation, but I don't want to appear rude. We may interrupt the progress of those presentations in order to get to the presentation on the Justice Reinvestment Initiative, which I want to make sure all of the members of the Commission are able to attend and participate in. The other thing I would request of all the presenters, and I would request of the Commission, in order to get through this material, I would ask all the Commission members to hold their questions until the end. Please make notes as you hear issues that catch your attention. You will all have an opportunity to pose questions, but I would like to get the presenters all the way through their presentations before we begin to ask questions. With respect to the lawyers who will be presenting and Mr. McCormick on the criminal procedure in Nevada, you've presented us with some outstanding PowerPoints. Those PowerPoints suggest to me that there may be some duplication, so to the extent that there is, maybe you could skip the duplicative parts and move forward with those areas. We have presenters from both north and south, so I think it would be helpful if there's something unique about the north or the south that you want to mention concerning how criminal cases are processed differently, you might mention that as part of your presentation.

Let's get started. We've got a lot to cover today, so we will begin with presentations on criminal procedure in Nevada. We have John Jones, the Deputy District Attorney for the Clark County District Attorney's Office in Las Vegas, and Jennifer Noble, the Deputy District Attorney in the District Attorney's Office in Washoe County.

Jennifer Noble (Chief Deputy District Attorney, Office of the Washoe County District Attorney):

I am a Chief Deputy District Attorney in the Washoe County District Attorney's Office, where I oversee the Appellate Division. Also, John Jones is in Clark County. Mr. Jones is also a Chief Deputy District Attorney and he is a felony trial prosecutor. You also might recognize us, those of you that are legislators, from the session, because we also represent the 17 elected district attorneys of Nevada during the session which make up the Nevada District Attorneys Association.

Again, we wanted to begin just with an overview. The 17 elected district attorneys in Nevada, 1 for each county, and the offices range from being very small with 1 attorney to 175 attorneys, so there's quite a range (Agenda Item VII A). All of the district attorneys in Nevada handle misdemeanors, gross misdemeanors and felonies. We wanted to also acknowledge something that's really important to us as prosecutors, and I think sometimes gets overlooked when we are discussing criminal justice, and that is our primary duty is not to convict people or put them in prison. Our primary duty is to seek justice, and our priority is to make sure that the truth comes out and that justice is served. If that means an acquittal or that means we drop charges, that's fine, and if it means that someone is convicted, that's also our objective depending on what the facts are and if we believe it's a meritorious case. I also want to talk about, in that vein, early

on, we do look for lots of opportunities to help folks out in the system whose crimes may be directly connected to mental health issues and addiction issues. Washoe County, for example, has 13 specialty courts. We have two dedicated full-time deputy district attorneys who work closely with teams to help folks out early on in the process to help them perhaps start going down the right road. I know that Clark County has, I believe, just as many specialty courts with the same purpose in mind, and their system is similarly robust. Just some basics about criminal procedure and crime, and I know that a lot of the folks on this Commission are very familiar with this so I'll go through it rather quickly. Of course, criminal law is divided into two parts. We've got crimes which are Nevada Revised Statutes that tell us what you can do and what you can't do, and then we also have criminal procedure, and that is basically the set of rules that talk about how we proceed in deciding whether or not someone is innocent or guilty of a crime and making sure that their rights are protected during that process. The NRS basically just tell us what is a crime. We all know it's not okay to bribe a judge, but the NRS tell us why and they give us a section and explain exactly the elements of that crime.

Now, moving to categories of crimes, the least serious crimes are misdemeanors, and misdemeanor crimes are punishable by up to 6 months in jail and a $1,000 fine. They can be handled in either municipal court by city attorneys or in justice court by deputy district attorneys. There is a 1-year statute of limitations on those types of crimes, and they can be initiated by arrest or by citation, such as a traffic citation. Gross misdemeanor crimes are in the next category. For a gross misdemeanor crime, you can spend up to 364 days in jail and be fined up to $2,000. Those crimes are exclusively confined to the justice court and the district court. They start out in justice court during the probable cause determination phase and then they move up to district court for plea or trial. There is a 2-year statute of limitations on gross misdemeanor crimes. Felonies, of course, are the most serious types of crimes, the minimum punishment being 1 year, but of course it can go up to life in prison or even capital punishment. Those always again start in justice court for the probable cause determination or a probable cause determination by grand jury, which Mr. Jones will talk about a little later. Generally, there is a 3-year statute of limitations, but again, there are lots of exceptions for certain types of crimes. There are 5 basic categories of felonies that range from 5 years to life in prison, like I mentioned, or capital punishment all the way down to a category E felony. That's 1 to 4 years in prison, but probation is mandatory on those types of crimes.

In prosecuting crimes, there are two chapters that we use most often. One chapter that I would mention is NRS 200. Those are crimes against the person. They include murder, robbery, sexual assault, battery, etc. Then, there are crimes against property, which are outlined in NRS 205. Among those are arson, burglary, home invasion, forgery, etc. Now, I really do want to mention that for the purposes of crimes against a person, although home invasion and burglary are categorized as crimes against property, district attorneys really do view them as crimes against the person, particularly a home invasion or a residential burglary. This is a situation in which someone's home is being invaded, this is the one place they are supposed to feel safe, and the effects on victims

can be long-term and quite substantial. Moving to home invasion versus residential burglary, this sort of gives you an example of elements of a crime. Each crime is made up of a mental element or elements and an act element, the actus reus. So, you can see home invasion and residential burglary, they sound pretty similar to the average person, but for a home invasion, you just have to enter the home of another with force, but for burglary, a residential burglary, you have to have a specific intent to commit certain crimes upon entry.

After the person is arrested or cited, the case will be referred to a prosecutor's office. Where it is referred depends on the location of the crime and the arresting agency. If the crime takes place within the city limits and it is a misdemeanor, it will be prosecuted by the city attorneys' offices and it will be litigated at the municipal court. But if a crime takes place within the county or it's a felony, the district attorneys' offices will handle those crimes, and the justice courts and district courts will be the places of litigation. Municipal court is very critical to the functioning of all of our homes, cities and areas. They deal with violations of city ordinances, misdemeanors, traffic, civil lawsuits up to a certain amount. There are no juries. It's only judges in these courts. They are prosecuted by the city attorneys' offices, such as the Reno City Attorney's Office, the Sparks City Attorney's Office, Henderson, the City of Las Vegas, North Las Vegas, etc. Just a quick word about justice court versus district court, justice courts are courts of limited jurisdiction. They handle misdemeanor crimes that fall within the district attorney's purview, as I've explained, and they also handle probable cause determinations in gross misdemeanor and felony crimes. Once the probable cause determination is made, the case is what we call bound up to district court, and in district court, all cases where it is a gross misdemeanor or felony are litigated or resolved there. With that, I will turn it over to Mr. Jones for a bit.

John Jones (Chief Deputy District Attorney, Office of the Clark County District Attorney):

I am a Chief Deputy District Attorney in the Clark County District Attorney's Office. Just continuing where Ms. Noble left off, once a defendant is arrested, they basically take a two-track process (Agenda Item VII A). The first track is what we call a 48-hour probable cause review. John McCormick with the Administrative Office of the Courts (AOC) I'm sure will get into that a little bit more, but basically that's where a judge completes what we call an affidavit review. The review the declaration of arrest to make sure that there is enough information contained on the four corners of that affidavit to hold the defendant in custody. For example, using the burglary elements that Ms. Noble previously gave to you, there has to be information in the affidavit that someone entered a residence or a structure of another with some sort of intent. All of that would have to be outlined and shown during the affidavit review. At the same time a judge is conducting a 48-hour review for probable cause, the district attorney's office is also conducting a review of the case to make a charging decision. Now, our larger offices in the state, Clark, Washoe and others, have attorneys whose sole job is to screen cases

and make the charging decision. I can tell you that in Clark County, all of our screening deputies are seasoned trial attorneys. We want more experienced attorneys making these decisions. We want more seasoned attorneys because we are making a completely independent determination from the agencies, the police agencies or law enforcement agencies, that submit cases to us. Looking at 2017, I would argue that we are in fact using our discretion. For example, there were 30,287 felony and gross misdemeanor cases submitted to the Clark County District Attorney's Office in 2017. We approved 24,967 of those, so about 82 percent, and 18 percent of those cases were denied. I can tell you, looking back at past statistics, generally around 20 percent of cases are denied by our office. It generally hovers around that mark. For misdemeanor cases, we screened 33,111, and with misdemeanors we generally have about a 90 percent approval rate. We do use our discretion quite often in reviewing cases. We do not have to approve charges submitted to us by police agencies, and we can choose to file other charges other than the ones that a defendant has booked on that we feel may better fit the allegations alleged.

Once we make a charging decision, we file in justice court in all cases, misdemeanors, gross misdemeanors and felonies, what's called a criminal complaint. This is the first document we file. It is the formal charging document filed by district attorneys that makes a short outline of what the defendant has done that violates Nevada law and what law they are alleged to have violated. It basically puts the defendant on notice for the crime they have committed. As you can see here, we have outlined the crime of burglary, and it states in the County of Clark, they feloniously entered, and then the name of the victim and the building in which they are alleged to have entered. After the complaint has been filed, a defendant will have what's called their first appearance in justice court, and that is really the first opportunity to see a judge in open court where often they are arraigned, the complaint is read to them and we set a preliminary hearing. Also, it's generally the first time in which a defendant will have an opportunity to address bail in open court. Unless a defendant is charged with murder, they are entitled in Nevada to bail. The NRS specifically outlines what factors a court may consider when setting bail. Judges have options. I want to point out, in lieu of bail, we have house arrest, intensive supervision or just straight OR's (own recognizance). Additionally, instead of formal programs, a judge can also set release conditions on defendants.

After the initial arraignment in justice court is really when plea negotiations begin. In Clark County specifically, we often make what we call early offers in justice court on the day of the initial arraignment in hopes that we can get a case resolved. If it is not resolved on the date of the initial arraignment, then plea negotiations will continue basically throughout the life of the case. There are many factors from a district attorney's point of view that go into a negotiation, including the seriousness of the offense, the ability to prove beyond a reasonable doubt the case at trial, the details in the officer's report, the defendant's criminal history, age and other factors. Most cases negotiate. As I indicated earlier, over 30,000 cases are filed by the Clark County District

Attorney's Office every year, but only about 130 to 170, depending on the year, make it to trial. As you can see, the vast, vast majority of cases negotiate.

Just briefly, the misdemeanor caseload is different than a caseload for a gross misdemeanor and felony, so I want to go over them briefly. After arrest for a misdemeanor, you head to initial arraignment, then shortly after is a trial or plea. Either way, if they are found guilty, then we would proceed to sentencing and then appeal. For felonies and gross misdemeanors, it's a little more convoluted, because on these types of crimes, a defendant is entitled to what we call a probable cause hearing. All of those probable cause hearings, as Ms. Noble indicated, occur in—not all of them, but most of them occur in justice court during what we call a preliminary hearing. There is also an alternative avenue for a district attorney to seek a probable cause finding, and that's through a grand jury, which I'll get to in a moment. So, a probable cause hearing, they have a right within 15 days of initial arraignment to a probable cause determination. Typically, that hearing is waived due to plea negotiations, so if a defendant has accepted a plea negotiation offered by a district attorney, then they can waive that probable cause hearing and would go right into district court. However, if a defendant would like to fight their case, then the state has to prove a slight or marginal evidence that a crime was committed and that the defendant was the person who committed the crime. We have two different avenues in which to have a probable cause finding be made, and the first is a preliminary hearing, which again occurs as part of a justice court. This probable cause determination is made after contested evidence, meaning both the defendant and defense attorneys are present for this hearing. The state would call witnesses and ask questions to show probable cause, and these witnesses are subject to cross-examination. Defense may also call witnesses as well, and after the conclusion of evidence, a justice of the peace will decide if there is sufficient evidence to bind over the case to district court. The alternative way to do that is through a grand jury, in which case the district attorney would take a case to a grand jury, which is 12 or more average citizens who make up the grand jury. The defendant and defense attorney are not present during these proceedings, but the defendant must be made aware of the fact that these proceedings are going on and may elect to testify at the grand jury if they want. There are certain circumstances in which a district attorney would have to present evidence, exculpatory evidence, etc., to the grand jury as well. So, if after hearing the evidence, the grand jury finds probable cause, that is the second way to get the case into district court.

After probable cause has been found, the case is now completely in the district court, where they will have another arraignment, this being the district court arraignment. That is where they will formally enter their plea of guilty or not guilty. It is in district court where both parties really begin to prepare for trial. It is where the district attorneys then begin searching out to make sure that we have all material, exculpatory and impeachment evidence to the defense, and we have to give it to the defense and we have an obligation to seek it out. We will issue subpoenas, contact witnesses, etc. Also, both parties will begin preparing motions. We may have a motion to admit evidence, a

motion to suppress evidence. There is a litany of motions that can be heard in district court as we begin to prepare for trial. Of course, after, if we again are not able to resolve the case, a trial by members of the jury of peers would take place. Twelve jurors would make a factual determination, including the guilt or innocence of the defendant. It must be unanimous and beyond a reasonable doubt. I won't read it to you, but here is the exact language that we are required to give with respect to what is reasonable doubt (Agenda Item VII A).

Now, if a defendant is found guilty by a jury or pleads guilty pursuant to a deal, then we do proceed to sentencing. You're going to hear later that a pre-sentence investigation report (PSI) is prepared. You will hear all about those. The judge will consider that report, the argument of both parties and whatever the negotiation is in rendering a decision. However, even after sentencing, a case is not over, and in many instances, it is just beginning. Ms. Noble, who is Chief of the Appellate Division in Washoe, will go over post-conviction proceedings.

Ms. Noble:

Thank you, Mr. Jones. Before I go into post-conviction proceedings, and again, I will try to be brief, I wanted to make sure that this Commission knows that both the Clark County and Washoe County District Attorneys' Offices have procedures in place to make sure that claims of actual innocence that are supported by specific allegations are reviewed carefully by both offices. In Clark County, which is much larger than Washoe, they have a Conviction Review Unit with one dedicated deputy and a committee of persons who review those types of claims. Similarly, in Washoe County, my unit, the Appellate Unit, which consists of three attorneys, reviews those claims together. If we believe that they should be reviewed further, we make sure to go over them with District Attorney Chris Hicks and Assistant District Attorney Bruce Hahn. With the smaller counties, I've had a chance to talk to them about it, and they do a similar process, but depending on how many attorneys are in the office, they don't have a dedicated unit, but it is something that is taken seriously and reviewed at the highest levels of the office.

Going into post-conviction proceedings, it is a common perception that after trial or plea and sentencing that the case is over. Nothing could be further from the truth. A lot of these cases remain very active after conviction. After conviction by trial or plea, we have defendants with lots of options. They can seek a direct appeal with our Nevada appellate courts. They can also file a petition for writ of habeas corpus at the district court. Additionally, they can seek a motion for a new trial. They can request DNA testing if something wasn't tested or they think it should be tested again, and they can also in some circumstances seek to withdraw their guilty plea thanks to a bill passed by Assemblyman Ohrenschall last session. There is also the availability, and it is not on your PowerPoint, but of a motion to correct an illegal sentence and a motion to modify a sentence where the prisoner can say, "Look, I think my sentence was based on a

material mistake about my criminal record." Those can be filed at any time. Our Nevada appellate courts: of course we have the Nevada Supreme Court, and that is made up of seven justices. According to their website, but I'm sure they are all probably getting more appeals now than this, they hear about two-thirds of the appeals and the Nevada Court of Appeals, of course, after a lot of hard work by Justice Hardesty, was put on the ballot and approved by the voters in 2014. It has three judges and hears roughly one-third of the appeals. In the direct appeal, someone can challenge their pretrial rulings. They can challenge evidentiary rulings that came up during their trial. They can challenge the sufficiency of the evidence of their case, the length of their sentence. All kinds of different things can be raised on direct appeal. It is important to note that all death penalty cases get an automatic appeal. Now, a writ of habeas corpus can be filed at the same time or before a direct appeal, but most commonly it happens after the direct appeal is denied. In a writ of habeas corpus, a defendant can raise a number of different types of claims. Usually, the claims have to do with ineffective assistance of counsel, but they can present new evidence such as an alibi witness or physical evidence that was not turned over by the police because of a Brady violation. They can also indicate that, "My attorney failed to discover this important evidence that would have made a difference in my case." They can challenge the voluntariness of their plea. They can challenge juror conduct. They can say, "The state just didn't do its job and I had a fundamental due process violation because of it."

Now, if the allegations in that type of petition are supported by specific facts, that if they're true would entitle a person to relief, they get another evidentiary hearing and they have the ability to call witnesses, and a judge makes a decision on that. More often than not, they are appointed counsel. Now, if that petition is denied, they also have another avenue of relief because they can appeal the outcome of that to the Nevada Supreme Court. Generally, petitions for writ of habeas corpus have to be filed within 1 year of either the conviction or, if they file a direct appeal, the remittitur or final resolution of their direct appeal, but there are lots of circumstances in which the court finds good cause to excuse that procedural delay. Some examples would be that the petitioner legitimately thought that their attorney was filing a direct appeal, or they thought their attorney had filed a petition for writ of habeas corpus, or there was simply a claim that wasn't previously available to the petitioner. They got new information through no fault of their own and they acted in due diligence to bring that to the court's attention.

With that, I think that completes our presentation. I do want to mention just very quickly, there are other avenues for relief. Petitioners seek relief through the federal courts, through federalized claims. They can seek review of the Nevada Supreme Court, and there are some other common law writs, such as the writ of coram nobis, which is a little bit arcane in my view and hard to explain, so I won't get into it, and of course they can also seek review from the Pardons Board. With that, that concludes our presentation, but Mr. Jones and I are happy to answer any questions that the Joint Commission might have.

Chair Hardesty:

Thank you, Ms. Noble and Mr. Jones. Ms. Noble, I will initiate two questions to you if I could briefly, and thank you both for a wonderful and pretty succinct summary of Nevada's criminal justice process. Could you share with the Commission if you have available the number of prosecutions or charges filed versus arrests? Mr. Jones shared that they were roughly, and I wasn't quite sure where his math ended up, but somewhere between 82 and 85 percent of those arrests versus charges. The second component he identified somewhere in between 130 to 170 trials, so the vast majority of charged cases end up in pleas, and I wondered what the situation was in Washoe on that number.

Ms. Noble:

Thank you, Justice Hardesty, for the question. I have to apologize; I don't have statistics that would compare the number of charges or requested charges that our office receives compared to the number of charges actually filed, but I'm quite confident that I can get those to the Commission promptly.

Chair Hardesty:

That would be great, thank you.

Ms. Noble:

What was the second question?

Chair Hardesty:

Trials versus resolution by plea.

Ms. Noble:

Again, I do not have those statistics with me today, but I would be happy to provide them to the Commission.

Mark Jackson (Douglas County District Attorney):

Ms. Noble, I know that you are aware because you were present during the March 28 meeting of the Advisory Commission as well as the April 30 meeting of the Advisory Commission, and at the March 28 meeting, Michelle Feldman, who is a legislative strategist for the Innocence Project, testified and had a pretty lengthy PowerPoint presentation. She discussed two specific cases involving a DeMarlo Berry as well as a Kirstin Lobato. She advocated on behalf of the Innocence Project for three reforms in

Nevada. One is the recording of interrogations, and you know from the testimony and the comments by myself as well as Chuck Callaway on behalf of Las Vegas Metro that there have been numerous meetings with Michelle Feldman, the Innocence Project and other stakeholders working on the recording of interrogations. The other 2 issues that she brought forward were jailhouse informant testimony and then a 2-year time limit for bringing forward new non-DNA evidence post-conviction. My questions are going to be more related to the second and the third one, the jailhouse informant testimony and the 2-year time limit of whether or not that should be changed. I know from you being a member of the Washoe County District Attorney's Office as well as advocating on behalf of the Nevada District Attorneys Association that you're aware of the positions of the district attorneys across the state in connection with those 2 particular reforms, so I would ask very broadly at the very beginning if you could comment on your opinion as to whether those are reforms that are needed here in Nevada with respect to the jailhouse informant testimony and the 2-year time limit for bringing forward new non-DNA evidence post-conviction.

Ms. Noble:

Yes, I am actually pleased to be part of a working group led by Chuck Callaway where we work with Michelle Feldman and the Innocence Project to see to what extent we can come to an agreement on some of these subjects and seriously review Nevada law and see if there is an area that needs to be changed to make sure that folks who are innocent have enough avenues to assert that with the courts. I will start with the informant testimony, the jailhouse informant testimony. It came out during our last working group session that that is actually very rarely used by both the Clark County District Attorney's Office and the Washoe County District Attorney's Office. It is my understanding in discussion with a couple of the rural district attorneys that similarly it is very rarely used. I don't know if it is necessary to create a law or require offices to keep a database about it, but I certainly think it is important that that information is conveyed to the defendants in a timely fashion. I think that the Innocence Project and the district attorneys certainly agree about the importance of the conveyance of that information. Whether or not it needs to be part of the NRS, I am less certain. I think that our district attorneys are doing an excellent job of disclosing that information. You also mentioned the DeMarlo Berry case, and I think the DeMarlo Berry case is a good example of where I believe the Conviction Review Unit of the Clark County District Attorney's Office functioned exactly as it should have.

With respect to Kirstin Lobato's case, that sort of takes me to the motion for new trial issue on newly discovered evidence. It is my understanding that Ms. Feldman and the Innocence Project would like to remove the statute of limitations so that we just don't have one, or have a similar remedy. I'm less certain about that. Our fundamental disagreement is whether or not claims on newly discovered evidence are too hard to bring before a court after the fact in terms of being outside that 1-year statute of limitations. The gravamen of our disagreement is that in my experience it is usually fairly

easy for a petitioner to attach a newly discovered evidence claim to a constitutional claim such as ineffective assistance of counsel or Brady claim where the police or the prosecutor didn't turn over information that would have led to the discovery of this new evidence, and so I think the Innocence Project's frustration is that they see this as an additional step in that they don't want to have to, I think to use their words, shoehorn claims of newly discovered evidence into constitutional claims. In my experience, when there are legitimate or very credible claims of newly discovered evidence, I have yet to see something out of our office where it is rejected simply because there is no connection to a constitutional claim. I have seen those types of claims be seriously considered by courts outside the 1-year typical limit where there is just even a tenuous attachment to a constitutional claim. So, in my view, frankly, I do not think removing any time limit from our motion for new trial statute is a prudent thing to do. I believe that petitioners do have avenues to get that sort of information in front of a court and reviewed, and of course, as I mentioned, prosecutors carefully review that type of evidence or that type of claim, and if there is something that we think is important for a court to review, we will certainly not stand in the way, because it is obviously all of our objectives to not have any innocent person in prison. We work hard to do that.

Mr. Jackson:

Just a follow-up for Mr. Jones down south, if you had any additional comments or anything to add to Ms. Noble's testimony regarding those two issues?

Mr. Jones

No, I think Ms. Noble artfully answered the question with respect to the Nevada District Attorneys Association's position on this issue, but we have been faithfully involved as part of Mr. Callaway's subcommittee, and if we can find a resolution, we will.

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

I have a question in terms of you said the district attorney's office doesn't usually use jailhouse informants. Does that include the number of people that perhaps are released from jail to then serve as informants once they are released or have an agreement with, let's say, law enforcement, that law enforcement won't put them in jail if they helped with information?

Ms. Noble:

I think that when we are talking about it in the context of the working group, we are talking specifically about jailhouse informants and folks that receive deals and inducements for their testimony. But with respect to folks who may have charges the police can bring against them or may have been released but might take a deal in exchange for cooperation with the government, that information is also information that

is required to be handed over to the defense attorneys, and it is something that is going to fall under Brady because it is impeachment evidence for those witnesses.

Ms. Jones Brady:

Just as a follow-up, when you say they rarely use them, but you were excluding those people, those other kinds of informants? You're just focusing on people who are informing and are still incarcerated?

Ms. Noble:

That is correct, Ms. Brady, because the question, I believe, had to do with the proposals by the Innocence Project, which did exclusively pertain to jailhouse informants.

Ms. Jones Brady:

The reason why I was asking is that there are times when people are charged, they are in jail, they get evidence against maybe a client that is also in jail, but then they are released, they get to get an OR, they get to get released as part of that benefit. I'm just wondering if once they're out if they're still considered jailhouse informants, or if those people aren't counted in that.

Ms. Noble:

That's a good question, Ms. Brady. I think technically because they are not still in the jail, they may not be jailhouse informants, but certainly information that they give and testimony that they might have will be subject to cross-examination, and any sort of plea deal that they are offered in exchange for cooperation is something that comes before the jury during trial.

Ms. Jones Brady:

On a different issue, you mentioned—I have a question about what is your viewpoint. You were talking about burglaries and how home burglaries are really a particular interest and considered a crime against a person. What is your position, if any, or your office's position, if any, on having different degrees of burglary? As you know, burglary is currently a category B felony, and it is still a category B felony if it is in a store or if it is even someone rifling through somebody's automobile. It is under the same—it is just one statute to cover all of that. Does your office have a position on whether there should be different levels of burglaries and whether a category B felony is always appropriate?

Ms. Noble:

I don't know that we have a particular position on levels of burglary. I know that our prosecutors are encouraged and it is part of the expectation of Mr. Hicks that in each

case, we use our discretion in deciding what to charge. For example, if we have someone who enters a 7-Eleven with no prior criminal history and they steal something, it could technically be what we call a shoplift burglary, but we're probably not going to charge it as that. When we charge burglaries in those cases, we are using our discretion and looking at folks who have multiple theft convictions over and over again, that continued to enter with the intent to steal from the merchant. It is a question of prosecutorial discretion, but I would note, I believe during last session, in working with Senator Ford, we acknowledged a difference between those types of burglaries and residential burglaries when we changed the sealing statutes. It is my understanding that for residential burglaries, it's a larger period of time than versus a regular burglary. There is some acknowledgment that the two types of crimes are somewhat different, but I don't think that we need separate categories of burglary. It is more of a situation in which the prosecutors must use their discretion in charging the case.

Mr. Jones:

I've been representing the Nevada District Attorneys Association since the middle of the 2011 Session, and we have had conversations regarding just this question every session that I have been in the Legislature, so 2011, 2013, 2015 and 2017. Different categories for burglaries are not something we are categorically opposed to. I think everything that Ms. Noble just said is correct. We use our discretion appropriately with commercial burglaries, but in terms of having that discussion, we have always indicated that we are willing to have that discussion, and if that is where the Legislature wants to go, I think we can get there.

Chair Hardesty:

I would make a request of the Commission members that we focus on the overview of the criminal justice system. If we are going to ask questions about the 400-plus crimes in the criminal code, we will be here for months. What I would prefer is if each Commission member would set aside questions that are particular to those subjects. We will have these folks come back. They are available to us and they have assured us that they would do so, so rather than getting into specific policy questions like some of these questions thus far, I would ask that you set those aside and defer so that we can address those later, and we will for sure, and they are certainly deserving of some review, but because of the agenda and the time constraints, I'd rather stay on the 30,000-foot overview rather than getting into the weeds about burglary or some of the other criminal statutes. Forgive me; I hope everyone will appreciate that concern. Are there any other questions about the subject of the presentation?

Judge Sam Bateman (Henderson Justice Court):

Mr. Jones, I just had a quick question related to the PowerPoint that was provided by JRI that is going to be talked about later (Agenda Item XI). On slides 53, 54, 56, I think

this is about what we are supposed to be talking about today, I note that they have obviously done some preliminary research and shown that our imprisonment rate is higher here than the national standard. I am wondering, you talked a little bit about the number of filings that the Clark County District Attorney's Office gets in terms of felonies versus misdemeanors, and Justice Hardesty referenced questions about negotiations. I think, in part, I'm hoping that as we go forward, we can unpack the information about us being at a higher rate in Nevada than the national average, because on its face, it's a little bit shocking. I think when you start getting into apples to apples, which is hard to do across states, it might not be, and I would hope the District Attorneys Association and everyone else would be working with JRI to figure out why that number is higher. I am wondering if one of the reasons, having been a prosecutor before and knowing how overloaded in particular the Clark County District Attorney's Office is, I know you file a great many thousand felonies versus misdemeanors, but I know as part of negotiations, a great many felony charges get reduced as part of negotiations to misdemeanors. I'm guessing you don't as you sit here today have a number about how many felony charges actually get reduced to misdemeanors as part of negotiation, but I'm wondering, in part, this 15 percent number that we see here, isn't a result of kind of reducing a great number of felonies to misdemeanors as just a matter of practicality in the District Attorney's Office in Clark County, and particularly where the largest amount of numbers are in Nevada, which then leaves the felonies that end up in district court tend to be more serious and tend to have people with greater criminal histories, which might account for why more of them are going to prison in Nevada. I think that's something that is going to be hard, I think, to compare our number specifically to other states. I think we're going to have to look at criminal histories of the average offender that gets sent to prison in Nevada versus maybe some of these other states where it's 15 percent less, but I think, going forward, I would hope that you could work with JRI, maybe see if we can provide some numbers about the rates of negotiation and how many felonies are being reduced to misdemeanors and what we are essentially being left with up in district court, because when I saw this number and in my experience over the last 15 years, we have not ramped up in district court, at least in the Eighth Judicial District Court, a desire to send people to prison. If anything, there's been a complete sea-change in what's getting into district court as opposed to what used to get into district court and the desire of district court judges to actually send people to prison and to basically do everything they can not to. I think that's something I would hope—I'm guessing you don't have those numbers. If you do, maybe you can quickly provide them, but otherwise, I think it's something that the district attorneys' offices are going to have to be a part of trying to figure out.

Mr. Jones:

I don't have those exact numbers in front of me in terms of how many of the 24,000-ish felony cases we file make it into district court. That is, that we have offered a gross or felony plea deal or they have rejected plea deals and end up in district court. I can provide those numbers to this Committee. What I do want to say is I have reviewed the

PowerPoint that you're referencing, but I've not had an opportunity to review the supporting research that they cite. I will say that Nevada is typically at the top in terms of violent crime, and I think that could help explain why we are above average in some of the stats that were cited by JRI, so I think we need to keep that in mind as we go forward. I do agree with your assessment that we do go above and beyond to find an appropriate resolution, be it a treatment court or other types of remedies that don't necessarily end up with the defendant going to prison. But that being said, there are instances where prison is an appropriate sentence, and we do consider that. One final thing I want to say, and I know Ms. Noble will have the same sentiment, if any of you want to come to our offices to shadow a district attorney, to do a tour, to meet with deputies, I highly encourage you to do that. Our offices are open. If you feel that would help you throughout your process to come into our office and shadow a district attorney for a day, let me know and I will pair you up with one and you can come shadow our office. I think it will help you see what we do on a day-to-day basis and how we make some of the decisions that we make.

Chair Hardesty:

Before we cross-examine the JRI presentation, it might be useful to hear the presentation, so I appreciate the zeal one has to ask questions about this presentation. I would note that JRI has met with and interviewed hundreds of stakeholders, including representatives of the district attorneys' offices, the public defenders' offices and judges throughout the state, so one might want to hold their questions and pose those to JRI if they need additional information. I would also like to thank the district attorneys' offices and the public defenders' offices and the judges throughout the state who opened their doors and entertained interviews with the staff of JRI, many of whom are here today.

Amy Rose (ACLU of Nevada, Inmate Advocate):

Just really quickly before I get my question, I know we want to keep on track, but because the issue of the actual innocence and the statute of limitations time limit came up, I just want to say for the record that we are one of only a few states that have a hard and fast statute of limitations from the date of the judgment. We are in a very distinct minority for that, so just want to be considering that going forward. I wanted to make that clear to both commissions. I have a quick question for Mr. Jones. When we're talking about the felony/gross misdemeanor case-flow, you can choose after the arraignment to go to a preliminary hearing or to a grand jury. Can you just quickly explain for us why you would choose one or the other or both or how that would work?

Mr. Jones:

There are any number of reasons why a deputy would make that decision. It could be simply that it is a complex case and it would take days to put on a prelim. For example, when you have a robbery series where 14 or 15 establishments have been the subject

of an armed robbery, it is a more expeditious process to go to a grand jury, whereas in a preliminary hearing, it could take days if not weeks if there are a large number of witnesses. For victim comfort: you have a traumatized victim who them seeing their accuser in open court at the preliminary hearing would be too traumatic for them at this point and a grand jury would provide them a level of comfort. There are any number of reasons why a district attorney would make the election to go to a grand jury over a preliminary hearing.

Ms. Rose:

Thank you

Chair Hardesty:

Seeing no additional questions, thank you, Ms. Noble, and thank you, Mr. Jones. Next are the presenters from the Clark County Public Defender's Office, Anna Clark and John Piro, and I will also invite up representatives of the Washoe County Public Defender's Office, Jordan Davis and Katelyn Cantu, if you would like to come forward, so that we can work through the PowerPoints that you folks have prepared. As I had requested earlier, if you could limit duplication as much as possible, that would be helpful.

Anna Clark (Chief Public Defender, Office of the Clark County Public Defender):

It is my distinct pleasure to be here this morning. I do want to just present a really broad-strokes overview. In the interest of not duplicating the information that everyone just heard from Mr. Jones and Ms. Noble, and their PowerPoint was very detailed and, frankly, had better graphics, I'm going to keep mine limited, specifically kind of a case-flow chart of how a criminal case just proceeds through our system, basically from the perspective of the defendant, the defense counsel—specifically we are appointed counsel, but I think this would hold true for private counsel as well.

Just to concur with what Mr. Jones and Ms. Noble presented, most criminal cases begin the moment someone is arrested and booked into a detention facility (Agenda Item VII B). The way it currently stands, within 48 hours of arrest, there is that probable cause review by a magistrate. There is an initial bail setting. I believe that is normally just what's on our standard bail schedule. Within 72 hours of arrest, ideally a criminal complaint is filed. There is an official arraignment in court. The appointment of counsel, normally the public defender's office, I know, takes a vast majority of cases at arraignment for indigent individuals who can't afford to hire private attorneys. The magistrate judge will make decisions regarding custody, both bail, OR release, any conditions of release for a criminal defendant, and then there is generally the scheduling of a preliminary hearing. I do just want to note really quickly that, at the arraignment, something that our office tries to stress, the Public Defender's Office here, and I'm sure

up north, is something along the lines of vertical representation. The moment we meet our clients for the first time is generally at their arraignment, but the idea of vertical representation is that the person who shakes your hand at arraignment or prior to preliminary hearing is the same attorney, the same person, who is going to represent you throughout the entirety of the criminal justice process and is going to be standing next to you when ultimately your case is resolved, a sentence is handed down or some other final decision is made.

At the preliminary hearing, that's for the felony and gross misdemeanor cases, I haven't talked much about the grand jury in this presentation. It's not used as commonly, so most cases are going to be proceeding along the preliminary hearing route. That is scheduled within 15 days of a person's individual arraignment, and it's a probable cause determination where they would hear evidence and determine if there is enough evidence for the case to proceed to trial. For misdemeanor filings, that 15-day setting is just a misdemeanor bench trial in front of a magistrate judge. The judge is the trier of fact in that case and they determine if the state has met their burden of proof in a case beyond a reasonable doubt. With misdemeanors, the sentencing usually occurs immediately after that bench trial.

I know there's been some discussion on negotiations. The vast majority of criminal cases result in a plea-bargaining process and are resolved through the negotiation process. I believe we have another PowerPoint coming with the actual numbers on that, but I would estimate it is probably 98 to 99 percent of cases resolved through this process. Those negotiations are generally hammered out prior to preliminary hearing or prior to the bench trial, so within that 15-day window between the initial arraignment and the preliminary hearing, the vast majority of cases are going to be able to be resolved. From a defense attorney perspective, we spend those 15 days going over the evidence with our clients, conducting some of our preliminary investigations and really gathering information on our clients, what's going on in their lives and what led them to be in the situation that they're in. That usually includes drug or alcohol problems, finding out about their living situation, if they have a home or if they are homeless, if they are suffering extreme poverty, if they have mental health issues, and gathering a lot of other mitigation-type information. The end goal of all of this work that we do on the front is to reach an appropriate resolution that takes into consideration the interest of justice, of course, but also the unique status of the individual criminal defendant that we have. For most negotiations, the state and the defense will agree to the terms. If it is a felony or a gross misdemeanor negotiation, it goes up to district court. For misdemeanor pleas, the cases stay down in the lower courts and the justice courts or the municipal courts.

Just quickly on the misdemeanor cases, I don't want to reiterate what has already been presented, but those misdemeanors carry a maximum of 6 months in a county jail, but common sentences usually include suspending that time and having requirements that are done by the defendant: fines, community service, classes, and by statute, of course, for domestic violence or DUI (driving under the influence) cases, there are specific

requirements that have to be done. Often there's restitution, and there are some diversionary courts that are available down in justice court, specifically the Justice Court Drug Court Program and some mental health-type programs. Felony and gross misdemeanors cases, either by plea deal or after preliminary hearing, go up to district court. The hearing master does take all initial pleas at the initial appearance, guilty or not guilty, and then the case, I think, is randomly assigned to a district court judge who presides over all future hearings. That includes pretrial motions, evidentiary issues, any hearings that need to happen prior to trial. The district court judge will conduct the jury trial. The district court judge will hand out any sentences. The district court judge presides over all probation revocation hearings that happen in the future.

All criminal defendants accused of a felony or gross misdemeanor are entitled to a trial by a jury of their peers. In an ideal world, prior to trial, all of those evidentiary issues have been litigated by the district court judge in the department where the case is assigned, and in a very ideal world, all of the discovery and exculpatory material that's required to be turned over by statute and case law has been provided to the defense, including reciprocal discovery that goes both directions, so that all parties are prepared when the case does proceed to jury trial. Jury trials always commence in the criminal department where the case was originally assigned, unless there is a scheduling conflict. In that case, the cases can go to be heard in an overflow setting where any available district court judge can hear that jury trial. Once the trial is assigned to a department or it goes to overflow, that district court judge in that department will keep that trial or keep that case for the rest of the case so that the person, the district court judge, who is sentencing the defendant is the same one who has heard the jury trial if there is a finding of guilt.

From our perspective, of course, on the defense side, all criminal defendants are entitled to their theory of defense and to present a defense at trial and have the State of Nevada prove the case beyond a reasonable doubt. After there's been a conviction either by jury trial or through part of the plea-bargaining process, there's the sentencing and conviction. The sentencing occurs usually no sooner than 60 days after the person has entered a guilty plea or a guilty verdict has been rendered by a jury trial. That allows the Division of Parole and Probation adequate time to prepare a pre-sentence investigation report, which is required in those felony cases. The district court judges then really have very wide discretion as to what to do with their sentencing decision. They can impose a prison sentence that falls anywhere within the statutory framework for the crime that the defendant has either entered a guilty plea to or been found guilty of by trial. The district court judge has the discretion to decide whether different cases and different counts of the defendant run concurrently or consecutively to one another. The district court judge has discretion in many cases to decide if a person's sentence should be suspended and a grant of probation given to the defendant. They can also order the conditions of probation, which would include diversionary courts. Down south, we have several courts. We have drug court, which is diversionary. We have a mental health court, we have a veterans court and we have a gambling diversion program that

all serve a diversionary function and can be ordered as a condition of probation. They, of course, also have the discretion to order fines, community service, restitution and whatever else they feel is appropriate in a probationary setting.

If probation is granted and there is an alleged violation, then the other big hearing that happens in the district court is the probation revocation hearings. In those instances, it's because the Division of Parole and Probation or the assigned probation officer has arrested a probationer and filed a violation report containing some alleged violations of probation. In that case, the defendant is entitled to a hearing on those alleged violations. It happens in the district court setting. Again, the same attorney who shook their hand at arraignment is the one representing them at that revocation proceeding. It is up to the district court to make findings as to whether or not the violations have occurred. If the district court does find violations at that point, they have a litany of options available to them. They can reinstate the individual on probation, they can modify the person's underlying sentence, they can revoke a term of probation and send that individual to prison, or they can modify the terms of probation as part of a written statement.

Of course, there is an appeals process. Ms. Noble spoke more at length on the appeals process and the post-conviction process in the State of Nevada, so I don't think there's any real need for me to repeat all of that information. I know in our office, if you proceed to jury trial, you have an appeal that is filed and handled by a specialized group of attorneys in our office, but beyond that, this slide is just regarding the jurisdiction of the different courts of appeals and the Nevada Supreme Court here in the State of Nevada, but again, I don't want to duplicate the information that was already heard (Agenda Item VII B). This slide actually concludes my presentation. This is a broad-strokes presentation, but I am happy to answer any specific questions that anyone might have regarding the process from the defense perspective or from the defendant perspective. Thank you.

Chair Hardesty:

Thank you, Ms. Clark. I think we will ask Mr. Davis and Ms. Cantu to offer their comments, and then we will open it up for questions from the Commission members.

Jordan Davis (Deputy Public Defender, Office of the Washoe County Public Defender):

I am a Deputy Public Defender in Washoe County. I am joined by Katelyn Cantu, who is also a Deputy Public Defender. I think it is important to start out with the mission of the public defender's office, and the mission of the Washoe County Public Defender's Office is to protect and defend the rights of indigent people in Washoe County by providing them with access to justice through professional legal representation (Agenda Item VII C). I also think it's important not only to concentrate on the legal case itself, but to also take a look at a holistic approach when you are dealing with a client. What I mean by

that is your clients are not only facing their criminal case, but they also have other issues that they are facing. A lot of the clients that we represent face substance abuse issues, mental health issues, housing issues, job issues, poverty issues, immigration consequence issues, transportation issues, and so I think as a defense attorney, it is not only important to help them resolve their criminal case favorably, but it is also to look at those things that have caused them to come into the criminal justice system and help to resolve those issues so that the recidivism rate goes down. I think that that's something that our office is attempting to do and will do more of in the future.

Our office consists of 61 different people. We have 36 attorneys. It's broken down into different teams. We have our category A team, which deals with our most serious felonies. We have our felony team, our misdemeanor team, juvenile team, family law team, mental health and appellate team. We also have support staff, a mitigation specialist and investigators. We do have a number of social work interns that also help with some of those issues that I've addressed.

Katelyn Cantu (Deputy Public Defender, Office of the Washoe County Public Defender):

Our office is divided into teams to correspond to our various areas of practice (Agenda Item VII C). We have three main areas of practice: criminal, civil and appellate. Within criminal, we represent defendants in four different justice courts, the Second Judicial District Court and at the Nevada Department of Corrections in their parole revocation or probation revocation hearings. Within our civil area of practice, there are also three sub-areas of practice, which include our family practice. We represent parents whose children have been removed by the government, by either an agency or Child Protective Services (CPS). We also provide representation to individuals who have been committed to a psychiatric hospital, such as West Hills, or to a mental health facility, such as the Northern Nevada Adult Mental Health Services (NNAMHS). Finally, our family team or our civil team also provides representation to parents in family drug court. They are eligible for participation in family drug court if they are part of a child welfare proceeding, meaning their child has been removed by CPS and is currently in the legal and physical custody of CPS.

Last year, our office received approximately 9,500 cases. We closed all but 382 of those. The majority of those cases fall into the felony, misdemeanor or hospitalization categories. Briefly to outline the process, the process for misdemeanors differs from that for gross misdemeanors and felonies. I will highlight the area of misdemeanor practice that I think is unique to Washoe County. Let's pretend I am a criminal defendant. I have been arrested; I am transported to Washoe County Jail; I will go through a booking process. During that booking process, I may apply for the appointment of a public defender. That is based on my financial position. I will also be asked questions by pretrial services. My answers to those questions will correspond to a score on the Nevada Pretrial Risk Assessment, which the judge will look at to determine whether or

not I am a good candidate for a release on my own recognizance, or if not, if an OR is going to be denied, the amount of bail. After going through the booking process, I will appear before a judge via videoconference using technology similar to what we are using today. At that first appearance, I will be told whether or not a public defender has been appointed to represent me and whether or not I will be OR'd or what my bail is. In Washoe County, we have an attorney that is present at the jail every single morning to oversee the first appearances, as well as the arraignment. Let me back up. After my first appearance, I will return, if I'm not released, to receive my criminal complaint, which, when it is filed, is typically within 72 hours of arrest. At that time, again, a public defender is present to go over the complaint. Once I would be arraigned, I will be set for what is called a mandatory pretrial conference, which is what we call a meeting with an attorney. If I am in custody, that will be set for the following week. If I'm out of custody, it will be set for approximately 3 weeks later. Let me just stop and talk about this 72 initial appearance arraignment process. Because we have an attorney that is present there every morning, we have the opportunity to argue for our clients to either have them released on their own recognizance or to have their bail reduced. We also have the opportunity to request a competency evaluation if, in discussing with our client, we believe that there may be some mental health issues that may prevent the adjudicative process from proceeding. I think it's important that we're there for that reason. We can also ensure that clients that are charged with category A felonies, that their charges are not being read to the entire room. Sometimes we will have 50 inmates that are in that hearing every morning. Going back to the pretrial conference, they will be set for a pretrial conference. At that conference, they can decide whether or not they will meet with an attorney who will go over the facts of their case, the charges, any possible defenses, convey any offers from the state and help them evaluate their options. At that time, they can decide whether to accept the plea offer, continue their case for another pretrial conference if there is missing discovery or investigation that needs to be completed, or they can set it for trial. Four weeks would be the earliest we typically set it for trial. Then, if they either accept a plea offer or they are found guilty at a trial, they are sentenced that day. They will be ordered to comply with certain sentencing requirements, and if they fail to do that, they will be brought back in for what we call an order to show cause hearing.

Mr. Davis:

Specifically, with respect to gross misdemeanors and felonies, it's a fairly similar process, so I'm going to concentrate on one thing in particular that is unique with Washoe County. That is what is called your mandatory status conference. After the complaint and after your arraignment, the case is set out for 1 week. At that mandatory status conference, that is the first time that I get to meet with my client, and I go through their charges, penalties, options, whether or not the state has made an offer on the case, what their discovery shows. They have a few different options at that point. They can either elect to continue their mandatory status conference out so that they can get their discovery reviewed. We can investigate the case. They can accept the offer that

the state has provided. They can reject that offer and counter with a different offer. Or, they can say, "You know what, I want to fight this case," and we're going to set this for what's called a preliminary hearing. I think that the district attorneys' offices and I think that the Clark County Public Defender's Office did a good job explaining that preliminary hearing, so I'm not going to go into great detail with that, but that's one avenue. I think it's important to note that if the case is bound over and they go up to district court, then they have the right to a speedy trial within 60 days. If they are convicted, then sentencing is set out and the court will look at what is called the pre-sentence investigation report, and that gives the court kind of an idea about who this defendant is. At sentencing, the court looks at that, they listen to the arguments of defense counsel, what the defendant has to say, the victim, and what the prosecutor has to say. Then, they will make a decision. It is important to note that the court is not bound by the agreement that we've reached with the state. What I mean by that is that the court is completely in charge of sentencing, so it's important that your client understand that. There are certain parameters that the judge will have to follow, but that sentence is entirely up to the court. I think that, just to highlight the unique features that we tried to highlight here, the 72 process that's unique to Washoe County, that mandatory status conference, that's unique, and then the family court team that we have, including hospitalizations that we do here at Washoe County. We're happy to answer any questions that the Commission might have. We do have our emails and our phone numbers, and if you have any further questions, we'd be happy to answer those at this time.

Chair Hardesty:

Thank you very much. Are there any questions by Commission members for Ms. Clark or the presenters in Carson City?

Chair Yeager:

I just had a quick question. What did the MSC stand for again?

Mr. Davis:

It stands for the mandatory status conference.

Chair Yeager:

Can you give any kind of background on how long that's been in effect in Washoe County? Because I know that's pretty distinctive. I had a chance to come up here and attend a couple of those, and I thought it was something unique. I just wondered if you had any insight on sort of the history or how that came about, and whether you think it's something that actually does help move the cases along more efficiently.

Mr. Davis:

I can't speak to when it came into effect. I can tell you that in my time practicing at the Public Defender's Office for the past 2 1/2 years, it has been in effect. I think it's an important part of the process. It allows the client to meet with you a week after they are arraigned, so you're able to go through everything with them. I would say that the drawback at that point is that they don't have all their discovery, so those conferences, you tend to continue them so that they have an opportunity to look at the discovery, and then we can further investigate the case. It's almost like a first meeting that you have with the client, and at that point, they are, I guess, unsure if they are going to go before a judge, but it's really just a one-on-one with the client to go through everything.

Mr. Jackson:

First of all, on the mandatory status conferences, we've been using those in Douglas County for well over two decades. We find that they are extremely efficient. I put a requirement on my prosecutors in the majority of the cases, and you can't ever hit anything 100 percent, but in the high 90th percentile, we try to extend at least a plea offer to the defense in a written form so they have a better understanding when they first meet with their client, because those are the typical types of questions that a defendant may ask. The one question I have would be to anyone who had just testified, and it's somewhat specific, but it's within the criminal procedure, and we talked about the bail, and also Ms. Cantu, I believe, was testifying regarding the order to show cause. Under NRS Chapter 178 where we deal with bail, there is a specific provision under NRS 178.508 entitled "The Duties of a Court When a Defendant Fails to Appear." Subsection 1 reads, "If the defendant fails to appear when the defendant's presence in court is lawfully required for the commission of a misdemeanor and the failure to appear is not excused or is lawfully required for the commission of a gross misdemeanor or felony, the court shall (a) enter upon its minutes that the defendant failed to appear, and (b) not later than 14 judicial days after the date on which the defendant failed to appear order the issuance of a warrant for the arrest of the defendant." It uses the language "shall." Do you know if that is being used in Washoe County, as well as down in Clark County, when a defendant fails to appear and the 14 days goes by, or is a warrant being issued?

Mr. Davis:

Generally, if a client fails to show up for a mandatory status conference, a preliminary hearing, any type of hearing at the justice court level, the deputy district attorney generally puts in an application for a warrant based on their failure to appear. It is my understanding that those get signed fairly quickly, and that's really the general practice in Washoe County.

Chair Hardesty:

Ms. Clark, are you able to respond on behalf of Clark County?

Ms. Clark:

Yes. Similarly, down in Clark County, basically as soon as an individual fails to appear for a scheduled court appearance, the warrant issues almost immediately, usually just upon oral request from the State of Nevada, so it happens much quicker than the 14-day statute would allow for.

Chair Hardesty:

Thank you. Seeing no additional questions, thank you to all of you for presenting today. Mr. McCormick, we will turn to you and ask you to summarize your comments and presentation.

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

First, just a moment of personal privilege. I just want to put my thanks to Ben Graham on the record for making sure I wasn't making things up in this presentation. Much of my presentation obviously has been hit upon previously by the other presenters, so I will kind of skim through and only hit on the court-specific items. I would just note here in dealing with jurisdiction that assignment of cases between the Court of Appeals and the Supreme Court are governed by Nevada Rule of Appellate Procedure 17, so if anyone's really interested in finding out what factors, they are more than welcome of course to read that. Also, just a brief comment regarding municipal court civil jurisdiction: as was indicated in the first presentation, it's a very limited civil jurisdiction and generally only deals with utility collections, barking dogs and administrative appeals from any city administrative decisions. I just wanted to clarify that.

On offense classifications, the thing here that I would focus on primarily is the right to counsel and when that comes into play and when an individual is facing loss of liberty, be it for a misdemeanor, gross misdemeanor or felony, obviously that right to counsel attaches (Agenda Item VII D). That's based on some existing United States Supreme Court case law. I would also note, if anyone thought the penalty for gross misdemeanors being up to 364 days in jail was a little odd, that was actually done through Senate Bill (S.B.) 169 of the 2013 Session primarily because federal immigration consequences trigger on a 1-year sentence, not a 364-day sentence, so that is just kind of a note on the penalty for gross misdemeanors. Arrests: I would note, as this has kind of been discussed already, that the 48-hour hearing that has been referenced, that determination of whether there was probable cause for the warrantless arrest, can occur in camera, so that doesn't have to be an open court hearing. The

judge can review that in chambers. Again, we have the 72-hour hearing, and just a note here that a lot of times we will say "initial appearance" or "arraignment," and those are basically the same thing. A lot of times it gets called an arraignment if the defendant is out of custody, or an initial appearance if that defendant is still in custody, but it's the same hearing. Just kind of a note on the jargon there, for lack of a better term. Also, the right to counsel attaches at this initial appearance pursuant to Rothgery v. Gillespie County, which is a 2008 United States Supreme Court decision. Again, that's something the court is focused on, making sure that a person has an opportunity to secure counsel, or if it's an indigent person, that counsel is appointed for them. I also note here that an arrest can obviously be made by a warrant or upon a complaint, and then the defendant can be summoned to appear in court rather than arrested. It depends on whether or not the defendant is in custody or out of custody at the time.

Again, briefly, hitting on the grand juries, I would note here that a grand jury is impaneled by the district court and for the county in which obviously the indictment is being considered. The jury is impaneled much in the same way that a regular criminal jury would be impaneled, and it's governed under Chapter 6 of the Nevada Revised Statutes. Also, to just speak a little bit to the grand jury process, the preliminary hearing versus the grand jury process, there was some legislative action a couple sessions ago that required the district attorney to tell the grand jury if they were pursuing the grand jury indictment after no probable cause had been found at a preliminary hearing. That is worth noting as well.

Arraignment: I think that's been fairly well covered, so I will just kind of power through this slide. Self-representation, again, this is a concern for the courts. Being that the right to counsel applies to all defendants faced with a loss of liberty, the defendant can waive his or her right to counsel, however a court must conduct what we call a Faretta Canvas. That's based on a case, Faretta v. California, to make sure the defendant is knowingly and voluntarily and intelligently waiving his or her right to counsel. That is just kind of a court-specific thing, because the court is in charge of making sure the individual is knowingly waiving that right.

Preliminary hearings: again, this has been hit on several times. One thing I would like to point out is that the same rules of evidence apply as in a preliminary hearing as apply in a trial. This means the defendant has the right to cross-examine witnesses against him or her. This is particularly important for us here in Nevada because of a 2009 Nevada Supreme Court decision that allows preliminary hearing testimony to be admitted in trial so long as the defendant had an adequate opportunity to cross-examine the witnesses against them. Also, just kind of a news note, preliminary hearings and death penalty cases must be recorded by a court reporter, but all other preliminary hearings can be recorded by electronic means. I think a preliminary hearing for a death penalty case is the only hearing that has to be recorded by a live court reporter. This was based on S.B. 34 of the 2009 Session. There was a lot of back and forth there. So, that's just kind of an anomaly that's worth pointing out in terms of criminal procedure.

Misdemeanor trials: this has been hit on, that the judge is the finder of fact (Agenda Item VII D). There's not a jury, and the reason for that is there is no jury trial when the penalties are considered de minimis, or not major, and that's actually based on a Nevada case that went to the United States Supreme Court called Blanton v. North Las Vegas, so just yet another sort of random fact there. We talked quite a bit today about plea bargains versus trial dispositions, and in Fiscal Year 2017, 1 percent of non-traffic misdemeanors were disposed through a bench trial. So, that other 99 percent could include some other non-trial dispositions, if the case was dismissed or something else, but you can see here that the vast majority of cases are disposed through plea-bargain, and then those other few miscellaneous things, and 0.2 percent of traffic misdemeanors went to bench trial. The vast majority of traffic misdemeanors are resolved primarily by either bail forfeiture or guilty pleas. Also, again, kind of on the same thing, felony trials in Fiscal Year 2017, 1.3 percent of felonies were disposed by a jury trial and 0.3 percent of gross misdemeanors were disposed through a jury trial. I think this also partially indicates that gross misdemeanors sometimes are kind of a tool for a plea. That would be kind of a conclusion to draw from this. Also, I would note that a defendant may waive his or her right to a jury trial if both the court and the prosecutor consent to that waiver of jury trial, so then it would be a bench trial in front of the judge. That is established in statute and is constitutionally permissible according to Singer v. United States.

Juries in Nevada: I would focus here on jury challenges and peremptory challenges. In Nevada, there are eight peremptory challenges in a life or death case and four peremptory challenges in all other felony or gross misdemeanor criminal cases. That compares somewhat on the low end across the western United States. California has 20 in death/life, 10 in a regular proceeding. Utah has 1- in death/life, 4 regular. I have those numbers available if anyone is interested there in how we stack up in terms of peremptory challenges in jury selection with other states. I would also note here that there are no uniform jury instructions in Nevada, but as a plug for the Supreme Court's Criminal Procedure Commission, we're working on it.

Sentencing: I think this has been covered quite a bit. I would note here what has to be in a court's judgment of conviction. So, obviously a recitation of the plea, the verdict finding, date of the sentence, sentencing terms, amount of fines, fees and restitution, the statute, obviously, under which the defendant is sentenced—that can have something to do with parole eligibility—credit for time served prior to conviction, which I think we've talked about at previous Sentencing Commission meetings, and the judge has to sign it. Again, we mention here that the PSI is conducted to inform sentencing decisions.

The death penalty: this is some of the unique aspects of it (Agenda Item VII D). The district attorney must file a notice of intent to seek the death penalty within 30 days of filing the indictment or information. The penalty hearing for death penalty cases is in front of a jury. Obviously, we consider aggravators and mitigators in making that sentencing decision. It has an automatic appeal, and just according to the 2014

performance audit of the death penalty in Nevada conducted by the legislative auditor, the average death penalty case ends up costing about $500,000 more over its life in the State of Nevada. I just kind of thought that was interesting and figured I'd share my interest with everyone.

Enhancements: this hasn't really been talked about, but this is an element of criminal procedure that courts are concerned with. There are two kinds of enhancements in Nevada. There is sort of an enhancement if you do something when you commit the crime. For example, if you commit a felony and you utilize the assistance of a child, that can be an additional 1 to 20 added onto your sentence. You can see there a deadly weapon. That's probably the enhancement most people are most familiar with. Commission of a crime against an older or vulnerable person, felony level obviously is additional prison sentence, and if you commit a felony to promote the activities of your criminal gang, that, again, can be an enhancement. We also have other things that impact criminal procedure and enhanceable offenses that require the court to notify people of their rights and some of the unique concerns about this. By way of example, battery constituting domestic violence, first and second offenses are misdemeanors, a third offense within 7 years is a category C felony, and if it's committed by strangulation, it's a category C felony to start. Same with DUI. There's that 7-year time limit, so misdemeanor, misdemeanor, third DUI within 7 years is a category B. Then, we have a number of other enhanceable offenses. I think we have a list, a couple pages, but the one I picked here as an example is the unlawful operation of a recording device in a movie theater. If you go to the movies and you're recording it on your phone, your first offense is a misdemeanor, and a second or subsequent offense with no time limit is a category D felony. There's a number of offenses like that throughout statute that particularly limited jurisdiction courts are concerned with, because when they are trying someone on that first or second misdemeanor offense, they need to advise that defendant that a subsequent offense could result in an increased penalty. The one that I always referred to as my favorite enhanceable offense for multiple offenses was the sale of impure butter, but that was repealed a couple sessions ago, I think.

Appeal post-conviction: this obviously has been covered fairly robustly in the previous presentations, but like was indicated, direct appeal post-conviction relief through habeas and federal post-conviction relief, and that's usually sparked by filing for a writ of habeas as well.

Plea bargains: I think this has been covered, again, but like Mr. Davis said, the court has to accept that plea bargain and does have the discretion in sentencing. As the numbers indicate from Fiscal Year 2017, and I actually have asked our research and statistics team at the AOC to dig down a little bit more and get us some county numbers on trial dispositions versus non-trial dispositions. But like I said, plea bargains tend to resolve a vast majority of criminal cases.

Bail: like was indicated earlier, pursuant to the Nevada Constitution, Article 1, Section 7, a defendant must be admitted to bail unless charged with first-degree murder, so that's a little bit unique to Nevada (Agenda Item VII D). Obviously, a parolee or probationer who's arrested for a different offense may not be admitted to bail. There are some offense categories in Nevada that have a mandatory 12-hour hold. Those that come to mind here are driving under the influence, domestic violence, battery constituting domestic violence and violation of protection orders, the theory there being, I think, first of all, on DUI, obviously, you are not going to let someone who is still intoxicated out of jail to go drive again when they were just arrested for it. Also, to provide the victim some time to get settled. I don't know what the best term is there, but to provide them with a little extra protection after that primary aggressor is arrested. In determining bail, we have bail schedules, but there's a national movement away from the bail schedule, the bail schedule being a list of crimes and the bail that's charged with that. Also, as you heard in Washoe County, they are doing more bail hearings closer to arrest and after that pretrial risk assessment. Obviously, bail bonds, bail by surety, and pretrial risk assessment. Another plug for the Nevada Supreme Court's Commission to study Evidence-Based Pretrial Release, they just extended the pilot project as far as the Nevada Pretrial Risk Assessment and are considering expanding the scope of that to study other issues related to bail. I see a number of folks here who are intimately familiar with that commission. Like I mentioned, bail schedules are coming under scrutiny at the national level. The case that comes to mind is the Walker v. City of Calhoun, Georgia, which has actually been accepted as a federal class action at this point about a bail schedule and no leeway being given by the court and people staying in jail for a long time based upon their ability to pay.

Misdemeanor citations haven't really been hit on too much previously here, but they are issued for minor offenses, such as traffic violations, and they include a court date when the recipient is to appear. It has to be at least 5 days after the issuance of the citation, and the citation serves as a promise to appear. Citations generally include a bail amount which may be forfeited to the court to resolve the ticket. A lot of tickets are resolved that way. You check "I forfeit bail," you sign it, you write a check, mail it in and that resolves the traffic ticket. Bail is determined by the court. Bail schedules are provided by statute for some offenses. For example, if you get pulled over today and get a ticket for using your cell phone while driving, there is a statutory fine amount of $50, so that would be the bail that was found on the ticket pursuant to 484B.165, by way of example. An individual who receives that citation may generally forfeit bail or appear in court and enter a plea. Failure to appear again can result in a bench warrant for failure to appear, as well as failing to pay a traffic ticket after trial or sentencing.

Administrative assessments: Mr. Yeager has heard me drone on about administrative assessments for at least three or four presentations this interim, I'm thinking, now, so I won't belabor that, but there's a lot of information available on that and how that funding mechanism is used by the Legislature to fund the judicial branch as well as a number of executive branch functions.

Competency was hit on earlier, but an incompetent person cannot be tried or judged to punishment for a crime, so at any time during a preceding, that proceeding can be suspended to determine the competency of the defendant. The court appoints two experts who must be certified according to NRS 178.417, and these experts render a report to the court on the competency of that defendant. The court can then, based upon that report, make a determination of the competency. They can either be deemed competent, the proceedings continue, they face the charges against them, or they can be committed to a state mental health institution until such time as the court releases them or they're return to competency.

Juvenile justice: I'd just mention, as long as we're talking about criminal procedure, the juvenile system is different. The idea is that it is more rehabilitative, and so I've included the legislative declaration from the beginning of Title Five that indicates as much and that kind of differentiates juvenile justice from criminal procedure. Of course, juveniles can be tried as adults based upon the seriousness of the crime and age, etc., but just kind of a news note that it is different.

Finally, just a quick note on the AOC's role in criminal procedure, the AOC is charged with providing continuing education to judges, and this obviously includes criminal procedure, changes in criminal law, all that type of thing. Right now, we're working on putting together a webinar or some other training mechanism regarding the new DUI interlock requirements that go into effect October 1. That would be an example of that continual training as far as changes in criminal procedure or sentencing. We do provide a case management system for 30-plus courts. Again, we provide a lot of one-on-one assistance, particularly to rural judges if they have questions or needs. In this realm, we also provide governmental relations and legislative summaries, obviously after each session, try to get the word out to the courts as far as new crimes, changes in sentencing, that kind of stuff so they're prepared for when they see those charged, they know how to handle it, they know the new statute, if there are new sentencing requirements, or whatever. Reform commissions, as I plugged twice already, I'll plug them again here, we do staff the Committee to Study Evidence-Based Pretrial Release, the Commission on Statewide Rules of Criminal Procedure and the Indigent Defense Commission, which I'm proud of myself for having not mentioned until the last slide. But that also lends itself to the Right to Counsel Commission. If you have an interest in that specific right to counsel for indigent defendants, I would encourage you to look at the Right to Counsel Commission or the Indigent Defense Commission on our website. We also assist courts in reporting dispositions and other required information to the Repository, to try to give you a segue to Ms. McKay's presentation. We also do some work related to forms, such as protection orders and the like. That is my speed-through of that presentation. I would be happy to answer any questions.

Chair Hardesty:

Thank you, Mr. McCormick. Seeing no questions from Commission members, thank you for your presentation. I would like to ask Mindy McKay to come forward and make her presentation on the Criminal History Repository. For those in the audience waiting to participate in presentations, I am going to delay or postpone the presentation on pre-sentence investigation reports and the presentation on the sentencing credits until after the presentation by the Justice Reinvestment Institute, the Crime and Justice personnel.

Mindy McKay (Records Bureau Chief, Records, Communications and Compliance Division):

I'm the Records Bureau Chief with the Records, Communications and Compliance Division within the Nevada Department of Public Safety. I was asked to present today an overview of the Central Repository for Nevada Records of Criminal History, as well as our Nevada Criminal Justice Information Systems to include what type of information is contained in those systems. Also, the status on the disposition backfill and the status of the ACAJ's Subcommittee on Criminal Justice Information Sharing. This is a lot of information today. I do want to point out that my Division's mission is to provide complete, timely and accurate criminal justice information by balancing the need for public safety and individuals' rights to privacy.

Our statutory authority: the Central Repository for Nevada Records of Criminal History is housed within the Records, Communications and Compliance Division within the Nevada Department of Public Safety pursuant to those statutes (Agenda Item VIII). We collect and maintain records, reports and compilations of statistical data submitted by each agency of criminal justice; collect, maintain and arrange all information regarding records of criminal history, DNA profile of certain persons from whom a biological specimen was obtained; and we use a biometric and personal identifying information of a subject as the basis of maintaining any records regarding him or her.

Our criminal justice functions are on the next slide. The Records Bureau's primary responsibility is to provide Nevada's criminal justice community with the information necessary for them to ensure public safety. This includes responsibility for being the centralized file cabinet for fingerprint-based records of arrests and dispositions, for most Nevada criminal justice agencies, as well as other criminal justice information files, which will be discussed later in this presentation. We also have civil applicant fingerprint-based background checks for employment required by various statutes to conduct fingerprint-based background checks for employment or occupational licensing purposes for positions of trust, usually working with the elderly, disabled, children or others in potentially vulnerable positions. The volume grows every legislative session when a new group is added in statute. We also have a Nevada Offense Codes program. It provides a standardized coding methodology to share charge information between law enforcement, prosecutors, courts and the Repository. The Nevada Revised Statutes

don't provide specificity when looking at all of the enhancements, so we provide that through our Nevada Offense Codes program. We are also the centralized conduit for transmission of Nevada criminal justice information to and from the Federal Bureau of Investigation's (FBI) systems, such as the National Crime Information Center (NCIC), the Next Generation Identification (NGI), the National Data Exchange (N-DEx) and the National Instant Criminal Background Check System (NICS). With that responsibility comes the requirement for us to train and audit all Nevada user agencies.

Other services that my Bureau provides are listed there on that slide for you. Over the years, the Division has been tasked with a variety of special services, including the State Sex Offender Registry, the Brady Point of Contact Program for firearms transfers, name-based background checks for employment purposes, the Domestic Violence Protection Order Repository, the Statewide Sexual Assault Forensic Evidence Kit Tracking and Reporting Program, and the Uniform Crime Reporting Program to include federal and state crime information.

We also have an Information Security Unit. The Information Security Unit is tasked with maintaining compliance with the Federal Bureau of Investigation's mandate to audit the technical security of all agencies with direct conductivity to Department of Public Safety (DPS) systems and indirectly to FBI criminal justice information systems. The information security officers are also responsible to ensure our Department's compliance with various state information technology (IT) policies and standards.

I am now going to move to the criminal justice information system overview (Agenda Item VIII). Our state system is called the Nevada Criminal Justice Information System (NCJIS). It is the computerized information system created to serve all state, federal and local law enforcement and criminal justice agencies in Nevada that require criminal justice information. It is the conduit through which Nevada criminal justice agencies access information systems of other Nevada criminal justice agencies, the Federal Bureau of Investigations, other states and international criminal justice agencies, such as the International Criminal Police Organization (Interpol) or the Royal Canadian Mounted Police (RCMP). It is managed by the Central Repository within my Division. We also have IT services which are supported by the Enterprise IT Services in the Department of Administration, as well as outside vendors who provide proprietary system support.

The next slide depicts our systems and a graph there for you. At the pleasure of the Chairs, would you like me to explain this, or in the interest of time, I can provide that on the record later?

Chair Hardesty:

Perhaps we will delay on that one.

Ms. McKay:

It will make your eyes cross. Moving on, just keep that crazy diagram in mind as I go through this, please. Some of the information files that we provide, this slide gives you an overview of some of the Nevada files. I will also give you an overview of the FBI and National Law Enforcement Telecommunications System (Nlets) files. We are the Computerized Criminal History System which contains fingerprint-based records of arrest, prosecution and court actions. Providing that the person was booked and we received all 10 fingerprints that were legible, we should have the criminal arrest, and providing that we receive the dispositions for each charge and each arrest, we should have the court information. We are currently requesting through our outreach efforts to receive information from the prosecutors which will allow for a more complete record, and I will go over that a little bit later in depth. The next slide gives you an overview of some of the Nlets files, and Nlets is also known as the International Justice and Public Safety Network. They provide over 140-plus different files that people can access throughout the nation. This is direct access to the state through our switch. It's not going through the FBI. The FBI files are on the next slide. Those are some of the FBI files that are also provided through our system with connectivity to the FBI as in interface.

Speaking of interfaces and connections, the next slide gives you an overview of some of the agencies that we interface with and how we have connections through the various other systems throughout the state through records management systems, case management systems, the Computer-Aided Dispatch System (CADS), mobile digital terminals (MDTs), which is what is used by the officers out in the field. On average, our NCJIS processes approximately 6,000,000 transactions a month. That's 72,000,000 each calendar year, which includes traffic for all state, national and federal files. The system is available 24 hours a day, 7 days a week, 365 days a year, with the exception of any downtime for maintenance, any downtime for new system deployments or any unexpected outages. We are required by the FBI to have our systems up 98 percent of the time, which we meet every year, which is proven through an audit by the FBI once every 3 years.

I will now move to the NCJIS Modernization overview. In Fiscal Year 2012, the Division received a federal grant to commission the study to recommend the best way to replace the critical systems of NCJIS, the Computerized Criminal History System, the Offender Tracking Information System and the Domestic Violence Protection Order System, because these applications and the underlying systems that support them are at risk of failure, no longer vendor supported, overly complex by today's standards—reference that diagram—and are at an increasing risk of failure. We hired MTG Management Consultants to conduct that study, which they recommended not only replacement of the Computerized Criminal History (CCH) System as well as the Offender Tracking Information System but an entire re-architecture of NCJIS as a whole to include the Law Enforcement Message Switch and the hot files. If you refer back to that diagram, you will see what type of massive endeavor that is going to be. On the slide, it provides an

overview of what we have done over the biennia. In 2012, we paved our path forward with the study. We started down that path in the 2014-2015 Biennium. The middleware and back-end systems were upgraded and we defined the requirements for the replacement of our Computerized Criminal History and Offender Tracking Information Systems. In the 2016-2017 Biennium, we began the coding of those two systems, and we also began gathering the requirements for our Domestic Violence Protection Order System, and our current message switch was upgraded. In the 2018-2019 Biennium, our Computerized Criminal History part 1, phase I was implemented May 21 of this year. Domestic Violence Protection Order go-live is scheduled for the end of this calendar year. We are also working on issuing a request for proposal (RFP) for our new message switch, hot files and a new Computerized Criminal History vendor. In 2021, we hope to begin the implementation of the new message switch, hot files and the new CCH. We also want to start focusing in parallel on our three background check systems listed there for you (Agenda Item VIII). Along with our civil applications that are listed right above, we have to replace our accounting system to go with that. We would like a document management system to get away from paper, and we would also like a user portal. In the 2022-2023 Biennium, we hope to focus on the state warrant system replacement requests, also from our Nevada user agencies. They submit requests on things that they would like to see as far as functionality in the system. We also need disaster recovery and, of course, technology needs to be refreshed and updated every so often as new versions come out.

I will now move to the disposition backfill history. In October of 2013, the Repository was notified by the Las Vegas Municipal Court that they had over 600,000 dispositions that had never been sent. In November of 2013, staff conducted court report monitoring to find only 29 courts were reporting dispositions consistently and timely. Around the same time, a story broke in the *Reno Gazette-Journal* about a mentally ill man under the guardianship of his parents who purchased a firearm through a private party. This prompted the Chief Justice to require that all courts go through their records and send to the Central Repository all dispositions and mental health adjudications that had never been sent. We then approached the Interim Finance Committee in June of 2014 to request authority to hire 10 permanent and 10 temporary positions. Later, we added 10 more temporary positions through a grant for a total of 30 new positions devoted to disposition data entry into the state and FBI criminal history systems. The staff works 24 hours a day, 5 days a week on disposition backfill. Keep in mind that we have always had vacancies due to turn over and that this effort didn't really begin until October of 2014. We needed time to hire those people and train them. So, NRS 179A.075 requires that each agency of criminal justice shall submit the information relating to records of criminal history that it creates, issues or collects, and any information in its possession relating to the DNA profile of a person from whom a biological specimen is obtained pursuant to statutes to us, the Division. The information must be submitted to the Division through an electronic network on a medium of magnetic storage or in the manner prescribed by the Director of the Department within 60 days after the date of the disposition of the case. If an agency has submitted a record regarding the arrest of a

person who was later determined by the agency not to be the person who committed the particular crime, the agency shall immediately upon making that determination so notify the Department. I won't read the rest, but I do want to point out that the definition of an agency of criminal justice pursuant to NRS 179A.030 is any court and any governmental agency or subunit of any governmental agency which performs a function in the administration of criminal justice. I won't read all the rest of that, but then I also want to point out that statute also defines what a record of criminal history is in NRS 179A.070. To kind of piggyback on the presentations earlier before me, when the criminal procedures have been completed, or in the case of specialty courts, when deferred sentences are issued, my Bureau receives, or should receive, the dispositions from either the prosecutor's office and/or the courts to post the adjudication information to the state and federal criminal history records. The receipt of this data is critical to record completeness and accuracy for multiple purposes, to include criminal justice, licensing and employment, and firearms transaction determinations.

Our current disposition status, I want to go through this really quickly. Also, as a result of outreach and education from January through December of calendar year 2017, there have been approximately 12 courts and law enforcement agencies requesting lists of missing disposition so they can address their internal process, so that's been a huge improvement. I'm happy to report that all Nevada courts are reporting dispositions consistently. The current dispositions are entered by staff within 2 weeks of receipt. By "current," I mean the dispositions that are being adjudicated today, not the backfill dispositions. Our Criminal Records Unit staff enters on average approximately 1,600 dispositions per week, both into the state and into the FBI systems. It is manual dual-data entry. We consider our original backfill project as complete. However, we have some remaining backfill dispositions that require further research and requests for items from the submitting agencies, and we do continue to attempt to obtain that information that we need. To avoid future repeat backfill, we have implemented and will continue with outreach, education, periodic reports and daily court monitoring. In partnering for accountability, the next phase of outreach is going to include quality reviews to help improve the quality of dispositions being reported to us. This will include a review of timeliness, accuracy and completeness of dispositions. There are some numbers on that slide there for you to kind of give you an idea of where we have come since 2014. I'm very proud of my staff. They have done a wonderful job, and I'm very proud of our partnerships with all of our criminal justice agencies throughout the state. We greatly appreciate their cooperation.

Now and in the future, we have federal grants to continue aid in our efforts to improve the quality of our records. We do have electronic dispositions that we do have to backfill up to the FBI. We receive those electronic dispositions from two courts in Las Vegas, but we receive them electronically only to the state system, so now we have to then transfer them into the FBI system. We're working on that. We also found some boxes in my Sex Offender Registry of some dispositions. Don't know why they were stored there. They had been there for years. Thankfully, my staff found them, and those have been

completed. We are now working on boxes that we found that we store at the State Library and Archives. We have about 236,000 of those dispositions that were stored in the State Library and Archives that my staff is currently working on. We are looking to clean up records from historical data conversions to add detailed charge information and sentencing information. This cleanup was required to be completed prior to migrating to the modernized criminal history system. We are not finished with our modernization on our criminal history system yet. You heard me mentioned earlier that it was part one. We're not even done with part one yet, and then we have a whole other part two to do if we don't get a new CCH that does everything for us. My staff is also working on the remaining CCH part one items, and we are also working on our Domestic Violence Protection Order System go-live, so my staff have a lot on their plates. We are also working on a correlation project, which is comparing our state criminal history records to the FBI's to make sure that they are the same. We have over 1,000,000 records to compare. We will continue with our outreach and education, and we will begin focusing on prosecutors as long as we are awarded the grant funds. Of course, we have a lot of other daily tasks that staff has to do.

With that, I will move on to the overview of the new ACAJ Subcommittee on Criminal Justice Information Sharing. I just have one slide on this for you. They have conducted three meetings so far. They have had presentations from local law enforcement agencies, prosecutors and courts on their records management systems and how they use records of criminal history. They have formed 3 working groups, a Northern Nevada that met on July 10, a Southern Nevada that met on July 17 and also a Nevada Offense Codes working group, which has not met yet. The goal is to identify recommendations to improve criminal justice information sharing to recommend to the Subcommittee and then to the ACAJ later this fall.

As always, I welcome and encourage all members of the various commissions and committees to visit my Records Bureau to get a tour and more detailed overview of all of our 14 programs. You can reach out to me to schedule that. I can talk about my programs for days. We have a lot going on. Please come and visit. We are happy to give you an overview. Again, I want to thank my staff. They have done a tremendous job. I am proud to be their Bureau Chief. With that, thank you for this opportunity and I'm happy to answer any questions.

Chair Hardesty:

Thank you, Ms. McKay, and I appreciate you being here today. I wanted to pose a couple questions before I open it up to the other Commission members. Could you go back to the slide that is current disposition status? You have an entry there that shows total arrests as of July 16 at 2,176,278. Then, you have total arrests with dispositions as of July 16, 2018 at 1,295,884. That roughly 900,000 case difference, am I correct in my understanding that those are, as of yet, not entered or not accounted for?

Ms. McKay:

That is correct.

Chair Hardesty:

That 900,000 number, does that include the 200-and-some-odd-thousand that you referenced that were in the Library and Archives office, or are those in addition to the 900,000?

Ms. McKay:

That includes those 200,000-plus.

Chair Hardesty:

I want to ask this issue because, appropriately, the district attorney's office has noted their plea-bargaining efforts, many times those charges and arrests are resolved, but the question then becomes how do those arrests get communicated to the Criminal History Repository? Is it your understanding under the statute you read that the district attorneys' offices in the state are to submit information to criminal history concerning the disposition of their charges and arrests?

Ms. McKay:

That is correct. I do interpret that statute to mean such.

Chair Hardesty:

And are they doing so?

Ms. McKay:

We are starting to receive some information from the prosecutors, largely in part due to our outreach and education and partnering with them. I do anticipate to see growth in those contributions.

Chair Hardesty:

But when did that start? Was that recent?

Ms. McKay:

Correct. This year.

Chair Hardesty:

Prior to this year, those were not being sent to you by the prosecution's offices around the state?

Ms. McKay:

They were, just not consistently. A lot of times we would just get them from the courts.

Chair Hardesty:

We will get into this a little bit more when we talk about data, but it does seem like your department is expected to collect a lot of data, but you can't collect that which you don't have, and it sounds like you have pretty severe demands. I know that it's always awkward for people in the executive branch to respond to questions like this, but staffing is a big issue for you folks, and I know your staff works very hard. I've seen their work. I wonder if you could comment about the staffing needs for your department to meet these extraordinary numbers and these extraordinary responsibilities.

Ms. McKay:

Yes, staffing is always an issue for various reasons. Shift work is not desirable, the level of the positions, I feel that they're underpaid for what they do and for what interpretation analyzation decisions that they're required to make. I feel that technology would really be helpful to reduce staffing needs. I think it's going to have to be a combination of both human and technological advances.

Chair Hardesty:

To this point, both commissions have for a long time talked about the need for data to make good decisions going forward. Much of that has to come through you folks. In the perfect world, would you want either or both of these commissions to recommend to the Legislature that they prioritize the staffing needs of your department?

Ms. McKay:

That's always very much appreciated, if you're willing to do so.

Chair Hardesty:

And you believe there is a need?

Ms. McKay:

Yes, there is a large need for technological advancements. We will be asking for the NCJIS Modernization funding. We're going to use as much of our reserves as we possibly can to pay for the NCJIS Modernization efforts, but we only have so much reserves. The reserves are not just for technology. It's used for other purposes. Any support that we can get on both fronts, staffing, technology, is always very much appreciated.

Chair Hardesty:

And cooperation?

Ms. McKay:

Cooperation, yes.

Chair Hardesty:

Would it be unreasonable to request a supplement to your presentation today for you to provide a detailed list of the needs that you perceive that would help modernize Nevada's data collection and its data systems, and staffing?

Ms. McKay:

I'm happy to provide a list of needs and prioritizations for you.

Chair Hardesty:

Thank you so much. Are there any questions from Commission members?

Paola Armeni (Representative, State Bar of Nevada):

Ms. McKay, can you talk about briefly the timing and priority that your office gives to sealing requests?

Ms. McKay:

That is one of the daily tasks that I mentioned that my Criminal Records Unit works on. We don't, per se, have priorities. We work on them when we get them as quickly as we can. We do assign staff specifically to those seal requests, and also I want to point out there is a process for seal requests in the unit. It's not just one person that processes those. It has to go through a series of levels within. It starts at the line-level employee and then it goes to the middle supervisor and then it ultimately goes up to the manager

for final sealing. There is a process that is in place that also makes it delayed a little bit for processing those seal requests.

Judge Bateman:

If I could follow up really quick on the question that Justice Hardesty asked, when you said that the dispositions were being transferred to you via the district attorney's office, how does that transfer occur? What is the mechanism or the vehicle that the information comes to you?

Ms. McKay:

It's usually in paper form. They can mail them, they can fax them, we do have one agency that does do an electronic transfer through a file transfer protocol (FTP). It's paper.

Judge Bateman:

That seems like part of the problem, but my second question is, I don't know how much you know about the Shared Computer Operations for Protection and Enforcement (SCOPE) in Clark County. Do you know who is ultimately responsible for SCOPE in Clark County for updating dispositions in SCOPE? Do you know that?

Ms. McKay:

No, I do not. Maybe Chuck Callaway.

Chuck Callaway (Police Director, Las Vegas Metro):

My understanding, and I'll verify, is that SCOPE is maintained by the county, but we have on Metro a SCOPE Administrator. It used to be Carmen Tarrats, who has just recently retired. Now, we are in the process of appointing a new director to that position, and I believe that person is responsible for that.

Judge Bateman:

I have been hearing since Clark County has been updating their systems with CJIS and whatever that some folks who were previously responsible for inputting dispositions into SCOPE, which we all kind of use on a day-to-day basis, are now questioning whether they still have that responsibility, so I'll get with you, Mr. Callaway, and maybe I can narrow that down. Thanks.

Chair Hardesty:

I'm glad you brought that issue up, Judge Bateman, because obviously over the years, I think there has been some confusion about who is to report what, and that has probably led to, in some cases, the courts relying on the district attorney's office, and other cases the district attorney's office relying on the courts, and this is a good example of, without casting blame, that's not the point, the left hand not knowing what the right hand is doing, and we've got to get everybody into the same bucket here so that we can make sure that this system operates appropriately.

Chair Yeager:

Thank you, Ms. McKay, for being here. Just a quick follow up on the dispositions, I guess it's the arrests without dispositions. It seems like it's a two-part problem. One is going backwards where we do have dispositions and putting them into the system, and that seems to be a resource issue, and then going forward, we have the issue of whether the dispositions are being reported to the Central Repository or not. My question there is, does your system now have any kind of mechanism in place that would essentially alert you if it's been some period of time since you received an arrest but you don't yet have a disposition? If the answer to that is no, do you think there would be some way to put in some kind of mechanism so, in an ideal world, an alert would go out to the reporting agency to say, "Hey, it's been a while. We don't have a disposition. Can you give us an update?"

Ms. McKay:

As part of our criminal history system modernization, we would like to put that functionality in as a technology instead of a person task. However, right now, we can run reports as to what's missing. That's how we were able to give you the numbers on the slides, and we do have our court report monitoring where we do use those reports to say, "Hey, we're missing these from you."

Chris Hicks (Washoe County District Attorney):

Ms. McKay, again, I commend you guys for what you have done to build up that tremendous backfill. I'm going to refer to that same slide, the current disposition status, and I'm just curious, the third bullet point says data entry on "current" dispositions, and the next bullet point talks about the 880,000-plus that aren't in there yet. I'm trying to understand the distinction there. If you could help me with that, and if you already explained it and I missed it, I apologize, but if you could do it again, please.

Ms. McKay:

Sure. You didn't miss that. A lot of what's missing and what Justice Hardesty pointed out with regard to the 800 to 900-plus difference between those 2 numbers on that slide, really, really old cases that we never received a disposition on, current cases that are still being adjudicated and then everything in between. Perhaps records retention is a big issue, whereas we've reached out, attempted to get the disposition that's missing and the court met its records retention, so we're having a very difficult time getting our hands on that. Mostly though, it's really old or the current ones that are currently being adjudicated and not yet through the process.

Mr. Hicks:

Thank you. As prosecutors, I think any prosecutor, any law enforcement, could anecdotally speak of how we regularly look at NCJIS records and just don't see dispositions, meaning convictions. Is that explained basically by that last bullet point? Is it that that information just isn't there or just hasn't been inputted yet? If so, do you have a level of confidence that at some point we're going to have all that so we can adequately inform the courts making bail determinations or sentencing determinations?

Ms. McKay:

Yeah, either we just don't have it yet or if it's not there, it's just not there, but I am confident that my staff is doing the best that they can. It's not just my Criminal Records Unit staff. My Brady Point of Contact firearm staff, they have to do research for their own business purposes. When they do find the disposition that's missing from the record, they do share that, send it across the hall to the Criminal Records Unit so they can update the record. My Sex Offender Unit staff do the same thing. My civil name check staff do the same thing. Through outreach and education, my staff is asking all of the jurisdictions and the agencies that attend those outreach and education courses, they're asking them, "Please, before you meet retention, can you please send them to us? Send us everything you have, please. We'll take anything you've got and we'll do what we need to do with it from there." It just takes time.

Chair Hardesty:

Seeing no additional questions, Ms. McKay, thank you so much for your presentation today. I look forward to the supplemental submission, if you could, and you can now make a clean getaway, so to speak. With that, I would like to invite the representatives from the Crime and Justice Institute (CJI) to begin their presentation, really kind of the centerpiece for today's meeting. One of the points that I would like to offer in leading into this discussion is the fact that the Advisory Commission on the Administration of Justice for years has complained or expressed concerns about data to make informed decisions. The Nevada Sentencing Commission has similarly raised concerns about

data and the accuracy of data, the availability of data. I think all of us would like to be in a position to make data-driven decisions as we talk about the need for reforms or what reforms should be considered. One of the things that I am excited about was for the selection of Nevada by the Pew Charitable Trust and the Bureau of Justice Assistance is the fact that we have been afforded a unique opportunity to take advantage of the resources offered by the Crime and Justice Institute and those organizations to assist us in identifying what data we have and to point out areas where we need data improvement so that we can make these kinds of important decisions. To that end, as many in these commissions know and many in the criminal justice system know, for at least the last month, and probably more than that, representatives of the Crime and Justice Institute staff have been engaged in personal interviews with judges, justices, lawyers, public defenders, district attorneys, stakeholders in the criminal justice system. I don't know how many you've interviewed, but it's got to be more than 100 that you've solicited information from. But as well, over the last 6 weeks, in anticipation of being selected, the Crime and Justice Institute has made requests, detailed requests, for data from the Nevada Department of Corrections, Parole and Probation and a host of other places, including the courts. Some of that data has been supplied. A lot of other data is yet to come. I mention this because, for anybody who would think that today the Crime and Justice Institute is in a position to offer you concrete data-driven answers, that would be unfair, partially because our own agencies haven't responded completely, or at all, in some instances, and partly because the data that they have received, they're asking for more follow-up and information. But there is some data that they can provide us that at least is a face of where we stand in Nevada, and they will share that with us, along with other steps that they expect to take. Mr. Engel, Ms. McNamara and your colleagues, if you would introduce the folks that are with you, not only at the dais but also in the audience, so that the two commissions can see how active you are in this process, we'd appreciate it.

Maura McNamara (Policy Specialist, Community Resources for Justice):

Thank you for having us here today. It is an honor to be here to present to you on what the Justice Reinvestment Initiative (JRI) is and explain the wonderful work we will be doing in Nevada. I'm a policy specialist with the Crime and Justice Institute. Presenting with me today, I have Alison Silveira, our data and policy specialist, and Colby Dawley, our Deputy Director of Adult Policy. We also have Len Engel up here. He is our Director of Adult Policy. In the audience, we have Leah Samuel, Sam Packard, Molly Robustelli and Andrew Page. I want to start off by giving you an outline of what we are discussing today. We will discuss the JRI process in general, take a look at the national trends within the justice system, hear what leading research says about incarceration and recidivism, get a glimpse of what challenges are facing Nevada's criminal justice system, and then lastly, we will talk about the next steps for the ACAJ.

Before I get into the national picture, I wanted to make sure you all were familiar with our organization and what we do. The Crime and Justice Institute is one of the technical

assistance providers of JRI (Agenda Item XI). We work with local, state and national criminal justice organizations to use data to reduce recidivism, cut costs and promote public safety. Since 2008, CJI and our Pew partners have provided technical assistance to 16 states throughout the Justice Reinvestment Initiative. This includes both adult and juvenile justice reform policies. In addition to our work in Nevada, we are also subjecting the good state of Arkansas to hundreds of slides of data as well.

The Justice Reinvestment Initiative happens in two phases. The first phase involves a workgroup or a taskforce, such as the ACAJ. The workgroup will take a deep dive into the state's criminal justice data to identify trends and what's driving the criminal justice system. They will look at who is coming into the door, how long they're staying and how they are being released. The workgroup will also look at how the system works in practice, and then identify what is working well and where there might be gaps. The second part is a policy development. Here, the workgroup responds to the problems identified in the data and system assessment presentations and develops recommendations. Lastly, the final part of phase one is a legislative process. This is when the policy options recommended by the workgroup get drafted into a report and presented to state leadership. The second phase of JRI is focused on the implementation of the phase one reforms. This phase ensures that states are provided with the necessary assistance they need in making the changes identified in phase one.

Now that you know a little bit about the JRI process and our organization, I'm going to talk about trends of the national criminal justice system and what led to our national prison boom. The prevailing view from the 1970s to the 2000s was that prison is the best option to keep communities safe. The thought was that high rates of recidivism are inevitable, that rehabilitation doesn't work and that the only question that we should be asking is how to be tough on crime. These views were popularized by notable literature review by Robert Martinson in 1974. He examined 234 studies of rehabilitation programs done between 1945 and 1967. From evaluating these studies, he concluded that nothing works to reduce recidivism. This conclusion greatly impacted criminal justice policies at the time by limiting research on rehabilitation and rolling back many policies of reform. What resulted, as you can see from the slide, is an increased reliance on incarceration as the only option. This led to significant increases in state and federal prison populations, as well as those in local jails. By 2008, 1 in 100 adults were behind bars. If you look at the broader picture, including those individuals who are on probation and parole in addition to those in prison and jails, the number of adults under correctional control by 2008 was nearly 7,500,000.

This time period is also known as the truth in sentencing era. In response to the war on drugs, spikes in crime rates and the federal call to action, states enacted policies that increased sentences and kept offenders in prison for longer periods of time. In addition to Martinson, these policies help explain why we see such an increase during this time frame. Such growth caused leaders in the field to take a pause and ask, "Is what we're doing working?" I am now going to turn this part of the presentation over to my

colleague, Colby Dawley, to talk to you about what researchers found when they returned to studying the effects of incarceration and rehabilitation.

Colby Dawley (Deputy Director of Adult Policy, Crime and Justice Institute):

In the next couple of sections, I'm going to talk about what impact incarceration has had on crime and recidivism, as well as what works to reduce recidivism. Before we jump into the research, I wanted to note the various reasons why societies use incarceration. This slide lists the multiple objectives of incarceration (Agenda Item XI). The first three, incapacitation, deterrence and rehabilitation, are various ways that affect public safety. The last one on the slide, retribution or punishment, can't be measured the same way that the first three can, but it's what lawmakers and you all decide is an appropriate punishment. There are multiple reasons why incarceration is used. What research has found is that if your goal is to reduce recidivism, incarceration is not the best tool for recidivism reduction. What impact has incarceration had on crime? Looking first at the macro, big-picture level, there is a robust body of research that explains how incarceration impacted public safety and the crime decline in the 1990s. The bottom line is there are limitations to how incarceration can serve as a crime reduction tool. Research attributes around 10 to 20 percent of the declining crime to increased incarceration, but other factors at play for that declining crime are improved policing strategies, technology and personal security habits, demographic shifts, as well as changes in drug markets. Continuing on this line of study about whether more incarceration resulted in less crime, researchers have found that the effects of incarceration on crime have now reached a point of diminishing returns. In other words, you do not see any significant public safety gains by sending one additional person to prison.

One way to measure public safety is to look at recidivism rates. Researchers have done this and examined whether incarceration reduces recidivism more than noncustodial sanctions, which are sanctions in the community. They did this by comparing similarly situated offenders sent to prison with those who were supervised in the community and compared recidivism outcomes. What they found is incarceration is not more effective than noncustodial sanctions at reducing recidivism. In fact, for many individuals, incarceration can actually increase recidivism. This is especially true for first-time offenders, drug offenders, as well as technical probation violators. Researchers have also looked at whether longer periods of time in prison reduce recidivism more than shorter periods. They've done this by matching offenders with similar criminal backgrounds that were incarcerated for short periods of time to those who were incarcerated for longer periods of time and compared recidivism outcomes. All of these studies have basically found null effects, meaning you aren't getting any better outcomes for holding somebody longer.

So, what does work to reduce recidivism? Going back to the Martinson study that Ms. McNamara mentioned earlier, researchers have revisited a theory around the "nothing

works." The problem with Martinson's study was that he was trying to find one program, essentially a magic bullet, that worked for all individuals in all circumstances. A year after Martinson's study, a researcher by the name of Ted Palmer examined 82 studies and determined that, in fact, 48 percent of the programs had reduced recidivism. Multiple studies followed Palmer's study that provided additional support for rehabilitation and empirically demonstrated that the "nothing works" movement was not grounded in theoretical or statistical support. This led to the research on what works to reduce recidivism, which I will talk about in the next few slides. The evidence-based practices that I'm going to walk through here in the remaining section are the Risk, Needs, Responsivity (RNR) Model, frontloading resources, incorporating treatment into supervision, using swift, stern and proportional sanctions, reinforcing positive behavior and monitoring quality, fidelity and outcomes. The Risk, Needs, Responsivity Model applies research on what works to rehabilitate individuals in the criminal justice system, which is based on years of well-supported research. The risk principle tells us who to target, the needs principle tells us what to target, and the responsivity principle tells us how to target those needs. Starting with the risk principle, what the research has found is that high-risk individuals are more likely to recidivate and require the most intensive intervention, both supervision and treatment. On the other hand, low-risk offenders are not as likely to recidivate, and in fact, intervention may not be necessary for that population. Too much intervention can actually increase their likelihood of recidivism. Why is this important? By adhering to the risk principle, agencies can direct moderate to high-risk individuals to necessary programs and services and ensure that low-risk individuals are not directed to programs and interventions that can do them harm. This also has the extra added benefit of making sure that agencies are using limited resources wisely or effectively. The next principle in the RNR Model is the needs principle, which tells us what to target. There are two types of risk factors that predict recidivism. The first one is static risk factors, which are factors that can't be changed, such as somebody's criminal history or age. The second one is dynamic risk factors, which can be targeted for change, and I'll talk a little bit about those in the next couple of slides. Criminogenic needs are risk factors which predict recidivism and are dynamic, meaning, when addressed, they could actually decrease an individual's risk to reoffend. There are a number of different criminal risk factors, but research repeatedly indicates that these are most strongly tied to the likelihood of reoffending. These are known as the "big four" and include antisocial attitudes, which are thinking, values, beliefs and rationalizations that are supportive of the crime, antisocial piers, associating with other criminal thinkers, antisocial personality, being impulsive, low self-control, disregard for others, a struggle with pro-social interactions and history of antisocial behavior, which is someone's criminal history. Other important criminal risk factors are things such as substance abuse, employment/education, poor family relationships and lack of prosocial leisure activities.

To further illustrate this point, since I know there are a lot of jargon words in the previous slides, we like to use the heart attack study. On the left-hand side are the risk factors that increase somebody's chances of having a heart attack. You'll see increased

LDL/HCL levels—that's cholesterol levels—all the way down to failure to drink any alcohol, which always surprises people, and that is for the red wine drinkers, not necessarily the whiskey drinkers. The first two of these risk factors, the increased LDL/HCL and smoking, predicted two-thirds of all heart attacks. So, why is this important? If you run into your doctor's office and you have increased LDL/HCL levels, you're a smoker and you weren't eating any fruits and vegetables, hopefully, if you had a good doctor, they wouldn't just say, "Alright, increase your broccoli intake and you're going to bring down your risk of having a heart attack." No, they would target the factors that were increasing your risk of having a heart attack the most. It's the same thing with criminogenic needs. When a risk and needs assessment is completed and it comes back as the criminogenic needs that are increasing somebody's likelihood of reoffending, in order to have the biggest effect on bringing down someone's risk level, you want to first target the factors that are the highest predictors of recidivism. That doesn't mean the other things on the list are not important, because they absolutely are important, so combined with the top four and then some of the other criminogenic needs, you can have the greatest impact on reducing someone's risk level.

The final principle of the RNR model is the responsivity principle, which tells us how to target barriers to successful programs. What research tells us is that barriers that prevent people from benefiting from programs and interventions need to be addressed if they are going to be successful. If these barriers are not addressed, the individual is less likely to be successful. Barriers that should be removed prior to treatment to increase the likelihood of success, I think, such as acute mental illness, childcare and transportation. Targeting these factors will increase an offender's likelihood of success in programming and treatment interventions. Going back quickly to mental illness, in a lot of our system assessment interviews, we've heard a lot about the challenges with mental health care and individuals in the threshold population that have their mental health issue or co-occurring disorder. Many states around the country are also facing this issue, and as you know, a lot of states have correctional populations with mental health issues. But what current research tells us is that mental health issues are not a criminogenic need, meaning they are not significantly associated with antisocial behavior. But mental illness can impact programming and intervention, and it is something that needs to be stabilized in order for a person to benefit from that program, which makes it what is known as a responsivity factor.

Research has also shown that resources should be frontloaded during the first days, weeks and months an offender is on supervision, when they are most likely to reoffend. Individuals should receive a risk and needs assessment to determine their risk level and criminogenic needs, and this information should be used to identify the level of supervision that is warranted and the programs to which they should be referred to address their criminogenic needs. Proactively identifying the risk level and treatment needs and allocating resources accordingly can improve outcomes and deter future negative behavior. Along those same lines, research has also demonstrated that recidivism is lowered, as I previously mentioned, when treatment that targets

criminogenic needs is incorporated into supervision. Once an individual's criminogenic needs are identified, a treatment plan should be developed to address those needs. Two treatment programs that have been particularly effective at reducing recidivism are cognitive behavioral treatment and community-based drug treatment. Cognitive behavioral treatment (CBT) targets the big four criminogenic needs that I mentioned earlier. In addition to programming, staff should also receive training on what's known as core correctional practices. These skills have been used to effectively change behavior and reduce recidivism. What they do is they actually provide opportunities to minimize attitudes and behaviors that are undesirable and maximize attitudes and beliefs that are desirable and prosocial. The best research on effective behavior change has also found that using swift, certain and proportional sanctions has a stronger deterrent effect than delayed, random and severe sanctions. In order for sanctions to be effective, consequences for violations must be communicated in advance, responses to violations must be swift so the individual can link the sanction to the behavior, all violations should receive a response rather than waiting for violations to pile up before they are addressed, and then the response should be proportionate to the behavior. Along the same lines, research has also found that in order to effectively change behavior, positive behavior must be reinforced, and in fact, rewards and incentives for prosocial behavior should actually be utilized 4 to 5 times more often than sanctions.

Finally, quality matters. All evidence-based programs must be implemented with fidelity according to the program design to achieve the desired result. What this means is that if you're using a risk and needs assessment tool, it should be validated to make sure that you're actually predicting recidivism on your population. Staff should be trained and receive coaching and supervision on the use of evidence-based practices. Standards for treatment and programs should be developed and monitored for compliance and fidelity to the program model, and data should be collected as well as performance benchmarks set to make sure that you're meeting the outcomes that you desire. That is all for the research section. I know there was a lot in there, so I will turn it over now to Ms. McNamara to talk about the turning point for the criminal justice system.

Ms. McNamara:

So, as researchers began to understand what works to reduce recidivism, the corrections field began to shift from the earlier question of how to be tough on crime to how do we improve public safety by reducing recidivism and how do we use what limited resources we have most effectively. Statewide policies and practices designed to reduce recidivism and shift resources began to emerge across the nation. What we saw from this shift was a national decline in incarceration. You can see the contrast from the slides we presented earlier about national trends, where in 2008, 1 in 100 adults were behind bars (Agenda Item XI). Now, by 2015, 1 in 112 were. The same dip occurred for those under correctional control, decreasing by over 500,000 by 2015. While less people were being sent to prison across the nation, we did not see an increase in property or violent crime rates. States began to see that you could achieve both, a drop

in the crime rate and a decrease in imprisonment rates, leading to the conclusion that states do not need high imprisonment rates to keep communities safe. Looking at states from 2008 to 2016, 35 states have achieved both, this reduced crime rate and reduced imprisonment rate. As this research became more robust, public opinion also evolved. Today, we see poll after poll showing huge levels of support for criminal justice reform that is focused on reducing recidivism rather than harsher punishment. This is a poll from a bipartisan collaboration done by two highly respected national pollsters, Public Opinion Strategies (POS) and the Mellman group. Despite these shifts, however, the damage of corrections preoccupying state budgets had already been done. Those facing behavioral health needs were left without the necessary support and treatment services. What we see when prison populations rise along with corrections budgets increasing is a reduction in resources directed to treatment and supervision. The result is that people with treatment needs are sent to prison instead of being served in the community. You find a disproportionate amount of those suffering from serious mental illness in our nation's prisons and jails. One in four individuals in jails has a serious mental illness, and one in seven in state or federal prison also suffers from one. This is a huge contrast compared to the 1 in 19 ratio of the general population. While we look at how many individuals with mental illnesses are incarcerated, it is important to remember what we discussed earlier in the presentation, that mental illness does not cause criminality. Likewise, inmates have much higher rates of drug abuse and dependency than in the general population, and 63 percent of sentenced jail inmates and 58 percent of prison inmates meet the criteria for drug dependency or abuse, as compared to just 5 percent of the US general population. You will notice that the rates for females are much higher than those for males. This high prevalence is also seen among those who suffer from co-occurring conditions. A co-occurring condition is when someone with a mental illness also suffers from a substance abuse disorder. Data shows that 74 percent of inmates suffering from a substance abuse disorder in our nation's prisons also suffer from a mental illness, as compared to just 56 percent who suffer from substance abuse disorders alone.

It is important for us to talk about these individuals with behavioral health needs because research tells us that they are significantly at risk within the criminal justice system. Compared to those without such disorders, individuals with such disorders stay incarcerated longer on the same charges and sentences, are less likely to make bail, are more likely to serve time in segregation during incarceration, are more likely to experience victimization or exploitation while they are incarcerated and are more likely to incur disciplinary problems. This set of problems has been described as entrenchment by researchers. These individuals, instead of just getting involved in getting out of the criminal justice system, tend to get stuck. The consequence of this entrenchment is the cost. This population requires an enormous amount of resources to house, supervise and provide required medical attention. These challenges are not unique, and many states have similarly faced them.

I'm now going to show several examples of how states have used a data-driven process to identify problems facing their own criminal justice systems within their own state borders and develop policy solutions to address those findings. South Dakota faced a serious problem of having their jails filled with individuals suffering from mental illnesses. Data showed that people with mental illness were much more likely to be jailed pretrial and to stay in jail longer. South Dakota responded by requiring mental health screenings at jails and requiring assessments following any positive mental health screening. Utah grappled with the problem of having limited treatment resources that were concentrated in only a few areas. The state responded by funding additional licensed clinicians to provide services, which expanded community outreach. Both Louisiana and Mississippi struggled with the issue of not providing meaningful alternatives to those incarcerated. Data showed that both states were sending a high number of nonviolent offenders to prison. Both states responded by expanding eligibility for existing programs that were serving as alternatives to incarceration, as well as limiting the amount of time period a person could be incarcerated for a technical violation. Data collected from Oklahoma and Maryland showed that both states sent nonviolent offenders to prison for extremely lengthy time periods. Both states responded by modifying their nonviolent sentences, removing mandatory minimums and narrowing the scope of conduct for certain offense types. Lastly, a problem faced by many states across the nation is highlighted by both Louisiana and Utah. In both states, a drain of community supervision resources was occurring by focusing on the wrong type of offenders. Both Louisiana and Utah made changes to allow supervision resources to be focused on high-risk offenders only. Now, I've spoken to you about the national trends and problems facing other states. Now, I turn the presentation over to my colleague, Alison Silveira, to talk to you about Nevada-specific challenges.

Alison Silveira (Data and Policy Specialist, Community Resources for Justice):

As Ms. McNamara mentioned, the national dialogue surrounding public safety and recidivism reduction has changed a great deal over the last 40 years, with a notable shift since 2008. This begs the question, how does Nevada compare? Over the next few slides, we'll get an early glimpse of the challenges faced by the State of Nevada. While today we will just be looking at high-level publicly available data reported by the state to the federal government, you can consider this a preview of some of the topics we will be drilling down into much more closely over the months and presentations to come. Much like what we saw transpiring nationally, Nevada's prison population has climbed since 1978 when the federal government began reporting. At that time, Nevada had a prison population of 1,350. By 2016, it had grown to nearly 14,000. In the last 10 years alone, this population has increased over 7 percent. One thing we're mindful of is the significant overall population growth the State of Nevada has experienced over this period as well, and though that is part of the story, it's not the entire story. While the state population has grown roughly 250 percent over this period, the state's prison population has grown more than 900 percent. One way to think about the role of overall population growth relative to the prison population is to compare rates instead of raw

numbers. Here in the slide, the lighter blue line represents Nevada's imprisonment rate per 100,000 residents. You can see that for much of this period, Nevada's imprisonment rate was well above the national rate, yet they begin to narrow during the late 1990s and early 2000s, years of significant population growth. Unlike the national trend, however, in 2014, Nevada's imprisonment rate ticked back up and has been climbing once again.

As overall imprisonment rates have started to taper off nationally, one trend we've seen in a number of states we work in is a growing rate of imprisonment for women. Here, in this slide, we see that while Nevada's female imprisonment rate has fluctuated greatly over the last 40 years, it's been consistently higher than states around the country. The most recent statistics show that Nevada's rate is 43 percent higher than the state average and still growing quickly. Though women make up a relatively small share of the overall prison population, the growth in female imprisonment rates prompts a deeper look at the underlying trends.

All of this growth comes at a substantial fiscal cost. The NDOC's budget has grown 20 percent since 2012 and is up to $347,000,000 for the fiscal year that just began. That doesn't include the budget for the Division of Parole and Probation housed under DPS, which has grown to over $60,000,000 a year in the most recent biennium. Given the high cost of prison beds relative to alternatives to incarceration, it's worth noting that Nevada relies more heavily on incarceration than community supervision, especially when compared to states around the country. Nationally, about 3 in 10 offenders are held in prison or jail, with the other 7 in 10 offenders serving out their sentences in the community. In Nevada, however, over half, or more than 5 in 10, state offenders are held in jail or prison rather than in the community.

In the last slide, you'll notice I mentioned jail populations as part of the correctional population. As part of our invitation to provide technical assistance to the state, we were also tasked with reviewing the growing jail populations in Clark County due to its unique size and impact on the state's prison population. Here, the gray bars illustrate the average daily population at the Clark County Detention Center from 2006 to 2016, while the overlapping blue lines represent bookings and releases over this period. As you can see, over this period the average daily population at the Clark County Detention Center has grown 9 percent, despite bookings that have declined 15 percent. If the average daily population is going up but fewer folks are coming in the door, this means that those who do are staying longer. Based on recent reports, in June, the facility had already exceeded an average daily population of 4,400.

Now, we know these are complex systems with a number of phenomena at play, and one element that's surely part of this story is the changing crime rate, which has experienced a number of peaks and valleys throughout this period. Nevada's crime rates have largely followed the same shape as national trends over the last 60 years. Here, the violent crime rate peaked in 1994 and has declined 32 percent since then,

while the property crime rate peaked in 1979 and has declined 68 percent since then. We were happy to see preliminary data for 2017 that showed recent drops in violent crime in the Las Vegas area, and we're hopeful that that is indicative of larger trends across the state. In addition to overall crime trends, we wanted to look at other behavioral health trends that may indirectly impact the criminal justice system, as we heard earlier. Nevada, unfortunately, has not been spared the numerous public health crises seen across the country. A report issued last fall by the state's Division of Public and Behavioral Health found that opioid-related hospitalizations had nearly doubled between 2010 and 2016, and that there was a growing presence of heroin in emergency room admissions in particular. Fortunately, the state also found in preliminary data that opioid-related deaths had decreased during this period. Lastly, research has found that Nevadans struggle with accessing treatment for mental illness. National data from the Federal Department of Health and Human Services tells us that Nevada adults with mental illnesses are less likely than their national counterparts to access services. Only one-third of Nevadans living with a mental illness reported accessing mental health services in the prior year, according to the study, compared to a rate of 42 percent nationally. Now, I will turn it back to Ms. McNamara, who will talk us through what's to come.

Ms. McNamara:

You all are very familiar with these challenges and have been working on them for some time. We are now going to talk about the next steps that the ACAJ will be taking to tackle some of them. This is a data-driven effort, so I wanted to show you all the different entities we have requested data from within the state. We have received and are analyzing some data already, and are very eager and excited to present it to you over the course of the next few months. Our first data presentation will discuss trends in admissions, the standing population and specialty courts. Our second will present about lengths of stay and trends in release. Our third will focus on community supervision and on reentry practices. In addition to analyzing the state's data and identifying trends, we are conducting a system assessment to gain a deeper understanding of how the criminal justice system works in this state. We are reviewing statutes, cases, regulations and administrative policies, and most importantly, we are talking to many of you and other stakeholders about their insight into the system. This slide shows the variety of folks from different disciplines that we have spoken with. These interviews are particularly helpful, because quite often, what you read in statute or policy isn't how something is occurring in practice. We will draw on these interviews in our presentations to provide context for the data about how an offender moves through the system. Both of these phases will set the ACAJ up with the tools they need to develop policies for what is best for Nevada. First, the ACAJ will examine trends in the data to see, like I said before, who is entering the system, how long they're staying and how they are being released. Second, the ACAJ will examine how the current system is operating, looking at what is working well and what could be improved. Third, the ACAJ will reflect on the information presented and develop policy options for the state to engage in,

drawing on research and examples from other states. Lastly, the ACAJ will make final recommendations based on these potential policies for legislation in the 2019 Session. This next slide shows the calendar with the road map broken into individualized meetings. There will likely be seven meetings of the ACAJ to carry out this development. Thank you all for your time and your patience. Now, we welcome any questions you might have about the presentation.

Chair Hardesty:

Thank you very much.

Mr. Callaway:

I have one quick question based on the data that you showed. Does that take into account the almost-44,000,000 tourists a year that we receive in Clark County when we're talking about, like, for example, the crime rate per population? Does that include tourism in that as well, or no?

Ms. Silveira:

I believe that it is not included. It's based on residence statistics taken from the US Census.

Mr. Callaway:

Thank you.

Ms. Rose:

First, I just want to say thank you so much for all of your hard work so far in analyzing the data that we have, trying to get additional data, meeting with people. I'm thrilled that your organization is here helping us to improve our criminal justice system, and thank you for your presentation today. I'm really looking forward to the work ahead. Just a couple of quick questions. The first one is, and I know you are still assessing and don't have all of the data necessarily in front of you or available or you're still looking for information, but when you talked about the three different Risk, Needs, Responsivity Model, when we talk about responsivity, generally it seemed that one of the ways to really help reduce recidivism is to focus on those community resources and get those community resources to people right away. Can you maybe tell us a little bit today about Nevada's resources and what you've found so far? Do you see that we have adequate resources, where are things lacking? If you can kind of give us an overview, or maybe you're not there yet, either way.

Ms. McNamara:

Having community resources and accessing them other ways is definitely one of the principles and a best practice that research has demonstrated. We have talked to a variety of folks, individuals on the behavioral health board, treatment providers, but we haven't really assessed the needs of those individuals and the opportunities that are available in Nevada yet, but we must certainly will be discussing that in future presentations.

Ms. Rose:

Thank you, I appreciate it, and I have one other quick question. You also had a slide on here when we were talking about the Clark County jail population where bookings were declining but the average daily population was not. Do you have an assessment of why that is, if you can share that? I have my own suspicions about that, but I'd be interested to hear what your particular assessment of that is, if you have one.

Ms. Silveira:

We do not at this time, but we are looking forward to digging into that data more concretely and being able to work with the folks at the Clark County Detention Center to more deeply understand the trends that are underlying that.

Ms. Rose:

Thank you, I appreciate it.

Ms. McNamara:

We're still in the process of getting the memorandum of understanding (MOU) with the Clark County Detention Center signed, so we haven't received data yet from the Clark County Detention Center.

Mr. Callaway:

If I may answer to the jail population question, based on meetings and conversations that I've had with our Chief and our folks at the jail, there's a variety of reasons for that. One example is the pre-sentence investigation reports, the length of time it takes. It could also be folks waiting to go to Lakes Crossing for competency hearings. In some cases, there may be particular judges that assign people to complete programs while there are in custody, which would lengthen their stay, so there are a number of factors that play into that. Basically, as we all know, the jail does operate pretty much at maximum capacity, so any time someone comes in the front door, someone's got to go out the back door to create a bed-space. We have changed our policies at Metro to

where low-level misdemeanor offenses, we don't make arrests for those offenses unless they are approved through a supervisor and there is a direct need to make an arrest. For example, the problem will continue to occur unless the officer makes an arrest, and obviously those misdemeanor offenses that require arrests, such as DUI or battery, domestic violence, so I'm looking forward to the group looking further into that data, but based on the conversations I've had with the folks, that's some of the reasons why we're seeing less bookings but longer length of stay.

Chair Hardesty:

Mr. Callaway, do you know the status of the MOU so we can get going on this? This is a critical component. I know there are a couple of other agencies in the state who are still working on MOUs, and obviously the time frame within which all of this data collection has to occur is very short, so I would appreciate it if you could follow up on that, if you're not familiar with its status.

Mr. Callaway:

Absolutely. I will look into that and let you know what I find out. As we all experience sometimes with our general counsel and legal folks, they tend to travel kind of at a snail's pace at times when it comes to MOUs and that type of thing, but I'll find out and I'll let you know the status.

Chair Hardesty:

I appreciate that very much.

Jeff Segal (Bureau Chief, Attorney General's Office):

Given the fact that we want to engage in data-driven analysis and decision making, for the 16 states that you have worked with in the past, do you have data that measures the results of the reforms that have been implemented as a result of your work, in terms of whether recidivism has gone down, whether people are safer from crime in those states? What kind of data can you provide to us for the 16 states that you've worked with in the past?

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

We have a fair amount of data, mostly focused after the JRI process unfolds and during the phase two process, there's a lot of performance measure data collection and a lot of evaluation that occurs based on the effectiveness of the implementation of the policies. We are now a few years out from a couple of those states and are now able to look at the impact of the policies on crime rates and recidivism. There was recently a study conducted on South Carolina's JRI process. They are 5 years out. It showed continuing

declines in the state population, significant changes in the trajectory of what was projected to be the population due to the policies that had been implemented, and a continuing reduction in crime rates and then a reduction in recidivism. We will be glad to make that study available. It was an analysis that just came out this past year in South Carolina. Most of the other states are still in the—it's hard to make a direct link between the policy changes and changes in crime rates and recidivism until we do a recidivism study, usually 2 or 3 years out, so those are ongoing, the data collection is still occurring in most of the states, but I think in every one of the states, the adult reforms, prison populations have declined since the justice reinvestment policies have been in place in those states. Crime rates have continued to decline. There are some shifts over the past year that we are trying to get better data understanding, but for most of the states that we have done, we can show that the projected goals, which are the reduction in the growth rate of the prison population, coupled with better outcomes in the community have continued to show positive effects. We will have more of that information as these presentations come about, and if there are any particular states you are interested in, let us know. We will make the South Carolina report available.

Mr. Segal:

I would definitely be interested in seeing what the data shows in terms of results. My second question is, with regard to mental illness, there is an indication that mental illness doesn't cause criminal behavior. But when you look at the statistics that you provided in terms of jail and prison populations, it's clear that people with severe mental illnesses are overrepresented in jail and prison as compared to the general population. It's pretty dramatic. Can you talk about what you mean by mental illness doesn't cause crime? Are you saying there is no correlation, or just kind of clarify that for me?

Ms. McNamara:

The research shows that mental illness does not cause criminal behavior, but kind of what we were discussing, as prison populations rise and corrections budgets rise and resources were shifted from treatment and community outreach programs for individuals with mental health needs, those individuals were diverted from the community to prison who need treatment.

Ms. Dawley:

I'll also add that one of the slides that Ms. McNamara presented was about co-occurring disorders. A mental illness alone is not predictive of criminal behavior, but a lot of those individuals have co-occurring disorders combined with substance abuse issues and other things that are criminogenic risk factors, which increase someone's likelihood.

Judge Bateman:

I was going through your PowerPoint, and I wondered, some of the more broad statements about statistics you referenced, I wanted to make sure that as we go forward, we weren't including in those, necessarily, federal criminal justice statistics versus states across the board, because the federal system is quite different and focuses on different things, and it's actually a really small portion of the overall prison population. Is it your general practice to only refer to state statistics?

Ms. Silveira:

Yes, my apologies. I may have said national without clarifying a few times. In the statistics we were presenting comparing Nevada's situation to what we're seeing nationally, we are referring to state institutional systems across the nation. For the most part, when we're looking at averages, we're looking at an average of all offenders in state institutions, and the federal populations have been excluded there. I believe in some of the earlier slides that Ms. McNamara was presenting regarding the trajectory over time when she presented the total correctional population, I believe that the federal population was included in there, but as we're going forward discussing, rarely if ever will the federal population be part of statistics we're presenting.

Judge Bateman:

Okay. Also, you talked about what impact incarceration had on crime. I noticed the first reference to be that researchers attribute 10 to 20 percent of the post-1990s crime decline on increased incarceration and a couple other opinions about recidivism and what affects it. Could you provide any of the reports that you're relying on for that? I was surprised by that number, 10 percent. I think a lot of folks that work in the system would be surprised by that 10 percent number, and I think there are studies that are higher. I'm not quibbling with you, if I could see where you're getting it from, I think that would be helpful as we go forward, because it does kind of frame the conversation as we go forward about whether we're going to try to reduce the incarceration or not and what effect that has on our crime rates as opposed to recidivism, necessarily. Does that make sense?

Ms. Dawley:

Absolutely. We are happy to share any of the studies or resources that are cited in the references, so we'd be happy to share that with you.

Judge Bateman:

I don't know if, Justice Hardesty and Chair Yeager, at some point during this process, we could have an agenda item on what our recidivism rates actually are in Nevada. I

know we've had a number of meetings already where the Department of Corrections has talked about releasing folks and that we're doing a good job, and I know Ms. Bisbee has come in and talked about it. I don't know that we've ever gotten, at least in this portion, how we come up with those numbers and what those numbers are. They were a little different when I had a conference where Dr. Austin was there, so I think maybe it would be helpful as a part of this process for us to all know what our current recidivism numbers are and how we're calculating them, because there is a Bureau of Justice Statistics report that recently came out that went a full 9 years out on recidivism and across state lines, and it's kind of a depressing report. I'm sure JRI is aware of it, where over 9 years you're looking at roughly an 85 percent recidivism rate across the country. I think it would be important for us to see what our recidivism rate is in Nevada and how we're calculating it and how we're comparing that to other reports outside of the State of Nevada. I don't know if that would be possible, Chair Yeager or Chair Hardesty, going forward.

Chair Hardesty:

I certainly think that the recidivism issue is front and center, not only how our own agencies calculate it or opine on it, but I think that needs to be tested by JRI. I think there is a genuine concern that our data may not be sufficient or accurate to give us the best calculation. I'm not being critical of agencies, I'm just talking about concerns that have already become apparent in prior Advisory Commission meetings and are apparent now about the reliability of our data and how it is calculating things that decision makers need to have going forward. Obviously, recidivism is an issue that is front and center with JRI, not only with respect to how the agencies view that, but also with respect to how they objectively and independently view it, they being JRI.

Holly Welborn (Policy Director, ACLU of Nevada, Inmate Advocate):

We've had a lot of comment from the inmate population and from former offenders that really want to be involved with Justice Reinvestment as we move forward, and I kind of explained to them that it's really more of a quantitative approach because we have to have those neutral numbers, but I'm wondering if in your research if there is any kind of qualitative component and if you do speak to victims, actual victims of crime and actual former offenders throughout the process?

Ms. McNamara:

Yes. It's definitely a part of our qualitative analysis of how the system works here. We are actually arranging two victims' roundtable discussions to coincide with the process to hear about victims' experiences here in Nevada. We have been in touch with Ms. Helms, who has shared her connections with victim advocacy groups here in Nevada. We definitely in previous states have had input connected with formerly incarcerated individuals as well.

Ms. Welborn:

We can definitely assist with creating a roundtable for former offenders and that population and parents of offenders, if you need that assistance. Thank you.

Ms. McNamara:

Thank you.

Judge Jennifer Togliatti (Eighth Judicial District Court):

I just wanted to know, on the states that you have the information on and the reports, is there a breakdown for the states that may have habitual criminal laws, how many of the incarcerated qualify as just a general habitual criminal either under their statutes or the equivalent of what we have? Have you looked at that? I echo the sentiment of Ms. Rose as far as thanking you for your time and your efforts on this project.

Ms. McNamara:

We've definitely examined in the states that we have worked in the habitual offender laws. In Oklahoma that we just worked in, one of the big policy changes had to do with the habitual offender statute. I don't have the specific rates of, like, the number of inmates who were impacted by that statute. I'm not sure if that's exactly what you're asking, but that definitely is something that we have investigated and looked into on a data-analysis approach to see who is being impacted by those laws, how those sentences are being reflected within the system in the states that we've worked in.

Chair Hardesty:

Just as a supplement to your question, Judge Togliatti, I have specifically asked JRI to look at Nevada's habitual criminal data and sentencing to try to assess that and its impact so that we have some information along those lines. I don't know whether good, bad, different, just what is the impact on habitual criminal sentencing, along with mandatory minimums, things like that, so that decision makers can have some understanding about lengths of stay that result from those kinds of decisions.

Assemblywoman Jill Tolles (Assembly District No. 25):

Thank you so much for all your work on this. I'm looking forward to seeing how this progresses. In regards to the South Carolina information, you quoted the positive impacts, and I'm looking forward to seeing that report in terms of decreasing threats to public safety, as well as to the prison population. Is there access to some budgetary information as well? For example, how much did it cost to invest in the data collection, perhaps software needs, personnel staffing needs, in order to ramp up this program in

South Carolina? What was the savings by having a reduced prison population and did that savings transfer over to an increase in investment on the treatment side and mental health resources, alternative sentencing programs, education and so forth, so we can maybe get a more global perspective of what the input and output is for the budgetary perspective? I think that would be helpful in our discussions moving forward.

Mr. Engel:

Sure. South Carolina was one of the first states that did this, and it was before the idea of Justice Reinvestment, that you take money from savings or averted costs from one place and you shift it over to another. This was primarily focused on the growing prison population and the state's inability to pay to cover the future costs. The goal going into it was to reinvest projected savings or averted costs. South Carolina did not do that, despite a lot of effort by a number of legislators and folks in the administration, but they did end up saving a significant amount of money simply because they reduced their prison population to a far greater degree than was projected. They were projected to grow, I believe, at 8 percent, and they ended up reducing their existing population. Over the 5-year period, they saved about $500,000,000 in corrections costs. The goal was to shift some of those savings into community supervision, improve services in the community. It's been tough to track the effectiveness of that goal. I think it was a noble effort, but I think there's been some difficulty in them not pulling that money back into the general fund and then distributing it as the Legislature, an executive, does to other places in the state budget. Ultimately, South Carolina surely deems this a success because it saved a lot of money. With regard to Justice Reinvestment, it is a success. The question is, did the communities benefit from the savings? Did the places, probation and parole supervision, treatment resources, did they get the benefits, and that is still a question.

Dennis Cameron (Representative, State Bar of Nevada):

I had actually questions in two areas. I think they might be somewhat premature as to what you still have to do in this particular process, but I was struck by the 43 percent higher than national average female inmate population. As part of your process, will you be going through to see how we actually accomplished this? Whether it's nonviolent drug offenders that are higher than the national proportion? Exactly what crimes are getting females incarcerated at this much higher rate?

Ms. Silveira:

Yes, that is precisely it. We will be spending the next couple of months digging into the data, in this case into NDOC admissions primarily, trying to understand for the female population in particular, what sorts of offenses, what types of offenses, are they violent offenses, nonviolent, drug, property crimes, through felony class, and using all sorts of information to try and better understand those trends. We're not at the point to be able

to answer those questions, but we can promise you three more data presentations in which we will start to dive into those.

Mr. Cameron:

Thank you. I will eagerly be looking forward to that answer. The other area that I was interested in, you're talking about incarceration actually increasing recidivism in some reports, and one of the things I looked at was the instability and increased contact with antisocial individuals for first-time offenders and drug offenders. Is there any correlation that you've seen in studies that go along with this, coupled with, when you get out of prison, a lot of times you come out broke and you come out with limited job opportunities, if that is a particular problem for first-time offenders and drug offenders?

Ms. Dawley:

Going back to the research around the population where incarceration can actually increase recidivism, one of the reasons for that is because typically these folks will have some prosocial, positive things going on in their lives, a supportive family or full-time job, so by taking away those stabilities from their lives, you actually increase their risk of recidivism. And then, of course, putting them in prison with antisocial peers, which was one of the big four criminogenic risk factors, that also will increase their risk to reoffend. Those are the reasons why that is, but absolutely, the reentry process, which we'll talk about a little bit more in, I think, the third presentation, making sure that they're actually prepared and have kind of the tools and resources to be successful once they are released is very important. It is something we will definitely discuss further as we go along.

Mr. Cameron:

Thank you very much.

Chair Hardesty:

Ms. McNamara, would you and your colleagues share with the Commission generally the detail to which your staff is going to go in looking at the data? I know you have made requests of various agencies to supply you with data, but as an example, criminal history. We've had a presentation about that today, and there have been some concerns about the reliability of criminal history records. The thing that I think Nevada benefits a lot from is having your boots on the ground, your staff members in the offices of NDOC and Parole and Probation and others, actually looking at each file in arriving at your conclusions. I'd like you to speak to the data-mining effort that you folks will undertake and have undertaken.

Ms. Silveira:

I can speak to that a little bit. As you all surely know and have learned throughout a number of presentations, each agency in the state that touches on a criminal justice system collects a different type of data and collects that data with a different level of nuance. We've been requesting and working with a number of agencies, large-scale administrative data sets, whenever possible for their last 10 years tracking admissions, releases, as well as year-end custody populations. In those different data sets, some of them have indicators of offenders' criminal history. One of the things that this process affords us is the opportunity also to identify gaps in data collection and be able to make recommendations, moving forward, how agencies can better collaborate in collecting that information. When we identify those gaps and they're of use and of value to the policy conversations that are unfolding here with the ACAJ, what we traditionally do and have done in other states is we'll conduct file reviews, so that tends to take the shape of randomized samples of a specific offender population we'd like to better understand, and then we would be going in and looking one by one at PSIs or narrative descriptions of offenses and criminal history to be able to make some more detailed conclusions about information that is otherwise unobservable when you're looking at the large-scale data systems that the agencies use.

Chair Hardesty:

Earlier in this meeting, a Commission member made an observation about surprise, I guess, about incarceration rates being higher than the norm, and that being a surprise in connection with the prosecution efforts. Part of your process would entail soliciting and obtaining the cooperation from the district attorneys' offices around the state to give you their data regarding plea-bargaining processes, pleas versus and plea reductions and charges that were dismissed as a result. Is that right?

Ms. Silveira:

Yes. I believe we have held interviews with members of that office, but I would be very excited to speak with Mr. Jones and his office further about that. The other request that we have made and are in the process of working on are with various courts around the state, in particular with the district courts in the Eighth and the Second, and we're in the process of drilling down the details on MOUs that we can observe large caseloads and better understand the charging and plea practices there countywide.

Chair Hardesty:

As you look at that data, where necessary, you'll do file reviews, correct?

Ms. Silveira:

Absolutely, and we understand also that the pre-sentence investigation reports where a great deal of information is collected are held by a number of different agencies, so depending on what the subject or what the specific ask is of the file review, that will help us decide who we are going to approach and which agency will help facilitate securing those records.

Mr. Hicks:

Kind of building off of the question that Justice Hardesty just asked, I'm curious as to just how far you're going to drill down into the data, because a concern I have—I've been a prosecutor in this state for 16 years. I've worked in Clark County, Carson City and Washoe County, and now I'm the District Attorney of Washoe County. I've been the President of the Nevada District Attorneys Association, so I know—generally, I would be fairly comfortable in saying who I believe is in our prisons. The notion that they are low-level crimes, first-time offenders, I just would be absolutely shocked if that were true. What I'm wondering is, as you're looking at those trends, that prison population, are you going to be looking at prior criminal history that might have—because there may in fact be people in prison on property crimes, but it may in fact show that there are people that earned that because of their past actions, or alternatively, it might be a situation where someone was afforded multiple opportunities at specialty courts, because we do have a robust specialty court system. I think you'll find it to be very good in your analysis, and they washed out of that, failed at probation and ultimately came to that place where we're saying, "We have no further resources to throw your way. We're just going to have to incapacitate you in prison. That's all we can do." I'm comfortable in betting that that's what you're going to find in our prisons, and that's what our society, our citizens, expect. Will you be drilling down into the data that deeply? The last example I would give is, sometimes as prosecutors, we might negotiate a case down where there were multiple victims or multiple crimes. We take all those different factors into consideration, and in fact, it might land someone in prison where just a surface view looks like low-level first-time offender, but in fact, there is much more to it. I'm optimistic that you will all be looking that much into it, and of course, I'd be happy to participate in whatever way my office can, but is that something you plan on doing?

Ms. Silveira:

Yes, absolutely. We will be using the data that is currently collected by agencies and then supplementing it as needed through these file reviews as described. The NDOC already collects information regarding criminal history, as do other agencies. We also have been working with Mr. McCormick and the folks at the AOC to study the specialty court system and the information that they have collected regarding the population that's coming through there. It's our understanding, and we've heard from all of the individuals we've spoken to that a lot of the agencies' data systems do not talk to each

other, is how it's often been phrased, so file reviews will be the primary way to be able to observe folks coming to and from different systems, such as the specialty courts. The other trends that we'll be able to observe and hopefully be probing into are folks who are entering prison from community supervision terms and folks who have failed for whatever reason in the community and are returning to serve out the rest of their sentence in custody.

Mr. Hicks:

Thank you. It seems as you did your presentation there—is it safe to say that the primary focus of your group is rehabilitation? Because you did touch on the four objectives of incarceration, but the bulk of your presentation is on rehabilitation. Do you ever take any positions on retribution or incapacitation or deterrence, those other objectives that we all have to consider as well, whether we be judges or prosecutors?

Ms. McNamara:

The primary focus of what we are doing here in Nevada is responding to what's driving the criminal justice system here, so we're here to facilitate a conversation among the ACAJ and the Sentencing Commission and all the stakeholders here about what is driving Nevada's criminal justice system and is there something that should be done about that? That is our goal and that is our purpose here. We are here to show you the data, we are here to show you examples from other states and we are here to show you what research says, but the primary goal and focus isn't to effect one of those purposes of incarceration, it's to help the state figure out how it wants to address its growing criminal justice population, if they want to, and the course that they can take to address it.

Mr. Hicks:

In our Sentencing Commission, which is the one I serve on, I think a real value of that Commission is the diversity on there. You have judges, you have prosecutors, you have defense attorneys, you have victim advocates, and I think that that serves that Commission well. I looked at all of your backgrounds, and it seems that it's largely criminal defense backgrounds in your analysts, so I'm curious, are there any prosecutors that will be serving as analysts in our state review?

Ms. McNamara:

Yes, we do. Quentin Weld is a former prosecutor. He's not with us on our trip today, but I believe you haven't met him, but other stakeholders and Commission members have met Mr. Weld. He is working exclusively on the Nevada team.

Mr. Hicks:

Okay, thank you.

Mr. Jackson:

First of all, I would like to start by thanking the Crime and Justice Institute. Almost all of my contacts have been with Ms. McNamara. I have had two separate meetings. Mr. Weld was at both of the meetings I was involved in, and I really enjoyed those discussions and the questions that you brought forward. With now about 27 years of experience in the criminal justice system, one thing I've learned is one of the terms I've heard probably the most often today is talking about recidivism. But I've seen that defined and I've heard that defined so many different ways, and if we asked every member of these commissions to write down the definition of recidivism, I think we would get different answers. It doesn't matter how we define recidivism, it's how you all define recidivism as you've gone across the country in these other states and as you come into Nevada and look at our particular system. One thing that would really help me to truly understand the data once you get all that is to provide the best definition of recidivism. You spoke a lot about it, Ms. Dawley, in your presentation, and about the risk principles, but we can all come up with different scenarios. If there was an offender or a parolee or probationer on, for example, a nonviolent offense, and what they would have to do in order for that to be considered recidivism, and if there's any almost statute of limitations or some limitation on a period of time. If they go beyond 3 years without committing another crime, for example, would that be considered recidivism? I just ask if you could bring that forward, and perhaps it would be part of your report anyways later on. I'm not asking you to define that today. Ms. McNamara, part of your presentation where you were talking on the slide about the minimal alternatives for incarceration, and under Mississippi, you talked about technical violations. Kind of the same thing is about how do we define a technical violation? For example, take someone who was a violent offender and they are on probation or parole, and they miss their scheduled meeting with their probation officer. I think we'd all probably agree that would fall under the definition of a technical violation. If they miss their urinalysis (UA) test, does that fall into a technical violations still? What if they test positive for an opioid on that? What if they commit a crime? In other words, if I truly understand how the Crime and Justice Institute defines what a technical violation would be, it would help me better understand ultimately the data that you will all be obtaining over the course of the next seven more steps.

Ms. McNamara:

Absolutely. Part of this is that it's not our definition of a technical violation, it's however the state wants to define it. The states that we've worked in previously have had similar issues of what is the meaning of a technical violation, what does this mean to our state,

so as we move forward in the process, those are definitely questions that you all will answer, not us, but you all will provide what the right definitions are for Nevada.

Chair Hardesty:

I think I'd like to underscore the point that arises out of Mr. Jackson's questions. Repeatedly now, answers have been given by the CJI staff that their research, their data collection and their presentation are sort of based upon what is happening in Nevada's criminal justice system, not what they have arrived at already as a conclusion. They are not arriving at a conclusion, they're arriving at data so we can arrive at conclusions, and I think that's an important point to keep in mind as we progress through this effort. There is one area I did want to ask. Mr. Callaway asked you whether the statistics that are shown on the slides about the number of persons incarcerated in state facilities per population took into account the 40-some-odd-million visitors to Las Vegas. I want to make sure that we're talking about apples and apples. For example, when you make a comparison to the national study or the national state incarceration statistics, I'm assuming that the incarceration rate, for example, California, New York, Florida doesn't take into consideration the visitors to their state either.

Ms. Silveira:

Correct.

Ms. Jones Brady:

Are you also going to be able to look at any racial or ethnic disparities in your research?

Ms. Silveira:

We will be presenting a racial and ethnic breakdown of the individuals coming into the prison population, as well as those who are in the year-end custody counts. I can't recall at this moment whether or not the other data sets that we're working with and the other agencies also record that, but at least with regard to the prison system, we will be sharing that information.

Ms. Jones Brady:

Thank you, by the way, for meeting with our office over at the public defender's office. It's nice to see you again. What about unique social factors that are here in Nevada? Justice Hardesty mentioned our tourism. We may have higher tourism than other people, but also, other statistics like our education, where we rank and how our education system works and those sorts of things, are you going to be able to factor those in?

Ms. Silveira:

They won't be the primary focus. Some of the agencies we've already received data from do collect information regarding highest educational level completed, and I believe the specialty court system actually records whether or not educational level has changed over the course of one's participation in those court programs. We will be able to provide some sort of insight to that, but it will not be the focus of our work.

Mr. Cameron:

This is just a follow-up question to what was raised by the Chair, as well as Mr. Hicks from the District Attorney's Office. An inflation of our incarceration statistics by outside state influences—I deal a lot with the Highway Interdiction Program, which is funded by the feds but it is done by the people here in the state, and we have a large number of people that are stopped transiting through Nevada because Interstate 80 is a choke point. I'm sure it's the same down in Southern Nevada as well. These people have nothing to do with Nevada and they have nothing to do with our crime rate. They are passing through, and because the large amounts of drugs they are carrying to other parts of the United States, they're ending up in Nevada prisons mostly on level III traffickings, which are 10 to 25 years, so they may have a disproportionate effect on our prison population for the number of people that there are. Is that something that you guys would be able to get into and find out how that's affecting our statistics?

Ms. Silveira:

I'm not sure at this point whether or not we'll be able to look at that, but we'd be very interested in knowing the answer as well. I know in some of the data sets, there are indicators of one's state of residence, and in other data sets there aren't, so we will be looking at those questions and if it is an issue that the ACAJ would like to focus on, or if there is a subset of that population we'd like to probe that further on, it might be the sort of topic that a file review would be appropriate for.

Chair Hardesty:

I appreciate Mr. Cameron's question, because that's precisely the point. Is our prison incarcerating a disproportionate number of out-of-state residents? It would seem like that's an important question to assess, and if we don't have the data, then maybe that's a data deficiency that we need to identify.

Natalie Wood (Chief, Parole and Probation):

First of all, thank you for your presentation. I very much appreciate it, and I know my own Division has met with you numerous times. I wish I had you in my back pocket during the legislative session, because everything that you mentioned with regard to

some of the positive outcomes that impact recidivism and victimization, the Division was fortunate to benefit from the financial dollars last session to change our supervision module, bring in a new risk assessment tool and also some intermediate sanctions of state-funded house arrest, indigent funding for those incarcerated and our Day Reporting Centers. But that aside, are you aware, are you going to be taking into account the fact that the state, the Governor's Reentry Task Force, has its own definition of recidivism? Mr. Jackson is right, we probably all have a different definition of recidivism. The Division's is slightly different in that if somebody is off paper for 3 years and they return back to supervision, then we would consider that a violation if it happened within 3 years. It's very similar to the state's definition. But my question is, will you be taking that into account during your evaluation?

Ms. Silveira:

We are not intending to do our own recidivism analysis for the state. It is not the focus of the data analysis, and given the kind of abbreviated timeline and the wealth of data sets we will be receiving, it will not be one of the products that we are presenting, but we know that a number of states across the country struggle with this question, and on the policy side, on the system assessment side, we would be happy to provide various definitions of recidivism that are used by other agencies. I know with regards to some of the prior questions, NDOC's reports are those that we have looked at most concretely for the state, and I believe those use a 3-year time and a new conviction. I'm not 100 percent positive, but we can also share those reports that they have put out with the Committee.

Chair Hardesty:

Maybe we need to catalogue all the definitions from the various agencies in the state, and then perhaps the ACAJ can reconcile those, or at least debate the appropriate one to select. Seeing no additional questions from the Commission, Mr. Engel, did you want to make a comment?

Mr. Engel:

I just wanted to slightly expand on my response to Assemblywoman Tolles' question about South Carolina. I shouldn't have focused just on South Carolina. They did some terrific work, and reinvestment was not a direct part of their goal. But other states have tied reinvestment or investment directly to the passage of reforms during the legislative session as a result of JRI, so we can give you examples of that. A number of them have directed funding to better data sets, better data teams, different types of analyses. We'll go through them and distribute some information, but we just left Oklahoma this past session. They directed $7,100,000 as a result of the passage of these bills to improve both supervision services, available treatment and the collection of data in the department of corrections. Utah a couple years ago directed as part of this $14,000,000

or $15,000,000 above what they would have provided to those agencies to do fairly similar things. Among, I think, the beneficiaries of that was $4,000,000 directed to community-based behavioral services, so we can break that down for you and call out data stuff. I didn't want to leave this with picking on poor South Carolina.

Chair Hardesty:

Mr. Engel, if you could, the members of the Sentencing Commission weren't present when CJI made its presentation, its introductory presentation, to the Advisory Commission. One of the states that you cited as an example was Utah. Could you mention Utah's outcomes with respect to their reduction in their prison population?

Mr. Engel:

Yes. They have reduced their population. It is about on par with where it was projected to be. The population dipped down to a greater degree than was projected at 1 point during the past 2 years of analyses. It is now basically level with the projected impacts. They were projected to grow at a rate they believed was unsustainable, and that was what brought the request from state leaders to do Justice Reinvestment. Their reforms focused on the things that were going to curve that future growth and then reduce some of the current growth. They are on par with the projected reductions. I don't have offhand exactly where they are. They have one of the most, if not the most, robust data collection and analysis system in-state and within the executive branch that we have ever seen. They are regularly collecting data. They are tracking it on a monthly basis and quarterly reports and have been very supportive of the performance measures related to the Justice Reinvestment policies. They do an annual report as well that shows what has worked within each of the policies. We would be glad to provide that information.

Chair Hardesty:

To Mr. Segal's question, I think that would be important information to supply, and the mechanism that Utah put in place to track what reforms they initiated.

Mr. Engel:

The reforms were, again, focused initially on the growing prison population, but the recognition during this process was that there were gaps in how local officials handled largely behavioral health issues, mental health, substance abuse, the lack of treatment available, the concentration of treatment resources on the Wasatch Front, Salt Lake City primarily, and the goal of the recommendations in addition to addressing admissions and length of stay in the prison population was also to increase alternatives to prison that were proven to reduce recidivism. The risk needs assessment stuff that we talked about, those are things that, during this process, they identified and then

focused resources on them. At least for the 2 years, they've had very good outcomes. We'll be glad to share that.

Magann Jordan (Victims' Rights Advocate):

Thank you so much for your presentation. I really do appreciate all of the hard work that you're already doing. Will you be looking at the programs that are currently in different prisons here in Nevada, and in regards to the statistics, how many different types of programs are in each prison and the amount of participants?

Ms. McNamara:

Yes, that is definitely something that we have requested from NDOC. We've met with Deputy Director Kim Thomas, who is the Deputy Director of Programs at NDOC, so we're gathering information about that. We don't have anything to share with you at this point in terms of analysis for that, but it is something that we're looking at.

Ms. Jordan:

As well as, like, the outcomes of those, or just what is in each prison? Is that kind of what your focus is?

Ms. McNamara:

That is where we are going to start. Again, looking at what information there is available in terms of those offenders who participate in those programs.

Ms. Jordan:

Alright, perfect, thank you. You discussed that you are currently creating some roundtable discussions with different various victim advocacy-type of groups. Would you be open to sharing which groups you are meeting with?

Ms. McNamara:

I don't believe the exact groups have been solidified. At this time, we're really in preliminary discussions. We're working with Anne Seymour, who is a national victims advocate representative, so she is getting in touch with local organizations. We actually have a call with her this afternoon to solidify who in-state we will be working with, but we would appreciate any recommendations, anyone you think that we should reach out to. We would love that connection.

Ms. Jordan:

Okay. Again, I work in the District Attorney's Office as the Victim Program Administrator. I'm happy to email you guys a few, at least down here in Southern Nevada, victim advocacy groups, such as Victims of Crime and those types of places.

Ms. McNamara:

That would be great, thank you.

Ms. Jordan:

You're welcome.

Mr. Callaway:

I actually asked this question previously when CJI did a presentation, but because we're in a joint meeting here today, I'd kind of like to just throw it back out there. In conversations when I've traveled with the Sheriff to various other cities across the country and conversation comes up about criminal Justice Reinvestment and whatnot and what other states are doing, a common theme that I'm hearing is that states that have seen significant reductions in their prison population have seen increases, significant increases, in their jail population. To give an example, if we take 1 offense that would be 365 days a year served in NDOC and we knock off a day and make it 364 days and now the person serves that time in the Clark County Detention Center, and then we say, "Well, we've reduced our prison population significantly," but our jail population has skyrocketed, to me, I don't see—that's a diversion issue. That's not really a win. In the last meeting, I believe it was stated, and I'm not sure if it's the gentleman that was here today that stated it, but I believe it was stated that in some of these jurisdictions, they've actually put money that they've saved by reducing prison population into expanding their local jails. We all want to see crime go away, we all want to see people not recidivate and not commit crimes at all, but in my mind, diversion is not solving the problem. I just throw that back out there to see what the comments might be about, in these other states, like Utah, Oklahoma, have they seen increases in their jail population, as was stated, I believe, in the previous meeting, and what's being done to address that so we're not just diverting issues, we're actually solving problems when it comes to crime?

Mr. Engel:

Unless you all think otherwise, simply shifting the burden from the state to the locals is not a goal of Justice Reinvestment. That was never the intent in any of the states that I worked in. The goal was not, "Let's just reduce the prison population and let the locals handle the results." In the states we've worked in where they have passed significant

sentencing reform that focuses on admissions, some de-felonization, where they've reclassified offenses from a felony to a misdemeanor, those states—and Utah, for instance, that state, in order to address that shifting burden, have made major changes to other things that were affecting jail populations. For instance, certain motor vehicle and driving offenses were considered misdemeanors. They were clogging the system and local jails. They made a number of those offenses violations so they were not jailable. This altered the burden somewhat. The other change was in alternatives to prison. They increased the availability of alternatives, and I think in my earlier response, that was where the money went. Money didn't go to jail capacity, it went to add alternatives to jail which allowed for folks who might have gone to jail as a result of de-felonization or a property theft increase policy, it allowed the alternative to take the place of incarceration. In those states, we're still doing analyses of some of these outcomes. In those states that have not experienced a spike in the jail population linked to the changes in the state and the policies that came out of the JRI process, we can look more deeply into that. Utah's going to have another annual report and annual data coming out in the fall, so they did some of the more significant changes that affected that burden, but also increased significantly the availability of alternatives. As soon as that information becomes available, we'll be glad to share it.

Mr. Hicks:

I was just thinking about one of our upcoming presentations, and that's the prison calculations on how people can get out with various credits. I was looking at your presentation and your section that says what works to reduce recidivism, and then you touched on swift, certain and proportional sanctions and reinforcement of positive behavior. Will you guys be looking at kind of the application of these good time credits in our prison in your analysis? Because a few years ago, our Legislature passed a bill involving our C, D and E felonies. Inmates are now able to receive tremendous amounts of credit on their bottom-end sentence, so there is really no certainty in any of our sentencing anymore in those kinds of cases. I think some of the presentations you'll hear later today, if you're still here, is some inmates can serve as little as 42 percent of their bottom-end sentence, and that doesn't do well to institute confidence in the public, and also, it might not for the accused either. I wonder that if you're just getting credits just for not getting in trouble, but you're not really reinforcing that with good behavior, is that something that you all consider? Has that been a factor in some of your prior studies?

Ms. McNamara:

We definitely have had a lot of conversations with individuals within the state who have expressed concerns over good time credits and as it relates to length of stay and the time served, that's definitely something that we're examining in the data. It is something that has come up in the previous cases that we have worked on. This system is very different from the other states that we've worked in, but we do plan to look at it.

Chair Hardesty:

Seeing no further questions from the Commission, I want to express my appreciation to all of the staff of the Crime and Justice Institute and thank you for your initial presentation and your overview of next steps. We look forward to the work going forward, and I know Chair Yeager and I have expressed this to you in numerous phone calls. By the way, so the Commission knows, we have weekly phone calls every Monday at 12:30 p.m. Both chairs, the staff to both commissions and the Crime and Justice Institute staff confer to get an update on what we're doing, who they're meeting with, what we're talking about, and of course, we will carry all of the concerns that the Commissioners have expressed regarding this subject going forward, but I want to thank you all for your initial presentation and your work. Again, thank you on behalf of the State of Nevada, because you are obviously devoting some extraordinary financial resources to this effort, and we're very grateful to be the recipient of them, so we express our sincere thanks and appreciation. Chair Yeager, did you want to offer any additional comments before we close this particular agenda item?

Chair Yeager:

Thank you, Chair Hardesty. I want to thank you for your presentation. We have talked, as Chair Hardesty said, over and over, so it's nice to finally be here. I want to reassure the Advisory Commission members that this is the beginning of this process, and I think the common sort of gripe or complaint we've heard over the past decade and much longer is that we don't have Nevada-specific data to drive Nevada decisions. That is really what this effort is about, to look at our state and for our state leaders to make the decision about where we move from here. I did want to just briefly touch on sort of the scheduling going forward for Advisory Commission members. You heard a little bit about it today, but over the next 6 months, really maybe over the next 5 months now that we're into August, they're going to be a number of presentations. We're working right now to finalize that schedule, but you can depend on probably one meeting per month, and perhaps more on occasion. As you heard, the first few of those are going to be data presentations where we'll be able to figure out what are we looking at here in Nevada. From that point, we are likely going to break the Advisory Commission into a couple of different subgroups to look at both—one subgroup will look at frontend, or potential recommendations on the frontend, and the other subgroup will look at recommendations on the backend or coming out of prison. The whole Advisory Commission is then going to come together later on in the year and basically discuss these potential recommendations and decide what we might like to put in our final report that will go to the Legislature. As many of you know, and I think all of you know now, the Advisory Commission does not have a bill draft request, so I have committed to reserving a Judiciary Committee bill in the Assembly to bring forth whatever might come out of this effort. There is going to be a lot of work, and I want to thank everyone in advance, because it's going to be quite an effort. I haven't said it yet but I should, that from this point on, the Advisory Commission largely is going to focus on this project. If

we had started this early on, this would have certainly been the only focus of the Advisory Commission. We do have some other issues we're working on, the working group coming out of the Innocence Project, we have our Subcommittee, as well as looking at our statute that authorizes us and the duties, so there will be some other pieces layered in there, but by and large, this effort is going to take a lot of time and a lot of energy. For those of you on the Sentencing Commission, I certainly invite you to follow along and to provide input where appropriate. I will wrap up by saying we are finalizing that schedule, and I hope to have that to Advisory Commission members very soon so hopefully you'll be able to look at your schedule and make all of this work. There's a lot of hard work ahead, but I'm certainly looking forward to it, and again, thank you for being here today.

Chair Hardesty:

For the Sentencing Commission, our next meeting is August 29, and at that meeting, the Sentencing Commission will be asked to entertain certain steps as part of its recommendations to the Legislature. We have a deadline of September 1 for recommendations for a bill draft, but that doesn't mean the Sentencing Commission's meeting schedule will end. In fact, we will continue throughout the fall looking at sentencing-related issues concerning the JRI review. So, look forward to seeing the Sentencing Commission on August 29. There likely will be at least one, and maybe two, joint sessions coming up in the fall as well. Thank you very much everybody.

THE CHAIR CALLED FOR A BRIEF RECESS.

Chair Hardesty:

I'm reminded by legal counsel of the importance of a quorum for both commissions. For the Sentencing Commission, we still have a quorum, but the Advisory Commission is a little close to the mark. We want to make sure and get through these final two presentations for the day. My estimate is that we should be done in about an hour, so if everybody could hang with us until that time as best you can so we can hold the quorums together, we can complete our work for today.

We'll proceed to Chief Wood and the Parole and Probation follow-up presentation.

Ms. Wood:

Today, I have my Deputy Chief, Stephanie O'Rourke. We're going to give you a presentation on pre-sentence investigations. Ms. O'Rourke is going to lead the presentation, and then if we have any other questions that we maybe have to dig into the weeds for, I can go ahead and answer them for you.

Stefanie O'Rourke (Major, Parole and Probation):

This will be a follow-up presentation from our April presentation on pre-sentence investigations. For some of you, this will be a quick review.

We'll start off with NRS 176.135 (Agenda Item IX A-1). This is the statute that authorizes the Division to conduct pre-sentence investigations on defendants who have pled guilty, guilty but mentally ill, nolo contendere or have been found guilty of a felony. As noted in the statute, if a defendant is convicted of a felony that is a sexual offense, a PSI must be written before the imposition of sentence or granting of probation and before probation is permitted. The PSI must include a psychosexual evaluation of the defendant. The purpose of the psychosexual evaluation is to conclude that the defendant does not pose a high risk to reoffend to be eligible for probation. Statute 176.135 continued: for felony offenses other than sexual offenses, the PSI must be made before the imposition of sentence unless the sentence is fixed by a jury or a PSI has been written by the Division within the 5 years immediately preceding the sentence for the most recent offense. Also, upon request of the court, a PSI will be written on category E felonies and gross misdemeanor cases. Statute 176.145 discusses the contents required in a PSI report. This includes criminal records, characteristics of the defendant to include finances, employment, education, marital status, their children, military service and circumstances that impact their behavior. We also have victim information to include the psychological or physical harm and financial losses of the victim and child support obligations. In addition to information contained in the report is substance abuse history, a sentence recommendation that contains a minimum or a maximum term, a fine, or both. Upon recommendation, we can also make a recommendation for regimental discipline or boot camp. Also included in the pre-sentence report is a psychosexual evaluation. We also have additional information in the PSI that is determined with input from the court, which includes gang affiliation, medical issues, physical identifiers and also the defendant's immigration status and gambling activity, if applicable. Statute 176.153 discusses who's entitled to the PSI report, which includes the prosecuting attorney, counsel for the defendant, the defendant and the court. This NRS also gives the guideline on when the report must be submitted.

The purpose of the PSI report is to provide accurate information to aid judges in pronouncing sentences. It is utilized by NDOC for classification processes and program eligibility. It is utilized by the Parole Board to make parole decisions. It's utilized by the Pardons Board to make determinations of worthiness of a pardon. It's used by the Division of Parole and Probation to provide an avenue to recommend appropriate sentences and, if probation, it's utilized to also recommend special conditions. The Division also uses the PSI in supervising probationers and parolees.

The process of the PSI, how it works, we've had a lot of presentations about the process up to the PSI, so when the defendant has pled guilty or is found guilty by a jury,

the sentencing court asks the Division to conduct a pre-sentence investigation. We contact the defendant and schedule an interview. During that interview, we review a comprehensive questionnaire. During that interview, we review their social history, their criminal history and the circumstances of the incident offense. In addition to interviewing the defendant, we gather information from police reports, district attorneys' files, prior records of the Division, as well as psychological or psychosexual evaluations. As stated previously, we also contact the victim. The purpose of that is to make every effort to obtain information that supports the victim's claim for restitution.

The pre-sentence recommendation: the Division utilizes a scoring tool that requires a PSI specialist to answer a series of 35 questions. The answers are then calculated to create a score which is used by the PSI specialist to formulate an appropriate sentence recommendation. Some of our sentence recommendations include prison, jail, probation with special conditions, such as restitution or fines and fees.

The last slide is our statistics from Fiscal Year 2017. This is the same statistical information I provided in April. For Fiscal Year 2017, we authored 10,135 PSIs, while 11,183 were referred. As you can see by the statistical chart, Category B felonies make up the majority of the reports that we've written at 35 percent. This also has a category of "other." That category represents felonies. It is just a data-entry error where the actual category of the felony was neglected to be added to our system. This also talks about our concurrency rate, which is outlined here. The prison concurrency recommendation rate is 68 percent, while the probation concurrency recommendation is 87 percent. There is a difference here in our figures, as Justice Hardesty recognized this last time. Our system doesn't track all of our recommendations, such as diversion courts and fines and fees, boot camp, so there is a little bit of a discrepancy. I also want to point out that sometimes our computer tracking system, it's a snapshot in time. If we run a report one day, it will be very different from the next day, so the figures vary from the date of when we run the report to the next day. That's as close as we can get to our concurrency rate to give you that information.

This is a very, very quick presentation, and we are available for questions.

Ms. Rose:

In what is included in the PSI, I thought I heard you say that you include immigration information, and I'm just wondering where you get that immigration from, and if I heard you correctly, if what you said that was included in there, and if I did, where you get that information from?

Ms. O'Rourke:

We actually contact Immigration and Customs Enforcement (ICE) and we get that information directly from them.

Ms. Rose:

Thank you, I appreciate it.

Ms. Armeni:

My question is in regard to the slide that is titled "Overview of Investigation and Report Preparation Process." There is a section that says the information is obtained from various sources to include, and it has a list of where you get your information from. Is that statutory? Is that something the Department has put together? Second, does that mean you will not take information from the defense attorney for the client?

Ms. O'Rourke:

When a PSI is requested, we obtain the district attorney's file, so a lot of the information we have, I believe, is from discovery. It's all in the district attorney's file. As far as the defense attorney, if they have information to provide, I'm sure we'll look at that and consider it for the report as well. Statutorily, no, I don't believe this is covered in statute or else it would have been included in previous slides.

Chair Yeager:

I have a couple questions I think will be pretty simple. You mentioned the regimental discipline, also known as boot camp. It sounds like over the years there's been some real dispute, I guess, about the effectiveness of that program. Over time, is there any kind of shift at Parole and Probation in terms of whether to actually recommend that program, or if you can maybe give me a little bit of history of your view of that program?

Ms. Wood:

Research has shown, I think the Bureau of Justice Statistics, and I think Pew-MacArthur had mentioned it also, that historically boot camp has been shown that it is not very effective. There's been, I think, a move nationally to move away from that. This came up at a meeting yesterday that we had in our Reno office. The PSI writers had asked me to clarify whether or not the prison is still utilizing that program, and if they are, that will obviously impact the Division's recommendation. So, it is something I need to discuss with Director Dzurenda, to say, "Is this still an option? Do you have the staffing to put this on or not?" Nationally, it's just been proven not a really productive option.

Chair Yeager:

With respect to the creation of the pre-sentence investigation report, I understand there's the two-part process—probably more than two parts, but to simplify, the offender fills out some information, hands that in, and then at some point, there is an actual

interview with that offender. My question is, in the interview, when we're talking about out of custody defendants, and it may not be uniform throughout the state, is that interview typically done face to face, is it done over the phone, does that vary within jurisdiction or among jurisdictions?

Ms. O'Rourke:

We try to conduct those PSI interviews in person. There are occasions when the defendant has been released from custody and is not a resident of Nevada and they leave the state before we are able to conduct that interview. Those are conducted over the phone. Because of the nature of Las Vegas, the magnitude of the PSIs, I believe that their gross misdemeanor PSIs, I don't believe they conduct interviews. It's just through the questionnaire.

Chair Yeager:

This could be anecdotal, but I'm thinking in Las Vegas in particular, probably a number of offenders who come in and do the interview, it's maybe apparent to the PSI writer that the person has some issues after dealing with them, maybe substance abuse or anger management. Is there any internal protocol, I guess, for your agency to try to make referrals or encourage those folks to seek services before their sentencing? Because obviously when that interview is happening, you've got a delay before sentencing, so I just wondered if you could speak a little bit to that, and if it's not happening, if it's something you think might be helpful and how we might be able to help in that regard.

Ms. Wood:

Most, if not all, of the interviews are done by our civilian staff, our non-sworn staff, so they obviously don't have the training of our sworn side of the house to recognize some of the signs and symptoms. It's not to say that they don't, it's just that I'd imagine it's not as immediate in certain areas. People that have probably got more tenure on are certainly more aware of it, or if it's more pronounced. Internally, we don't have the staffing to say—well, they're not ours. It's not our jurisdiction at that point, so we walk a thin line between making a referral and then assuming the Division has ordered them to do this, and so we have to be careful on that. Until they are sentenced officially, the Division doesn't have jurisdiction over them.

Karin Kreizenbeck (State Public Defender):

Can you tell me, and I don't know if you can, is there a minimal educational level, or what are the qualifications for the writers of the PSI?

Ms. O'Rourke:

I don't have that off the top of my head. I can certainly check the state personnel website and look at the classification specs, but I don't have that off the top of my head.

Ms. Wood:

Usually, we just follow general human resources (HR) guidelines. Are you asking whether or not they have a degree or whether they don't? As Major O'Rourke said, if they meet the minimum qualifications, we'd have to look at what the specs are. Years ago, they used to require that. I believe they've moved away from that, both on the sworn and non-sworn side of the house.

Chair Hardesty:

Major O'Rourke, this is kind of an additional question related to Ms. Armeni's question. You were referring to the list of information sources, and I wanted to talk about criminal history. We've had a presentation here, and over time we've had questions about the reliability of the Criminal History Repository and the like. I would like you to comment, if you would, on the steps that Parole and Probation takes in ascertaining the true criminal history of the defendant. I think that has a lot to do with the issue about file review that JRI is going to undertake, and also provide some source of confident criminal history for the defendants. So, could you comment on the steps that you all take to develop the criminal history in the PSI?

Ms. O'Rourke:

Once we receive a file, we begin the PSI process. We run the criminal history. As we review the criminal history, the dispositions that are listed in that criminal history, we assume that they are correct. There are a lot of times where we show an arrest but no disposition, so our staff contacts the arresting agency or the jurisdiction, whether it be the court or whatever source we have, whether it's the district attorney, public defender, the court, to obtain the actual record of disposition. That's one of the processes of the PSI that takes so long. At times, we're not just contacting Nevada, we're contacting agencies statewide. What is listed in NCIC we assume is correct. If the defendant has some questions or disputes, the actual NCIC printout, we ask them or we recommend that they contact that agency that filed the disposition with the Records Division to try and rectify that. There are times where, when we complete the PSI, they dispute our criminal history summary. We will do our best to go and research the agency that listed the disposition so that we have a physical record of that so we can compare it to what's reported in NCIC versus the actual record. Our goal is to get the most accurate criminal record we can for the defendant. There are times, as you can see in our PSIs, where there are arrests listed, but there's just no way for dispositions. Sometimes that's because of records retention schedules. During the last legislative session, I can't

remember what bill it was, maybe 291, where we only go back 10 years now for arrests with no dispositions that we list in our PSIs. I hope that answered your question.

Chair Hardesty:

Yes, thank you. I'm turning to the statistics slide again. I have a follow-up question, and it's in part based on the presentation by the District Attorney's Office in Clark County, where I understood them to say that they effectuate 82 to 83 percent of those arrests into complaints. I understood that to be in the neighborhood of 24,000 cases. Here, you show, in Fiscal Year 2017, 7,022 PSIs. You may not be able to answer this question, but that's a rather dramatic difference, and I wondered if you knew why that was such a dramatic difference.

Ms. O'Rourke:

I can speculate that maybe it's because of jury trials, maybe it's because of continuances, like the Chief said, diversion, cases where someone starts out through a diversion program before they get to the sentencing stage of their conviction. All I can report is what we receive and what we've completed.

Chair Hardesty:

Right. So, we need to kind of drill down into that separation a little bit.

Ms. Rose:

In terms of immigration information that you get from ICE, what prompts that inquiry to ICE? Is that something that you ask for from every single person who you do a PSI for, or is there a different set of criteria?

Ms. O'Rourke:

We base that on their self-reported alien status. If they report that they are born in another country, that's what prompts us to contact ICE. So no, we do not do that for every person that we complete a PSI on.

Chair Hardesty:

Let's turn to the follow-up presentation on sentencing credits, agenda item X. Mr. Pruyt, thanks for coming back to follow up on the number of questions we had.

Garrit Pruyt (Deputy District Attorney, Carson City):

I think about everyone here has heard the presentation, so I'm going to go through it in a bit of a different way. I'm going to go through some parts pretty quickly, highlight some areas of concern and address them that way, and certainly if there are any questions, I'll be happy to address them at that point.

Chair Hardesty:

The Sentencing Commission in particular is interested in recommendations from you about statutory changes that it might consider to make corrections to the credit policies in this state.

Mr. Pruyt:

I will definitely address those as we go forward. When you have the realities of what we have for sentencing, there are some issues that come from this (Agenda Item X). The first of those issues you're going to have is really transparency. Whenever a sentence is pronounced in court, if someone hears a basic sentence of 12 to 30 months, as most of you know sitting here in this room, 12 to 30 months is not 12 to 30 months, it's just not. Therein lies one of the biggest problems that I personally come across. Oftentimes as a Deputy District Attorney, I'll speak with victims, and we'll be explaining the sentencing process to them. Even after we've explained, "Hey, there's credits available to them," we'll go out in the hallway and there'll like, "Okay, this person just got 12 months," and you're like, "Well, yes, but no." You get this look like, "What kind of crazy lawyering is going on here?" This kind of just incredulous look of, "What just took place? I just heard a judge say it, why isn't it that way?" I can only imagine that sometimes even defendants come across the same issue. I know that sometimes defendants file motions later on when they get into the Department of Corrections, "Hey, I should have this credit. Why don't I have this credit? Why don't the numbers add up? Why does none of this make sense?" When it comes to not making sense, what they're really caring about usually is a parole eligibility date and a parole expiration date. Those are the dates that generally matter to someone who is incarcerated, "When am I going to come for parole and when do I get out, no matter what happens?" So, these are the abbreviations that occur throughout the presentation. Inmates are provided with their parole eligibility date and they are provided with their parole expiration dates. These are dates that they have available to them. This is where the problem comes. They change while they're in custody. A lot of times they'll think, "Wait, how can they change? How is this even possible that they change," and it's because of the little intricacies of the law. Your parole eligibility date is determined by your flat time, which is your flat time plus your stat time and your work time. That's what determines that. There are three different types of credits that are given. You have that initial misnomer of flat time being something special. It's your day-for-day credit. The amount of time you've been in. Most inmates, once they get that, they understand that. It becomes a little more straight

forward. But the extensions and the drawback in that time come because of the work and the statutory good time. If you lose statutory good time or you decide not to work or you lose your job and then you get another job later, those dates move back and forth, because what the NDOC is giving the persons who are incarcerated is best-case scenarios, and that's what they are getting. "Oh, you got a job. So, if you continue on this job, there are no issues, you do this, you continue to get good time, you don't get in a fight, anything else that may result in a loss of good time, here's your dates." Then something happens and they get another kite or another form that says, "Oh, your dates are different." It's like, "Whoa, wait a minute, you took my time away?" No, no time was taken away, you didn't earn the time that was projected that you would have earned, so then motions come from that, and I'm sure district court judges get those motions as to, "Why am I not getting my time credits?" and that creates a little bit more work.

The same comes with that parole expiration date. As those credits are being calculated on the backend, the same thing is happening, which kind of brings us to what to do with it. One, I think we all know the judgment of conviction (JOC) is incredibly important because that's what's going to determine the start point for all this. If the JOC is wrong, there are issues. The remedy to this comes really in the credits, how they are applied, when they are applied. The first recommendation I have, simple to say, certainly much less simple to do, is basically to simplify the process. It amazed me as I started to study this, and I started to study it a few years ago when I was at the Attorney General's Office because we would get calls from either public defenders or prosecutors asking about, "How is this person out?" or "How long are they going to be out?" and "What do I tell people? I don't even know what to tell somebody for how these credits are going to apply." Unfortunately, most of the time, we ended up with, "Here's a ballpark. Here's this," and nobody wants to hear that. People want a definite time. The person who is incarcerated wants to know, and so do the victims of the crime. They want to know. They want to understand how long a person's going to be there, because it affects their life as well depending on the type of crime that it is.

Looking first at the statutory good time, it's almost clear. If you get into NRS 209.4465, for the period the offender is actually incarcerated pursuant to his or her sentence, it's almost clear, until you get into that sub-definition of what does "actually incarcerated" mean. Then, you find out house arrest is incarcerated. The minute you talk to a victim that house arrest is incarceration, they will just lose their mind. The whole concept, "No, that is not incarceration. Incarceration is incarceration." I can't blame them for being upset about that, because while it seems clear, it's not. That's one of the first problems there. If it's going to be incarceration that the credits are applied to, then it should be incarceration in the literal sense of the word. If there's going to be credit for something other than incarceration, it should be called that. That way, those in the courtroom, whether they be attorneys, persons watching or the judge, everyone can be on the same page. We can have the same definition, because right now we do not. That's a problem. What you end up with, this is just a quick calculation of what credits can do to the frontend of a sentence. You have that 12 months, what that really means is 221

days. This is just flat and stat time credit. This is for someone who elected maybe not to work or take advantage of those types, education, any of the things they may have the opportunity to do in prison but elected not to do. These are the dates. This is how it's going to be. But again, it's something we know. A lot of people take advantage of times to work in prison, so these days can go up, they can go down and they can go all the way down to that 42 percent minimum that was mentioned earlier. That's codified in statute, that you must serve 42 percent. This is what it looks like.

When we get to work credits, work credits vary all over the place. They vary based upon your custody status, they vary based upon where you are, and not in the sense of how they're written in statute. Actually, they're pretty straight forward in statute with some discretion to the institution. I think that's proper. Each inmate, depending on the crimes that they have, their custody status is going to vary. They're going to receive classification there. What they're doing in prison can also affect that classification. Someone who is medium custody has opportunities for 10-credit jobs ranging from things as a porter to working in the kitchen to warehouse, things like that. If you're in maximum security, if you're at Ely State Prison, certainly your opportunities to work, there are not nearly as many there because of your custody status. It's that simple. You're not going to get the same as a minimum security who's going to go work in the metal shop working on fabricating some I-beams. That's just not going to happen. You may start as a porter. Even persons who have been convicted of felonies carrying life sentences, their custody status throughout time can be altered and they can be sent to other prisons that are of a more medium security designation, and they can have the opportunities to participate in other work-type programs. The ranges are there. Persons who desire to work and are behaving in such a way can have the opportunity to prove themselves with work little by little. Again, it's not necessarily an issue with the availability of credits for work. I don't see that as a huge problem. It more comes in the application of those credits. The same goes for your merit credits. I'll admit, I'll probably always be a fan of merit credits for education. I think their application has some flawed issues, but encouraging persons to be educated, especially to obtain a GED (general equivalency diploma) I think are important. That's just a personal opinion. I think it's a really important thing for a person who has offended. I don't care if they're on probation or whatever, a GED is something important they need to do.

So, awarding credits based upon obtaining education, I think, is a good thing to incentivize, which is going to bring me more to what was requested by Justice Hardesty, how these credits are applied. First, they go towards the maximum sentence on all charges. Your work time credits, stat time credits and merit credits, they always go to the backend of your sentence. They are always going to pull time off of there. That's how its written within the law. On most offenses—maybe most is a stronger word—on a good majority of offenses, they also come off the front, and this is where the biggest issues with transparency lie. I find it incredibly ironic when you look through legislative history and you talk about truth in sentencing, and what we have is an untruth as it comes to sentencing. The first recommendation I would have for the group: credits

should not apply to the frontend of a sentence. Now, easier said than done. This has far reaching consequences, and I can understand that. It affects incarceration rates, and I fully understand that. It affects the budget for NDOC. This is a lot more persons who are going to increase their stay. So, I think what was sought to be addressed here, we kind of did a run-around about what really needed to be addressed. When you look through the legislative history, yes, there is a lot of talk about incentivizing when these credit schemes were put forward, but there were also a lot of issues with budget and the amount of persons who were incarcerated and reducing incarceration rates. So, in lieu of actually going directly to the crimes, which I can imagine would certainly be a monumental and difficult task, it came to simply instead of rewriting what the penalty for the crime is, we're just gonna say, "Yeah, the penalties are going to stay the same, but we're gonna pull some credits off the frontend and just not bring it up as much." That's where the problem is. If it's something like any felony, say possession of a controlled substance, if the thought is that a person shouldn't be incarcerated for 12 months on the frontend of a possession of a controlled substance, then perhaps it shouldn't be in the felony category. I think that is the proper way to restore transparency to the system so that anyone sitting in the courtroom, from the defendant to the victim to anyone else, when they hear the frontend of a sentence stated by a judge, that's what it is. I don't think you're going to run across issues of "Well, now there's no incentive to behave," or anything like that. I don't have a problem with credits applying to the backend of sentences. I think there's a clearer way that they can come forward, and some of that can do with language, so they can still come across when you are incarcerated, but at least that way—and most of the people—let me take one step back. In coming to these recommendations, a lot of this comes from talking to victims or other persons in the courtroom, people who are part of the system and just taking notes on that. A lot of the people I've talked to, when I've asked them, "Do you have an issue if someone gets a job in prison, if they behave, if they do things like that, do you have any issue with taking time off the backend of their sentence?" The majority of the response is no. This is personal, I don't have huge statistics to go along with this or a double-blind study or statistics in the north and the south, but persons I have personally spoken to, that, hey, if someone's behaving and that affects their ability to reduce the backend of their sentence, that's a little more acceptable. But when I've talked to them about the frontend of their sentence, they just don't understand why it would be that way. If the judge said that that's the frontend time that you're going to do, how all of the sudden does that not happen? I think fixing that would go a long way to restoring more trust in our system. I certainly wouldn't want anyone viewing Nevada's judiciary system on the outside to have any thought that it works in any way that maybe Federal Congress or other things that the nation doesn't have the most trust in at the moment, so they know when they walk in and they hear a judge say, "Okay, you're going to serve a 12 to 30 or you're going to serve a 24 to 120," you're going to serve 24 months before you're eligible for parole. If you do good in prison, that may affect your ability to make parole. It may also lessen the time that you have to do total, but when you go in, you will do that 24 months because that's what the judge mandated as part of the punishment for your sentence. Just plain and simple, so that everybody knows. No more guesswork, no

more wondering is it going to apply, won't it apply, is this the right felony, is this a B but one of those exempted B's that has a different category? None of that. Everybody knows, so there's no more guesswork into it.

When it comes to offenses in custody, I'm going to go through this pretty quick. This is just basically an explanation that credits can be lost while you're in the prison system. If you commit certain offenses, they have ranges of offenses in custody that they categorize in an A, B, C category very similar to a felony-type system. They range A, B, C based upon severity. Those credits can be removed. There is a due process hearing associated with that, so it's not going to be just a caseworker who's like, "Yeah, you upset me today, so goodbye to your credits." It's not going to work that way. There are some protections that take place in that sense to address that. If you get revoked on parole, you lose your good time credits. They can be restored. There are already methods within statute to deal a little bit with that.

Then, we have aggregation, which is not so much of an issue as it was a few years ago when this presentation was first coming around, because persons being sentenced now, if they have more than one sentence, they're being aggregated up front, and persons who were already incarcerated have had several years to petition to have their sentences aggregated. There are a few little rules on what can be aggregated and how for persons who are already in. For example, if you already went to the Parole Board on one, you can't move to aggregate it to another one, some things like that. You actually have to get parole on that one, but you can aggregate your other ones. It's addressed in that fashion.

Then, of course, the ever important 42 percent minimum statute, which is very important that it's there, because in some cases—not a lot, but in some cases—absent that statute, persons would have been able to earn more credit than even 42 percent and could have actually gotten lower. It's important that that one is there. If a person does have more credits than that, they are still kept track of by the NDOC, from the last time I spoke to them. They keep track of all those in case there is a loss of credits later on or a subsequent offense comes up, so that all those things can be factored in and kept track of.

That takes us to residential confinement. This gets to those B felonies. This one is so interesting. Residential confinement is just interesting on how it can be applied. There are a lot of little intricacies within the statute, and I'll be completely honest, not all of which are clear. The most often time that I see this come up, where there's complaint, is a DUI. Let's take a third or fourth offense DUI. They're B felonies. Under the traditional framework, you think, "Hey, it's a B felony, you gotta serve whatever the judge pronounces on the frontend under the current scheme," and that's not the case. They can be eligible within 12 months of release for house arrest, because that's still termed under the statute as confinement. If a person is being sentenced, say, a minimum on a fourth DUI to 24 to 60 months in the Nevada Department of Corrections, after 12

months they can be placed on house arrest. In talking to the Nevada Department of Corrections, that tends to be what's happening. At the 12-month mark, they are then being released out. If a judge or anyone else in the courtroom thinks that it is a 2-year sentence up front of actual incarceration, it is not. Therein lies the hard part. If a judge actually wants that to take place, is he in a position where he or she needs to say, "Hey, I need to do it to a 36-month because they could apply for this program and once they apply for that program they're going to get out," and it leaves all these open possibilities, and it has the ability to disproportionally affect the sentence. Perhaps even worse is you could have a DUI third offender who has participated in a diversion program and subsequently fails out of that diversion program for not complying. Say they have a 1 to 6-year sentence, so they go in and they are already within 12 months of release. Would the effect then be, "Okay, you have violated the terms of the probation you were on, the diversion agreement. You're now going to be punished by 12 months in prison, but not really. We're going to classify you and we can put you on house arrest and turn you right back out again with less supervision than perhaps you had in the DUI diversion program." That's an issue, certainly an unforeseen issue. That's why I say when taking the credits off the front and making it a sentence that a judge says up front can eliminate a lot of these and that the better place to address how long a person actually spends is in its classification as an A, B, C, D or E felony and the times that are set forth under statute for those crimes.

The conclusion being, as I said before, I don't want us to be in a position where public trust erodes in the judicial system, which is one of the reasons I'm sure we're all here. We love the judicial system. I know I do, or I wouldn't do what I do. When addressing those crimes, though the work will be, as I firmly believe, extensive, to address the actual sentence of the crime is where it should start.

One of the last parts here, credits for persons on parole, this is an interesting one as well. I can only tell you the information I receive from persons I have spoken to when it comes to how credits are applied to parole, when they are not applied to parole. Should a person get credits for parole? I've heard persons say that incentivizes them to do well, and then on the opposite side of that you have the very simple, "Well, if you don't do well, you get revoked and you go to prison. You go back." So, how much more incentive is needed to do well, then to do it? Obviously, Parole and Probation has a limited budget, they only have so many officers, there are only so many people they can supervise, and so to simply say, "Hey, no credits for anyone and we're just going to double our caseload," is not going to work. There's only so much budget in the State of Nevada. It's not like we're going to all of the sudden create this huge deficit in our state. We know that's not going to happen. There are different methods, and there are many I've thought about, for parole. Perhaps one of them, maybe not the simplest, but when persons are out on parole and they are supervised, if they're not receiving credits or if this Commissions decides to recommend not having credits unless you're actually incarcerated completely, perhaps after 6 months or a year of review, a Parole and Probation officer could submit a record of whoever it is they are supervising to a board

within Parole and Probation. If there's no need to continue to supervise that person based upon integration into the community, doing what they need to do, they could perhaps have the statutory power to discharge the person at that time, rather than, "Oh, you've had all those credits and all the sudden you're off, because you earned all those credits in prison, you continue to earn them here, and within 3 months, you're done. I think the credits, what they start to do, the way they are now, they start to undermine some of the missions really of the agencies that we have and the transparency there. If Parole and Probation is there to supervise them, and every officer I speak to in Parole and Probation, that's what they're there to do. They enjoy their jobs. I think they are very good at their jobs. They want to help people integrate into the community, but in many cases, they have a case for a few months and then the person could automatically expire based upon the credit system that we have, and so what they are trying to do is then undermined by that. I fully understand this is a delicate balancing act that has to take place, but I think the best way to go about it, what will have the best outcome for the citizens in Nevada, is to address the actual crimes, to set forth the time that should be served so that it is known to all and it's not a guessing game, and also set forth the type of credit that one can earn when they're not actually in custody.

With that, I don't have anything else to add.

Tegan Machnich (Chief Deputy Public Defender, Clark County):

With regard to your comment on giving credit for house arrest, are you aware of any other situations where that's being given other than in the DUI context?

Mr. Pruyt:

As it's written in statute, house arrest is available to persons that are within 12 months of release and that can qualify for a treatment program, and then there's also a designation close to being in a minimum security setting. A lot of persons go to a minimum security setting close to their release dates anyway by the very nature of their classification. So, could a person technically be eligible for house arrest for many other types of crimes? Under the plain reading of the statute that we have, they could. Does NDOC have extra administrative regulations in place that further curtail that? To that, I couldn't give you an answer on.

Ms. Machnich:

So, you don't actually have any specifics about house arrest being applied to anything other than DUI, correct? I just want to make sure we're clear.

Mr. Pruyt:

I have heard of cases where it's applied other than DUI, and I'm sure we can find some if you would like specific ones that can be sent forward.

Ms. Machnich:

I would very much like that. Thank you, I appreciate it. You've been referring to "us" and "we." Maybe I just missed it, but who is that?

Mr. Pruyt:

As far as "us" and "we," I'm trying to think back to when I used those particular pronouns. I'm not here representing a particular organization, so the "us" and "we" would probably be the people that I've spoken to, either victims of crime, persons who have watched court proceedings and then had questions regarding those court proceedings, and other colleagues that I've spoken to within the legal profession.

Ms. Machnich:

Colleagues within the District Attorney's Office in Carson City?

Mr. Pruyt:

The District Attorney's Office, I've spoken to many public defenders, private defense attorneys. That's what I'm getting at. Obviously, I'm a Deputy District Attorney.

Ms. Machnich:

Okay. So, you don't have anyone specific? We're not talking about when you're talking about "us" and "we," there's not, like, a commission or a committee or a group that you are specifically representing?

Mr. Pruyt:

That would be correct.

Ms. Machnich:

Okay, I just wanted to be clear on that. If I'm understanding correctly, you're advocating for reducing penalties and reducing classifications of felonies across the board to misdemeanors and gross misdemeanors, is that correct?

Mr. Pruyt:

No, that is not correct in any way. What I'm talking about is, if a person feels that—if we take away frontend credits, and I only said possession of a controlled substance as an example, 12 to 30, if it is the feel of the Legislature or the Commission in general that a 12-month sentence, absent credits on the front, is not what we're seeking to do, then reclassification would be proper. Personally, I look at many crimes that I think should be elevated and others that may be lowered. When I think of domestic battery involving substantial bodily harm that comes out as a C, but a pawn burglary comes out as a B, I think that completely misses the mark. The domestic causing substantial should be a B. It's much more violent and goes along with others.

Ms. Machnich:

Okay, so you did not advocate that as the solution for what would be drastic increases in incarceration rates and incarceration and NDOC budgets that would result from your plan laid out for us?

Mr. Pruyt:

My recommendation is straight forward. If there's an issue with certain crimes—let me think how best to phrase this—if there are crimes that don't merit the punishment if you're taking credits off the front, then those crimes need to be evaluated. I'm not advocating for a specific crime. I imagine that there are plenty of crimes out there that persons think should go up or down, but that's the proper way to address it. If that is addressed, I think that in turn can address a lot of the budgetary constraints at the NDOC. So, some can go up and some can go down, and that's the proper way to go, rather than just applying credits on the backend and undermining the actual sentences that are set forth in statute.

Ms. Machnich:

Thank you, I look forward to that house arrest information.

Ms. Armeni:

One of your solutions is to remove credits from the frontend of all sentences. Would that include credit for time served as well?

Mr. Pruyt:

Credit for time served would be, to my understanding, essentially a person's flat time. That's day for day. It's not in the traditional thought of an extra earned credit or a good time credit. If you earned a day in jail, you've earned the day in jail and that will always

be applied and it's included in the account and the judgment of conviction, which is why that credit for time served date is there. So obviously, any time you serve in a city jail before you go to prison would always be accounted for, and I would never advocate to not give a person credit for time they are actually incarcerated.

Ms. Armeni:

Off the frontend, then?

Mr. Pruyt:

Credit for time served is considered front and back. It is always there. It's a flat time. You can't take the day away from someone who has served the day.

Scott Burton (Professor of Criminal Justice, CSN):

Regarding the issue of custody prior to sentencing, is this something you think could be fixed with a legislative definition with regard to house arrest, or trying to find a quick fix on this?

Mr. Pruyt:

I don't think there's any quick fix on this, but yes, I think the way these terms come up, they are used within the statutes. They're just not always used the same way. So, if we're going to define, I think incarceration is one of those things that should be defined as to actually what it is. By just simply putting a definition in, it could have rolling effects if each statute it's used in isn't addressed, because all of the sudden if you say what it is, well then there are a few statutes that didn't use it that way before and then they're turned on their head from what they were originally intended to be used, so it needs to be addressed kind of together.

Ms. Welborn:

We're talking about frontend. We serve the pronouncement by the judge, but earlier you had said that we want to incentivize the work credits. I'm just confused on how that would work. If the judge sentences someone to 12 years and they're supposed to serve that 12 years, what is the effect of the good time credit at that point, the work credit at that point?

Mr. Pruyt:

The work credits would still apply to the backend of the sentence. The merit credits would still apply to the backend of the sentence. My recommendation is not to just do away with credits. So, you get that frontend date, and I'll go back to a 12 to 30 just for

simplicity. At 12 months, you don't make parole. Well, you may be coming up for expiration soon anyway on that 30 months because you worked, you got your good time credits, you got the other things. You can still earn the benefit of those, but it doesn't undermine the sentence that the actual judge gives forth on the bottom end. It allows the offender, perhaps because of the type of crime it was or certain other aggravating factors that may be stopping their parole, to still have an ability to positively affect the length of their sentence on the backend.

Ms. Welborn:

I said something similar the last time that you presented before this Commission, and in my role on the Sentencing Commission—and I'm speaking for Ms. Rose also—Ms. Rose's role as the inmate advocate, there's just no way that the ACLU of Nevada could get behind and support the recommendations as laid out until the Sentencing Commission realizes its duty. The reason that I ran around the Legislature talking to both sides of the aisle while we were working in unison as a united front to form and create the Sentencing Commission was to take a deep dive to do exactly what you said early on in your presentation, that there are unjust sentencing schemes in the Nevada statutes. Until we can reform those and reformat those in a way that is just and until we can really take a look at why these sentences are so long in the first place, we just cannot get behind that. We understand the frustration and completely identify and have sympathy for the fact that even the inmates we work with are incredibly frustrated by this credit process. They want to know when they're coming, they want to know when they're going. I don't think we've had adequate conversations about this, so my recommendation is before we move forward, perhaps it's time for us to create a working group on this particular issue so we can understand it before we make those recommendations to the Legislature.

Ms. Armeni:

For clarification, when you're talking about house arrest or incarceration, you're not talking about someone that is on house arrest prior to being sent to prison, are you?

Mr. Pruyt:

That's not what I'm talking about. I'm talking about house arrest once a person has actually been incarcerated. Once they are within 12 months of their release date, they are then placed upon house arrest. They are still getting credit for that as if it were incarceration.

Ms. Armeni:

That's how I understood it as well, but I think there was some confusion, so thank you for clearing that up.

Al McNeil (Sheriff, Lyon County):

Thank you for your presentation. I'm not on the Sentencing Commission, and I thoroughly enjoyed your passion and commitment to your topic. I have to agree that my community has a lot of frustration too that I see in the sentencing, and they can't understand. This is just the people on the outside. I think what you have to say has a lot of merit. My question is, with respect to good time and work time, at the county jail sentences, have you given much thought to that and what would that look like?

Mr. Pruyt:

Let me make sure I understand your question correctly. Credits applied in county jails, as I see them, and I obviously focus a little more on Carson City's County Jail credits since that's where I practice, they're different. The amount of time earned is different. A lot of times it can be 5 days for 30. It's drastically different than the 20 you may have after serving 30 within the Nevada Department of Corrections. When it comes to county credit, obviously we would be talking about gross misdemeanors and below, because if anyone has served county time and is then sentenced on a felony and they go to prison, they are actually going to get credit as it's applied under the prison statutes. It's going to be retroactively applied for all the time they were there, so they're actually getting credit based under the state system because it's an actual felony that they're convicted for and being incarcerated on and not the county's individual system. If it's a gross misdemeanor, credit is applied based on the county for the time that they served in there. The counties have different ways to go about this. If it's something the Commission wants to look at, if they're going to establish straight forward and simple credits, and perhaps those credits apply even across county jail systems, that may have all sorts of other push back in the same way. I know that they can get trustee status within the Carson City Jail and then get some more credits based upon that, so they can reduce their time there. So obviously, yes, it does. You get a similar effect that you have in a felony court, where if someone is sentenced to 364 days, they're not doing a full 364 days. Within Carson City, it's not down to the level where a lot of times it looks like half, which certainly causes people concern. I can think of two cases where I've talked to people where they've seen people get out after, say, 10 months on a gross misdemeanor sentence that was 364 days. There wasn't as much heart burn if you'd explained, "Hey, I did this amount of work," because they're seeing a good majority of what they heard in court being served and not a whole lot less.

Ms. Kreizenbeck:

I'm just curious, and I don't know if you can tell the answer to this, if you are considered on house arrest on the DUI program getting credit, why is that any different than pre-sentence house arrest?

Mr. Pruyt:

To be honest, it's the way the statutes interplay with one another. I don't know. Pre-sentence house arrest is different. To my understanding, it falls more under the lines of bail, so it's house arrest but it's more of a bail condition. That is the way I have read the statute, whereas on the other, you're actually sentenced, you're incarcerated, but where you're incarcerated is how they alter the definition instead of how. It's splitting hairs when it comes to the law, but as I read the house arrest provisions post-sentencing, you're still incarcerated but you're incarcerated in your home, whereas when I look at the bail provisions, that's a term of your bail. You're out on house arrest so you have these extra terms and conditions associated with bail, but we're not calling you incarcerated.

Ms. Kreizenbeck:

Thank you.

Chair Hardesty:

Seeing no further questions from the Commission, thank you very much for your follow-up presentation and your suggestions. We'll include those in our work program for the Sentencing Commission meeting on August 29.

Alright, at this juncture, I'd like to invite any public comment.

Leslie Turner (Community Organizer, Make It Work Nevada):

This is my first time being in a hearing, so I definitely will do the first public comment next time. I've been here since 9 a.m. I just wanted to—and this is my comrade right here, Tiara. I just wanted to say that this has all been really informative, and thank you for this work. I just think that it's really important that directly impacted people, communities, families are represented on both sides. We've heard a lot about victims, not as much about formerly incarcerated folks who are trying to rebuild their lives. I'm actually originally from California. I've been here since 1999. I'm a University of Nevada, Las Vegas (UNLV) alumni, and I live on the west side. On the west side, 89106, that entire community has a very significant impact by the criminal justice system. This is whole families of people with felonies, can't get jobs. This is people who have been out for some years that have not found gainful employment. These are kids who have parents that are currently incarcerated, so when we talk about diversion and we talk about criminal justice reform and police reform, we have to be talking to those communities, and those communities have to actually have a voice at the table. When we're talking about Justice Reinvestment, we should be reinvesting back into the communities that have the most impact, that have the most consequences, and then also I just want to add that someone mentioned the prosecutor's office, their goal is also

justice, which I believe. When we're talking about 99 percent of cases are being plea-dealed out, I just would have like to know how is that success measured? What is the measure of success? What is justice? What does that actually look like from, like, a personnel standpoint in a district attorney's office? We're talking about diversion programs. I heard mental health, I heard substance abuse, but are we also thinking about preventative things that we can do as far as crime goes, like literacy, like resources, addressing issues of poverty. These are all significant things that are happening in my community right now that often drive people towards criminality, so I just think that we should definitely be talking about those things. I would definitely like to continue this conversation. Hopefully I could put together like a roundtable of formerly incarcerated folks to meet with the Justice Reinvestment folks to start having these conversations. I think it's really important. I think the evidence and the research has shown that incarceration does not necessarily equal public safety and lower recidivism rates. So, we're here, so talk to us, and we have input, and I think that our perspective being directly impacted also should be just as valuable as discussions with district attorneys and public defenders and judges. Our voice is just as valuable, so hopefully we can have more of those conversations. Thank you.

Chair Hardesty:

Thank you, Ms. Turner, for your participation here today. Thank you for sitting in the meeting. I'm sure that it was helpful to your presentation there.

Ms. Turner:

Thank you very much.

Chair Hardesty:

If you wouldn't mind putting on the sign-in sheet your contact information, then I'm sure that we can make arrangements to reach out to you and be in touch with you and your friends and colleagues to see if you would like to share your voice on these subjects.

Ms. Turner:

Definitely. Thank you so much for that.

Tiara Moore (Field Organizer, Make It Work Nevada):

I'm working on a project, but I will talk about that a little bit later. Sitting and listening, I heard the risk assessment and how effective that is and the district attorney's office who is conducting this risk assessment, because on May 11, I was arrested for an alleged crime that never took place that never happened. I shouldn't have been arrested the day before Mother's Day, spent Mother's Day away from my children. I just graduated in

December with an associate's degree in medical administration, so very heartbreaking. I had just got hired May 9 to be the physical therapy assistant for a place in Las Vegas. I had just gotten hired, so I was falsely arrested, but that doesn't bother me. Falsely being arrested, you can get an arrest off your record, but my main reason for being here and speaking is that the risk assessment offered me a lower bail, which was $3,000, and the district attorney's office wanted to raise it to $10,000, being that the risk assessment said $3,000. Also, forced into a plea deal that would have created a barrier to employment moving forward, being that I had just graduated college, so I would have had a criminal record moving forward and it would have hindered me from getting a job and providing for my children, and I am a single mother of five. I didn't take the plea deal because I knew a crime hadn't been committed. I knew they didn't have a case, but if I wanted that ankle bracelet off my leg, if I wanted to go home, they offer you a plea deal and they never had a case. They never had—a crime was never committed, but it was mainly a conviction and not justice. I didn't take the plea deal. My attorney said, "No, don't take it, because they have no case," but I was offered that, and if I didn't have proper representation, I would have taken the plea deal because I wanted to go home, because you're scared, you don't know what's going to happen, but I didn't take the plea deal, and ultimately, the judge dismissed the case, apologized and everything else, but what comes after that is now I have that on my record, so when employers do run my criminal record, it shows up as a felony, another barrier to employment. With the risk assessment, I think they need to look further into that, because it does create a problem. I don't like talking about it because it is heartbreaking on full mothers, and Make It Work Nevada is organization designed for mothers. It's an organization to help women, such like myself, so that's why I'm here speaking today.

Chair Hardesty:

Thank you, Ms. Moore. I appreciate your attendance.

Gary Peck:

I haven't been here in a long while. It's nice to hear your voice and see your visage, Justice Hardesty. I wasn't sure if I was going to speak, but after this young woman gave testimony about her experiences with the bail system, I really am just—I feel really compelled to say that here in this state, we have been talking about an utterly broken bail system for as long as I have been here. That would be almost 25 years. It is absolutely outrageous that anyone has to sit in jail simply because they cannot afford to be released before they're adjudicated. That is not acceptable. There is a movement all over the country. It includes prosecutors who understand why this is an affront to constitutional values, it is an affront to any real concept of justice. It needs to be fixed, and it should have been fixed yesterday. So, that's an aside. That's one point of entry, or portal, into this criminal justice system that you folks are looking at in a comprehensive way. I'm not sure if this is within the purview of these commissions and this Joint Commission, but the other point of entry, of course, is contact between the

police and the public. It's been more than a decade since this state passed a law which required police departments to gather and submit for analysis data about vehicular and pedestrian stops broken down by race, broken down by gender, broken down by age, so that we could make a determination about whether or not racially biased policing is a problem in the state. I heard someone mention interdiction, so on highways. It would be important to know who is stopped, why, what the hit rate is and whether or not we have a problem that should be addressed. The last time this was studied, they found that black and brown people were disproportionately stopped. They said they didn't have benchmarks to be able to make a determination about whether or not that was a product of bias or just demographics and logistics, but clearly, indisputably, without question, the post-op data showed, and showed very clearly, that people were treated differently based on their color. People were much more likely to be pulled out of cars, to be handcuffed, to have their vehicles searched, even though the hit rate for white folks was higher. There is absolutely no reason why that data ought not be collected. The Police Executive Research Forum calls that a best practice. That's police executives around the United States. It is also—because I heard one of the people testifying today who said, I think it's an outside vendor who you've contracted with to do some research for you, they didn't know what kind of data was gathered and available within prosecutorial offices around the state. I can tell you what kind of data is gathered and analyzed: inadequate data is gathered and analyzed, and that is a problem because we know, all over the country, the criminal justice system is plagued by racially discriminatory patterns. That doesn't mean any individual is a crass or crude racist, it means that there are problems of institutional racism, and that should be a priority for every single prosecutorial office and every single police department that cares about a fair, just, equitable criminal justice system and one that doesn't offend our constitutional values. I hope that will be taken seriously as a priority. I don't think there could be—somebody said we don't want to erode trust in our judicial system. Seriously, forgive me, there are broad swaths of the community where trust has already been eroded, and I think all of you understand that and we would have to be in denial to not acknowledge that. That doesn't mean the system is an awful system, but it does mean there are many regards in which it is badly broken. That is one, and it should be a priority for everyone on this Commission and every stakeholder that is represented on the Commission. Thank you very much, and Justice Hardesty, again, it's a pleasure to—haven't seen you in a while. Thank you.

Chair Hardesty:

Nice to see you, Mr. Peck. Thank you for being here today and offering your sentiments.

Mr. Jackson:

I just wanted to make a comment to Ms. Moore. Ms. Moore, if an individual is arrested and the charges are ultimately dismissed by the prosecutor, a judge or the person is found not guilty at trial, then that person has a right to immediately file a petition to seal

their record pursuant to NRS 179.255. I don't know if forms are available down on the Clark County District Attorney's website, but I do have forms available on my website. It's dcnvda.org, so Douglas County District Attorney, and just look under the forms and handbook for sealing a criminal record.

Ms. Moore:

Thank you.

Ms. Brown:

I want to briefly touch on what was said this morning during Patricia Adkisson's testimony. I presented the documents, which was number two. She read the letter and she referred to the pages. The pages that she is referring to is in the documents, number two, those numbers, okay? So, I want to clarify that. Dealing with the presentation on criminal procedure in Nevada by Ms. Noble, there are some things that she didn't touch on. I don't think this has ever been touched on. I know from personal experience and what I've personally witnessed and gone through, and I've seen in other cases as well. We mentioned Brady violations. It's a constitutional issue. When a prosecutor withholds evidence from a case and it becomes a Brady violation, however, the court can find a way around that issue, like in our particular case. When we were able to see the entire file in the district attorney's file on Mr. Klein in 2009, the handwritten notes detailing that he was not turning over any of the evidence, the exculpatory evidence, and favorable evidence to the defense, that he had defied a court order ordering him to do so, and all that evidence that showed another person had committed the crime and other crimes as well. That judge's decision around not being a Brady violation was a work product. That's something we don't hear is work product. A prosecutor can withhold evidence that could exonerate a person, but it can also be deemed a work product and not a violation. I took that information. Mr. Klein had passed away the following year. I filed in the matter of the estate of Nolan Edward Klein in Washoe County. In a 2010 case, I raised everything that was found in that petition of writ of mandamus, and that's where the work product came into it. Now, I want to skip over to what was touched on for the inmates, the NDOC credits. I don't know if you're familiar with this or not, and I know there hasn't been any real changes in the years. Now, inmates will enter the prison system. They will go into the prison system and they will go right to medical, and that's where they have lived for many years. They receive flat time. They receive no credit because they are ill. There have been inmates who have been transported from one institution who have had jobs to seek medical care. They lose their jobs, they lose their credits, so when they are in medical, they get flat time, no credits, and they could be there for days, weeks, months and years, and that is something that has not been addressed. I guess that's pretty much it for now, but I think that should be dealt with, the credits, because if an inmate becomes sick or is sick, he should not receive flat time. He should be able to get some type of a credit to come off

the backend or frontend. Like I said, there have been years—one person was in for, I believe, 8 years in the medical, and he has never received credit. Thank you.

Chair Hardesty:

Is there any other public comment?

Ms. O'Rourke:

I just wanted to follow up on the question about the qualifications of the specialist III for the PSI writers. That is a bachelor's degree or a high school diploma coupled with experience in case management and maintaining records and deciphering records. I hope that helps.

Ms. Kreizenbeck:

That does, thank you.

Chair Hardesty:

Any other public comment or concluding remarks by Commissioners? Seeing none, I'd like to thank everybody for their patience today and your attention to the work and the detail that we have received and we have ahead of us for the Sentencing Commission. Our next meeting is August 29. I have been working with the Crime and Justice Institute representatives. I hope to, along with Mr. Anthony, develop a work program that will be submitted to the Commission to consider on August 29. Then, we will likely have some additional meetings going forward in the fall as we continue to deliberate on various issues that have been raised today and will be developed going forward.

Chair Yeager, do you have any concluding comments or remarks? He defers, so I will declare adjournment at 3:14 p.m.

RESPECTFULLY SUBMITTED:

_____
Jordan Haas, Secretary

APPROVED BY:

_____
Justice James Hardesty, Chair

Date: _____

_____
Assemblyman Steve Yeager, Chair

Date: _____

Agenda Item	Witness/Agency	Description
A		Agenda
B		Attendance Roster
Agenda Item III A	Paul Corrado	Public Comment
Agenda Item III B-1	Tonja Brown	Public Comment #1
Agenda Item III B-2	Tonja Brown	Public Comment #2
Agenda Item III B-3	Tonja Brown	Public Comment #3
Agenda Item III C-1	Michael and Patricia Adkisson	Public Comment #1
Agenda Item III C-2	Michael and Patricia Adkisson	Public Comment #2
Agenda Item III C-3	Michael and Patricia Adkisson	Public Comment #3
Agenda Item IV	Jordan Haas, Interim Secretary	Draft Minutes of the April 27, 2018 Meeting of the Nevada Sentencing Commission
Agenda Item V	Jordan Haas, Interim Secretary	Draft Minutes of the April 30, 2018 Meeting of the Advisory Commission on the Administration of Justice
Agenda Item VII A	John Jones, Chief Deputy District Attorney, Clark County, and Jennifer Noble, Chief Deputy District Attorney, Washoe County	Presentation on Criminal Justice in Nevada
Agenda Item VII B	Anna Clark, Chief Public Defender, Office of the Clark County Public Defender	Presentation on Criminal Procedure in Nevada
Agenda Item VII C	Jordan Davis and Katelyn Cantu, Deputy Public Defenders, Washoe County Public Defender's Office	Presentation on the Washoe County Public Defender's Office

Agenda Item VII D	John McCormick, Assistant Court Administrator, Administrative Office of the Courts	Presentation on Criminal Procedure in Nevada's Courts
Agenda Item VIII	Mindy McKay, Records Bureau Chief, Records, Communications and Compliance Division	Presentation on the Central Repository for Nevada Records of Criminal History
Agenda Item IX A-1	Stephanie O'Rourke, Major, Division of Parole and Probation	Presentation on Pre-Sentence Investigation Reports
Agenda Item IX A-2	Stephanie O'Rourke, Major, Division of Parole and Probation	Responses to Requests for Information
Agenda Item X	Garrit Pruyt, Carson City Deputy District Attorney	Presentation on the Accounting and Application of Sentencing Credits
Agenda Item XI	Staff of the Crime and Justice Institute	Introductory Presentation on the Justice Reinvestment Initiative
Agenda Item XII	Nicolas Anthony, Nevada Sentencing Commission Counsel	Bill Draft Deadlines