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

October 10, 2018

The meeting of the Advisory Commission on the Administration of Justice was called to order by Chair Steve Yeager at 9:05 a.m. at the Legislative Building, 401 South Carson Street, Room 3137, 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.

COMMITTEE MEMBERS PRESENT (CARSON CITY):

Assemblyman Steve Yeager, Assembly District No. 9; Chair
Justice James W. Hardesty, Nevada Supreme Court; Vice Chair
Christine Jones Brady, Deputy Public Defender, Washoe County
Julie Butler, Representative, Central Repository
Chuck Callaway, Police Director, Las Vegas Metro
Christopher DeRicco, Chairman, Board of Parole Commissioners
James Dzurenda, Director, Department of Corrections
Adam Laxalt, Attorney General
Al McNeil, Sheriff, Lyon County
Judge Jim Wilson, Carson City District Court

COMMITTEE MEMBERS PRESENT (LAS VEGAS):

Paola Armeni, Representative, State Bar of Nevada
Judge Sam Bateman, Henderson Justice Court
Kymberli Helms, Victims' Rights Advocate
Amy Rose, ACLU of Nevada, Inmate Advocate

COMMITTEE MEMBERS EXCUSED:

Senator Aaron Ford, Senatorial District No. 11
Assemblywoman Lisa Krasner, Assembly District No. 26
Mark Jackson, Douglas County District Attorney
Natalie Wood, Chief, Parole and Probation

STAFF MEMBERS

Bryan Fernley, Commission Counsel, Senior Principal Deputy Legislative Counsel, Legal Division, Legislative Counsel Bureau
Victoria Gonzalez, Deputy Legislative Counsel, Legal Division, Legislative Counsel Bureau
Angela Hartzler, Secretary, Legal Division, Legislative Counsel Bureau
Jordan Haas, Secretary, Legal Division, Legislative Counsel Bureau

OTHERS PRESENT:

Paul Corrado
Tonja Brown, Advocate for the Inmates, Advocate for the Innocent
Wes Goetz
Clyde Means
Michelle Feldman, Legislative Strategist, Innocence Project
Jennifer Noble, Chief Deputy District Attorney, Washoe County District Attorney's Office
Alison Silveira, Data and Policy Specialist, Community Resources for Justice
Maura McNamara, Policy Specialist, Community Resources for Justice

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

I will now open the sixth meeting of the Advisory Commission on the Administration of Justice (ACAJ). At this time, I am going to open agenda item III, which is public comment. I will let members of the public know that we do have a 3-minute limit on public comment. I will be keeping time, and I'll let you know when that 3 minutes expires. It's not that we don't want to hear from you, it's just that we have a big agenda.

Paul Corrado:

I'm a volunteer at the Nevada Department of Corrections (NDOC). I've been doing volunteer work since 1994. I've got a couple things, first of all about haircuts and barbering. I'm wondering if it would be possible for people who are incarcerated—because they do get haircuts now, obviously, and I'm wondering if it would be possible for them to have someone and some way for them to be able to get their barber's license so when they do leave, they have a trade, because they may have a trade now but they can't use it on the outside without having some problems with licensure and sanitation, etc. This could be used as the ServSafe certificate is, which allows people to get that sort of thing. When they leave, they then can be employed fairly quickly. The other thing, of course, is the license could be issued while incarcerated, and the standards associated, especially sanitation standards, with haircuts could be made sure that they were kept. Secondly, of course, Douglas County's risk-based approach to bail, I think, is something that needs to be looked at by all counties very carefully, because obviously if you can keep people from getting into the system by not having them plead guilty just to get away from being incarcerated. Lastly, I've handed out something from the State of Washington

(Agenda Item III A). They have something called Swift and Certain (SAC), which was established to reduce confinement time for sanctions following violation of supervision convictions. They found that substantial overlap in focus groups between both officers and offenders was understood, and they have also in there an outcome and cost-benefit analysis and evaluation. We don't have the same thing here because, it's my understanding, that the different county jails are not able to recoup that expense from the state for the people who are incarcerated. This puts a burden, of course, not only on the counties, but also eliminates the possibility of perhaps the cost savings. Washington only implemented the Swift and Certain and saved themselves $36,000,000 in a year. They were able then to take $9,000,000 of that and put it into a program associated with cognitive behavior. I'm going to leave that cognitive behavior piece for next time, because you're busy. I appreciate your time, and thank you all.

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

I want to just briefly discuss proposed electronic recoding of custodial interrogations legislation. I think it's great, but I'd like to see it be perfect. I think by adding when the interrogation is completed, the person must receive a copy of the interrogation recording immediately following right after the interview, because I have known years ago a man by the name of Willy who was interrogated—this was 35 years ago—in Douglas County. They lost the recording, and then 2 years later the victim recanted the testimony. He made a false confession based on the assurance by law enforcement that if he confessed that he would get help and he could go home. Based on what he was told during the recording process, he signed a confession and then they conveniently lost the recording. He spent 20 years. Also, I'm asking that legislative members consider my proposed recommendations with a petition for exoneration and five recommendations, particularly now since Marsy's Law is on the ballot. It is detrimental to those who have been wrongfully convicted, and Question One, I'll just read it, "undermines rights guaranteed to everyone by the United States Constitution, including the rights to be presumed innocent until proven guilty, to effective counsel, to confront one's accuser, to a speedy trial. For example, by allowing the victims to prevent disclosure of certain information or to refuse to participate in interviews or depositions, those wrongfully accused of crimes may be denied access to information proving their innocence." I have provided over this session and others throughout the years people who have been wrongfully convicted. Evidence has come up years later, years even after all their appeals have been exhausted. This is why we need a petition for exoneration to help those who have been wrongfully convicted. We've had some—not all—who have had convictions overturned recently, compensation for these people. I have provided you a copy of a letter from John Franklin Smith (Agenda Item III B). This came about back in 2000. There was a deposition being taken in a civil matter in which the victim recanted her testimony, and one of the people that was representing one of the defendants was ordered to shred the deposition that she had recanted that it was consensual sex and not rape, and this letter is how this came about. But there is information out there that I have provided to this Committee and previous committees over the years. I ask that perhaps you could maybe consider it for this work session to go along with what the Innocence Project is going to be touching on.

Wes Goetz:

I want to talk about something you have here about the recording of interrogations and informant regulations. Informants already in prison wouldn't be good to trust since they're inmates and they're looking for ways to get out, and they can inform you of the wrong information. It says here "recording interrogations." I'm reading from this page that you have up here. It says, "Policies adopted pursuant to this section shall be made available to all peace officers and such agencies and shall be available for public inspection during normal business hours." What I get out of that is that if someone gets interrogated, I'm allowed to have public inspection during business hours of what the interrogation's about, I guess. I have a court supplement brief in support of a petition for writ of mandamus (Agenda Item III C). It's about trying to get my records from Parole and Probation. You're talking about funding for the Division of Parole and Probation, the State Board of Commissioners and the Repository histories. I'm thinking we should have more funding going towards Parole and Probation, the Department of Corrections, so they can actually afford to give me my records. Mostly, this whole brief is about public records, Chapter 239 of our Nevada Legislature's Nevada Revised Statures (NRS). You also have NRS 179A.100, and it says right here "any which pertain to an incident for which a person is currently within the system of criminal justice," and I think this is a criminal justice committee, "including parole and probation." Well, it has nothing to do—nothing says about lifetime supervision. What we need to do is make a bill that includes lifetime supervision, because I was being watched and interrogated and all this stuff through parole and probation, but when I tried to ask for my records, they were saying, "Well, you're on lifetime supervision and you're not entitled to your records." Well, they were watching me for 10 years, even when I was on probation in 1998. You also have NRS 179A.070, recording of criminal history. To me, all this criminal history that was in the computers of Parole and Probation should be my records for me to look at, because it's about me and nothing else. I know the Attorney General is saying, "Well, there are victims, there are informants, there are neighbors. We cannot give you that information." I'm not asking for my victim's information or my neighbor's or informant's, because they had no informants in prison.

Chair Yeager:

Mr. Goetz, can you wrap up, please?

Mr. Goetz:

So, I'm hoping that you guys will talk about funding for this information today about the Repository. There are lifetime sex offenders right now, and the Adam Walsh Act went into effect. I think you should have more funding to notify the sex offenders in Nevada when they have to report in. I have to report in every 3 months, every 90 days, and now there's no law that says that you are supposed to notify me for this, but there was a law previously without the Adam Walsh Act that they would notify me, I would come in and get my fingerprints and picture taken. So, I hope that you talk about that today with the funding

for the Repository. Since you are not looking at sex offenders now, if the McNeill case—because I haven't been supervised mostly from parole and probation since the McNeill case. There should be more funding going into probation, to get maybe records, and maybe towards the Nevada Repository for records.

Clyde Means:

The reason I am here today on my public comment is the fact that currently—and they have for I don't know how long—Parole and Probation is using the polygraph exclusively to determine if a man is untruthful. I had a call yesterday from a family that their brother had for 9 years gone through counseling and everything, had complied with every requirement, but because he failed the polygraph twice, he was revoked yesterday, for 9 years. This gentleman is in his seventies. He is learning disabled. Our president said last weekend, "Innocent until proven guilty." If you have hard evidence, that's one thing. The Federal Bureau of Investigation (FBI) does not even use the polygraph to determine candidates' eligibility to become an FBI agent. They use state-of-the-art technology to determine. It should either be done away with totally, which is what I would agree with, or have a third party not with Metro to evaluate the results. People can interpret the way they want to. A question can have inflection that is asked of the person taking the polygraph that can mess it over. I feel that we are in the 21st century, but we have 19th-century technology that is being used. Freedom is a precious commodity. Innocent until proven guilty. He served his time, he came out, he's been an honorable citizen of this country, even though he has not regained his rights. It is time to look at this, provide the funding so that the modern technology that the FBI uses—my understanding is that they use voice-stress analysis to determine. Like I said, his family is very upset about this. I don't blame them. While I was incarcerated, almost a 12-year period, his was not the only story I heard. I heard of a gentleman 8 years ago. We were talking. I knew him from before. I said, "What are you doing back here?" He says, "I failed the polygraph twice and they revoked me." He filed a habeas corpus and was reinstated. Our prison system in Nevada is overcrowded right now. To me, it is time that we come into the 21st century. I also understand he had a new parole officer that had just been on his case for about 2 months because he moved from his parents' home that had been on a reverse mortgage. His previous parole officer never made him, did not require him, but I guess it was a random act, that his name came up in the thing. Like I said, if there is hard evidence, that's one thing. Polygraphs aren't even accepted in courts anywhere in this country, and yet Parole and Probation can use that to revoke a man. Turn around, place your hands behind your back, you're revoked.

Chair Yeager:

Mr. Means, will you please wrap up?

Mr. Means:

Thank you very much. I appreciate your time listening to what I have to say.

Chair Yeager:

Thank you for your public comment, Mr. Means. Seeing no one else for public comment, I'm going to close agenda item III. At this time, I will open up agenda item IV, which is approval of the minutes of the September 12 meeting. Commission members, I've had a chance to review the meeting minutes (Agenda Item IV). As usual, our staff is fantastic. I did not find any corrections. If there are any corrections that you would like, let me know. Otherwise, I would take a motion to approve.

> MR. LAXALT MOVED TO APPROVE THE MINUTES OF THE SEPTEMBER 12, 2018 MEETING OF THE ADVISORY COMMISSION ON THE ADMINISTRATION OF JUSTICE.
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> JUSTICE HARDESTY SECONDED THE MOTION.
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> THE MOTION PASSED UNANIMOUSLY.

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Again, I just want to thank staff, and particularly Jordan Haas, who did a fantastic job on these meeting minutes as always.

Commission members, just to give you the lay of the land, the way I intend to run today's meeting, we're going to go slightly out of order. What I'm going to do next is go to agenda item VI, which is going to be the presentation from Ms. Butler, and then after that we are going to go to agenda item VII, which is the Innocence Project informal working group. After that, we will go quickly to the work session and decide whether we want to proceed with any of the work session documents, and then we will come back to the main presentation today under agenda item V. I just wanted to make sure everybody knew the order that we were going in today. With that being said, I will now open agenda item VI, which is a presentation by Ms. Butler on the Criminal Justice Information Sharing Subcommittee of this Commission.

Julie Butler (Representative, Central Repository):

I am the Administrator for the Department of Public Safety's Records, Communications and Compliance Division. The Subcommittee for Nevada Criminal Justice Information Sharing (NCJIS) has held three meetings so far. Our fourth meeting is scheduled for tomorrow. We have discussed various information systems that are in use throughout the state. We have heard from law enforcement agencies, courts, prosecutors, the Central Repository, and discussed the various challenges that we all face to effective information sharing. The Subcommittee has the authority per the enabling legislation to establish

working groups, and we have done so. We have a Northern and a Southern working group who have had two meetings so far, and then we have a working group on Nevada Offense Codes that has met once so far. We will be hearing status reports from those working groups at tomorrow's meeting. Tomorrow's NCJIS Subcommittee meeting will focus on the status of the NCJIS Modernization. We will have an update on the National Incident-Based Reporting System (NIBRS) and the National Use of Force Data Collections. We will have a report by prosecutors on providing records of criminal history to the Central Repository. We will focus on the federal Fix NICS Act, which stands for the National Instant Background Check System for Firearms Eligibility. It is a federal law that passed last year, and all states are required to adopt an implementation plan to improve reporting to NICS, so we will discuss the state's draft implementation plan and hopefully seek approval for that. Then, we have a potential bill draft request (BDR) tomorrow to discuss to improve criminal history record reporting and the record quality. A work session will follow tomorrow's meeting where we will hopefully approve recommendations on NCJIS Modernization funding, the Fix NICS Act implementation plan and the bill draft request, and additional recommendations may follow after the Subcommittee meeting. Our recommendations will then be considered by the ACAJ at its November/December/January meetings. That concludes my presentation.

Chair Yeager:

Thank you, Ms. Butler. Let me ask you just a scheduling question. I take it from your comments that tomorrow's meeting of the Subcommittee, that's probably going to be the last meeting that is going to happen before this whole Commission would take up the recommendations. Is that right?

Ms. Butler:

Yes, that's correct.

Chair Yeager:

Okay, great. So, what I will do is, after that meeting, I will follow up with you to decide whether we want to put a work session document related to this agenda item on our November meeting where we will be together as a whole Commission, or if not, we would then have it in the January timeframe, but I will follow up with you to get that information to make sure we schedule it at a time that works for you. At this time, I want to open it up to other questions from Commission members for Ms. Butler. Seeing no questions from Commission members, obviously, I want to encourage members, if you are able to tomorrow, to tune into that meeting. If you can come in person, great, or if not, as you know, these meetings are broadcast on the Nevada Legislature's website, so those are available to watch if you're able to break away from your normal activities for a little bit of time. Again, Ms. Butler, I want to thank you for taking over the Subcommittee. Just so everyone knows, the meeting tomorrow is scheduled for 9 a.m. It is going to be run from here in Carson City, so this will be the main location, but also with the ability to participate

from the Grant Sawyer Building in Las Vegas. Again, thank you for your work on the Subcommittee.

At this time, I will close agenda item VI, and I will now open up agenda item VII. I want to invite our presenters, I believe Mr. Callaway and perhaps Michelle Feldman if she is present down in Las Vegas. Committee members, as you may recall, I appointed a very informal working group to look at some of these issues brought forward by Ms. Feldman and the Innocence Project. The purpose of this today was to give us an update on the outcome of those informal meetings, and then after that, we will perhaps go to a work session to consider at least one of the recommendations.

Chuck Callaway (Police Director, Las Vegas Metro):

I will turn it over to Ms. Feldman here quickly, but first I wanted to thank the Attorney General's Office for providing us with a facility and with folks to transcribe minutes from our informal meetings that we had. I believe we had three meetings with stakeholders on these issues that you see before you that Ms. Feldman will go into in depth (Agenda Item VII). I think we had some very robust discussion and I think there were some areas where we were able to reach consensus, in particular on the recording of interrogations. Ms. Feldman vice-chaired the working group and I will let her go into specifics of what happened during those working group meetings.

Michelle Feldman (Legislative Strategist, Innocence Project):

I want to start by thanking Chair Yeager for convening this Innocence Issues Working Group. It was a really great setup to have every stakeholder in the room to discuss different issues related to preventing and addressing wrongful convictions in Nevada. Also, thank you to Mr. Callaway for being a great chair and keeping everybody on task and keeping everybody on time, and to Patty and the Attorney General's Office for helping with all the logistics. We had 11 members in the group, and we met 3 times to talk about 3 different issues. The first issue was recording interrogations, the second one was safeguarding against unreliable jailhouse informant testimony and the final one was addressing the time limit on introducing new non-DNA evidence of innocence. The good news is that we were able to come to a consensus on a recording of interrogations bill, and the legislation would require that every agency in the state adopt a written policy that, at minimum, requires interrogations in their entirety to be recorded for suspects in homicide and sexual assault cases. The group members thought that this really struck a good balance between having a uniform statewide practice but at the same time allowing agencies to adopt written policies that were right for them. Mr. Callaway worked with his agency, and the Las Vegas Metropolitan Police Department now has a really great recording of interrogations policy that can be a model for other law enforcement agencies in the state, so it was a really good outcome and I think it's going to help make the system more transparent.

The next issue we met on was jailhouse informants and safeguarding against unreliable testimony. We talked about reforms that other states have implemented, like requiring prosecutors' offices to track and disclose the use of jailhouse informant testimony, and also benefits they receive and other impeachment evidence, and then requiring it be disclosed to the defense, and also some jurisdictions require pretrial reliability hearings before jailhouse informants' testimony is admissible. We ultimately didn't come to an agreement on legislation, but the Nevada District Attorneys Association voted to require all offices by January to adopt written policies on the use of jailhouse informants, and I'm going to turn it over to Jennifer Noble in just a moment to talk more about the policies.

The final issue was addressing introduction of new non-DNA evidence of innocence after a person is convicted. Here in Nevada, a person has 2 years after their conviction under the motions for new trial law to introduce new evidence. After that time, they have to go through state habeas, and the new evidence has to be tied to a constitutional claim. That could be a problem, because in a lot of innocence cases, it's just pure new evidence, like the actual perpetrator will confess to the crime, so we talked about different models in different states. We spoke a lot about the factual innocence laws that were passed in Utah and Wyoming, and we had the Wyoming Attorney General's Office call in, and also the Wyoming Prosecuting Attorneys Association, to talk about how we came to an agreement on the factual innocence law. Ultimately, we didn't come to consensus, but I hope that this Commission will consider this issue again in the future.

That's really the summary, and I again just want to thank everybody who took time to participate. Thank you to all the support we got, and it's just great to be able to have discussions and come to solutions. Thank you again.

Chair Yeager:

Thank you, Ms. Feldman. Ms. Noble, did you want to add anything on the policy discussion? It's okay if you don't want to. No pressure. If you could just let us know, I think it was on the second bullet point about jailhouse informant testimony, if you want to kind us let us know where things are at with respect to the Association, please.

Jennifer Noble (Chief Deputy District Attorney, Washoe County District Attorney's Office):

I'm here on behalf of the Nevada District Attorneys Association. We were able to get a lot of good discussion and work done in this group, and we thank the Innocence Project and Mr. Callaway for leading the way on this. Essentially, the District Attorneys Association met in September, and what we were able to agree about unanimously was that each district attorney's office will adopt a written policy by January 1 of 2019. That policy will address, I think, many of the concerns regarding what we call incarcerated witness cooperation agreements and make sure that the nature of those agreements are tracked and kept so that they can be disclosed in future cases, because we certainly recognize that in most, if not all, instances, that information is certainly discoverable pursuant to

Brady and its progeny. There was no resistance to this. It's just a matter of everyone coordinating things. Various district attorneys' offices have their own versions and practices, but I think we made some good headway here in making sure that the concerns of the Innocence Project are addressed. We also were all able to agree that these types of informants are used very rarely, but we do agree that when they are used, it is certainly important to track that information for discovery later. With that, that's all I've got.

Chair Yeager:

Thank you for being here this morning. Commission members, does anyone have any questions for any of the three individuals who updated us on this agenda item? Are there any questions or further comments on what we just heard?

Paola Armeni (Representative, State Bar of Nevada):

I have a couple questions, and I'll just focus right now on my questions on the jailhouse informants. Ms. Noble, you talked about the Association—thank you for doing that—deciding that they were going to come up with some policy on the jailhouse informants. Are you as an Association going to come up with a standard policy that you will provide to all the prosecutors' offices in the state?

Ms. Noble:

Thank you for the question. What we were able to come up with is the elements that each policy shall contain, and my plan is to provide an example policy for each of the offices. But you have to understand that the sizes of these offices vary drastically within the state. For example, in the Washoe County District Attorney's Office, we use JustWare. They also use that in the Clark County District Attorney's Office. But in Esmeralda County and other counties, they may not use that same tracking system. The important elements will stay the same, but in terms of the mechanism for the tracking of the information and the keeping of that information, that is going to be left up to the individual district attorneys' offices.

Ms. Armeni:

Thank you. Do you know if those written policies will be public record or subject to the public records law?

Ms. Noble:

It would seem to me that each one of those policies would be subject to a public information request. I don't know of any place in the public record we plan to publish them, but they should be available upon request.

Amy Rose (ACLU of Nevada, Inmate Advocate):

I'm not sure who to direct these questions to, but I have some questions about the new non-DNA evidence issue. From what I understand from the presentation, it looks like there was no consensus reached, which I think is kind of disappointing to me to hear that, especially because we are one of only four states that still have just a 2-year time limit ban exclusively on any new non-DNA evidence, which I think is really concerning. Obviously, we've talked about it on this Commission before. We've heard from the Innocence Project about the issues that that presents. We saw that specifically in the case of DeMarlo Berry. His only option was to make a constitutional claim and try to fit it in, because the only other option for people if they find evidence of actual innocence that is non-DNA, they have to somehow fit it into a habeas petition and say that it is a constitutional issue. Not everyone will be able to make that claim. I'm wondering why there was no consensus reached and what happened, and if maybe we can hear a little bit more about that particular process and why we are going to leave the statute as it is now, denying people the opportunity to present evidence of their actual innocence if it is discovered after 2 years. I'm not sure who we can ask questions to for that.

Ms. Feldman:

I can talk a little bit about it, and then Ms. Noble can also talk a little bit about the discussion. I think that we heard from Wyoming and the Prosecuting Attorneys Association and the Attorney General's Office about how they had the same issue of the 2-year limit, and they talked about how we were able to really narrowly tailor a statute. The idea of the factual innocence law almost mirrors the post-conviction DNA testing law in that it creates certain legal standards that this new evidence has to meet to be able to get a person back into court, and I think some of the concerns were that everybody is going to file a petition. That hasn't been the case in Wyoming so far, but the law is pretty new. But it is something I hope that state habeas—I think the DeMarlo Berry case really shows that it's a cumbersome process. Had the Conviction Integrity Unit in Clark County not taken his case, he would probably still be in prison for a crime he didn't commit, even though the actual perpetrator confessed 20 years later, because the lawyers had to kind of shoehorn the new evidence into a constitutional violation. It didn't really fit. I hope other states are looking at their laws, because I think a lot of these laws were originally created before there was awareness about wrongful convictions and there was awareness that people can find new evidence that they didn't commit the crime, so I hope that it's something in the future that we can take up here. Ms. Noble had a lot of review and discussion and did a lot of work on this too, so I will turn it over to her.

Ms. Noble:

Thank you for the question. First, I want to start from the place that we absolutely think that credible claims of actual innocence or compelling, newly discovered evidence have to be given meaningful review, and Clark County's Conviction Review Unit, Washoe County's Conviction Integrity Committee and similar practices in the smaller offices, we

believe, are the best way to address that. Second, there is a fundamental disagreement, I think, between us and the Innocence Project, and we were able to have some good discussion about how difficult it is to "shoehorn" an actual innocence claim or attach it to a constitutional claim. In my daily practice—I practice in the area of post-conviction law and appellate practice—I'm just not seeing those practical problems occur too often. Third, I want to say that we did reach out to prosecutors in Utah and Wyoming, and particularly in Utah, for example, integral to the way their law is drafted is meaningful judicial screening at the beginning of the time when the petition is filed before the prosecutors are even required to respond. In my experience, I think that would be very difficult given the burden that the courts currently seem to have with respect to these petitions. It's very often that even on a successive petition and abuse of petition, we are still ordered to respond even though the courts by statute could dismiss it outright. I also wanted to share with the Committee that when we spoke to the prosecutors in Utah, they said that while the statute is placing the burden on the petitioner, the practical matter is that the prosecutors are having to re-prove the case. It's causing hundreds of hours of investigation, and it's essentially a retrial of the case. They are kind of dissatisfied with how it has played out. Now, I understand that's not universal among some of the prosecutors that Ms. Feldman and her folks are in contact with. The Wyoming statute is quite new and it operates, again, on that assumption that the courts are going to conduct meaningful review at the outset. Again, I'm just not convinced that that's going to be something that happens. Certainly if we see something where a claim of actual innocence or newly discovered evidence appears to be credible, it needs to be heard. We will find a way, and it's my job as a prosecutor handling these cases to bring that to our office's attention. But we are not satisfied that the structure of the statutes and the changes proposed by the Innocence Project are the right solution.

Mr. Callaway:

If I can make a final comment on this issue in regards to the working group, as the chair of the working group, and I had this conversation with Ms. Feldman before we started, in my mind, a working group comes together to find solutions. I didn't want to have a situation where five members of the working group support something and four members don't so we come back to this body and recommend that it go forward. I wanted a total consensus from the working group on all the issues that were brought before us, because the working group works to solutions. It's not a legislative body that takes a vote and the majority wins. I believe that we were able to have good discussion on these issues, but these two areas with the new post-conviction evidence and the jailhouse informant issue were just two areas that the group as a whole could not reach consensus on. It certainly doesn't mean that the Innocence Project won't bring these issues back to the Legislature, where then it could face a majority vote and be passed into law. We're not saying the law as it is today won't change, we're just saying the working group could not come to a consensus on these issues.

Chair Yeager:

Ms. Rose, did you have a follow-up question?

Ms. Rose:

I do, thank you. I guess this question is maybe best suited for Ms. Noble. I understand in Clark County they have a Conviction Review Unit. In Washoe County, they do not, although from what you are saying, it sounds like you make efforts to review cases that are brought to you. But this raises a couple of concerns. I guess the first question from that is what do people in every other county do? If they don't have a conviction review unit, what are their options?

Ms. Noble:

Thank you for the question. It's important to understand that most of the prosecutors' offices in this state are not as big as Washoe County and certainly not as big as Clark County. It's actually not true that the Washoe County District Attorney's Office does not have attorneys assigned to reviewing those issues. I am the Chief of the Appellate Division in the Washoe County District Attorney's Office. I'm also a part of the Washoe County District Attorney's Office's Conviction Integrity Committee, and we review these issues when they come up. I also want to point out that the members of the Nevada District Attorneys Association (NDAA) that are from smaller counties, if you have four attorneys in an office or two attorneys in an office, it doesn't really make sense to designate those attorneys specifically as a committee. Each one of the elected district attorneys in our state, each one of the members of the NDAA is committed to reviewing meaningfully allegations of actual innocence and newly discovered evidence that should be brought before the courts. Just because they don't have a named committee does not mean that the same work is not being done in those offices.

Ms. Rose:

I appreciate your answer, Ms. Noble. Do you know if in the smaller counties there is a process for people to apply? It sounds like what you're saying is they are actively looking for cases. I'm just not really sure if I am in Douglas County and I think there's someone who confessed to the crime, like let's say the DeMarlo Berry situation, what do I do if my claim doesn't fit in a constitutional issue, it's past 2 years from the date of my conviction, and I'm in Douglas County? Is there a form I fill out to get that information to the four prosecutors? What are people's options? Is there a process that you know of? I understand that you don't work in all the rest of the counties, so you may not have that information, but it does sound like you have some concept of it because you know that they review information, so I'm wondering if you know how they do that.

Ms. Noble:

I don't know the specific processes of how they do that, but we referenced the DeMarlo Berry case a couple times today, and I would say—of course, I don't work in the Clark County Appellate Division, but Mr. Berry was able to connect his claim to a constitutional deprivation claim, so I'm just not persuaded that there is this difficulty in connecting or creating a constitutional nexus with these claims. They're pleaded all the time: ineffective assistance of counsel, failure of my attorney to investigate, failure of the prosecutor to talk to witnesses at the scene. Those are all sorts of things that are articulated every day in this context, so certainly they can file a petition for writ of habeas corpus. They can file a petition for writ of coram nobis. We get all kinds of things from prisoners, and they are reviewed by the Appellate Division. Courts order responses. If a court pleading is filed, the district attorneys' offices are going to review it and the information contained therein.

Ms. Feldman:

You brought up a good point about the DeMarlo Berry case, but actually, the district court denied his claim originally. They wouldn't even look at it because—first of all, his claim was time-barred under state habeas. You have 1 year after your appeal to file, so the only way he could overcome that was to prove the highest standard, that he had new evidence of actual innocence, and the district court—the Rocky Mountain Innocence Center filed the petition and the district court reviewed it. The Clark County District Attorney's Office filed a motion to dismiss, and the district court granted that motion, so then DeMarlo Berry's lawyers appealed to the Nevada Supreme Court. The Nevada Supreme Court said to the district court, "You have to have an evidentiary hearing at least," and at that point, that's when the Conviction Review Unit was getting started, so they took the case. Luckily, that provided him with his way to get exonerated.

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

When I was in law school, I worked for the Federal Public Defender's Office in their habeas unit, and it actually was very difficult to sort of bootstrap substantive claims within constitutional claims. You referenced the ineffective assistance of counsel, interviewing, doing an investigation, but if, for example, there was a witness that never came forward that the defense didn't know about, that doesn't come under ineffective assistance. We had a very difficult time being able to get claims approved by the courts because so often the substantive claims did not fit into a specific constitutional claim, and we were always thinking of creative ways to toll the time when they were time-barred. "Well, this person was in the hospital from this date to this date." I think we weren't able to succeed more than we were able to really bootstrap those substantive claims. That was just a comment. The question I have is what is the composition of the Clark County unit versus the Conviction Integrity Committee? The reason why I'm asking is I'm interested in systemic changes or systemic fixes, because if the Conviction Integrity Committee is dependent upon—you are a very ethical person, so if it's dependent upon who is there looking at it at the time, that's not a systemic fix. It's a fix that is sort of just dependent upon who is

there at the time. I'm curious what the difference in the composition is, if there is a difference. Like, is Clark County made from a more diverse composition, or is that just all people in the Clark County District Attorney's office?

Ms. Noble:

It's my understanding that the Clark County Conviction Integrity Unit is composed of attorneys from that office. So, no, there is no composition in our office or their office, and I obviously don't work there, that involves folks that are not prosecutors, because prosecutors bear the burden and the responsibility of making sure that innocent folks aren't in prison. You also referenced tolling, Ms. Brady, and I just want to make sure, because this came up in Ms. Feldman's comment as well, that we are not conflating the issue of procedural time bars and the difficulties they can present with the difficulties that you described in constitutionalizing a claim, because they are two separate issues.

Ms. Jones Brady:

I'm aware of that, and I just was saying that those were both complexities, and if there was a law that allowed for more time—the time bar is what makes the lawyers have to bootstrap substantive claims within the constitutional claims. If there wasn't a time bar, then they would have that extra time to say, "Here is a new substantive claim we have just discovered."

Ms. Noble:

Respectfully, that's not my understanding of the law. That's not my understanding of what we are dealing with in my daily practice. It may be different in the federal system, I don't know, but the tolling, the procedural time bars and the constitutionality of a claim, for me, are related but separate issues.

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

As a bit of a follow-up to the dialogue that just took place, I wanted to pose a question to the chair of the working group and/or you, Ms. Noble. Were there any areas within the habeas statute that were identified for legislative changes? The Supreme Court and our district courts around the state struggle with some of the language in the statutes. You are correct as an example that petitions for writs of habeas corpus are to be judicially screened before the district attorney's office is expected to respond or the Attorney General's Office. Unfortunately, that screening process is an issue, and I think that it's something we need some stats on. So, in addition to my first question, I have a second request of your association. Are there statistics that one can provide either to the Supreme Court or to the Commission or to both that show the number of instances in which judges request responses to writs of habeas corpus that are subject to procedural bars or otherwise defective under Hargrove or any number of other cases? That's one side of that issue. The other side of that issue is this: in how many instances, and are there any

statistics that show this, have responses been filed to writs that are simply a motion to dismiss because of procedural bars or some other bar that have later resulted in relief for the defendant? That is of concern to me, because it seems that the stakeholders in the system have knee-jerk reactions. The judicial system is overwhelmed by writs from inmates, handwritten writs, many of which do not have merit, with all due respect to the folks over there in Mr. Dzurenda's facilities. That occupies a considerable amount of judicial resource and, frankly, consumes a lot of district attorney resource, because if the knee-jerk reaction of the judicial system is to simply order you to file an answer, that just wastes everybody's time where the writ should have just been disposed of. On the other side of the coin, I fear we get conditioned to that, so that the writ with merit, although poorly framed, ends up having huge implications not only for the defendant, but for the law. It seems to me that the writ of habeas corpus practice in the state needs to be examined, because it's a huge resource suck, but it's also a system that I'm not sure is correctly identifying those with legitimate exception or actual innocence claims. I'm very concerned from the perspective of the Supreme Court looking at what our district judges do and what we do and what our staff does. I'm not sure we're running the show the way we need to. I was interested in whether the working group had identified any legislative suggestions, and alternatively whether any statistics exist along the lines that I've commented about.

Ms. Noble:

Thank you for the question, Vice Chair Hardesty. I want to start by agreeing wholeheartedly with your last comment. It is a resource suck. It is difficult for my attorneys in my division to spend time that we would like to spend on certain petitions that merit more careful review. We do it, but we spend a lot of our time responding to frivolous successive abuses of petitions that could have been dismissed outright, and it's not always happening. In terms of specific statistics, I don't have them for you here today. I wasn't prepared with those today, but I have implemented a tracking system in JustWare. We're trying to keep track of motions to dismiss, second or successive petitions where we are ordered to respond and things like that, because I think that in trying to figure out how we can best address the concerns of the Innocence Project, which are real, in terms of making sure that folks with credible claims are carefully considered and that those are litigated properly, it would help if our attorneys didn't have to spend so much time responding to the frivolous petitions. I don't have the number of instances where we have to do that, but I certainly am starting to gather them and can provide those to you, Justice Hardesty, and the Supreme Court as we gather them. I am happy to do that.

Justice Hardesty:

And perhaps Mr. Owens in the District Attorney's Office in Clark County would have some numbers for that jurisdiction.

Ms. Noble:

Yes, I would be happy to discuss that with Steve Owens from the Clark County Appellate Division. I want to make sure I understand your second question correctly. I believe it was how many instances do we file a motion to dismiss a petition that results in relief for the petitioner or for the state?

Justice Hardesty:

For the petitioner.

Ms. Noble:

Relief for petitioners is rare, but often what I will end up doing is filing a partial motion to dismiss, because some of the most common credible claims that we see that deserve a hearing are Lozada claims, claims of appeal deprivation, so I might file—if the incarcerated individual has 18 other claims that are clearly either the law of the case or they just don't state a basis for relief under Strickland or other cases, I will say, "It is our position that the courts should dismiss these so that we don't waste time on this, but we need testimony from the attorney. We need testimony, if they want to do it, from the incarcerated person, and we need to figure out if there was an appellate deprivation claim." Frankly, if I pick up the phone and I talk to a trial attorney and they say, "You know what, I forgot to file an appeal," that often doesn't even make it to the court because we end up stipulating to just let that person file a late appeal. We try to solve things that way too.

Justice Hardesty:

Part of the issue, I think, from the perspective of the Supreme Court is that there are numerous instances in which the petition is—you are ordered to file an answer. The petition is disposed of by the district court after your office has consumed its time doing that. Then, we get the case, but the cases that seem to have merit or potential merit are cases in which there should have been a lawyer appointed and there should have been an evidentiary hearing, and it would have saved everybody a tremendous amount of time if that took place in many instances. What I'm trying to do is figure out a way for trial judges to be able to separate those that are less deserving and should be dismissed and avoid everybody's waste of time, since they are the gatekeeper initially under current statutory construct, and still make sure that we afford opportunities for those with innocence claims to be able to pursue those and a vehicle to do so. Maybe you and I disagree about this, but I do believe that cases like the one you've been discussing with Ms. Rose and the Innocence Project representatives were problematic. Shoehorning some of these actual innocence claims into writ proceedings post-procedural default is a real problem, and I think we need to create a vehicle for that to happen. Maybe that does require some change in our jurisprudence. As you know, actual innocence is factual innocence, and maybe some of these issues need to be modified. That would be more of

a statutory change. I assume the working group, Mr. Callaway, did not recommend any changes to the statutes?

Mr. Callaway:

No. When we work-sessioned this particular issue, we kind of had three categories to discuss. One was do we all agree on this or do we not, what are some low hanging fruit, so to speak, that we could agree on, or we all disagree, that we are not making any recommendations back to this Committee. You can see just from the discussion we had today that this was a robust topic that a lot of people—some folks on both sides dug their heels in. So, in the long way of answering your question, no, we didn't have any specific areas that we brought back on this issue to recommend legislative change. I think the thought was that the Innocence Project would pursue a bill and then this issue could be further battled out at the legislative session.

Justice Hardesty:

Personally, I want to applaud the working group and its work and all of its members, because it's terrific what you've accomplished. But Chair Yeager, I do think that this Commission, not now, but maybe next session, should look carefully at how we approach writ of habeas corpus relief in our state. I think it has become a huge consumption of time and effort, much of which is wasted in the process and does not really help identify in all instances those with a serious and meritful claim.

Ms. Feldman:

Justice Hardesty, I wanted to add thank you for your comments. Working on this issue of state habeas and actual innocence issues across the country, the problem of frivolous claims is something that's brought up everywhere, so it's a common problem. Interestingly, in a number of states in recent years, their supreme courts have said, "We are recognizing under state habeas that actual innocence is a claim, and if there is new evidence of innocence, our constitution allows this claim to move forward." Last year, the Iowa Supreme Court just issued a ruling that says actual innocence is a claim that you can make under state habeas. Texas has done it, and Connecticut. There are a number of other states. Some courts have taken up the issue of actual innocence and created a way through court rulings. Other states have done it through legislation. Thank you again for those really thoughtful comments.

Chair Yeager:

I want to thank you as well, Vice Chair Hardesty. I think that recommendation is a good one. It will obviously be up to whoever chairs this Commission in the next interim to decide whether to take this on, but I do want to encourage stakeholders that it sounds like, at least with that last issue, there is some contention, and I certainly understand that. It's not unexpected, but to the extent folks want to keep working on this issue I would encourage

you to do so, not in the context of the Advisory Commission, but if there is an appetite to figure out that particular issue or what Justice Hardesty had mentioned about habeas reform. Certainly if something can be brought to the Legislature that is a consensus, that is preferable, but I understand that's not always realistic, particularly when it comes to the judiciary issues. I do want to thank all of you for working hard on this issue: Director Callaway, Ms. Feldman, I know we had Judge Bateman from our Commission on the working group, and you, Ms. Noble, as well as the others who are listed on the slide (Agenda Item VII). I want to thank you for the time and effort that you put into this and for the recommendations brought forward to this Committee. We may call on you again in the future, but for now, thank you for your service to the Advisory Commission in this interim.

I am going to move on from this agenda item. I will close agenda item VII. What I would like to do next is go to our work session document while we have everybody here. Members of the Commission, you should have a work session document that contains essentially three recommendations (Agenda Item VIII A). You should also have from the Innocence Project Working Group the proposed legislation relating to electronic recording of custodial interrogations (Agenda Item VIII B), and then you should also have an Attachment A which goes along with recommendation three (Agenda Item VIII C), which we may or may not take up given the appetite of the Committee. The first thing I think we ought to do given the presentation we just heard is go to recommendation number two of the work session document. I will remind the Commission as well that we do not have any bill draft requests as a Commission, so when we make a recommendation to draft legislation, what essentially happens is it goes into the final report and it is up to an individual legislator or someone with legislative committee bills to decide whether to take that idea and run with it. Just because we request it doesn't mean it will actually be drafted, although I think last interim most of the recommendations were picked up and drafted into legislation. What I would like to ask the Committee is we just heard about proposal number two, the recording of custodial interrogations. It sounds like there was a consensus reached by the working group, so I'd like to ask before we consider this recommendation, is there anyone on the Commission who is either opposed to advancing this recommendation or anyone who would like additional time to consider the recommendation? If so, we could potentially move this to our November meeting. I don't want to twist anyone's arm, but it seems like there was a consensus reached, but I want to make sure I take input from Commission members. Are there any concerns?

Adam Laxalt (Attorney General):

I would prefer to delay it to November, if that's okay.

Chair Yeager:

Attorney General Laxalt has asked that we delay until November, and I think that's a fine suggestion. I want to give folks a chance to look at it and to think about it, ask any questions that you might have of the working group, so keep this in your back pocket and

we will have this on the November work session, as well as a potential recommendation to make at that point. Please be sure between now and then to reach out if you have any questions or any additional thoughts. Again, this is a mark-up that you have. Whether the actual bill would look exactly like this depends on Legal's drafting of the bill, so it's more of a conceptual sort of recommendation. But with that request, I will roll item number two of the work session agenda to our November meeting.

I would like to go to proposal number one, and I wanted to ask Vice Chair Hardesty if perhaps you could give us a quick rundown of proposal number one, because it does have interplay with what the Sentencing Commission decided to advance at the August 29, 2018 work session.

Justice Hardesty:

Thank you, Chair Yeager. For the information of the members of the Advisory Commission, the Nevada Sentencing Commission had a deadline to conduct its work, at least for purposes of submitting a bill draft request to the Legislature, of August 31. On August 29, the Commission met and approved three proposals that would be passed on to the Legislature. The recommendations seek support for those recommendations: drafting a letter to the Governor and the Legislature to express support for additional funding for the Division of Records, Communications and Compliance for our Criminal History Repository, the Division of Parole and Probation, the Department of Corrections and the Board of Parole Commissioners; and an additional $3,000,000 appropriation per year to the specialty court programs in Nevada. The evidence and facts presented to the Sentencing Commission during its meetings leading up to this recommendation dealt with the request for support from the Legislature. All of these agencies labor under deficient budgets, and they are not able to accomplish their objectives, which poses a threat to public safety and a threat to the effective operation of the criminal justice system. I would urge the Advisory Commission to join the Sentencing Commission in endorsing these recommendations. We talk about it and we, frankly, as far as I'm concerned, pay lip service to it. The time has come to be serious about adequately supporting these agencies' needs. I would be happy to share specific details, but the salary problems that exist within the Division of Parole and Probation, the Department of Corrections and the Parole Commissioners have been displayed in the press. Overtime is paid way more than it should be, simply because of a lack of funding for the base personnel needed for those groups. You have heard to a degree from Mindy McKay the efforts that we have in the Criminal History Repository to get that squared away and up to date and how big a problem that is. You've got law enforcement on the streets depending upon that for their own life and safety, and yet our systems are problematic because we don't adequately support them and get them current. As for specialty court programs, in 2015, the Legislature made an investment of general funds to help support a commitment out of the general fund for specialty courts. I think everybody in the system recognizes that properly operated—I add that condition—specialty courts are the most effective system to avoid recidivism and generate rehabilitation. The Sentencing Commission is seeking a further investment into our specialty courts, very much the same way as Oregon did. Oregon

started off with a $15,000,000 investment and ratcheted that up to $40,000,000, and the results have been outstanding. We need to do the same thing in Nevada. That's item one in those recommendation points A, B and C.

Chair Yeager:

Thank you, Vice Chair Hardesty. I do think with this particular recommendation, given the timing, this is one that I think if we are going to take this up, we need to take this up today given the letters going to the Governor, who is building the budget currently, if not already pretty much built, and then to the Legislature as well. What I would like to do is take a motion, and then I will go to any discussion on the motion. Do I have a motion to approve recommendation number one, points A, B and C?

MR. CALLAWAY MOVED TO APPROVE RECOMMENDATION NUMBER ONE, POINTS A, B AND C.

MS. BUTLER SECONDED THE MOTION.

Ms. Jones Brady:

I was just wondering on point A if that includes money to protect against hacking and invasion of information contained in that Repository.

Justice Hardesty:

I would defer to Ms. Butler to respond to that, but the presentations to the Sentencing Commission would answer that question yes.

Ms. Butler:

The issues that we face right now with the Nevada Criminal Justice Information System (NCJIS) are that the underlying systems are not vendor supported, so that leads to various security risks from hacking and malware and intrusion attempts. So, indirectly, if those systems are upgraded to modern and supported systems, that does harden them and protect them against those types of threats: hacking, malware, etc. Does that answer your question?

Ms. Jones Brady:

Yes, thank you.

Mr. Laxalt:

As a supporter of specialty courts, I would love just a little bit of detail of—is this $3,000,000 supplementing existing specialty courts, or is this part of a plan to be able to expand?

Justice Hardesty:

The presentation to the Sentencing Commission was part of the plan to expand the outreach and participation of specialty courts. The last session revealed that several hundred more individuals were able to participate in specialty courts as a result of the investments that were made by the Legislature in 2015 and again in 2017, and this would continue that effort through the Specialty Court Funding Committee.

Chair Yeager:

I will just add to that as well, I know particularly in Clark County, for instance, the mental health court where they are doing good work, their waitlist is 6 to 9 months currently. These are individuals who are seriously mentally ill and have been deemed appropriate for mental health court, but the waitlist is just that long in terms of services and coordinators. Those are typically people who are sitting in the Clark County Detention Center waiting for placement, because normally, they are not being released prior to the beginning of the specialty court program. I think some of this additional money hopefully will expand the capacity and maybe the waitlist, if not eliminate it entirely, it would at least be cut down substantially.

Justice Hardesty:

If I could augment or supplement that response, Judge Togliatti, who is a district court judge in the Eighth Judicial District and is responsible for handling the competency review and competency cases, testified and argued strenuously in support of additional funding for Clark County's mental health court system. The mental health court system started in Washoe County with Judge Breen going back to about 2000, 2001, and the Washoe County system is insufficient, but it is robust. Compared to Clark County, it is off the charts, golden. Clark County is seriously deficient in its mental health court capacity. Just by way of example of this money, the Specialty Court Funding Committee divided the money up through that committee. I think roughly $1,600,000, maybe $1,700,000, went to Clark County in the last go around, and I wouldn't be surprised that a similar percentage allocation would be divided by the committee. It's based on a showing of need, capacity to be able to build your program, and it's also built around the requirement that the program meet best practice requirements and national guidelines.

Chair Yeager:

Seeing no additional discussion, we will go ahead and take a vote on the motion. Again, this is recommendation number one, points A, B, and C in the work session document.

THE MOTION PASSED UNANIMOUSLY.

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Next, I want to go to recommendation three on our work session document. Again, I am more than willing if folks would like this recommendation to be rolled to our next agenda in November. I'm happy to do that. I will explain it first. We talked about this a little bit as a Commission at the beginning of our work, that the statute requires us to do really an unrealistic amount of investigation into various topics, to appoint various subcommittees. I think over the years, a lot of that really has not been done just due to capacity and the fact that all of us on this Commission obviously have other jobs that take up the majority of our time. The thought under Attachment A would be to revise the statute that creates the Advisory Commission (Agenda Item VIII C). We wouldn't revise the membership at all, but essentially would leave it to the discretion of the Chair. I will note that the Chair, at least historically, has changed almost every session and has been rotated historically among the Assembly, the Senate and the judiciary. Essentially, the Chair would have discretion about what issues to take up in that particular interim.

The other recommendation, number two, just moves the report deadline back a couple months. We're still operating under a September 1 deadline, which obviously we're not going to meet this interim, and I think it's been a while since we actually have met that deadline.

Recommendation three on Attachment A puts this Commission in line with other commissions, which basically say if you are a state employee that you have to be given the latitude of the day off to actually attend these meetings, that you don't have to take essentially a vacation day to be here. That was just, I think, an oversight when this Commission was created.

Number four essentially repeals the various subcommittees. As this Commission knows, we really only had one subcommittee this time, which was the one that was specifically put into statute last session, but medical use of marijuana, juvenile justice, victims of crime, they all have committees that are either statutory, legislative or located in other agencies, so it was a bit of an overlap.

Number five: members may recall that when the law was passed back in 2013, I believe it was, to take DNA from arrestees, there was a subcommittee set up to examine that.

That subcommittee had one interim where they met in 2014, I believe it was, and then didn't meet again. Now, there was Assembly Bill (A.B.) 97 from the last session. Basically, that subcommittee was going to be tasked starting, I believe, in 2021 to try to get a handle on the sexual assault kit backlog. The idea here was to just give that duty to the full Advisory Commission rather than having a subcommittee. The thought here is to be more flexible and to align the statute with really what is practiced at this point for the Advisory Commission. Before I take a motion, I will ask though if folks are uncomfortable or would like a little bit more time. We can certainly roll this one to November as well.

Mr. Laxalt:

I would just like to make a comment on at least the subcommittee of victims of crime. I know traditionally the Attorney General's Office does this. We were prepared to hold that, and I know the Chair decided that we would put it into the larger Committee. If this is going to be sort of officially repealed, I want to make sure that that mission isn't lost and it is absorbed into the larger Committee or there is some thought given to where it should go. Obviously, I'm not going to be the Attorney General here in 2 months, but it is an important role for the Attorney General. This position is uniquely situated to be able to span all of the various areas that can help with this issue. This isn't going away. It's something that is incredibly important, so I'm happy to support this. I just want to make sure it's on the record that the notion is to put it into the larger committee and that that particular mission isn't disappearing.

Chair Yeager:

Thank you for that, Attorney General Laxalt. You're absolutely correct, that would still be part of the mission and could be part of the duties of the larger Commission. I should have noted as well, one of the issues with the subcommittees is that because we are subject to the Open Meeting Law, so are all of our subcommittees. In terms of the staffing and scheduling of subcommittees, that sometimes presents a challenge budgetarily for the amount that is allocated for the Advisory Commission on the Administration of Justice, which is why I think historically we have kind of pulled that into the larger Committee as a whole when we are all meeting rather than trying to agendize separate subcommittee meetings. But that being said, your comment is very well taken and we have that on the record. I certainly would speak for myself and would hope that any future Chair would agendize and take up this topic area as appropriate and as necessary in interims to come. I don't have an official motion yet, but if everyone is comfortable advancing this recommendation today, I would take a motion and we can have some further discussion after the motion. Is there a willingness to do that, and if so, do I have a motion to advance recommendation number three?

JUDGE WILSON MOVED TO APPROVE RECOMMENDATION NUMBER THREE.

MR. CALLAWAY SECONDED THE MOTION.

Mr. Callaway:

I like the way this is written, and I like, for lack of a better term, cleaning the slate a little bit of the Advisory Commission. One of the frustrating things for me, and I've said this over and over during the time that I've served on this Commission, is kind of what I call the shotgun approach, where we have a million presentations on a variety of different topics and we get a cursory look at this and a cursory look at that, maybe sometimes we only hear one side of the story on a particular issue, and then lo and behold we're at the end of the interim and here's the legislative session right around the corner and then we're in a position where we're trying to make recommendations on something that we as a Commission I don't believe have really dug down deep into and really had quality discussion on. I don't want to change the proposal. I like the idea of the Chair having the authority to decide what the topics are for the Commission, but in my mind, I would even like to see those topics limited to maybe no more than—I think even three topics per interim would be pushing it. If this Commission were to be able to take a topic, and I could pull a thousand of them out of a hat based on what we've talked about, but I'll just pull one: burglaries. If this Commission took the topic of burglaries and spent the whole entire interim working specifically on that issue, hearing the totality of both sides of the story, looking at the crimes, looking at commercial versus residential versus home invasion versus category B issues, I think we could come back with a quality product at the end of the interim when we are not overloaded with too many topics. So, that's why I support this, and in my mind, I would even like to see those categories narrowed even further when it comes to the interim.

Chair Yeager:

I can only speak for myself at the moment, but my hope for future chairs of this Commission would be just that, that they would reach out to the members of the Commission once they are appointed to sort of take the pulse and come up with, as you said, two or three manageable topics where we can really dive deep, because I think your point is well taken as well. Sometimes it can be really hard in this setting to dive deep into it, but at the moment, again, this is a conceptual amendment, so the drafting of it will fall to Legal. Perhaps we can have some further discussion about whether to limit that expressly or not, but hopefully with a competent Chair in the future, we will be able to limit the topics to things that are of interest to the Committee and to the Chair as well.

Ms. Jones Brady:

I was just thinking about the victims of crime. I know the Attorney General's Office works so much with the various entities across the state regarding victims of crime and domestic violence and the whole thing, so I just was trying to visualize how that fits into a

subcommittee along with two other very substantive things. I don't know really how that works with fitting that in with the other two.

Chair Yeager:

I think sort of how it works, in this conceptual amendment, at least, is that there would not be a formal subcommittee of victims of crime of the Advisory Commission. The Advisory Commission as a whole could take up that topic, much like how we had a couple presentations. I don't remember which meeting it was, but some months ago we heard from the Attorney General's Office and from some other—I think it was a victims of crime office or fund. We had some presentations. The idea would be that would go to the whole Commission rather than a subcommittee. Certainly, I think we can benefit by some coordination and knowing who is doing what in that space, and hopefully being a facilitator and a coordinator to make sure that folks are working together and getting the most bang for their buck. That's essentially how it would work in this sort of new universe of the Advisory Commission. Are there any additional comments by members or discussion on the motion? Seeing none, we will go ahead and take a vote on this. Again, this is recommendation number three on the work session.

THE MOTION PASSED UNANIMOUSLY.

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That recommendation will advance to the final report of the Commission. Again, we will take up recommendation number 2 at our next meeting, which I believe is scheduled for November 8.

Ms. Armeni:

I apologize, but I thought when we were looking at all of these recommendations that we were maybe going to delay all of the recommendations until November. I don't understand why at this point we would not move forward with the second recommendation if we are moving forward with the other two, so I would propose a motion moving forward to draft legislation related to the wrongful convictions.

Chair Yeager:

Thank you, Ms. Armeni. I had a request from Attorney General Laxalt to push that one to November 8, so I'm going to go ahead and do that at this time. I appreciate your motion, but at this point, I'm not going to take a motion on that. I just want to make sure that everyone is comfortable with it, has time to ask questions and get comfortable with that language. We will take it up on November 8, but I appreciate the motion nonetheless.

I will close agenda item VIII, which is the work session. Thank you, members, for your attention and your preparation for those items that were on the agenda today. At this time, we are going to get to really the heart of today's agenda, which is agenda item V. Before we get there, I do want to make a couple of introductory remarks. Today we are going to have another opportunity to take a deep dive into Nevada's prison data and explore trends looking back over the last 10 years. As the Commission knows, this is the second of three data and systems presentations, so keep in mind that we will be learning a good deal beyond the information that was presented today and in September. We still have another data presentation to come. I also want to remind the Commission that this presentation is not aimed at recommending any particular changes to the system. Instead, the focus of today's presentation is to give this Commission a data-driven foundation to help guide us during the policy development process which is going to happen later in the year in the November/December timeframe. At this point, I'm going to hand it over to Justice Hardesty to make some remarks as well, and then we will move along with the presentation.

Justice Hardesty:

As the Commission knows, we've had a lot of work done by the Crime and Justice Institute (CJI). We have a number of representatives here in Carson City, and I understood that Mr. Engel is in Las Vegas. It's good to have you with us, Mr. Engel. I don't know if you have other representatives down there, but maybe you can come up to the dais when your colleagues up here do and introduce those that are with you down there.

As a reminder, we are here to spend the next few meetings working through data and systems findings. I want to emphasize at this point that the work of these researchers is revealing to us what our systems are telling them. They are simply reporting what our systems' data are telling them and they are compiling it in what I consider to be a very understandable way. So, I want to remind everyone once again, don't shoot the messenger. The messenger is revealing information to us that, like or dislike, is something we need to know and we need to see.

At our last presentation in September, we saw data about what is driving prison admissions and trends over the past 10 years. That data is still being worked on, and in fact, there were a number of questions posed at the last meeting for a follow up, and staff from the CJI is going to answer a number of those follow-up questions because they have gone back and looked at some of the areas that were highlighted during the course of the last meeting. Today, we have an opportunity to learn more about what is behind Nevada's prison population growth by examining data on the amount of time an individual spends in prison on a sentence. You will recall the chart that was offered about the driver of population, and one of those, of course, is the time that a person spends in prison, and that raises the question of why. At our next meeting in November, we will look at trends in community supervision and CJI will present additional follow-up data findings from courts and the findings of the file review that CJI is in the process of conducting. By the way, I just want to underscore something for the Commission's benefit. I can't imagine us

having the resources and the staff and the expertise to do what these folks are doing, including the task that they are involved in when they talk about the file review. It is so easy for us to express that. It just flows off the tongue so nicely. What it means is these folks are locked up in a room someplace with some other staffers reading pre-sentence investigation reports. Now, if you haven't live a day on this earth, you know that that's probably something you don't want to do. It is time consuming. It is dreary, it is not something that's very exciting, but, man, is it important to an understanding of the data that they are developing. I can't thank them enough for undertaking such a challenging task. A combination of all of these three presentations, the one in September, the one today and the one that we will see in November, will help the Commission, I think, engage in policy discussions when we break up into subgroups that the Chair has created, and I think sent out notices to everybody. Those subgroups will afford us the opportunity to have, I hope, robust debates about what the data means, what it is showing and where we might be able to make some improvements in our system for the next session. With all these comments in mind, I would like to introduce you to Alison Silveira. You all recall, of course, Maura McNamara. Both of them will be presenting today, and I think Len Engel is in Las Vegas. The time-served analysis builds on the first presentation's examination of admissions and helps us understand what is driving our prison population. The CJI staff is going to present a paltry 99 slides. They purposefully kept it under 100 so that you wouldn't be overly intimidated, but they are stunning in their information and the questions that they raise.

As we did in the last presentation, even though I know there are a lot of slides here, I am requesting that you defer your questions to the representatives from CJI until the end, so please make notes. Everyone will have a chance to pose questions. I think you will also appreciate that, at the end, they are going to respond to questions that were posed in the last meeting on follow-up issues that we had for them. Chair Yeager and I have gotten to know these folks really well. We have a phone call every Monday at 12:30 p.m. I want to thank Ms. Silveira and Ms. McNamara for being here.

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

I'm a data and policy specialist at the Crime and Justice Institute, and I am joined up here by my colleagues Maura McNamara, a policy specialist, and Molly Robustelli, a policy analyst. In Las Vegas, we are also joined by our colleagues Sam Packard, Len Engel and Quentin Weld. We're excited to be here to continue sharing data findings concerning Nevada's criminal justice system. As I mentioned during our last presentation in September, we hope you'll see us as a resource today and throughout this process.

Last month, my colleagues and I joined you in Las Vegas to present data findings on trends and admissions to Nevada's prisons over the next 10 years. Today, we will begin by clearing up the answers to some of the questions that came up during our last presentation and by letting you know which topics we are continuing to look into for our next presentation in November. We will then do a brief review of the admissions and custody trends we presented in September. From there, we will turn to the topics of the

day: time served, sentencing and release trends, stemming primarily from an analysis of NDOC data. Once we've reviewed those new data findings, I will turn the presentation over to my colleague, Ms. McNamara, who will walk us through some key decision points in the criminal justice system and provide a closer look at the primary factors considered for each one.

These next few slides should look familiar, so I'm not going to cover them in as much detail as we did last time (Agenda Item V). As a reminder, the Nevada Department of Corrections provided 10 years of detailed individual-level case information on admissions and releases. Today, our findings on time served, sentencing and release mechanisms will rely on this data. Additionally, we will present one slide each using summary-level data from the Division of Parole and Probation, as well as from the Nevada Board of Parole Commissioners. Summary-level data, as a reminder, means that we received monthly, quarterly or yearly tallies, but we don't have the underlying case-level information to dig into it further. As a reminder, all data presented was analyzed in consultation with the agencies providing the data.

We have a few definitions before we begin. In several places today, I will again be referring to various trends by the type of admission to prison. The four types of admission we will be discussing are listed here. In particular, most of today's new data findings are going to focus on the population admitted as new prisoners, and that describes the individuals who were sentenced directly by the courts to prison rather than those who entered prison as a result of a violation on supervision in either parole or probation. Additionally, a number of today's findings will also refer to trends by an offender's type of release from prison. Those discussions will rely on the three categories that we have listed here. To begin, discretionary parole refers to those individuals who have reached their parole eligibility date, were granted parole by the Board of Parole Commissioners and were released following successful completion of a reentry plan. Mandatory parole here refers to those individuals who were not released on discretionary parole but were released by the Parole Board within 12 months of the expiration of their sentence. Lastly, expiration of sentence refers to those individuals who were released from prison after completion of their sentence.

We're going to turn now to follow-up questions from the last presentation. First, you will recall that I showed the Commission a pie chart in September describing that 41 percent of the people admitted to Nevada state prisons last year had no prior felony conviction on their record. When I described this data point as limited to convictions within the State of Nevada, several of you correctly pointed out that pre-sentence investigation reports (PSIs) do in fact include the defendant's out-of-state conviction history. After speaking once again with the NDOC staff, I can now confirm that the statistic does in fact include out-of-state convictions as well as convictions within the State of Nevada. Thank you for allowing me to clarify that point.

Second, you may remember that I presented the Commission with a list of the 10 most common felony B offenses on admission to prison. The fifth most common on this list was

trafficking of a schedule I controlled substance in an amount greater than 27 grams. This amount is statutorily defined as category A felony but was listed in the data set we received as a category B with corresponding sentences in the B range. Following our presentation, our colleagues at the NDOC looked into these cases for us in greater detail and discovered that the name of the offense was incorrectly entered for the small subset of cases. Upon review, these cases are indeed felony B's and the sentencing structure provided for them is accurate and corresponds with what was entered on their judgment of conviction. In fact, on review, many of them appear to fall into the felony B category range of 4 to 14 grams, the lower of the two felony B-level trafficking offenses. So, what does that mean for the analysis we shared? It means that if we were to correct those entries by creating a general felony B trafficking category that includes both the 4 to 14 range as well as the 14 to 27 range, it would become the fourth most common offense on admission to prison last year and it would be the third most common felony B offense. When we look at the top offenses for the individuals who were sentenced directly to prison, excluding those who returned on a violation of parole or probation, we would find actually that felony B-level trafficking was even more common than burglary. These slides are in the review that we will be going through today, and I will point those out when we get to them once again.

The next question that we received, I believe from Assemblywoman Krasner, had to do with offenders admitted on the habitual criminal statute. We looked into the accompanying offenses associated with individuals admitted to prison under the habitual criminal laws. Over the last 10 years, 1,354 people have been admitted to prison under this law, including over 100 people last year. Unfortunately, the vast majority of these individuals in our data set did not list the associated charges on that booking. As we mentioned before, we flagged this question to continue looking into for a file review in which we are reading through those pre-sentence investigation reports, and that is already underway with the Division of Parole and Probation.

Out-of-state residents: this question we likewise circled back with NDOC staff regarding this question on the state of residence and confirmed that in the data set that we received, there was not a reliable or validated method of identifying who is an out-of-state resident. However, we do understand as well that this information is collected in the pre-sentence investigation reports, and so this is also on our list of things we will be reviewing during the file review.

Questions regarding community supervision populations that arose during the last presentation will be discussed in our third data presentation in November when we come back to speak to community supervision practices and those data sets.

The remaining questions that came up, primarily pertaining to the conduct underlying burglary offenses, as well as the conduct leading to a violation of community supervision, will also be examined through this file review process. To Justice Hardesty's point earlier about the process we are undertaking, I would also like to publicly thank the folks at the Division of Parole and Probation who have graciously been pulling hundreds and

hundreds of PSIs and violation reports to help us prepare for this review. I believe Lieutenant Dreyer and Major Carpenter and a few others in the Division are in Las Vegas as well, so we would like to thank them for all of their assistance, as it's no small task on their part either.

Now, we are going to turn to a review of the findings that we have already presented to you so far. We began our conversation in September with the Iron Law of Prison Population Growth, which states that there are two elements that affect the size of the prison population. The first is admissions. When more offenders are admitted to prison, the population grows, and when fewer offenders are admitted, it decreases. The second is time served. When offenders serve for longer periods of time, the population also grows, and when offenders serve for shorter periods of time, the population dips. Combined, these two elements determine the overall size of the prison population.

Last month, I presented on admissions to prison, as well as the standing NDOC prison population over time. Today, I will be presenting on the second mechanism, displayed here in yellow (Agenda Item V), which is time served or the length of stay an individual spends in custody. When we looked at overall prison admissions since 2008, we saw that admissions to NDOC prisons have grown 6 percent over the last 10 years, with just over 6,000 people admitted to prison in 2017. When we broke this growth down by the different types of admission, we found that new prisoners comprise the largest category on admission. Those are the individuals who are sentenced directly from court to prison, and that growth over this period was concentrated among parole and probation violators. We also broke down admissions by the offense or conduct leading to prison. Here, you will recall that person offenses include those that NDOC classifies as either a violent or a sex offense. It's a catchall category for those. Nonperson offenses include those that NDOC classifies as a drug, property or other offense. Here, we see that two-thirds of individuals entering prison last year were admitted for nonperson crimes, meaning the most serious offense at conviction was a drug crime, a property crime or another offense that was not classified by the NDOC as either a violent or a sex offense.

We then turned to prison admissions by felony category, where we learned that felony B crimes accounted for 48 percent of all prison admissions last year and that more than half of those admissions were for these nonperson offenses. Nonperson offenses, in fact, made up the majority of admissions across all felony categories, except, of course, for those in the felony A category, as we would expect.

We then turned to review the 10 most common offenses on admission to prison last year. Here, you will see in the top two lines that burglary and attempted burglary represent more than 760 admissions to prison last year. Low-level trafficking, this new sort of felony B category offense that we have combined, is now the fourth most common offense on admission, followed by simple drug possession. Also of note here is that 8 of the top 10 offenses on admission are these nonperson crimes. The two person crimes appearing on this list are robbery and assault with a deadly weapon.

When we broke out the overall admissions to prison by gender, we found that male admissions followed a similar pattern as the overall population, but that female admissions, which are displayed on the slide in front of you, have grown 39 percent over the last 10 years. In probing female admissions in particular further, we found that that dramatic growth was spread across all admission types, unlike the overall population, and it included growth in the community supervision admissions, as we saw, influencing the overall prison population. Moreover, when we looked at the most serious offense on admission to prison last year, nearly 80 percent of the women admitted were admitted to prison for nonperson crimes, and the vast majority of these were drug or property crimes.

Another notable finding that we presented last time is that a growing number of people entering the prison system present mental health needs. Last year, more than 1,700 offenders admitted to prison were identified as having a mental illness or impairment requiring treatment or a medication protocol. This represents a 35 percent increase in the number since 2008.

We then turned to the standing prison population, and this is seeking to answer the question that, on a single-day snapshot taken every year, how many people are sitting in Nevada state prisons? We saw a national slide showing that the number of people held in state prisons across the country had declined by 7 percent from 2009 to 2016, and then we looked at this slide, where we saw that the number of people in Nevada's prisons, as displayed here, grew by 7 percent since 2009 to over 13,000 last year. We then looked at the standing female prison population on its own and found that as female admissions have increased, we have also seen the female prison population and annual snapshots grow by 29 percent to over 1,200 women in custody last year.

This next slide summarizes those key takeaways from the last presentation (Agenda Item V).

Now that we have reviewed the admissions and population trends, we can turn to the topics of the day. As I go through this section, keep in mind that Iron Law of Prison Population Growth, which tells us that the size of the prison population is driven by those two factors: admissions and time served. We know based on the slides we've just reviewed and the analysis presented that admissions to prison have grown, and in particular for women and community supervision violators.

Now we will be turning to time served. This next slide presents average time served for individuals released from prison over the last 10 years. It uses two different ways of thinking about time served. The first are these dark blue bars, which is limited to time spent in prison, while the second, displayed in light blue bars, includes time served in prison as well as the time served in jail that is credited against one's prison sentence. These are both legitimate ways to define and consider time served. Using only prison time, we see that time served has grown by 18 percent over the last 10 years. When we include jail and prison time combined, it has grown 20 percent. When we look at prison and jail time together, we get a clear understanding of how much time an individual is

spending incarcerated for a given charge. This will be especially useful for comparing time served with the underlying sentences. When I refer to time served in the remainder of this presentation, I'm referring to prison and jail time combined. One other thing to note on this slide and the slides to come, unless explicitly mentioned, the slides concerning time served are displayed just for individuals who do not have a consecutive sentence. This is because we will be looking at the most serious offense on admission and the trends associated with that offense. For individuals serving on multiple offenses consecutively, we cannot so easily draw the same conclusions. I have a slide later in this section that will focus directly on those consecutive sentences, so we will talk more about them at that point.

This next slide displays time served trends by type of admission to prison. Unfortunately, limitations in the data only allowed us to effectively observe admission types for release cohorts since 2012. For that reason, the slides in this section will cover the last 6 years of this period. Given the distinct nature of these groups, we will be focusing on the new prisoner population. Here, we see that individuals who were sentenced directly to prison and released last year served an average of 29 months in custody, nearly 7 months longer than those released in 2012. Probation violators served an average of 20 months last year, and parole violators served nearly 10 months. The length of stay for probation violators has been the steadiest over this period, growing 7 percent, while time served for new prisoners and parole violators has grown by 31 percent and 92 percent, respectively. If we look at time-served trends by person and nonperson offenses, we see that time served has increased on both fronts. This is important to think about, because if longer average sentences were just the result of more serious crimes in the system, you would expect to see this increase only for those person offenses. This is, however, not the case. You will recall that person offenses include those the NDOC classifies as a violent or a sex offense, and nonperson offenses include those that the NDOC classifies as a drug, property or other offense.

Time served has also grown across all four offense types. Notably, time served for drug offenses has increased 28 percent. Person crimes experienced an 8 1/2-month growth over this period, while those falling into the other category, including habitual greater, habitual lesser and DUI (driving under the influence), served 1 year longer on average in the 2017 release cohort relative to the 2012. When we break out this new prisoner population by felony category, we see growth in every area, but in particular major growth in the higher felony categories of A and B. Time served for category A felonies nearly doubled in the last 6 years, while felony B offenders served nearly 10 months longer last year than they would have had they been released in 2012. Offenders sentenced for C, D and E felonies in the 2017 release cohort all served at least 1 month longer than their counterparts in 2012.

It is important to note that, while looking at this graph, the number of individuals released per offense category differs significantly. For example, in the felony A category, which shows a huge jump in time served, only 24 people were released last year. The felony B category, on the other hand, which shows a 10-month increase on average, represents

nearly 1,500 individuals who were released last year. Thus, the impact of the time served increase greatly depends on the number of offenders serving in that offense category. To further illustrate the impact that that category B population has on the prison population, here's a graph showing the total number of months served by each felony category in 2012 and 2017. When we multiply the number of months served by the number of offenders released in that cohort, we can compare both how the length of time served and how the increase in the number of offenders in that cohort together impact the numbers. Here, we see that felony B offenders released last year spent 73 percent more months overall in custody than those released in 2012.

When we look further into what is driving this 10-month increase in time served for those felony category B offenses, we see that it is not just from an increase in time served for person offenses, which grew 10.6 months over that period, but also a 36 percent increase in time served for nonperson offenses. As you will recall from an earlier slide, we showed that time served for drug offenses had increased 28 percent since 2012. If we probe the specific types of drug offenses, we see growth across possession, sale and trafficking categories. Trafficking offenders in particular served an average of 8 months longer in the 2017 cohort than in the 2012 cohort. As you will recall from our admissions review earlier, trafficking offenses are one of those top drivers of admissions growth in Nevada.

Doing the same breakout for property offense categories, we see that time served is up for burglary, fraud and larceny, all of which play a notable role in admissions cohorts. You will recall that burglary in particular was the most common offense on admission for the overall prison admissions story for felony B offenders, as well as for female admissions. Here, we see that burglary offenders are serving 3 months longer on average than they were in 2012 and that the length of stay for fraud and larceny offenders has increased even more.

This is the slide I mentioned earlier about consecutive sentences (Agenda Item V). The growth we've been discussing over the previous slides up until this point is displayed in the lower light blue line here. Above in the dark blue line is the average time served for individuals with consecutive sentences. This includes people who have two sentences that are stacked one upon another based on a judge's discretion, as well as those sentences that are both for a specific crime and a separate but related enhancement. Here, we see that time served for new prisoners on consecutive sentences has grown 48 percent, with last year's release cohort serving on average more than 1 1/2 years longer than their counterparts in the 2012 cohort. For a sense of scale, last year, 13 percent of all prison admissions, or nearly 800 people, entered prison on consecutive sentences. New prisoners serving consecutive sentences are serving over 5 years on average relative to just under 2 1/2 years for the nonconsecutive population. If these folks with consecutive sentences were included in all of the other slides we just walked through today and those overall averages, you would see lengths of stay significantly higher than the ones we've presented so far.

This is our last graph in the time served section, and it displays the overall growth and length of stay for new prisoners relative to the percent of their minimum sentence that they have served in custody. We will be talking about sentences shortly, but here we see that the increase in time served has occurred at the same time as a six percentage point increase in the percent of their minimum sentence served. This is important because it means that while sentences have gone up, which we will soon see, individuals are not serving a smaller share of those longer sentences. To gain a better understanding of why time served has increased and to determine what offenses may be contributing to it, we also calculated the average time served for the top 10 offenses for new prisoners in the 2017 release cohort. Here again we see burglary tops the list as the most common offense in the release cohort, with offenders serving an average of almost 31 months in custody, or over 2 1/2 years, before release. Meanwhile those new prisoners serving on attempted burglary served 1 1/2 years on average. We also see that offenders sentenced for simple drug possession, a presumptive probation offense, served over a year. For all but 1 of these top 10 offenses, we see in the right column that time served has grown since 2012.

Over the last 12 slides, we have seen that time served has increased across admission types, across felony categories, across offense types and sentencing structures. But what actually contributes to time served? Broadly speaking, the amount of time an offender spends in custody is the product of their sentence, their accrual of credit for the time they did spend in custody and the programs they participated in, as well as whether and when they were considered for parole and the outcome of that decision. My colleague Ms. McNamara will speak to each of these in greater detail later on, but for the moment I will share a few data findings on each of these points. When we look at sentencing trends over the last 10 years, we see that individuals sent directly to prison in 2017 had sentences that were 12 percent longer on the minimum term and 7 percent longer on the maximum term. Last year, new prisoners had an average minimum sentence of 25 months, or just over 2 years, and an average maximum of nearly 6 years. This graph, as well as the subsequent sentencing graphs, excludes life sentences and sentences that have been aggregated.

When we looked at growth in sentence lengths by felony category, we saw that all new prisoner felony categories experienced longer sentences in 2017 relative to 2008. This growth was particularly prominent for B felonies, which are displayed here. Those B felonies, as you will recall, made up nearly half of admissions to prison last year, and they experienced minimum sentences nearly 4 months longer and maximum sentences that were more than 6 months longer than they would have been in 2008. Likewise, we see growth in both minimum and maximum sentences for drug and property offenders. Drug offenders who were sentenced directly to prison in 2017 experienced minimum sentences 3 months longer and maximum sentences 8 months longer than they would have in 2008.

Here, we have the top 10 offenses for new prisoner admissions last year and their corresponding average minimum and maximum sentences. Notably, we see that longer sentence terms are imposed for low-level trafficking offenses than they are for assault

and battery offenses. We see burglary offenders here are receiving long sentences, on average a minimum of just under 22 months and a maximum of over 5 1/2 years. Individuals sentenced for attempted burglary, meanwhile, saw minimum terms imposed of 15 months and maximum terms of 3 1/2 years. Simple possession further down this list carried an average minimum sentence of over 13 months and an average maximum sentence of over 3 years. One thing to note here is that the full impact of these increases in sentence terms that are imposed has not yet been materialized in the time-served trends that we looked at earlier because the offenders who were sentenced last year, and from which these statistics are based, by and large, many of them remain in custody and were not in the 2017 release cohort. Over the coming years, we would expect the average length of incarceration to continue to grow as the individuals sentenced more recently serve increasingly longer sentences.

Another factor we know that affects the length of time individuals spend incarcerated in Nevada is the accrual of credits against their sentence. In this slide, we see that 98 percent of new prisoners released last year had accrued some amount of stat time, 94 percent had accrued some amount of work credit and an additional 60 percent had accrued some form of merit credit (Agenda Item V). This data reflects inmates earning any amount of credit, meaning they earned at least 1 day of that credit during the course of their incarceration. One way to think about the role of credits is to look at the percent of an individual's sentence that was served in custody at the time they were released from prison. We know that credit accrual functions distinctly based on many different factors, and one of those is felony category. Ms. McNamara will touch on those roles later on. In this slide, we see that, on average, new prisoners released last year had served 129 percent of their minimum sentence, with felony B offenders serving the highest, an average of 137 percent of their minimum, and felony E offenders serving the lowest, an average of 100 percent of their minimum sentence.

We will now turn briefly to releases. Individuals are released from custody in three primary ways, as we will explore in greater detail later. These include discretionary parole, mandatory parole review and expiration of sentence. This slide shows the number of individuals released by each mechanism over the last 10 years. Here, we see the number released on discretionary parole grew from 2008 to 2010 and declined for most of the period through 2016. Over the last year, releases have grown once again, especially for those released through the discretionary parole mechanism. Of the 6,000-plus offenders released last year from prison, 40 percent had served until the expiration of their sentence, while another 42 percent were granted discretionary parole prior to their expiration. When we break out releases by felony category, we see that almost half of offenders released in the C and D felony categories are serving until the expiration of their sentence compared to roughly 40 percent of felony B offenders. Broken out by type of offense, we also see that drug offenders have the largest share of releases on discretionary parole, while person offenders have the lowest share.

One important thing to note as we are talking about these distinct types of releases is that an offender's length of stay in custody has grown across all 3 types from new prisoners

that were released since 2012. Here on the slide, we see that offenders released on discretionary parole are serving 8 months longer on average prior to being paroled, and those released to be on mandatory parole review or at the completion of their sentence are serving an extra 5 months on average.

Lastly, we can observe some of these trends as well through the Parole Board's grant rates using summary-level hearing information from the Parole Board. This slide shows that both discretionary and mandatory parole grant rates have fluctuated over the last 10 fiscal years. These are all going to be 6 months off from the prior slides on the calendar year. According to the Parole Board, the first 2 years on this slide, Fiscal Years 2008 and 2009, likely reflect policy changes at the Legislature that affected the total number of hearings that were held for each of those years, but the overall trend shows a slow decline from Fiscal Year 2011 and onward, and it has only begun to turn around in the last year. Moreover, we see here a narrowing of grant rates from most of this period between the discretionary and mandatory review categories. From these figures, we can deduce that 45 percent of discretionary parole hearings resulted in a denial, as did 40 percent of mandatory parole reviews. Ms. McNamara is going to discuss the factors underlying each of those processes later in this presentation.

We have reached the conclusion of the data slides I will be presenting today. What have we learned so far? First, we've seen that time served in custody has increased across the board over the last 6 years for all offense types, all felony categories and all types of release from prison. This is particularly pressing for property and drug offenders, who experienced time-served increases of 15 percent and 28 percent, as well as the category B offenders that we discussed. On average, a new prisoner's length of stay grew 7 months over this period. This increase is due in part to increases in minimum and maximum sentence terms that are imposed. Minimum sentences are up 8 percent for property offenses and 16 percent for drug offenses. This growth in time served is also particularly notable for those category B offenders who served an extra 10 months in custody relative to offenders released on similar offenses in 2012. Felony B offenders released last year served 137 percent of their minimum sentence. Meanwhile, over the last 10 years, minimum sentences for felony B offenses have increased 15 percent. Those increases will continue to have a dramatic effect, as we saw that last year nearly half of prison admissions were for felony B offenses. Lastly, parole grant rates have largely declined over this period, though they have increased once again in Fiscal Year 2017.

I recognize that it can be challenging to take in a lot of statistics all at once in such a short period of time. I would like to try to briefly tie it all together before turning over the presentation to my colleague. As we saw last month, Nevada's prison population is up 7 percent to well over 13,000 people sitting in prison last year. This growth is due to a 6 percent increase in admissions and a 20 percent increase in time served. While some may attribute Nevada's growing prison population to violent offenders, we actually saw that two-thirds of admissions last year were for nonperson offenses, led by burglary and attempted burglary, as well as several drug-related crimes. This was all the more true for the female population admitted to prison, which grew 39 percent over the last decade.

Last year, 70 percent of women who were admitted to prison were sentenced on drug or property offenses, and nearly 80 percent were sentenced for nonperson offenses. People sitting in prison for those nonperson offenses in particular have experienced longer lengths of stay and declining parole grant rates for much of this period. Now I will turn the presentation back to my colleague, Ms. McNamara, who will walk us through some of the key decision points in the criminal justice system and the factors that are considered at each point.

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

Thank you, Ms. Silveira. So far, our analysis has looked at the trend in prison admissions and length of stay. As you mentioned during our kickoff presentation in August, that in addition to conducting a data analysis, our team has conducted a system assessment to try to understand how an individual flows through the system and what options exist at each key decision point. This information we obtained through interviews with the system stakeholders—many of you, so thank you for speaking with us—as well as reviewing state statutes and administrative policies. Today, we are going to discuss the key decision-making points in the criminal justice system to try to understand these policies and practices at each of these points and how they may influence the prison trends that have been identified. As Ms. Silveira previously mentioned, the two factors that influence prison population growth are admissions and time served. It's important to remember this equation when trying to understand why a state's prison population is growing like Nevada's is. The data we have seen so far has shown that admissions are up 6 percent and time served is up 20 percent (Agenda Item V). The combined result of these two components is a growing prison population that is up 7 percent. That begs the question of why.

We are going to look at key decision points in Nevada's system to help us answer this question. Today, we are going to discuss law enforcement conduct, initial detention in court hearings, sentencing and release. We are going to talk about each of these points individually throughout the remainder of the presentation. We will talk about another very important point, community supervision, at the next presentation in November.

The first decision point we are going to be talking about today is law enforcement conduct. Law enforcement conduct is crucial when thinking about the criminal justice system because it is the frontline defending our communities, the point of access to the system and the first opportunity for diversion. Law enforcement also plays a critical role in dealing with individuals with behavioral health issues. As we talk about the options available to law enforcement officers when they interact with an individual, it is important to talk about the large population in Nevada with an untreated behavioral health need. When individuals with behavioral health needs go untreated in the community, their conditions become destabilized and they can become more vulnerable to crisis. We're talking about this in the context of law enforcement conduct because it is often law enforcement who is called on to respond to these crises. Research studies show that nearly one in seven law enforcement officers' encounters involve a person undergoing a behavioral health

crisis. Our discussions with many in-state law enforcement have confirmed this high prevalence. This slide shows the growth in the number of 911 calls handled by both Lyon County—thank you, Sheriff McNeil—and Carson City that have been flagged as a mental health crisis. Law enforcement therefore plays a crucial role in diverting individuals with a behavioral health disorder when arrest is not appropriate, so it is essential that they have the tools and alternatives necessary at this point.

Specialized responses are necessary to alleviate the high number of individuals being admitted to prison with a mental health issue. This slide shows how the number of individuals admitted to prison with a mental health issue has been increasing over the past 10 years. Each decision point we are talking about today represents an opportunity to identify an individual's treatment needs and target programming and services to address those needs. What options are available to law enforcement? This slide outlines what choices law enforcement has. This includes arrest, citation, mobile outreach referrals, triage centers and emergency commitment holds. We'll talk through each of these more specifically in the following slides. One of the options is the use of citations. Under Nevada law, officers can issue a citation for certain misdemeanor offenses instead of arresting a person. A person who receives a citation will still have to go to court and handle their case. However, they will not go through the arrest and pretrial detention process. This option, however, is restricted only for misdemeanor offenses, and the decision to use it is up to the complete discretion of the specific officer. While law officers can use citations for any type of misdemeanor offender, there are certain responses that are specific to individuals suffering from a behavioral health issue. Many of these responses have been created to address Nevada's growing behavioral health population with unmet treatment needs. One of these options is the use of an emergency commitment hold, commonly known as a Legal 2000, which authorizes officers to take an individual who presents a clear and present danger into custody for evaluation, observation and treatment at a hospital where they are held for 72 hours. Another option that law enforcement officers have and are increasingly able to use is de-escalation. Many states around the country have provided this skill through crisis intervention training. In Nevada, the amount of officers who have this training differs from jurisdiction to jurisdiction. For example, a large number of officers in Clark County have received this training, as it is required, while in other jurisdictions, there are two to three officers who have it. This disparity is a result of resource allocation instead of a lack of desire to have all officers with this training. A recently implemented option is making a referral to the mobile outreach safety teams, which link law enforcement with local treatment providers. Referrals are made to the team, which consists of law enforcement officers, case managers, clinicians and a coordinator, who then follow up on that referral and connect the individual in need with local providers. Most teams, however, are available in a limited number of jurisdictions. Lastly, law enforcement officers have the option of taking an individual undergoing a behavioral health crisis to a triage center that can treat and stabilize them rather than taking that individual to jail. The Mallory Center is a great example of this. Unfortunately, however, over this past year, two of the state's largest triage centers have closed their doors. While the existence of these options provides a critical point to allow officers to use their discretion and respond appropriately to an

individual in need, they are limited throughout the state by a lack of resources and access to treatment providers.

The second key decision point we are going to be examining is the initial detention and court process (Agenda Item V). This is a critical point in the system because it determines whether or not a person will be detained pending the outcome of their case. This decision point also serves as the first opportunity to identify whether someone who is detained has a behavioral health issue. As we mentioned during the presentation at the beginning of August, individuals with behavioral health needs are at a higher risk within the criminal justice system. The research tells us that 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, are more likely to experience victimization and are more likely to incur disciplinary problems at higher rates. This slide walks through the first 72 hours following an arrest. It describes what happens following the arrest from law enforcement. We are going to be talking about each of these steps more specifically in the next slides.

At arrest, bail is set according to a bail schedule. The bail schedules differ per county and every offense is assigned a bail amount, with none having the presumption of release. There are certain jurisdictions, however, that have been granted authority to release offenders without bail to avoid overcrowding when the situation warrants it. The Subcommittee to Study Bail Schedules compared the bail schedules across the state and found significant variance across those schedules. Judges can reevaluate the bail at both the 48-hour and 72-hour hearings. At these hearings, judges can lower the bail, raise the bail or release the offender on special conditions. Several jurisdictions are using the Nevada Pretrial Risk Assessment tool to identify eligible offenders to release, pending the outcome of their hearing.

The first time a defendant appears before the judge is at the 48-hour probable cause hearing. This hearing occurs by camera in the judge's chamber and is narrow in scope to determine if probable cause exists to detain the defendant. The first time the defendant appears in court is at the 72-hour hearing, commonly called an arraignment. This generally occurs 72 hours after arrest. However, it can be extended upon district attorney request. At this hearing, the charges are read in open court, the defendant enters a plea, and the defendant can also be referred to a specialty court program. Judges can also sentence eligible misdemeanor offenders to a pre-prosecution diversion program with a deferred sentence. This diversion opportunity, however, is not currently available for offenders who are charged with a felony offense.

Once an individual is arrested and booked, however, there are limited mechanisms to identify behavioral health issues. There is no statutory requirement for screenings in jails or during the initial court process to identify mental health or substance abuse disorders. However, many jails do currently screen inmates for mental health issues, but they are using a different type of screening method and have different steps that they take to respond to positive screens. Additionally, some jurisdictions have Forensic Assessment

Services Triage Teams, also known as FASTT programs, that screen offenders at booking for behavioral health needs and develop individualized plans to address those needs, both while the individual is incarcerated in jail and to link the individual with community service providers to receive treatment post-release. Lastly, certain jurisdictions have clinical assessments for entry into specialty court programs. However, this is not a statutory requirement or a standard practice across the state. A lack of identification results in a missed opportunity to link these individuals with treatment providers and to divert them from the system. These types of screenings are really important because of the large number of individuals within jails who have mental health issues. Studies have shown that, nationwide, one in four inmates in jail have a serious mental illness. This slide shows data we received from the Clark County Detention Center finding that individuals with a mental illness who had 4 or more encounters with the Las Vegas Metropolitan Police Department utilized nearly 5,000 bed days in 2017. This high prevalence is why it is so critical to have methods to identify such offenders in jails and at initial court hearings to ensure that these individuals get the appropriate care they need and have access to the diversion programs they may be eligible for early on.

The next key decision point we are going to examine today is sentencing (Agenda Item V). This is one of the most important points in the criminal justice system because it determines who is going to be sent to prison and for how long. This slide, and I apologize for all the arrows, shows the sentencing process from arraignment to imposition of the sentence. At arraignment, a defendant will enter a plea of not guilty or guilty. After a guilty plea, the Division of Parole and Probation will complete a pre-sentence investigation report, commonly known as the PSI that we have all been talking about, which includes background on the defendant, information about the offense and a recommendation for prison or probation. Such a report is required by law. At the sentencing hearing, the judge imposes the sentence using the PSI and the statutory ranges as guides. If a person enters a plea of not guilty they will go to trial and be found guilty or not guilty either by a judge or a jury. If they are found guilty, the Division will complete a PSI report in the same manner as a guilty plea and the judge will likewise use it at the sentencing hearing to inform their decision. Judges use the PSI report as a tool to inform their sentencing decisions. The PSI report includes a self-reported questionnaire that contains information on the individual's background, health, family history and information about the offense itself. The questionnaire also asks the defendant to make a statement about the offense and describe any plan and pay for probation. After the defendant completes the questionnaire, a Parole and Probation specialist will conduct an interview with the defendant confirming all of the information. The Parole and Probation specialist will also interview any victims, conduct a criminal history check and verify restitution amounts, if appropriate.

The answers from the questionnaire and interview are entered electronically into the Probation Success Probability (PSP) Tool. Using the results of that tool and the Sentencing Recommendation Selection Scale (SRSS) worksheet, a sentencing recommendation is calculated and provided to the judge. It includes a recommendation for prison, borderline or probation, and if it is a prison recommendation, it will include a sentence term range. The lower the PSP score is, the more likely the defendant will

receive a recommendation of incarceration. For example, a score between 0 and 54 would result in a recommendation for prison. The PSP deducts points from a person's score for a variety of factors. This slide shows all the categories and factors that the PSP tool considers and can deduct points for (Agenda Item V). The first category is the offense itself; the second category is the individual's criminal history; the third category is the individual's social history; and the fourth category refers to the pre-sentence adjustment. This includes criteria such as cooperation with the Division during the interview and honesty with respect to the offense and their criminal history.

This next slide outlines the mechanics of scoring the PSP. Ultimately, the results of the PSP score are used with the SRSS to provide a recommendation of either probation, borderline or prison. If the PSP score indicates a recommendation for prison, the specialist will put the offense's total score into the SRSS to determine a specific range of months to recommend. It is important to note that a Parole and Probation specialist can make a recommendation that deviates from the scoring module. Deviation requires approval of the supervisor and most often occurs when conforming to plea agreements or when the offense includes multiple counts or victims.

As PSI reports are tools for judges, the next question to ask is how often judges agree with the recommendation. This slide shows data from the Division of Parole and Probation about the concurrence rates between the sentence ordered by the judge and the PSI recommended sentence in 2017. It shows a 63 percent concurrence rate with the prison sentence recommendation and an 88 percent concurrence rate with the probation recommendation. This high rate of concurrence is important to think about as we discuss what factors go into key decision points in the system. Aside from what is contained in the PSI report, which is self-reported, the judge has limited information about an individual's behavioral health needs at sentencing. There is no required assessment for mental health issues, and the only one that is statutorily required for substance abuse applies only to offenders who are eligible for felony DUI court.

As we've been discussing the informational tools available to judges at sentencing, now we're going to look at the sentencing options afforded to judges, particularly those options that serve as an alternative to incarceration. At sentencing, a judge can impose a prison sentence, a suspended sentence and period of probation, a specialty court program, participation in a regimental disciplinary program or residential confinement. While we see from the previous slide that judges do have several options for alternatives to incarceration, there are eligibility restrictions for each that limit their use and restrict access. For example, statute prohibits many different types of offenders from being eligible for a deferred sentence into treatment. This includes those offenders that have certain types of convictions: trafficking, domestic violence and person offenses, and who have had a previous treatment opportunity. For specialty court programs, eligibility is limited by the fact that it depends on a referral and not a standardized assessment of an individual's behavioral health need. For a suspended sentence and probation, access is influenced by the PSI recommendation, which depends on subjective criteria, and the statute for presumptive probation excludes those who have previously failed a treatment

program. For residential confinement, its imposition as an initial sentence term is reserved only for DUI offenders. Lastly, for the regimental disciplinary program, eligibility is limited to only young male offenders convicted of certain types of offenses. In addition to the PSI recommendation, the only other guidance a judge has at sentencing is a statutory range and the requirement that the minimum sentence cannot exceed 40 percent of the maximum term. This is important because a judge is not required to consider any mitigating circumstances at sentencing, such as behavioral health needs, duress, justification or other factors beyond what is mentioned in the PSI. As we talk about sentencing, here's a reminder of the statutory ranges available for judges. This slide shows the ranges associated with each offense category.

In the next few slides, we are going to be looking at four specific offense types. We are looking at them because they are driving admissions and lengths of stay in prison. There are also offenses that we've heard many of you mention and ask questions about, including how the offense definitions compare to other states. We will explore some of these questions in the next few slides. However, some of the questions you've asked, including the underlying conduct leading to prison, will be answered through the file review process that we have been talking about. The first one, burglary, is the number one offense at admission. Looking at the statutory elements of the burglary offense, it requires only entrance into virtually any location, and 22 location types are listed in statute. The second one, trafficking of schedule I substances, is the largest driver of time served for drug offenses. This offense applies to possession of any amount of a controlled substance greater than 4 grams. Habitual criminal lesser, which has seen admissions grow 10 percent since 2009, applies to any 3 felony offenses from separate convictions in any period of time. Grand larceny, one of the most common category C felonies at admission, covers any item valued at over $650.

These statutes are much broader and include a wider range of conduct than some other states, as we will see in the following slides. These slides illustrate the uniqueness of Nevada's burglary statute in that it does not have different levels for different types of structures or different types of conduct. Many other states, including Oregon, Arizona, Utah, Ohio and Oklahoma, have different levels of burglary to differentiate the type of conduct, considering the type of location, whether or not there was a forced entry and whether or not a victim was present. Similarly, Nevada's trafficking statute differs from other states by having a weight threshold of 4 grams. As this map shows, this is lower than the federal weight threshold and that of its neighboring states. It is important to note that many states do not have a weight threshold at all but identify trafficking by other conduct, such as sale or possession of money, baggies, weights or other conduct. Likewise, this slide shows a similar notion for Nevada's felony theft threshold. As you can see from the slide, the theft threshold of $650 is lower than 43 other states across the nation and the District of Columbia. Lastly, Nevada's habitual offender statute differs from other states in that it applies to any three felony offenses from different convictions in any period of time. Nevada does have a habitual felony statute that focuses on violent offenses. Other states' habitual offender statutes are similar to this one and enhance only

violent offenses. Additionally, other states have specific periods of time in which the prior felonies must be committed in. Nevada has no such similar look-back period.

The last decision-making point we are going to be talking about today is release. As Ms. Silveira previously discussed, it is one of the main factors influencing time served. This slide maps out the process of prison releases. Again, I apologize for the many arrows, which can be confusing. After a person is sentenced to prison, the primary mechanism for release prior to expiration of sentence is through parole. We will talk about the differences between mandatory parole and discretionary parole in an upcoming slide, but once a person is eligible for parole, they will be reviewed by the Board of Parole Commissioners. This review can take place in the form of a hearing, or parole can be granted in absentia. If parole is granted, the Division of Parole and Probation will review the inmate's reentry plan. If it is sufficient, they will be released. If parole is denied, the inmate is eligible to be reviewed again within either 3 or 5 years depending on the offense by the Parole Board. Offenders who are within 12 months of their sentence expiring who have been sentenced to 3 years or greater and have not been paroled previously on that sentence will be reviewed by the Board for mandatory parole. If an inmate is denied parole at all junctures, the inmate's sentence will expire at the maximum date.

This slide discusses the types of releases that exist in Nevada that are outlined in the system in the previous slide. Residential confinement is not a release mechanism as individuals are still considered NDOC inmates. However, it authorizes NDOC to allow eligible offenders to serve the remainder of their sentence under electronic supervision if they satisfy certain conditions. Discretionary parole is a release mechanism that requires the Board of Parole Commissioners to grant or deny parole. The Board can grant parole in absentia or with a hearing. The Board must hold a hearing to deny parole. Mandatory parole is a release mechanism that requires parole for all eligible inmates who are within 12 months of their sentence expiration, unless the Board finds that such an inmate poses a danger to public safety upon release. Eligible inmates are those who have never been granted parole, have a maximum sentence date greater than 3 years and do not have a consecutive sentence. Lastly, expiration of sentence refers to release after an inmate completes his or her maximum sentence term.

Looking more closely at discretionary parole, all inmates excluding those sentenced to life without parole or death are eligible for it once they have received their parole eligibility date. The parole eligibility date is calculated by NDOC generating a date adding together all flat days, stat credits, work credits and merit credits. The parole eligibility date may change based on failure to earn credits or a loss of credits due to institutional behavior. Inmates sentenced on or after July of 2014 must serve at least 42 percent of their minimum sentence. Looking more closely at mandatory parole, all inmates are eligible if they are within 12 months of their sentence expiring, were sentenced to a term greater than 3 years and have not been previously granted parole on that sentence. Inmates serving death, life without parole, and a consecutive sentence are also ineligible. There is a presumption that individuals be granted mandatory parole. However, it can be denied if the Board finds that the inmate will likely pose a danger to public safety if released. The

parole eligibility date determines when an individual will be seen by the Board. An inmate's parole eligibility date reflects the credits earned by inmates. This slide outlines the credits available to inmates and from which point in their sentences they are deducted from. The Parole Board is responsible for making the decision of whether to grant or deny parole. In making this decision, it receives information about the inmate, including the PSI report, release plan, summary of their institutional behavior and programming participation, as well as results from a risk and needs assessment. The Parole Board uses these elements, as well as factors outlined in statute, to make their determination.

When talking about how parole eligibility is determined, it is important to note that Nevada does not have a streamlined geriatric or medical parole option. While Nevada does grant NDOC authority to release offenders who are physically incapacitated and within 12 months of death, this mechanism requires the individual offender to petition NDOC for release and is narrow in criteria. Other states have a parole process for offenders who have reached a certain age or medical state that allows review by the Parole Board to ensure that this offender will pose no danger to the public if released. This one is significant considering the growth of the over-55 population and the increase in prison health care costs over the past 10 years.

Unlike parole, an inmate on residential confinement is still considered an NDOC inmate. Additionally, it is a decision point that the NDOC makes and not the Parole Board. The criteria for NDOC to assign an inmate to residential confinement include a determination of whether or not the inmate is willing and able to secure employment, enroll in an education or rehabilitation program, and pay for all or part of the costs of their confinement and restitution. The statute excludes offenders with certain types of convictions and specific institutional infractions.

Looking at all of the key decision points we have talked about today, some key takeaways to think about are the limited options law enforcement has to divert offenders, the lack of mechanisms to identify inmates with behavioral health needs, the lack of any pre-adjudicatory alternatives for felony offenders, the influence subjective PSI criteria might have on sentencing, the criminal statutes that encompass fraud conduct and wide sentence ranges, alternatives to incarceration that are limited due to their eligibility criteria, and the fact that parole is the only true release mechanism and it's entirely dependent on the discretion of the Board of Parole Commissioners.

I believe Chair Yeager is going to talk about next steps, but if you prefer before then, we can get to questions.

Chair Yeager:

Thank you so much for the presentation. Again, I think you got through 100 slides in about an hour, so good work with that. It's a lot of information to take in. Commission members, I'm struggling with some of this as well, and I'm going to open it up for questions here in a moment, but I did have a couple of things I wanted to ask right off the bat. Some of

these may not be questions for you; they may be questions for other Commission members. The first one I know is for you. When you talk about average sentence length, your slide had indicated that you did not include people with life sentences (Agenda Item V). My question there is, is that only excluding life without the possibility of parole? What did you do with, for instance, kidnapping, which can be a 5 to life? Was that included in the analysis, or did you back out all of those life sentences?

Ms. Silveira:

All life sentences were excluded from those analyses. I will say, because I realize this will pose some confusion, individuals who were sentenced to life with the possibility of parole who were subsequently released from parole are included in the information on time served and releases, so those individuals who have been released on parole are part of that analysis. But if there was not a numeric sentence length associated with their maximum term, they were excluded on the sentencing averages.

Chair Yeager:

Thank you. The second question might actually be for Director Dzurenda, and I wanted to note beforehand that I learned that today is World Mental Health Day, so I think it's interesting that we're talking about mental health today. But if you are a social media person, if you look for that hashtag, you'll find a whole bunch of posts about mental health here in Nevada and elsewhere in this country and around the world. My question was, the slide that talks about prisoners with mental health needs, and it was a pretty dramatic increase over the last 10 years, so I guess my question is, is it that we really are seeing an increase in those that have mental health needs, or are we just doing a better job identifying people that have mental health needs such that they were always there, but we just didn't do a good job identifying those issues in the past? I thought, Director Dzurenda, it might make sense for you to take that on, because I know you are at least—I don't even know how long, 2 or 3 years in, so if you have an opinion on sort of what that increase is about, I would like to hear it.

James Dzurenda (Director, Department of Corrections):

I've seen a couple things happen, and I think a lot of it is that you're starting to see a better job that the evaluations are doing in the prison system. Specifically, when you're dealing with the seriously mentally ill, there are different criteria that agencies are using to identify someone as seriously mentally ill. Even in the state prison system, the south part of the state was using different criteria than the north, so those things kind of threw off the data points that were used in the last few years, which just changed recently, about 6 months ago, so even the numbers are changing, but the identification of those that are seriously mentally ill is different, which drives the data up. Also, the different types of psychotropic medications now are driving data. With the female population, we saw a dramatic increase in the use of psychotropic meds, which is a lot, almost double the amount of the male population. We are looking at probably somewhere around 45 percent

of our female population that is on psychotropic meds, where more like 25 percent of the male population is. Those are just different ways that you are starting to see the data changing, and a lot of it is where we're focusing on our mental health population. Taking inmates that are seriously mentally ill out of segregation, which happened about 12 months ago, also increases the amount of those that we are determining that have psychiatric needs, because when you start putting more offenders into the correct programs and taking them out of isolation, you're going to start treating them more, so you're starting to see those numbers go up as well, which is a good thing for the state because those offenders will go out into this community eventually and you want to do the right programming and right treatment needs for them. The numbers in the mental health population, to me, it is that we are doing a better job in the prison system and in Health and Human Services out in the community to identify them, which actually does raise our numbers. The evaluations that we are utilizing upon intake are a lot different this year than they were last year, so you're going to start seeing a raise of those numbers going up again.

Chair Yeager:

Thank you for that, Director Dzurenda, and I just kind of had wondered, I don't know that Southern Nevada in particular has ever had robust mental health or behavioral health services in the community, but certainly I think we're reaching a point now where it's coming to the forefront how inadequate our systems are, and I just wondered about the interplay there. But regardless, it's obviously good news to hear that we're identifying those individuals in the prison system and trying to get them help so that they can be successful on the backend when they are finally released. The other question I had, and again, this might be for Commissioner DeRicco, I'm kind of wondering on parole, when you have an inmate that comes up for parole, whether it's discretionary or mandatory, and you have the inmate telling you, for whatever reason, "I don't want to be paroled. I don't want to get out," does that play into the Parole Board's release decision in any way, in terms of, is that sort of deferred to, or is the Parole Board going to look at the facts? I'm trying to figure out in this parole/release category if that might be an issue here and how that plays to the Board's decision making. Sorry to put you on the spot, but I just had a question about it and I thought you would be the best person to answer it.

Christopher DeRicco (Chairman, Board of Parole Commissioners):

You're not putting me on the spot. We have many hearings in which individuals indicate that they would like to just expire their term while they are incarcerated. I would consider it a piece to the puzzle here on whether or not to grant or deny. Certainly if it's a mandatory parole hearing where, according to statute, we have to determine whether or not that person may be a risk to the community and they're indicating that they don't want to go out and comply with the terms of supervision, that may be a risk to the community, but we rely more heavily upon our risk assessment and what it is telling us as to where that starting point is. So, that coupled with some of these other issues that we consider, really, it's a full picture. I can tell you I have sat in many hearings where individuals have said

just that, “I don’t want to be released,” and have been involved in panels that have granted it. What happens from there is it ends up going to the Division of Parole and Probation to try and set up an appropriate release plan. That’s my understanding, is sometimes these individuals may not even work on a release plan and they end up expiring in prison, so it’s an interesting dynamic. I guess the short answer is that we consider it a piece, but we don’t always go with what they want to do.

Chair Yeager:

Thank you for that. I just wonder, from a data perspective, this maybe adds a new wrinkle. So, if we have individuals who, according to the Parole Board’s data, are getting paroled, but then practically speaking, they’re not actually getting out because there is not a release plan in place, maybe because they’re not willing to work on one or there just isn’t one. I just wonder if there’s some way, and it might already be in your slides, but if there is some way to look at that, because I think what you would be seeing there is a higher parole grant rate, but maybe not a corresponding decrease in length of sentence. Obviously there are some structural issues as a system that we can do to maybe not incentivize someone to want to stay incarcerated and not go forward with the release plan, but I just wonder if there’s a way to find that out or figure out how many people we are talking about or how that would impact the data.

Ms. Silveira:

It’s a great question and one that we have been thinking about as we have been working through the data. I have two points in response. One: we can try and get at that question by actually comparing the data we have from NDOC on releases with that which we have received from the Parole Board. What we are reporting on slide 47 are grant rates (Agenda Item V). Those are folks who have been granted; those are not folks who have been released. The underlying numbers for these grant rates are individuals who have been granted parole. They are in the fiscal year and not the calendar year, so everything is slightly off. If you were to compare that, and of course I don’t unfortunately have these numbers with me right now, but if you compare that to slide 42 where we have discretionary and mandatory release numbers in raw numbers displayed, you can compare that these are not identical. We’re seeing similar trends, but they are not one to one and the discrepancy is likely the individuals who have either willfully or through other reasons not successfully completed a reentry plan. We have tried to look at the set that we have received to see if we could examine this further, and unfortunately we cannot. This is one of, I think, a number of places in which the types of data that are collected for everyday case management work in a very effective way but make it more challenging to do after-the-fact analysis. I think, as I mentioned to my colleagues that have tried to look into this before, certain information is really regularly updated by the NDOC system, which is excellent so that their staff has updated information every day, and unfortunately it means the folks who are initially granted parole and then perhaps subsequently released based on an expiration of sentence or discharge when they have completed their sentence term, it’s not possible to disentangle those two patterns from the format of the

data that we have received. But I think that comparing the releases from NDOC with the Parole Board grant rates and the underlying numbers which we do have, and I can provide, would allow us to get a higher-level look at that.

Chair Yeager:

One thing that I think is beneficial that will come of this process—there are obviously a lot of things that are beneficial, but one thing I think would be extremely helpful for this Commission and for myself is when we get to the end of this process, if you could tell us, "Here are all the things that we would have liked to figure out but we weren't able to figure it out because the data is incomplete. It's not tracked, or it's not broken down," because my hope is that, hopefully working together, we can figure out that if we are in this situation 5, 10 years from now, that we track the kind of data that we would need for this kind of analysis. So, as you go along in this process, if you don't mind taking note of what your ideal world would look like in terms of readily available data from our various criminal justice agencies in the state, I would certainly like to hear about that. I want to thank the agencies who have cooperated, and obviously you're dealing with the limits of the data that you have. That collection started long before any of us were really here, so throughout this process, I would like to try to figure that out and, going forward, make sure that we have this data, so please take note of that.

The last question that I have, and it sort of dovetails with the burglary issue, and we talked last time about how all burglaries are not created equal, I know we're going to get into an analysis in the November meeting about the burglaries, but I was kind of interested in trafficking. You sort of piqued my interest by essentially combining the 2 B-level trafficking categories, 4 to 14 grams and 14 to 28 grams, and that's a huge driver of the population. Much like burglary, not all trafficking charges are created equal either. As your slides highlighted, in our state, we don't really distinguish between different substances. It's just simply a weight. There doesn't have to be an indicia of sale or anything like that, it's simply possession and weight. Obviously, these can be very different. Having 100 grams of heroin versus 100 grams of meth are 2 very, very different things, and so I just wondered, as part of this process, if there would be a way for some of those trafficking charges, the category B's, to do some kind of sampling on those, because what I suspect happens, from my experience, is you come in with a high-level trafficking, which is over 28 grams, and you're looking at a life sentence, and then typically these cases get negotiated down to one of those either low-level or mid-level trafficking, but even within that, we could be talking someone who has kilos versus someone who has 75 grams or 50 grams. I just wondered if you could perhaps do a sampling of substances and weights, maybe a random sampling of that, because I think it would be interesting for this Committee to see. I would suspect if you had kilos, you're probably going to remain in the high-level trafficking, but I'm not sure about that, to be honest. If that is possible, I certainly don't want to make you do more work, but I think it would be enlightening to the Committee to get a little bit more data on the B-level trafficking.

Ms. Silveira:

Absolutely. I failed to mention earlier that trafficking is one of the other categories of information that Parole and Probation is in the process of graciously pulling hundreds of PSIs for us, so we will be reviewing that for substance, weight and any other indicia that are indicated in the PSI report. Additionally, we are in the process of receiving and have just received data from several courts, from the district courts in Clark County as well as in Washoe, and we plan to spend the next period of time before we see you in November looking at that to better understand those plea behaviors that I think you alluded to there. I have not yet reviewed the trafficking offense descriptions closely enough in those data sets to be confident that they include—I would imagine that they do include—weight-associated amounts, but to be able to observe whether there is also similar plea-down behavior there.

Chair Yeager:

Thank you. It's been a while since I've looked at a PSI, thankfully, although it sounds like you will be looking at a lot of them, but my recollection was that the PSI would give the weights, would give the substance. Usually there is a synopsis of the facts, and I believe on the PSI there is normally an indication of what the original charges were, or at least what the negotiation is and if it results in dismissal of charges. So, in that analysis, I think it would be helpful if you are able to find whether there are some indicia of somebody selling drugs, either a sale of a controlled substance, I guess possession with intent to sell, versus just a trafficking charge, which again, we've talked about possession of certain quantities, because I think in my mind, and probably the Commission's mind, those can be two very different things, whether someone is out there pedaling the drugs versus having a large quantity for whatever reason, whether they're a drug mule or the so-called Costco defense, that they buy in large quantities for personal use, which I think does happen on occasion. If you're able to pull that information or glean that either from the pre-sentence report, from judgments of conviction, I think that would also be helpful to help us figure out, are we really talking about people who are selling or are we talking about drug runners who are in our prison for years at a time. I'll just leave it at that, and I think that's all the questions that I have at the moment. I am going to open it up now for additional questions from Commission members.

Mr. Dzurenda:

Mine's more of a comment. First, of all the data pulls that the Department of Corrections did, most of this was manual. We don't have any real history to be able to do a query into a computer system that will just give you the data, so a lot of the data that was provided to CJI was hours and hours and days and days of trying to find the data for them, which was a great job by the Offender Management Division. One thing you're going to start seeing some changes on will be the parole grant and parole release numbers. You will start seeing a change in that, because what we were approved during the year through the Legislature through the Interim Finance Committee was parole positions to put into

major facilities to develop and help the inmates develop parole release plans, which has never happened. Usually it was left up to the inmate to come up with their own parole release plan. Now, they're going to have assistance from parole inside our facilities to do those, so you'll start seeing better releases and probably higher grant rates because of that. Currently right now, we have probably in the range of about 250 inmates that have been granted parole that are not released. It ranges anywhere between 200 and 500 at any given time, and the majority of them are because the offender either has no address or nowhere to be released to or an insufficient parole release plan, so those numbers are being looked at. They're going down. Those should be zero, hopefully eventually, and that's where we're going to shoot for, so those numbers will also go up.

The other thing I wanted to bring up about this data that I was looking at, you've got to be careful when you're looking at definitions. There was one definition that they used in here where they didn't use the word recidivism but they used the offender being admitted receiving a new prison sentence. It's going to look a little different from the numbers that we use. Even though it was numbers we gave them that we're using publicly, because we're under what's called a Federal Second Chance Reentry Grant and they dictate what term we have to use for that language, which is those that are returned into prison, not necessarily on a new prison sentence. It could be anybody coming back into a prison sentence, which we have to abide by for the Second Chance Reentry Grant, which is different from this data. The other ones you have were also that, in the community, they use those that have been rearrested, which is the jail system, or those that get rearrested and come back into our prison system is a third type of recidivism which they use also, so you've got to be careful of the way the term is going to be used in this data. The other thing is the technical violations that are increasing or that we've seen over the years that are coming back into the prison system. A lot of that does go back into what the community can provide for alternatives for parole and probation and the money that the Legislature approves to be able to build up community resources for parole and probation so there are alternatives for them to stay out in the community. All the data that I have seen shows that it is more dangerous to release those offenders at the end of their sentence rather than to have some type of transition into the community or to have some type of support services in the community. When you don't have the resources in the community for parole and probation to put them in, they put them back into the prison system, which is more dangerous, but there are no alternatives for them. That's when you start seeing that it could actually increase crime in the community by not having the appropriate services for them to leave them out there or alternatives for parole and probation to be able to put them into those services. There is very little that the Division of Parole and Probation can do with inpatient care for mental health and addiction services, which has shown that those higher-risk offenders that are in for mental health and addiction services are spending the majority if not all of their time in prison, which is actually becoming more dangerous than those inpatient services that can be locked down or in secure units for up to 6 months to up to a year in the community will be a safer way. You start seeing that those more higher-risk offenders are going back to prison on the technical violations and expiring their sentences, which actually can down the road be more dangerous and increase victimization.

Chair Yeager:

Thank you, Director Dzurenda. Obviously, I want to encourage you and the other agency heads that we have here, if you're going through this process, don't be shy to request in your agency budget, subject to executive approval obviously, what kind of resources you actually need to beef up these information systems, because I'm sure it would be a lot easier for you and your staff to be able to automatically create this information than spending all these hours. So, don't be shy to ask for that in addition, and I'm not singling you out, because you've been very good about coming up with solutions. But if it's a housing issue where offenders don't have addresses, how can the Legislature help? Do we need transitional housing? How do we make it happen? What's the funding needed for that? I can't promise you the Legislature will approve it, but I think we're all better off if we know what the need is, what that dollar amount would be and what it would do in terms of the data we're talking about here, where we have all these individuals, 200 to 500 who have been paroled but they're going to sit there, that's a tremendous resource drain on our state. So, if we can shift money, I just want to encourage everyone to not be shy. I understand sometimes you can't say things out loud, but if you want to come and say, "This is really what we need," or "These are my ideas for how we can improve this system," I know on behalf of the Legislature that we want to know that and we want to be able to support our criminal justice partners the best that we can. Again, thank you for your work and for all the innovative approaches you're bringing to the Department of Corrections.

Justice Hardesty:

I've had an opportunity to meet with the CJI staff quite a bit, so I'm pretty familiar with the information that they provided, but I did want to underscore a couple of points here. As Ms. McNamara noted, one of the drivers for prison population or admissions is the sentencing decisions of the judges, which is initiated by pre-sentence investigation reports, which has its recommendation built upon or relied upon by a PSP. This is more of a comment than anything else, but this Commission may recall that I raised with the Division of Parole and Probation the status of the risk assessment tool that is being used to calculate and recommend these sentence ranges, and as you will recall earlier this year, we were advised that the risk assessment tool is the same one that we've been using since 1991. We had requested, and this Commission has requested—I'm sure Mr. Callaway will recall—that this be updated and brought current and revalidated. That has yet to occur, and it is quite troubling to me that the PSP score is resting on an instrument that is so aged.

Another issue that is of concern to me is the extent of no concurrence by the judiciary with the recommendations of the pre-sentence investigation report. That raises a number of issues that would be impacting the prison population. Either you have judges who are sentencing at vastly disparate rates or you have judges who lack reliance on the pre-sentence investigation report's recommendation or you have judges who are harsher than other judges. The point of this is that the goal of the Sentencing Commission was to try

to level this out, and I think what these slides show, and I wish the Sentencing Commission had been able to see these, is what I will characterize as a huge disparity between what is being recommended by the Division of Parole and Probation, what the judges are doing with that information and what's happening. If you look at the slide that shows the deviation between those going to prison, the number of judges not concurring with that recommendation is fairly substantial, but there is also a relatively substantial number of judges who are not concurring with the probation recommendation either. So, I think this is something that we need to do a deeper dive into, and I've discussed that with CJI staff but I think this is an important aspect of this.

The last issue that I want to raise is the mandatory parole status. As you know, the statutory definitional basis for mandatory parole is a defendant who is within 12 months of their release. Well, for a lot of these inmates, another 12 months is nothing compared to having to be under supervision for several years after they are released. To underscore what the Director was saying a little bit ago, we actually put ourselves in a public safety risk by having a mandatory release statute that is frankly at a stage when many inmates would just say, "Shoot, I'll do my time, expire and you can't touch me." I just think that that's something that really needs to be reevaluated. Wouldn't we be better off getting these folks out of here earlier and supervising them longer than holding them, warehousing them, and then them making the decisions, notwithstanding the efforts that the Director is making to try to develop a system with release plans. That just drives our prison population up unnecessarily, I think. Not so much questions but just observations and additional takeaways that I discussed with CJI. I think the data review that they're undertaking will underscore many more of the issues that they have already highlighted from the data we have. Sorry for taking up time with more of a commentary than questions.

Chair Yeager:

Thank you, Justice Hardesty.

Mr. Callaway:

Just a couple points to kind of bring some of these things into perspective. From my lens, from the law enforcement lens, first of all, in the criminal justice world, we hear a lot about the term quality of life. It's no secret that sometimes law enforcement sees things differently than the community sees things, and quality of life is—I'll use burglary for an example because that's one of your top drivers here. You want to fill a town hall full of angry citizens? Have a burglary surge in their area, have burglars hitting their neighborhood and you'll fill a town hall with 100 people that are angry because the cops aren't doing anything about that, and it really is a quality of life issue. While the police are out there trying to find the murderers and the rapists and the robbers, you talk to citizens in the community and they are upset because their car got broken into, their house got broken into, someone stole their garden tools out of the shed, whatever, but it's a huge issue for citizens. I was looking at our numbers, and I actually pulled the numbers from

2017 and 2016. We're averaging about 13,000 burglary reports a year at Metro in our jurisdiction, just our jurisdiction alone. I don't know how many Henderson gets, I don't know how many North Las Vegas gets, the Mesquite Police Department, the Boulder City Police Department, in Clark County, but Metro gets roughly around 13,000 burglary reports a year, and those are the ones that are reported. How many people don't call in because they think nothing is going to get done? They're frustrated. Out of 13,000 calls in a year, 400 and some folks got admitted into the prison system for committing a burglary. From the law enforcement lens, that scares me, because that tells me there's a lot of burglars running around out there that aren't being caught or aren't being held accountable for what they are doing out there because the number of folks getting admitted into the prison for committing a burglary is significantly lower than the number of burglaries that are occurring. I also pulled the number for robberies. It's a little bit better scenario, but we had 2,708 robberies last year, and your slide shows 290 folks were put in prison for robbery. Again, not even close to the number of robberies that we're having reported on an annual basis just in our jurisdiction, and your numbers are for the state as a whole. I think that's an area that we need to put into perspective.

Also to that point, I have two questions. Number one: when you say new prisoners, and I think this was alluded to already, but you're not saying a prisoner that has no criminal history; you're saying that they are being admitted into prison on a new conviction, correct? You're not saying when you use the term new prisoner—in my mind, I kind of think, "Oh, they've never done anything wrong and they're a brand-new prisoner," but theoretically, they could have a whole slew of criminal history and this is just that they've been convicted of a new crime that sent them to prison, correct?

Ms. Silveira:

Correct. The definition for new prisoner is individuals who have been sentenced by a court to prison for their offense, rather than those who have been sent to prison or admitted to prison from a community supervision violation. That is the distinction.

Mr. Callaway:

And then another term of clarification, when you use the term person crime, are you referring to the definition or the crimes listed in NRS Chapter 200, crimes against a person? Are we on the same page there, that what Nevada statute looks at as crimes against a person is also what you are referring to as person crimes? Or is there a disparity there?

Ms. McNamara:

I think Chapter 200 is included in the person crimes, so the definition of person crimes for the purposes of the data analysis uses NDOC's definition of classifying offenses. So, it's violent offenses and sex offenses, and the person offenses in Chapter 200 are mostly

categorized with the violent offenses as NDOC categorizes them, so the person offenses are much wider than just that statute.

Mr. Callaway:

Thanks. One final comment in regards to your slides about law enforcement contact and mental health options for law enforcement, I agree with everything you have there 100 percent. We have significant challenges with the mentally ill, and it's intertwined with the opioid crisis and it's intertwined with homelessness. There are a lot of spider webs that are related to the mental health issues. You're right, we do have limited tools at our disposal, whether it's legal 2000, whether it's Mobil Outreach Service Teams (MOST), whether it's social services, but I think the one thing that struck me when you were going through your slides was when law enforcement encounters these folks and we have those options available, and even on the judiciary side we have the citations that you described or we have arrests that you described, in Metro, we have a policy because our jail is so full, and I've said this before, that for any misdemeanor crime, you have to get supervisor approval to make an arrest. An officer in the field doesn't just make an arrest for a misdemeanor unless there is no other alternative and a supervisor has approved that, so we're trying our best. There are obviously the mandatory exceptions like domestic violence and DUI, but we're doing our best to limit misdemeanor offenders going into the Clark County Detention Center. So, the point I'm trying to get to in a roundabout way is the only time those options are really available to us with mental health is when we're talking about low-level crimes, but those folks wouldn't be the ones that you're seeing in your prison slides. If a person with a mental illness kills somebody or rapes somebody or robs somebody, they're going to get arrested and go to jail. Then they're going to go through the competency process and whatnot, so the options that are available to law enforcement on the frontend are unfortunately for those low-level offenders that the only option would be probably a citation, if not one of those avenues like the MOST teams or legal 2000. As you know for legal 2000, they have to be a threat to themselves or to somebody else for us to use that. We see a significant amount of the population that is—the term that I often hear is service resistance. So, just mental illness in and of itself is not a crime, as you know. If someone says, "No, I don't want treatment and I don't want help," they are out running around naked in the street and screaming and we encounter them, the officer does have to make a decision: "Do I arrest this person for obstructing traffic or do I try to plug them into services?" But often with those folks, we do a legal 2000 and they come down from their crisis, the doctor comes into the emergency room—who may have no experience in mental health at all. They may be an eye, ear, nose or throat doctor, and they go through a checklist and say, "Do you feel like you want to hurt yourself now?" The person says, "No, I did an hour ago, but I'm okay now." "Alright, sign here and let's get you out of here so I can treat the guy with the broken ankle." We get a revolving-door process, where now officers are out again later dealing with the same person. So you're right, it is very frustrating, but I don't necessarily know that those folks we are encountering so often on the frontend relate to a large degree to those folks that Director Dzurenda's dealing with on the backend in his prison system. Maybe eventually they are; maybe they do commit a murder and then we end up arresting them and they end up in

his custody, but on the frontend, I don't know that that category necessarily relates to those backend folks, if that makes sense.

Chair Yeager:

I did want to note for the record, you may be aware of this, Director Callaway, but there is going to be legislation next session about the legal 2000 civil commitment hold process. I know that's being worked on, really geared by the Northern Behavioral Health Policy Board, but I know that there are a bunch of stakeholders. I know Metro is involved in that as well, so I'm hoping we can solve some of those problems, exactly what you talked about, which is law enforcement encountering the same person four or five times in one day, sometimes where they are initiating multiple civil commitment holds. So, stay tuned for that. If you're interested, let me know and I can put you in touch with that working group, but it's a lot of people right now that are working on it, so I wanted to make that clear for the record. Did you have anything you wanted to add?

Ms. McNamara:

Just in response to what you were describing in terms of the law enforcement contact mechanism, and I definitely agree with you that in terms of the type of incidences, those are involving, the type of offenses that that captures, but I did just want to share the conversations that we've had with other stakeholders in the state about the success of those programs. We have talked to individuals in Washoe who have implemented those programs, we have talked with Sheriff Furlong in Carson City about his implementation of those programs, and he has noted a decrease in his jail from the inception of starting some of those programs. We did see in the data for admissions for Washoe County that has expanded those programs recently that their admissions have declined recently. I don't know if there are causal connections, but just to share the conversations we have about those programs.

Ms. Jones Brady:

I liked what Chair Yeager was saying about, kind of in a different way, we can't look at this in a void. So, I should hope that the subcommittees will be working with Health and Human Services subcommittees and different subcommittees, because we have an affordable housing crisis in Nevada, we have access to health care, education, employment is doing better than it was, I'd say 5 years ago. I have a lot of clients that are able to get jobs now when they weren't 5 years ago, but I think that what I am concerned about is that if already the prisons and the jails are our de facto substance abuse treatment and mental health centers, and so I hope that we are working together in the way that Director Dzurenda was saying, that we can coordinate with people in other industries on the outside. Moving on, I don't know if we are going to or if you guys have separated out some of the different areas within Nevada. We have Clark County, we have Washoe County, we have Douglas, and then some of the rurals. I'm just wondering if at some point we need to look at each of the different counties too to see if there are specific

different things within each of those. I would like to see more demographic information, for example, not just with race, but with age. I'm seeing for my clients, when I have a young opioid—we have the young offender programs, which are fabulous, but then when they relapse and then they go to prison, to see those 20-year-olds go to prison and then come back to me a few years later, they are so changed after they have been groomed by some of the older inmates. It just breaks my heart, so I would like to see some things around younger people, helping them even more. The young offender programs are great. I did want to make a comment about the Parole and Probation scores. When I get the PSIs, I review them every time with each of my clients and we go over where they lost points and where they gained points. The funny thing is, some of the things that will take away points on the PSI, for example, substance abuse and mental health issues, they get dinged points for that are the very things that may be mitigating according to Nevada law. So, that's maybe where you're seeing some of the disparity between the judges, because they are considering mental health maybe or substance abuse mitigating, but then on the PSI score, the PSP score, they're getting dinged for that, so what I'm wondering is when they revamp the PSI score, if they do, if they are able to sort of build in instead of just taking away two or three points because they have a substance abuse problem, if they are able to say if this person gets treatment, that could raise their score by two or three points. Build that in there and then maybe you might see the disparity between what judges are sentencing and what Parole and Probation is recommending, that gap close a little bit. That was one thing. I guess this would be a question for the prisons, is that with the mental health people who have mental health problems, they have been in isolation, so I don't think they receive the same goodtime credit that they would if they were out of isolation. I don't know if that's true, and now if they've got other programs for people with mental health, are they still being able to accrue goodtime credit in the same way, because if they're in the mental health unit, are they still able to participate in work programs and different things that help them accrue faster times? These are just questions I have about that. Those were some of the problems. One other request I would have is the domestic battery. To my knowledge with felony domestic batteries, I don't know that there are domestic violence or specific domestic battery programs in the prison for those mandatory prison sentences, and so sometimes I am getting second felony, third felony domestic batteries coming back for some of the same conduct and they are telling me they are not getting any. Maybe they don't want to participate in programs, but they are telling me they are not getting programs.

Mr. Dzurenda:

I've got a couple of answers for you, but you are correct. If someone is in segregation, they do not earn any meritorious credits. We do not put the seriously mentally ill into segregation anymore, so they do get credits. The other thing with programs, mental health is considered a program, so when they are in a mental health program in a mental health housing unit and complete that program, that's meritorious credits because they completed a program. That's all different from what it was last year, so these are different things that you'll start seeing that are occurring. The other thing with domestic violence programming, what's different in the Department of Corrections this year than last year

again is what we're using is called the Nevada Risk Assessment System (NRAS) Tool now. It dictates to the caseworkers what programs are needed or necessary for those individuals to succeed based on evidence-based—so those are even changing, which is added into that is domestic violence, where before it was almost subjective depending on whether they believe the individual behaves enough to go into groups or if they're even interested, but now the NRAS will determine who needs what program how and why and how much and then whether or not they refuse, so all that's going to be built in, which is different from last year, so it's all changed. I hope that helps.

Ms. Jones Brady:

That helps, and I think that's a great movement there. The other thing is if there is a way for us to communicate in the system a little bit better. I know that for most of my clients I will get them either a substance abuse evaluation or a mental health evaluation, and I don't know if that follows them to the prisons. I suppose we would need the clients' permission, but to the extent that we've done pre-sentencing a lot of that groundwork, to the extent that the clients are letting us share that with you guys so you can have that already, if there's a way to do that, that might be helpful too.

Ms. McNamara:

That's definitely a great idea, and that could be very helpful in that transition, and I think a lot of the research shows that continuity of care and identifying someone's diagnosis and then what type of needs would be very beneficial at all points of this decision making. Just in response to your comment on the PSP and the PSI scoring, I think that's definitely a question for you all as ACAJ Commission members to think about and reflect upon in terms of the changes you might want to make to that. It is a very different scoring tool used from what we've seen in other states. It has a lot of dynamic risk factors on it that a lot of other states use static factors, such as criminal history offense severity. They talk about the dangerousness of the offense, if there was a victim, the amount of restitution, and those are all factors in the scoring mechanism, but some of the other categories about mental health and substance abuse and family history, employment, those we don't generally see in scoring mechanisms. So, I think, just as ACAJ Commission members, that's just really important for you all to be thinking about in this process.

Chair Yeager:

I don't want to scare Director Dzurenda, but I have been exploring perhaps the ability to use blockchain technology for some of this information sharing that you're talking about, Ms. Jones Brady, whether it's medical records, or it could be evaluations that were done. Really, in the criminal defense context, I think part of the concern from the Director is you can't just accept sort of rogue documents and you don't know where they came from, if they've been altered in any sort of way, so blockchain would solve that problem of the reliability of the source. Of course, it costs money and we'd have to figure out how to implement it among multiple different departments, but I will be looking at at least trying

to authorize some kind of pilot program during the next session so maybe some of our agencies can communicate in a very easy, cost efficient, safe, reliable manner. We're not there yet, of course, but I think if we make progress in that area, any progress is better than none, because like you say, Ms. Jones Brady, often in the criminal case there is a lot of work that's done. It costs a lot of money either to the state or to the county, and then that information is not shared among our agencies. I think when we don't share that, we do a disservice really to everybody involved in the process. So, be on the lookout for that. I'm not sure what it will look like yet, but hopefully we'll be able to run with something and start that process next session. If you don't know what blockchain technology is, I guarantee you're going to see it everywhere now that I've said it out loud, because it's sort of exploding on the technological scene and there's a lot of interesting legal questions. Director Dzurenda, did you want to say something?

Mr. Dzurenda:

What's important, I think, is the Department of Corrections does not have electronic health records. We have been approved it through the Interim Finance Committee through the Legislature, but when you're talking about electronic health records, you can't do them when there's no broadband. We have probably the majority of our smaller facilities around the rural areas where there is no broadband, we're working on the broadband to be able to get it. Currently, we have no information medical sharing unless it's through paper from us to the community, which is very scary. We have another thing talking about mental health, when you have inmates that were using formularies for psychotropic medications. We're putting inmates on medications that we believe are going to help, like the first formulary psych med is Prozac. However, with Prozac, we found out 40 percent of the inmates that are on Prozac, it actually makes them more violent, so we changed their medications and put them on something else. But the community doesn't know that when they get released, we let inmates go that are on psychotropic meds, they go back into the community for mental health services, they go back to another formulary, which usually Prozac is their number one issuance for that type of diagnosis. They go back on psychotropic meds of Prozac and they become more violent in the community and they are wondering why, so those are important factors we've got to look at.

Chair Yeager:

We definitely have work to do, but we will continue to make progress on that front. Obviously, we can't communicate electronically if we don't have records stored electronically, so that's a good first step, but we will work to try to get there.

Judge Jim Wilson (Carson City District Court):

My question is for Ms. McNamara. During the PSI portion of your presentation, you mentioned and you have on slide 75 a bullet point that there is no statutorily required mental health assessment in connection with the PSI. Are there states that require that?

Ms. McNamara:

There are states that require mental health assessments, both in jail to determine for pretrial release, as well as part of the sentencing initiative. South Dakota comes to mind as one of those states, but in terms of that, I am not familiar with a state that has a scoring mechanism similar to the PSIs having a clinical assessment associated with that, no.

Judge Wilson:

That's my only question, thank you.

Al McNeil (Sheriff, Lyon County):

I believe in trying to change outcomes, and we've had great conversations, but I watched the second presentation and I'm starting to get concerned that we might be going in an area that my community can't support, and that's the area of changing burglaries and drug dealing, because they destroy a community. If I have a citizen that looks at me and says, "That individual broke into my home and stole something. Why is he walking on the street?" We're the ones that get the brunt of it. I'm sure that Director Callaway would agree with that from a sheriffs' and chiefs' perspective. Or "He gave my child drugs, why is he not in prison?" That's the reality of the world that we live in, and I don't know how to change that outcome, but that is a real, real concern. Just like the Chair said that no two burglaries are the same, and I've echoed before, no two drug trafficking cases are the same. I would like to see, and this is probably more of a comment, not a question, but something maybe to bring back is you bring in 28 grams, which is 1 ounce of methamphetamine, into Las Vegas, hey, that's just a night's worth of party. You bring 28 grams or an ounce of meth into my community, into Lyon County or into Douglas County or Carson City or Elko County or Nye County or any of the other 15 counties in the state, and that's a serious, serious amount of drugs that can really impact the community as a whole. So, when we look at trafficking amounts, I think it is important. You've got Washoe and Clark Counties, and then you've got the rest of the state. The 15 rural counties are the vast preponderance of trafficking and sentencing of prisoners, that's probably online, so I'd like to see that kind of break out of data between Clark and Washoe and the rest of the state. Another thing to dovetail on, I think—Chair Yeager, I have talked to many, many ex-felons that have gotten out of prison. They don't want to be on paper, they don't want their life supervised. I don't know what that data looks like, I don't know what the number is, but I can probably tell you I've talked to about half a dozen in the past year or so that have said, "I just don't want to be supervised." So, I don't know if that dovetails, how you get a person like that to participate. I think the Justice may have brought up some great comments. Then, I did also—dovetailing on that, I don't know if the data shows it, and this is probably my next question maybe to bring back, but it's on the specialty courts. We see a lot of individuals that go into the specialty court system and they really don't want to be there. Oh yeah, they want to be there because they don't want to go to prison, but they really don't want to participate and partake, and then suddenly after they've been rearrested three, four, five, six times and brought back into a county jail trying to get them

to cooperate, and finally the drug court says, “Enough, you’re going to prison,” where is that data captured? I don’t know if you can answer that now or if you have to bring that back in.

Ms. Silveira:

I can try and speak to that a little bit. When we presented last time, we presented data from the Administrative Office of the Courts (AOC) on their specialty court programs that they supervise, and particularly on felony offenders coming through the door. What we presented were success rates of the number of individuals who were discharged last year, and I don’t have them in front of me, and I believe Ms. McNamara spoke to a number of research principles underlying those specialty courts which have to do with actually which types of offenders are best suited for what is a multi-year intensive program a lot of times. Unfortunately, the NDOC data that we have received—and I believe the way it is tracked doesn’t indicate if somebody has been a participant in a specialty court and has failed the specialty court and has been released and sent back, so we would observe those individuals who are participating in specialty court on a suspended sentence with probation, we would observe them as part of the probation violator admissions population, but we aren’t able to distinguish them as well. My hope is to be able to observe some of the patterns of probation revocations that may or may not involve specialty court individuals, and with some of the court data that we have recently received from Clark and Washoe, I don’t believe we will be able to identify which of those individuals have participated in the specialty court, but we should be able to identify—and this is a should, not a promise—the number of times an individual has appeared prior to a revocation. We can’t sort of hone in on that exact population, but we can try to sort of observe some of the trends in which that population would consist a part of. I think that’s as far as I would be able to get you on that data.

Ms. McNamara:

I can’t speak to what the data can show, but I can speak to the fact that I’ve talked to a variety of different specialty court coordinators in various areas of the state, and one of the things that they have all said is that some have recently started using risk assessment tools to identify offenders who would be eligible for the specialty court program, so that’s one way in terms of identifying who might need the program, who might benefit the best from the program, and I think there is definitely a desire and an impetus to now have these different courts start implementing that and seeing the success of that and shifting from either a document referral of having a mental health history or having a substance abuse history to a more clinical assessment indicating these high-risk offenders who would benefit most in those programs.

Sheriff McNeil:

Thank you, and I think you did show in the last presentation how disparaging our specialty court is from the north and the south. The last one is more of a question which was on

slide 74, and I think the Justice really got it. That really caught my attention, is judges not concurring with recommendations. I think I could draw a conclusion as to possibly why in Nevada's system of elected judges. Do we want to be the hangman judge and get reelected? I don't know if that's the trend, but I definitely would like to know how does that compare to—are there states out there that don't have an elected judge system as to concurrence/non-concurrence? Is this the system that's the best for us? I don't know, and so when I see we're not listening to the experts and we're spending money to complete these and we're not—to me, it raises a big flag. So, is there a way to capture that, or is this the best system?

Ms. McNamara:

That's definitely something that we can look into. I think what is unique about Nevada is the PSI recommendation process. There's not that many states that give an actual recommendation to a prison and probation sentence. In terms of being able to compare that to a lot of different states, it definitely narrows the pool, but that's something that we can circle back on and talk about further.

Chair Yeager:

I just want to note, Sheriff McNeil, I think you really hit the nail on the head. Our communities clearly don't want drug dealers and people breaking into houses, they don't want those people in the community. The difficulty we have and one of the reasons we—at least I—invited this process to come in is we can't tell from our data at the prisons who is breaking into houses, who is drug selling versus possessing, so I'm very anxious to hear the presentation next month. I think it would be reasonable to assume that most of the people there are in the selling and the breaking-into-house variety, but I don't want to assume that, so I want to see what that data says, and I think that's part of the effort that we're looking at as a community. Do we need to further break down these offenses so we're sure that the bad ones are ending up in prison and maybe the ones that aren't quite as bad and can be rehabilitated—where this analysis leads, I don't know. We'll see the data next month, but I would hope we'd get to a position where we'd be able to say definitively that 95 percent of the people in prison on burglary are breaking into houses, that makes sense, or they're the ones selling drugs in our communities. I just want to thank you for identifying that, and I know it's been a bone of contention in this Commission for a long time, who these people really are who are in prison, particularly on the burglary offenses, so I'm anxiously awaiting that next presentation. We will go from there, but I just wanted to thank you for raising that, because I think it is important, and it's important for the community to understand what it is we're trying to do here. We're not simply trying to say people shouldn't go to prison. We want to make sure the right people are in prison, and the ones that don't need to be there we can try to rehabilitate in the community. If that works the way it's supposed to, then public safety, as Director Dzurenda has talked about, is enhanced. That ultimately is the goal here, to enhance public safety and to be more fiscally responsible, so we'll see where we end up, but those are the two goals that

are in the back of my mind if we advance recommendations. Let's go next to Ms. Butler for any questions.

Ms. Butler:

I don't have any questions at this time.

Mr. DeRicco:

I wanted to refer to slide 43, and just for clarification on here, this slide indicates the prison release type for 2017, but my question is, I don't believe anything is built in, or can you build in—out of these, how many were granted parole, revoked and then ultimately expired their sentence in custody? So, were they given that opportunity to be on the streets? Otherwise, I see it as just—we don't show that opportunity that was in there, and I'm curious to know where that is and what that would change as to how many were truly expired with no opportunity for community supervision. My next question I guess is with regard to the PSP. I learned something here today. Justice Hardesty, it seems to me quite odd that the PSP would not have been validated or redone since the late 1990s, and certainly I can see where that could be an issue. My question is, do you know how that PSP score, and maybe you don't know, would change if someone doesn't show for their pre-sentence interview? How is this score calculated, because I would assume that they're getting more dings against them, and I don't know why someone may or may not have interviewed, but I'm curious how that affects if they were not able to be interviewed in the pre-sentence process. To follow up with that, we have pre-sentence reports that are waived where there is no interview at all and a post-conviction report happens down the road, and I'd be curious to how that recommendation is also made when pre-sentence reports are waived. Listening to Director Dzurenda speak, he kind of just threw some ideas or thoughts into my mind here, and from the Parole Board, there are many times when we see individuals come back before us for violations, and I can tell you, boy I wish we had some more alternatives, I really do. In Las Vegas, there is the Casa Grande program, which could be used as a facility maybe to house somebody short of going back to prison who isn't quite ready to continue to stay on the streets where they might be running amok, but we need some more secure-type settings where there's a little more guidance and oversight. These are things maybe down the road to discuss, but to me, I could see the revocation rate go down by having something in between, short of prison but not really able to stay out in the community still.

With that said, I think I just had one other note. Also, Director Dzurenda mentioned about the NRAS, and I know that they are moving forward with that. I would like to see if it's possible to have that made a part of the Board report for us. I think that would be helpful to us in making decisions. I think Chair Yeager hit on something that's very important, that I felt was, with regard to, do we want these burglars and people selling drugs in our community? These are things that we weigh every day at the Parole Board. We have these individuals that come in, what we consider factors on these, and they're right in the middle. Should we grant, should we not? Those are the ones that we need to make those

decisions on, and we see multiple repeat—they generally come out on the lower end of the scale. They're not violent offenders. However, they've repeatedly committed burglaries, thefts, shoplifting. You see the patterns and what's going on to when is it going to be that time that comes across somebody and can that be a potential threat? The safety of the community is certainly paramount to what we try to do, but once again, we're dealing with human nature. It's a fine balance to try to determine how many can we get out that can be safely supervised, and it's difficult. I appreciate the work that you're doing and the conversations we've had, because for me, a new Chair of the Parole Board only a few months in, this gives me a starting point kind of to move forward and move on from here, so thank you.

Ms. Silveira:

I'd like to speak to your first question on slide 43 (Agenda Item V), and I was actually flipping through it to be sure that we didn't in fact have that in our presentation. We can break out this information by the type of admission to prison, so to tell you for the new prisoners we discussed, folks that are sentenced directly who have not yet received an opportunity for community supervision on the current booking versus how these release types differ for the other populations, so I'm happy to bring that back to the next presentation if that would be helpful.

Mr. DeRicco:

I actually had just one more thing real quick. I didn't see any stats with regard to the residential confinement program. There's mandatory parole stats, there's discretionary parole stats, expiration stats. Will you be providing some of these here too?

Ms. Silveira:

The format of the data that we received from NDOC, and I cannot say that this is how their actual system works, but based on our requests and what we received, it did not include releases to residential confinement, but it did include releases from residential confinement. It looks like Director Dzurenda may have something more to add to that.

Mr. Dzurenda:

For releases, there are certain things called a 405, which is a residential release. It's actually pending in court cases right now, because the way it's written, even on here, it's the NDOC's discretion, but it's really not. That's what we're trying to find out from the court cases, is do I as Director for the prison system even have the option to deny somebody? I don't think I do. Right now, we have denied in the past based upon victims' impact. However, it's being litigated in court now whether even NDOC has the ability to deny residential placement for 405's, which is what they're called, so there are still court cases pending on that, if that helps.

Ms. McNamara:

I can respond to your question on the PSI and the PSP. There is a section on the PSI report that if someone isn't showing up for their interview, it's flagged. I don't know, and I wish Chief Wood was here today, but we can circle back with Chief Wood on the PSP to find out exactly what happens and exactly what information is inputted into the PSP. It's my understanding that all the criteria that an individual can get from there, like their criminal background check from the offense, that can all be inputted. But in terms of the other more nuanced information, I don't know what decisions are made at that point, but we will follow up on that.

Ms. Rose:

I just have a couple of quick questions, and first I just want to say thank you again to the Crime and Justice Institute for all of the work you've done, the many, many hours that you put into pouring over all of our data so we can make better decisions. Thank you very much for your work. it's very helpful to all of us. In terms of the trafficking statute that we have, on slide 82 where you showed some other states that also trigger mandatory weight in those other states, in Idaho and Arizona and then in the federal system, do you know if in addition to the trigger there is also an intent to distribute element that has to be proven for the crime, or is it also like Nevada where it's just the number and as long as you meet that threshold, then that's all they're really looking at?

Ms. McNamara:

I know for Arizona specifically there are other triggers required. It's not just the numerical weight. It's my understanding for both federal and Idaho that it is just the threshold.

Ms. Rose:

Great, thank you. If there are any other states that you know of, one or the other, I think that would be helpful for us to know too, if you can follow up on that as well. For the theft threshold of $650, do you know when that statute was last amended? I know that might be a too-in-the-weeds question for you. It's something we can probably look up easily, but just for the record, do we know when that was last amended?

Ms. McNamara:

We all remember looking it up, but we cannot recall the actual date, so we will circle back on that.

Chair Yeager:

I can assist you on that. It was the 2013 Session. Assemblyman Ohrenschall did a bill that raised the prior threshold, which was $250, and raised it to $650. We are about 5 years into the new regime.

Ms. Rose:

Thank you. I appreciate that, Chair Yeager. Obviously, the reason I'm asking is just thoughts of inflation, and $650 at one point in time is clearly not the same as $650 today. Just a last, quick question, I can't remember if for the Crime and Justice Institute if you all have spoken with formerly incarcerated persons or if you've done a roundtable with them.

Ms. McNamara:

That is definitely something that we have discussed, and it's something that I think we were planning to discuss with the Chair and Vice Chair Hardesty to see if that's something that the Commission is interested in having some sort of roundtable with respect to formally incarcerated individuals. We do have the victims' roundtable that's scheduled for later on next month. That is definitely a practice that we have incorporated into this process, so moving forward, that's definitely something to consider. I'm sorry, I just want to circle back quickly to the trafficking statute question. In terms of just the states listed up there, Idaho and the federal government don't have other indicia but the other states listed, and there's a variety of states that don't have an actual threshold, that require indicia of scale with their trafficking statutes, so I just wanted to clarify that.

Ms. Rose:

Thank you for the clarification, I appreciate it. I would encourage you all, if you have the time, to fit in a roundtable with formerly incarcerated people I think that would really be helpful to just give a personal impact to how these systems work in practice and understanding the data overall. I would also be happy to connect you with some people or recommend some people for that. I know Leslie Turner, who previously had come to talk to the Commission, and there's another woman who came to speak about her experience with the criminal justice system that I think would be helpful for you all to hear and put it in context, so I'm happy to do that if that's helpful to you.

Ms. Armeni:

I wanted to know if there has been any correlation when you were doing your studies as to the increase in time served compared to maybe an increase in a person's criminal history. So in other words, are people getting longer sentences because the people that are going before the courts now have a more extensive criminal history? I think that's something that we probably need to look into if you haven't already.

Ms. Silveira:

I don't believe that we've been able to look at that yet, though criminal history factors are among those that we are looking at through the PSI-level file review wouldn't be able to—because we're doing randomized sampling, we couldn't say that of the 6,000 folks who were admitted last year we can speak to all of their criminal histories, but we will be recording some of those major factors that are tracked in the PSI and presenting some of that back at the next presentation in November.

Ms. Armeni:

Thank you. My second question is, I believe you referred to a DUI as a nonperson crime. Are you characterizing it like that because that's how NDOC is characterizing it, or is that your own terminology?

Ms. McNamara:

It's characterized by NDOC as an "other" offense, and so we have included it.

Ms. Silveira:

Just as a clarification, NDOC uses, as I understand the categories, violent offenses, sex offenses, drug offenses, property offenses, DUI offenses and "other." It's our experience that when you are working with so many categories, things get very confusing very quickly. So, the DUI offenses are folded into the nonperson category, as you alluded to. The person offenses, as we discussed previously, include all offenses that are categorized by NDOC as a violent offense or a sex offense. They also include a couple of additional offenses that we think lay individuals might consider a violent or sex offense, but due to classification issues aren't traditionally considered those, and those would include something like reckless driving resulting in substantial harm, something of that nature, which isn't necessarily considered a violent offense. We understand NDOC's also undertaking a reclassification of all of their offense categorizations right now, so those offenses, anything resulting in substantial bodily harm or injury to a person, are also encompassed in the person offense category. Does that clarify?

Ms. Armeni:

That's actually my follow-up question, so I'm glad you brought that up because that's my concern. I was looking at page 14, and I believe you characterize a DUI labeled on there as a nonperson offense, but I would venture to guess, and I may be wrong, but the majority of people that are in our prisons for DUI are ones that have caused substantial bodily harm or death. There may be some people in there for third DUIs. I don't know what the statistics are, but that's why I was concerned that maybe characterizing a DUI as a nonperson offense when the majority of DUI offenders that are in prison are there as a result of harm to a person.

Ms. Silveira:

I appreciate that. Just to speak to that a little further, the offense descriptions that accompany the individual-level case data we received from NDOC include offense descriptions for DUI, which we interpret as the third offense rising to a felony, as well as DUI resulting in substantial bodily harm, so offenses that in the description describe the results of substantial bodily harm have been characterized as person offenses, and those offenses that appear to be felony category B offenses as a result of being a third rather than bodily harm or injury as caused would be in the nonperson category.

Ms. Armeni:

Thank you.

Judge Sam Bateman (Henderson Justice Court):

I want to thank Ms. Silveira and Ms. McNamara for taking my call yesterday, and I will apologize to Justice Hardesty if I cut into his time. I know they had an appointment with him, so I'm sorry. But we had a good conversation. I was looking at some of the stuff in terms of going forward. Bang for your buck is kind of what I was thinking of in terms of future policy decisions that we're going to make relating to the prison population. It's my understanding, like with admissions, and we're talking about admissions when we talk somewhat about trafficking and burglary, and those are driving admissions. It seems, if I understand the whole process correctly, the math, you can have higher admissions and get away with it if you have lower time served. If you have higher time served, you have to drive your admissions down to try to keep your numbers even. Is that kind of a fair way of thinking about the math?

Ms. Silveira:

Yes, and it depends. They're all questions of magnitude, so in the way you're describing, if the trends were running in opposing directions, then you could imagine a bit of a seesaw where, depending on the magnitude of the admissions increase or decline and the time served increase or decline, the prison population could either grow or diminish. But what's sort of notable here, and I think distinct from other states that we've worked in, is that both admissions and time served are increasing, so there's sort of no question that both of those are playing a role in increasing the size of the overall population.

Judge Bateman:

I guess I'm not as surprised that the admissions are going up somewhat considering we're back to being, I think last year we were the second-largest state in population increase, so I'm assuming to some extent unless you drive down your crime rate significantly or do something completely different than what you're doing, you're going to probably get some creeping up on admissions. I could be wrong about that. We talked a little bit—the reason

I called you yesterday is that I was so surprised by these results. They were not intuitive to me over the last 6 years to 10 years that, if I understand your statistics correctly, sentences are up, parole grants down, except I think it's ticked up recently over that same period of time, and revocations, parole and probation are up. I think that's what you're talking about is admissions are going up, and then all of these other things are driving time served towards an increase. I was kind of shocked to see, and I think Justice Hardesty mentioned, that the sentences were going up. The only thing I wasn't surprised by was slide 74 on the PSI recommendations. I think you broke it down by a recommendation for prison versus probation, and it does look like the district court judges are less often following the recommendation by Parole and Probation for prison. You're seeing a pretty big—am I reading that correctly, that quite often they're actually not following the recommendation for prison? So, this would be even worse. Our numbers would be even worse if the judges were following Parole and Probation's PSP, or whatever it's called, the scale and its recommendations for prison, which is actually what I as a practitioner have seen, so I was not surprised by this slide. So, that's why I'm so surprised that our sentences are up in the amount that they are, because in the last 10 years, there's just been a huge change in mentality towards not sending people to prison and negotiating cases down to misdemeanors, specialty courts, all of these things, so that's why I'm kind of shocked. I think Ms. Silveira said that you, CJI, expected the time served to continue to go up, I guess if we don't do anything, and my question ultimately to that statement is why do we come to that conclusion? Can CJI even come up with an opinion as to why our sentences are going up, why parole grants are going down, why revocations are going up? I'm guessing you have a limited ability to tell us that, because I think a lot of it is qualitative and I think we have to, to some extent, use our own expertise from the people that are on this Commission. For instance, I know Parole and Probation is not here today, I think it was Ms. Wood, but when we talked about the tool that is being used in addition to just the recommendation for prison and probation, I don't know if Parole and Probation can tell us, have they seen over that same period of time higher recommendations based upon their tool? I don't know whether they can pull that information, but it would be interesting to me if the sentences were going up if the tool itself is recommending higher sentences. Does that make sense? Ms. Wood's not here to really talk about it, but it would be very interesting to me if over that same period of time, the tool has basically been pretty consistent on what it's recommending on sentences. We're not some huge increases, and at the same time, judges are giving much higher sentences. Does that make sense, what I'm saying there?

Ms. McNamara:

That definitely makes sense, and I think you are accurate in saying that, in terms of understanding all of the nuances about why this is happening, it is going to have to come from the ACAJ members, because you are the experts in your respective fields. We can study the system and we can talk to as many people as possible and read all the statutes and administrative policies, but you all know what's really happening and have insight that we don't have, so to try to get to the answers about why this is happening, it's

definitely going to come from those discussions that you're going to have in the upcoming months.

Ms. Silveira:

I was going to speak to two of the data points that you had mentioned. You had asked why we expected time served to increase. As I noted during the presentation, and just to clarify in case that was unclear, the sentencing increases that you alluded to as we were showing were based on the backend on 2017 admissions to prison. Presumably, most of those individuals were sentenced in 2017 as well, maybe some at the end of 2016, and many of those individuals have not yet been released, and so the comment regarding we would expect time served to continue increasing in part has to do with those folks who are coming in the door are for the most part likely still in custody, and so they won't be released for the next few years, and you can only calculate time served once someone has in fact been released. That's the kind of bottleneck that we're expecting to continue, and then you would only really be able to see the effects of the 2017 sentences 2, 3, 4, or 5 years down the line depending on the nature of the folks who are coming out. There is one piece that you mentioned, I think you sort of got to a lot of the points of we're showing what, but we can't always answer the why question, and I appreciate that. There's one piece we hope to be able to speak a bit more to parole revocations at the next presentation using some of the hearing data that was provided to us by the Parole Board that we've been preparing to present, so we will be able to speak a little bit more to those. The probation revocation side continues to be a bit more of a black box, and I think we will see what we can get with the court data in terms of being able to share something. I think as Ms. McNamara alluded to, a lot of those why questions are going to be left for you all who are the stakeholders and the experts in the system.

Judge Bateman:

Thank you, and I think it sounds like if we really want to make a big change, we're going to have to change kind of our behavior as a whole, and I don't know whether that's always going to come very easily with statutory changes. The only other things I was going to note, Chair Yeager talked about trafficking. I know back in either the interim of 2010 or 2012, the ACAJ took up trafficking and there was a lot of work done. I think Judge Herndon was on the ACAJ at that time, and there was a presentation after pulling some information on trafficking. I reached out to Judge Herndon to see if he knows exactly when it is. Maybe the Legislative Counsel Bureau (LCB) can help. I don't know if we kept any of that information or if it's in the minutes, but it might be a good starting point. I think I mentioned it when we talked yesterday. Also, I know you had taken out some of the aggregation, inmates that have had their sentences aggregated. I thought at this point everyone is supposed to be having their sentences aggregated. I don't know what percentage that is, and I know NDOC was having recently a hard time deciding exactly how that was going to work, but that's another thing that should have been driving our prison population down. If sentences are aggregated, they should be getting out faster. That's not really a question, I'm just throwing it out there for Director Dzurenda. That's

another point in why I am surprised that our time served has been going up when we have that as another part of the process. Finally, I know you're going to do some modeling on the trafficking, and you talked about coming up on the trafficking and the burglary charges, if you were to change them somehow and you guys could model it going forward about how much bed space you'd save. That's going to happen, I'm assuming, coming up in the next few meetings, is that correct?

Ms. Silveira:

Yes, that's correct.

Judge Bateman:

I think that will be helpful in telling us what kind of changes you can make to those statutes and actually how much difference you're going to actually make in your prison population. Finally, the $650 issue, the only thing I would say from the point of view of the limited jurisdiction judges is what I'm seeing is a lot of negotiations down to misdemeanors, much more than I used to perceive as a district attorney, and where much of my morning calendar is, just anecdotally, becoming status check calendars on informal probation, and we don't provide a whole heck of a lot of services. We don't monitor people. You're going to have people addicted to methamphetamines and heroin, and I'm offering them a lower-level drug counseling class online. I know Henderson Municipal Court uses the benefit of they set up a formal probation process for misdemeanors. I know you showed the slide on the $650 threshold and all those additional states that have higher thresholds. It would be interesting to know, and I don't know whether you have the data offhand, I'm not suggesting you go out and find it, how many of those states use formal probation procedures for misdemeanors, but one thing that concerns me is dumping a whole lot of—one way to address your prison population is to reduce felonies to misdemeanors and putting a lot of people into the justice court system where we don't have any of the availability of resources that come when you're in the district court is disconcerting to me. I don't know if that's information you have, but as we go forward, think about how little help people get when they're in the justice court system on misdemeanor convictions and informal probation. I think that's all I've got. Thank you, Chair Yeager.

Justice Hardesty:

I'd like to address a point that has been raised by Judge Bateman. In the slide that shows the concurrence/no concurrence by judges, that does not mean that the judges opted for probation. It means that they didn't concur with the Division of Parole and Probation, so that option could mean the defendant got probation, it could mean the defendant got a much harsher sentence than what was recommended by the Division of Parole and Probation, or it could mean they went to prison, but went to prison for a lesser sentence than recommended by the Division. I don't know, Ms. Silveira, if that distinction is contained in the spreadsheets you showed me yesterday, but I don't think so from what I read.

Mr. Dzurenda:

Just so you know, for aggregating sentences, we don't aggregate every single inmate's sentence that qualifies in the Department of Corrections. It's only when the inmate requests his sentence or her sentence to be aggregated. What we found out was that some inmates had found out when we did aggregate their sentence that it actually got them more time based upon how much merit time they lost in their first sentence. If they lost it all and then aggregated, they're going to have more of a sentence than if they didn't aggregate it. So, just a little education on that.

Judge Bateman:

If I can just follow up based on Justice Hardesty, I appreciate your point. I didn't realize that it was just prison or probation, but it seems like if we have that information, it would sure be interesting to know how far they're deviating and are they deviating up or are they deviating down and what the recommendations are over a period of time from this PSI report, because I'm just surprised that we're going up in the way they we're going up.

Justice Hardesty:

That's what I've requested.

Ms. Silveira:

I have a list of things that I'm going to try to speak to that have come up. So, with regard to Justice Hardesty's comment, respectfully, that's not actually how I understand the information that's displayed there. The information we are provided, unfortunately, is among the summary-level data that I mentioned that we don't have more detailed information on. We have monthly tallies. I believe the individuals for which there is no concurrence under the prison column have not received a prison sentence, be it higher or lower than what was recommended, so I believe they may have received a probation sentence. We understand these are the only two recommendations for which concurrence is tracked by Parole and Probation. However, Parole and Probation through the pre-sentence investigation report makes other types of recommendations, and so we were told other recommendations that aren't tracked include a sentence to a regimental discipline program, specialty court participation, a sentence of deferred treatment, fines fees, and restitution paid, and that there are often other recommendations that are not tracked as well, so I just wanted to clarify that. We cannot state that those for whose recommendation to prison was not concurred, that they have been placed in probation. They may fall into some of these other categories, and likewise for the individuals for whom concurrence to probation was not provided in the sentencing. They may have been sentenced to prison or they may also fall into one of those other categories. That's my comment on the concurrence rates.

With regard to Judge Bateman's question about aggregated sentences, following our conversation yesterday, I looked into the numbers. The individuals that are excluded from the sentence calculations, as we mentioned, those who have a life without parole or death sentence, as well as those with aggregated sentences. As a percentage of admissions in the 2 years that we are displaying, so for 2008, that represented around 4.5 percent of all individuals. So, about 258 individuals fell into those categories for admissions in 2008. It's relatively small number. Very few of those were aggregated sentences. Those were mostly life sentences. On the 2017 end, that number, I think, with the aggregation changes that have been discussed have risen to 7 percent, but still represents a number of 421 individuals out of approximately 6,000, a little over 6,000 that we saw admitted last year, so it's still a relatively small share. I think Director Dzurenda's comments speak to that. I'm trying to recall if there was another data-related question, but I can't see it on my list, so I'm going to finish up.

Chair Yeager:

Before I make some comments, Ms. Helms, did you have any questions or comments?

Kymberli Helms (Victims' Rights Advocate):

No, I didn't.

Chair Yeager:

I did want to stay on this slide for just a second and sort of dovetail on what Judge Bateman said. I would suspect based on my knowledge of the system, and my question I guess is can we figure this out, for those no concurrences, if we are assuming that that is indeed where Parole and Probation recommends prison but a judge does not concur, meaning presumably you go to prison, although I wonder if maybe not concur means you do some jail time first and then get probation. That could be an option, but what I'm curious about is, and I would suspect that, when a judge does not concur and decides to give probation, that typically the suspended prison sentence is probably longer than what's recommended in the pre-sentence report. I know that's sort of a common defense tactic to say, "Hey, can we have probation, but we'll agree to a longer prison sentence, a longer suspended sentence?" I guess what I'm kind of wondering there is, obviously if that's happening and you have individuals who, for whatever reason, are failing supervision, then they're going to be going to prison for in fact a longer sentence than was recommended. So, I don't know if in your review of PSIs—because what would happen is the pre-sentence report would make a recommendation and have a specific amount of time, and then if you were able to mesh that with the judgment of conviction, you'd be able to see what happened. Even if the offender got supervision, the length of the suspended prison sentence is going to be indicated in the judgment of conviction, and so I just wonder if that's kind of at play here too, where borderline offenders from the courts' perspective are getting probation but with a larger hammer over their head that ends up being applied later on in the process. I just throw that out there as an option. I just don't

know if you can look at that, but it might be interesting and it might explain some of what we're seeing in terms of actual length of sentence going up, but this slide of non-concurrence with prison being so disparate, it could potentially explain it. The other thing I wanted to mention that hasn't been brought up yet, and I think we may want to consider this, we talked about backing out life sentences from the length of stay in prison, and it occurs to me that if we do that, we are removing not all but probably most habitual criminal sentences, because with the exception of the small habitual, which would be a 10 to 25, that's one of the options, everyone else on habitual would have a life tail on their sentence. So, presumably, they would not be included in this information. We've talked about habitual criminals as a Commission, and I just wondered if we might be able to do some kind of analysis on the habitual criminal offenders who have life sentences, how much time are they spending, and I think you said you were going to try to get to what the underlying crime was that led to habitual, so that would be interesting to see that, because if we are having, for instance, a category C felony which results in a life sentence, that's a pretty dramatic increase. I put that out there, as we may not want to ignore that category, because I think it's important if we are going to examine our habitual criminal statutes, and that's a big if, but if we are going to, that would be good information to know.

In the interest of not starving anyone, which I fear that I've probably done because we are approaching 1:30 p.m., I'm going to ask anyone who has additional questions to follow up directly with our presenters. I just want to give you a little bit of the lay of the land of where we go from here. If we could go to one of our final slides, the next steps slide (Agenda Item V), we have a calendar of meetings there, and you will see that our next meeting is going to be November 8 at 1:00 p.m. I do note that by the time we get to November 8, we will all be passed election season here in Nevada, which I'm sure many of us are very much looking forward to, so that meeting again is going to be at 1:00 p.m. rather than 9:00 a.m. Let me know if you have conflicts with that meeting. At that meeting, we are going to review community supervision and reentry practices, as well as following up on data from the courts and the file review and all of the wonderful suggestions that the Commission has made today. Again, I encourage you if you have questions later on, and I imagine you will because this was a lot of data to get through today, to just follow up directly. You have contact information on the presentation.

I wanted to also note that every one of you should have received an email about subgroup assignments last week, but for our Commission I do need to formally appoint those subgroups. So, in the context of this agenda item, I am also going to open up agenda item IX, I believe it is, which is the formal appointment of the subgroups. You should have received this, but for the benefit of the record, I'm going to appoint the two subgroups, which are going to be made up of Advisory Commission members. The Sentencing/Pretrial Subgroup will be chaired by Justice Hardesty and will include Assemblywoman Krasner, Ms. Jones Brady, Mr. Jackson, Ms. Butler, Mr. Callaway, Ms. Armeni, Judge Wilson and Ms. Rose. That'll be the Sentencing/Pretrial Subgroup, and then the Release/Supervision, or so-called backend, Subgroup, I will chair that subgroup. Mr. DeRicco will be on it, as well as Attorney General Laxalt, Director Dzurenda, Judge Bateman, Sheriff McNeil, Ms. Wood, Senator Ford and Ms. Helms. Those are the formal

subgroup appointments, and in terms of scheduling, as you can see on the next steps slide, each of those subgroups is going to meet two times essentially. We'll get that information out, but you can see that subgroup meetings will be November 27 and 29. My recollection is that November 27 is going to be the backend subgroup that I am chairing. Justice Hardesty's will be meeting on November 29, and then both subgroups will meet on December 18, but it's going to be staggered. One is going to be in the morning and one is going to be in the afternoon, and we will make sure we get that up on the website here very soon. Again, you should have received the email with that schedule. I want to encourage members to the extent possible to make yourselves available for those meetings. I know we have a lot of meetings, and I know we're entering holiday season, but it's really, really important if you can make it, because we've crafted the subgroups by expertise and we want your input, so please let me know if you think you'll have issues with those dates, but please make every effort to be there for the subgroup meetings. After the subgroup meetings we have, as you know, a final meeting scheduled for January 11. That meeting is scheduled for 9:00 a.m., and that is the meeting where we will likely be taking up recommendations that come out of the subgroup meetings. That's the schedule right now, and that's what we are going to go with. If there are any changes, I will let you all know, but again, I want to thank you for being here to present. This was a wealth of data, and I want to thank Commission members for being so engaged in what was a long morning and afternoon. We will see you, our presenters, back on November 8. I just want to say thank you again for your hard work and for being here today.

Ms. McNamara:

Thank you for the opportunity, and thank you everyone for your thoughtful questions. We really appreciate it and we look forward to coming back.

Chair Yeager:

Thank you to those who joined us in Las Vegas as well. I know you didn't have a speaking role today, but we appreciate you being present and working on this mostly behind the scenes. I am going to close agenda item IX and V, which we were jointly talking about, and at this time I am not going to formally do agenda item X because we sort of discussed topics, locations and future meetings. But I am now going to go to our final agenda item, public comment, under agenda item XI. I know we have some folks who have weathered a long day with us here, so if you want to give public comment, please make your way to the table. Just a reminder, 3 minutes as always.

Mr. Goetz:

This was a long presentation. I listened to a lot of it. I'd like to make a request for the Committee to make a recommendation to the Legislature to draft a bill to allow people that are on parole or lifetime supervision to have access to their records from the Division of Parole and Probation. I would also like maybe this group that did the presentation to also maybe do a study on how many other states allow their parolees and lifetime people

on supervision to have access to their records. Why I would like to do this is because I was listening about a lot of people that are being revoked from parole and probation, and it seems like they can make their own decisions, but if we want to see our records and see why they revoked our probation, we don't get access to the records. I have a supplement brief here I just want to kind of read a little bit about, not the whole thing, but just to get an indication of what I'm talking about (Agenda Item III C). It says, "Petitioner Westley Goetz, by and through his counsel of record, supplements his petition for a writ of mandamus after the evidentiary hearing March 14, 2018, at which the court allowed the parties to file supplemental briefs addressing the legal issue of whether a person subject to lifetime supervision an offender on parole and probation. As the court is aware, the issue of this case is whether Goetz is entitled to a copy of the records of the Division of Parole and Probation, the Division, has created about Goetz since he was originally placed on probation in 1998. The court's initial order held that although Goetz had a right to access his records under NRS 179A.100, not all records he requested were records of criminal history to which the statute provides access. In part, the court relied on the conclusion that Goetz is subject to lifetime supervision and was not on parole or probation and the Division would not have records regarding Goetz. At the hearing, the court heard Goetz testify nearly daily interaction he had with the Division until the decision McNeil v. State prohibited the Division from existing such control over the people subject to lifetime supervision. Supervision was in place during the time Goetz was on probation, 1998 to 1999 and lifetime supervision from 2009 to present. Goetz testified that he has paid and continues to pay Division supervision as mandated by the law of $30 a month to NRS 213 1076. The evidence hearing established the Division has never denied that Goetz has been under its supervision for more than a decade. Indeed, the Division brought Goetz' paper of records to the hearing, showing the court a stack of records approximately 10 inches tall."

Chair Yeager:

Mr. Goetz I need you to wrap up. I did want to let you know we have that copy of that brief that you been reading from. We have that in front of us, so if you could just kind of wrap up with your main points, I would appreciate it.

Mr. Goetz:

What I'm trying to do is get my records, and if there is any way to recommend to the Legislature for a bill draft to be able to get my records, because I think other states do have this for their parolees and sex offenders. The other thing is to make a draft for the Central Repository to know locations for the tier-three sex offenders that have to report in every 90 days, that they should also be notified that they have to register every 90 days.

Ms. Brown:

I just want to make a few little comments that were mentioned earlier regarding the way the system is run. Ms. Noble brought up some issues, and some other members too. But

I just want to remind people on how this really works. When you are convicted, the inmate is the one who does the post-conviction work. They are the ones who do the writ of habeas corpus, and then if they are fortunate enough, they do get an attorney appointed to them to represent them at the hearing. Now, it has changed over the years. Before, the inmates used to have access to the law library where they could do some research. Nowadays, unless it's changed—they changed it some years ago to where now there is a law library that comes to their cell, they give them the case, they come back the next day, and it takes time, so they're at a disadvantage. When you are dealing with your freedom, it's very important that they do get proper representation, and that's not always the case. There are times where the courts will just address one or two or three issues, and those that are crying for resolution aren't heard. By the time it gets to the federal court, it's not addressed because they go by what the lower courts are doing, and they're losing this. So, when we kind of separate out—and I'm thinking this is why the petition for exoneration comes in. I know my time is just about up, but there's something that you may not be familiar with. I've been texting with—they want to remain anonymous, but it's a website on Facebook called to Reno Cop Watch. I don't know if you're familiar with it, and about the recent shooting of a person, a private citizen. He has some issues. This deals with what the CJI just brought up on page 62. They would like to have their input dealing with this particular page. It says they should have a standard intake screening process across the state for mental health addiction issues after finding what tool works best for assessment. It should be mandatory and uniform since they said they don't have a standard one. Now, it's been recently, and we'll just say in the last 2 years—we all know that the mental health crisis is on the rise. In Washoe County, there have been three deaths, mental health issues, and they've ruled them homicides. These are—or for example, one of the persons that was killed, he was hogtied. He had a mental health issue. He was at a casino and he was having a mental health breakdown. The Reno Police Department were called, they put him in a hogtie, they transported him to the Washoe County Jail, and he died there hogtied. He couldn't breathe, crying out for help, 40 minutes and he died. Another inmate, if you go to the Reno Cop Watch, and this is the most—it is very disturbing, but I think maybe you all should take a look at it. It is the most recent shooting of 2 weeks ago in which a man who had some issues, and there was a domestic—not violence, domestic call noise complaint. Apparently they had come at a couple times, and then on the third time they had come out, and the sister, I guess she had called and he had taken an overdose of meth. She was trying to seek help for this individual. The police show up, and my understanding is at that time he was able to get into his truck, and if you take a look at the video—there are actually two, one with audio, one without, but the last one is a one-minute audio.

Chair Yeager:

Ms. Brown, please wrap up.

Ms. Brown:

Okay. Six officers fired into the truck, killing him. If you take a look at the video, he wasn't really posing a threat. There were other avenues that could—and now people are so concerned because the mental health crisis is on the rise, they fear calling the police because of what is happening. Now, I don't know if you know this or perhaps you may want to look into it, but it's come to my attention that the United Kingdom in London, they have a different area on how they deal with it, which would go with page 72, and I think that might be something we might want to look into. They don't send the police out. What they do is they send out somebody who is primarily trained in mental health issues, and if there is a problem, then they contact the police and the police get involved. I think that's a darn good solution for some of our mental health instead of sending out the police, because that just sometimes escalates the problem. Thank you.

Chair Yeager:

Thank you for your public comment. Seeing no more public comment, I'm going to close agenda item XI. Again, thank all of you this morning and into the afternoon for your attention and thoughtful questions. I will see all of you on November 8, if not sooner. This meeting is adjourned at 1:44 p.m.

RESPECTFULLY SUBMITTED:

_____
Jordan Haas, Interim Secretary

APPROVED BY:

_____
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	Tonja Brown	Public Comment
Agenda Item III C	Wes Goetz	Public Comment
Agenda Item III D	Mercedes Maharis	Public Comment
Agenda Item IV	Jordan Haas, Interim Secretary	Draft Minutes of the September 12, 2018 Meeting
Agenda Item V	Staff of the Crime and Justice Institute	Justice Reinvestment Presentation #2
Agenda Item VII	Innocence Issues Working Group	Presentation on the Innocence Issues Working Group
Agenda Item VIII A	Bryan Fernley, Commission Counsel	Work Session Document
Agenda Item VIII B	Innocence Issues Working Group	Legislation Proposed by the Innocence Issues Working Group
Agenda Item VIII C	Bryan Fernley, Commission Counsel	Work Session Attachment A