

1. **Welcome & Introduction** [Justice Hardesty]
2. **Policy Options: Sentencing and Offenses** [CJI and Justice Hardesty]
 - Burglary
 - Theft Offenses
 - Drug Possession
 - Drug Trafficking
 - Habitual Criminal penalties for nonviolent offenders
 - Sentencing implications of the Pre-sentence Investigation Report (PSI)
 - Category B Felony Offenses
3. **Policy Discussion: Pretrial Topics** [CJI and Justice Hardesty]
 - Examining pretrial policies to strengthen the system's response to offenders with behavioral health needs, to better focus corrections resources and support outcomes that reduce recidivism:
 1. Law enforcement behavioral health engagement and intervention
 2. Options for criminally-involved individuals with behavioral health needs
 3. Incentivizing treatment participation and completion
4. **Commission Calendar** [Justice Hardesty]
 - Final Meeting with entire Advisory Commission: January 11th

Burglary – Policy Options

“Unlawfully entering or remaining in” a:	Current Statute	Option 1	Option 2
Motor Vehicle ¹	Category B 1 – 10 yrs. • Penalty becomes 2-15 years if offender possesses deadly weapon • For a second or subsequent offense, offender is ineligible for probation	Misdemeanor, 1 st or 2 nd Up to 6 mo. jail 3 rd Category E 1 – 4 yrs.	Misdemeanor, 1 st or 2 nd Up to 6 mo. jail 3 rd Category E 1 – 4 yrs.
Other Buildings ²		Category D 1 – 4 yrs.	Category D 1 – 4 yrs.
Commercial Building, e.g., a shop or store		Category C 1 – 5 yrs.	Category C 1 – 5 yrs.
Residence/ “Inhabited Dwelling” ³		Category B 1 – 7 yrs.	Category B 1 – 10 yrs.
Home Invasion ⁴		Category B 1 - 10 yrs. (no change from existing Home Invasion statute)	Category B 2-18 yrs. Unlawful entry ⁵ of an inhabited dwelling, by an offender armed with firearm or deadly weapon, with additional requirement that: <ul style="list-style-type: none"> ○ The offense occurs after sunset and before sunrise; <u>or</u> ○ A person other than the offender and any accomplices is present in the residence at any time during the offense

Additional policy options:

- For Motor Vehicle, Other Building, and Commercial Building categories, allow a second-time offender to be eligible for probation
- For Commercial Building, expand the shoplifting exemption to include petit and grand larceny offenses

¹ E.g., a conveyance, vessel, boat, or vehicle.

² E.g., non-residential and non-commercial buildings or structures, e.g., an outbuilding, warehouse, mill, barn, stable, tent, outhouse, railroad car, or other building.

³ E.g., any structure, building, house, room, apartment, house trailer, travel trailer, or motor home in which the owner or other lawful occupant resides (based on NV’s current definition of inhabited dwelling).

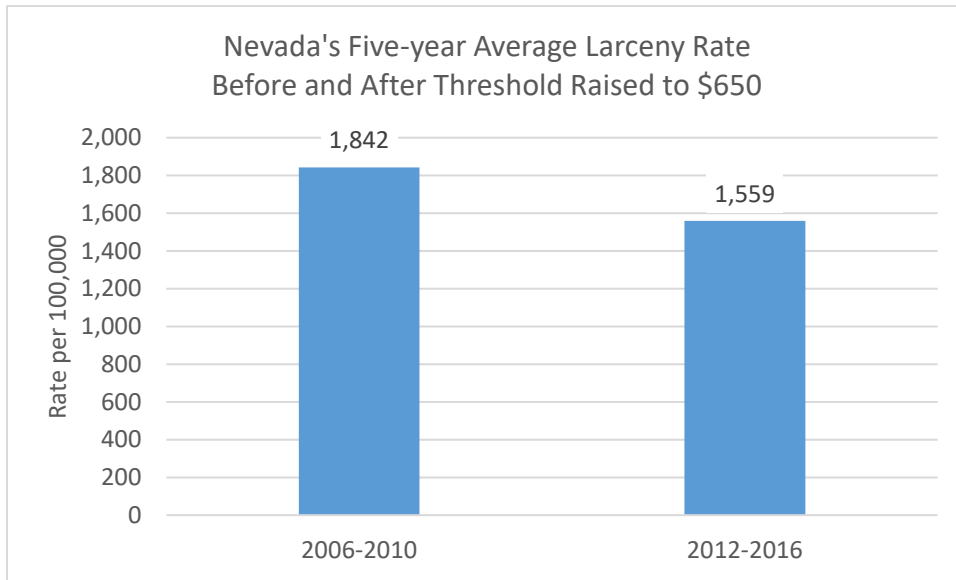
⁴ Home Invasion and Burglary currently carry identical penalties, but Home Invasion is classified as a violent crime while Burglary is not. Home Invasion currently requires forced entry, i.e., some physical damage to the entryway, and does not require a specific intent to commit a crime within the residence, but is otherwise similar to burglary. In most other states, Home Invasion (often called Aggravated Burglary) is punished more severely, and requires additional elements similar to those listed here in Option 2.

⁵ This option would remove the forced entry requirement from the home invasion statute (requiring physical damage to the structure) and replace it with any unlawful entry. The new element would include either unlawfully entering or remaining unlawfully in an inhabited dwelling.

Theft Offenses – Policy Options

Dollar Amount	Current Statute	Option 1	Option 2	Option 3		
0 – 650	<650 Misdemeanor Up to 6 mo. jail	<1500 Misdemeanor Up to 6 mo. jail	<650 Misdemeanor Up to 6 mo. jail	<1000 Misdemeanor Up to 6 mo. jail		
650 – 1000	650 - 3500 Cat. C Felony 1 – 5 yrs.	1500 – 25k Cat. C Felony 1 – 5 yrs.	650 – 1500 Gross Misd. Up to 1 yr. jail	1000 – 2000 Gross Misd. Up to 1 yr. jail		
1000 – 1500						
1500 – 2000				1500 – 5k Cat. D Felony 1 – 4 yrs.	2000 – 25k Cat. D Felony 1 – 4 yrs.	
2000 – 3500						
3500 – 5000	≥3500 Cat. B Felony 1 – 10 yrs.	25k – 100k Cat. B Felony 1 – 10 yrs.	25k – 100k Cat. B Felony 1 – 10 yrs.	25k – 50k Cat. C Felony 1 – 5 yrs.		
5000 – 7500						
7500 – 10k						
10k – 25k						
25k – 50k				50k – 100k Cat. B Felony 1 – 10 yrs.		
50k – 100k						
100k or higher			≥100k Cat. B Felony 1 – 15 yrs.	≥100k Cat. B Felony 1 – 15 yrs.	≥100k Cat. B Felony 1 – 15 yrs.	

Theft Offenses- Follow-Up:



Source: Federal Bureau of Investigation, Unified Crime Report

Drug Possession – Policy Options

Current statute for Sched. I–IV substances ⁶ :	Option 1	Option 2	Option 3
First and second conviction: Cat E Felony 1 – 4 yrs. Presumptive probation, excluding offenders who previously failed treatment, are on supervision, or have previously been revoked	All convictions: Misdemeanor Up to 6 mo. jail	First three convictions: Misdemeanor Up to 6 mo. jail	First two convictions: Misdemeanor Up to 6 mo. jail
			3 th and 4 th convictions: Gross Misdemeanor Up to 1 yr. in jail
3 rd and subsequent: Cat D Felony 1 – 4 yrs.		4 th or subsequent: Gross Misdemeanor Up to 1 yr. jail	5 th or subsequent: Cat. D Felony 1 – 4 yrs.

Note: Reclassifying simple possession as a misdemeanor will automatically give officers the ability to issue citations for this offense, rather than arrest.⁷

Additional policy options:

- Exclude any conviction under NRS 453.336 from being used for the purposes of a Habitual Offender charge.
- Make a proportional change to possession of Schedule V substances or marijuana (likely each would be a misdemeanor).

⁶ NRS § 453.336

⁷ See NRS § 171.1771 through § 171.1779

Current Distribution Statutes for Heroin, Cocaine, and Methamphetamine

	Current Statute				Policy Option
	Substance	Weight	Offense Number	Penalty	
Possession for sale⁸ of Sched. I & II substances (453.337)	Heroin, cocaine, meth, GHB, and others	Any	First	Cat. D felony 1 – 4 yrs.	Cat. D felony 1 – 4 yrs.
		Any	Second	Cat. C felony 1 – 5 yrs.	Cat. C felony 1 – 5 yrs.
		Any	Third or subsequent	Cat. B felony 2 – 15 yrs.	Cat. B felony 2 – 15 yrs.
Sale, distribution, exchange, or transport of Sched. I & II substances (includes attempt) (453.321)	Heroin, cocaine, meth, GHB, and others	Any	First	Cat. B felony 1 – 6 yrs.	Cat. C felony 1 – 5 yrs.
		Any	Second	Cat. B felony 2 – 10 yrs.	Cat. B felony 2 – 10 yrs.
		Any	Third or subsequent	Cat. B felony 3 – 15 yrs.	Cat. B felony 3 – 15 yrs.
Trafficking of Sched. I substances (except marijuana) (453.3385)	Heroin, cocaine, meth, GHB, and others	4-14g	Any	Cat. B felony 1 – 6 yrs.	See three (3) trafficking options on following page
		14 -28g	Any	Cat. B felony 2 – 15 yrs.	
		≥28g	Any	Cat. A felony Life or a term of 25 yrs., parole eligible after 10 yrs.	

Note: **Red fill** means a sentence requires a mandatory prison term and cannot be probated.

⁸ Nevada technically also has a misdemeanor sale/distribution statute, NRS 454.351, but for these substances it would only be utilized in the case of a plea agreement.

Policy Options – Trafficking Sched I & II (including Heroin, Cocaine, and Methamphetamine)

	Current Statute	Option 1	Option 2	Option 3
Trafficking of Sched. I substances (except marijuana) (453.3385)	4-14g Cat. B 1-6 yrs.	28-100g w/ conduct evincing sale or manufacturing Cat B 1-10 yrs.	56-100g Cat B 1-10 yrs.	<ul style="list-style-type: none"> Eliminate the prohibition on probation and specialty court eligibility and retain current weight breakdowns
	14-28g Cat. B 2-15 yrs.	100-400g w/ conduct evincing sale or manufacturing Cat B 2-20 yrs.	100-300g Cat B 2-15 yrs.	
	≥28g Cat. A 25 yrs. or Life	400g+ w/ conduct evincing sale or manufacturing Cat B 3-20 yrs.	300g+ Cat B 2-20 yrs.	

Note: Red fill means a sentence requires a mandatory prison term and cannot be probated

Additional policy option:

- Remove simple transport of a substance as a possible element of the sale statute. NRS § 453.321

Habitual Offender – Policy Options

	Current Statute	Option 1 (Based on Nevada Record Sealing statute) ⁹	Option 2 (Based on Nevada DV and DUI statutes) ¹⁰	Option 3 (Based on other state's lookback period) ¹¹
Length of "lookback period" for purposes of Habitual Criminal statute (would not apply to Habitual Felon statute)	Habitual Criminal (Lesser) includes any two prior felony offenses in any period of time Habitual Criminal (Greater) includes any three prior felony offenses in any period of time	A prior conviction may not be used as a qualifying offense, if: For a prior Cat. A felony or violent felony ¹² : <ul style="list-style-type: none"> • 10 years have elapsed between completion of the sentence on the prior conviction and commission of the current offense For a prior Cat. B, C or D felony: <ul style="list-style-type: none"> • 5 years have elapsed between completion of the sentence on the prior conviction and commission of the current offense For a prior Cat. E felony, if: <ul style="list-style-type: none"> • 2 years have elapsed between completion the sentence on the prior conviction and commission of the current offense 	A prior conviction may not be used as a qualifying offense, if: <ul style="list-style-type: none"> • 7 years have elapsed between commission of the prior offense and commission of the current offense 	A prior conviction may not be used as a qualifying offense, if: <ul style="list-style-type: none"> • 5 years have elapsed between completion of the sentence on the prior conviction and commission of the current offense

Additional policy option:

- For Habitual Criminal Lesser, retain the high maximum of 20 years -- allowing for a severe penalty if warranted -- but create more flexibility for sentencing judges by eliminating the 5 year mandatory minimum sentence.

⁹ NRS 179.245

¹⁰ NRS 200.485; NRS 484C.400

¹¹ La. R.S. § 15:529.1

¹² As defined pursuant to NRS 200.408

PSI Sentencing Recommendation – Policy Options

Option 1	Option 2	Option 3
<p>Remove sentencing recommendation from PSI, but retain the ability of prosecutors and defense attorneys to use the PSI to inform their sentencing recommendations; and the ability of judges to use the PSI to inform the sentence they impose.</p> <p>Require increased sentencing training for judges.</p>	<p>Remove the use of a risk and needs tool to make sentencing recommendations and determinations.</p> <p>Require increased sentencing training for judges and Division of Parole and Probation Specialists III.</p>	<p>Prohibit certain factors entered into the PSP tool – which determines the recommendation of incarceration vs. probation as well as specific sentence lengths -- to exclude subjective factors unrelated to protecting public safety, including:</p> <ul style="list-style-type: none">• employability, financial ability, family situation, honesty, attitude, resource availability, substance use, and alcohol use <p>Require increased sentencing training for judges and Division of Parole and Probation Specialists III.</p>

Additional policy options:

- Examine the current funding structure for PSIs
- Submit question of judicial training for consideration to the Nevada Supreme Court

Felony B Offenses – Policy Options

Policy Option	Additional Policy Option
<p>Reclassify the 13 offenses previously proposed for reclassification by the ACAJ during the 2015-2016 interim, including:</p> <ol style="list-style-type: none"> 1. Theft, value of \$3,500 or more (NRS 205.0835) 2. Grand larceny, value of \$3,500 or more (NRS 205.222) 3. Grand larceny of motor vehicle, value proven to be \$3,500 or more (NRS 205.228) 4. Maintaining drug house, first offense (NRS 453.316) 5. Taking property not amounting to robbery, value \$3,500 or more (NRS 205.270) 6. Receiving or possessing stolen goods, value \$3,500 or more (NRS 205.275) 7. Theft from vending machine, value of \$3,500 or more (NRS 205.2707) 8. Receiving or transporting stolen vehicle, value proven to be \$3,500 or more (NRS 205.273) 9. Obtaining money, property, rent, or labor by false pretenses, value \$650 or more (NRS 205.380) 10. Theft of fire prevention device, value of \$650 or more (NRS 475.105— Punished as grand larceny. See NRS 205.222) 11. Unlawful use of scanning device or re-encoder with intent to defraud (NRS 205.605). 12. Gaming crimes, first offense (includes certain track and sports wagering and attempts at or conspiracy to commit crimes) (NRS 465.088) 13. Knowingly selling a motor vehicle whose odometer has been fraudulently altered (NRS 484D.335) 	<p>Reclassify three top non-violent Category B drivers:</p> <ol style="list-style-type: none"> 1. DUI (NRS 484C.400) 2. Ex-felon in possession of a weapon (NRS 202.360) 3. Transport of a controlled substance (NRS 453.321) <p>Top ten non-violent Category B offenses on admission to prison in 2017</p> <ol style="list-style-type: none"> 1. Burglary (442 admissions) 2. Trafficking of a Controlled Substance, Schedule 1, Felony B Offense (281 admissions) 3. DUI (162 admissions) 4. Ex-Felon or Prohibited Person in Possession of a Firearm (133 admissions) 5. Transportation of a Controlled Substance (81 admissions) 6. Failure to Stop on Signal from Officer (71 admissions) 7. Sale/Give Controlled Substance, Schedule 1 & 2, 1st Offense (62 admission) 8. Establish/Possess Financial Forgery Lab (35 admissions) 9. Possession of a Stolen Vehicle (22 admissions) 10. Grand Larceny (16 admissions)

- Note: If felony theft thresholds are adjusted pursuant to the theft policies presented above in this document, many of the offenses listed here in Option 1 would automatically be reclassified or broken down.

Nevada Data Findings and Current Practice:

- A large and growing number of people enter Nevada's prisons with serious behavioral health needs
 - More than 1,700 offenders who entered prison in 2017 were identified as having a mental illness requiring treatment or medication, an increase of 35% since 2008
 - In a review of PSIs, 79% of defendants reported either a current or prior mental health or substance abuse need; 27% of defendants reported both
- There are few diversion options and fewer accessible community-based treatment options
 - Other than Specialty Courts, there are no diversion options for felony offenders
 - Nevada law allows pre-prosecution diversion only for eligible misdemeanor offenders¹³
- Specialty Court participants who receive a deferred sentence are more likely to graduate
 - 67% of participants in 2017 who had a deferred sentence were successful in their Specialty Court program, as compared to just 42% of participants who were successful without a deferred sentence¹⁴

Relevant Research:

- Crisis Intervention Training (CIT) for law enforcement results in lower incidences of violence in the community and the use of force¹⁵
- Successful pre-trial interventions integrate mental health, substance abuse and criminal justice personnel, and reduce the inappropriate use of incarceration for those with behavioral health needs¹⁶

Policy Discussion:

Example	States
Require law enforcement training on behavioral health needs	Arkansas, South Dakota, Minnesota ¹⁷
Require collaboration with community-based providers to support behavioral health needs	Tennessee, South Dakota, Washington ¹⁸
Divert individuals with behavioral health-driven conduct to non-criminal alternatives and outcomes	Texas, Georgia, Hennepin County, MN; Maricopa County, AZ; Milwaukee County, WI ¹⁹

¹³ NRS § 174.031

¹⁴ Based on a review of 1,118 individuals with felony cases admitted to an adult drug court, mental health court, or felony DUI court in district court in 2017.

¹⁵ Skeem & Bibeau (2008); Dupont & Cochran (2000); Hanafi, Bahora, Demir & Compton (2008); Morabito, Kerr, Watson, Draine, Angell (2012)

¹⁶ Hartford, Carey, and Mendonca (2006)

¹⁷ A.C.A. § 12-9-119; S.D. Codified Laws § 23A-50-14; Minn. Stat. - § 626.8469

¹⁸ Tenn. Code Ann. § 40-11-150; S.D. 27A-10-20; Rev. Code Wash. (ARCW) § 36.28A.440

¹⁹ Tex. Code Crim. Proc. Art. 16.23; Georgia Code § 15-18-80

Policy Options:

1. Require a certain percentage of law enforcement offices to have CIT trained officers
2. As part of reinvestment, require a certain percentage of funds be dedicated to expanding the options available to law enforcement when responding to individuals with behavioral health needs including expanding the use of MOST programs, mobile crisis teams, triage centers, and psychologist/social worker positions within police departments
3. Establish pre-prosecution diversion for first-time nonviolent felony offenders, including a sentencing alternative for offenders with minor children
4. Remove existing barriers to probation
5. Establish a presumption of sentence deferral for certain nonviolent offenders admitted to Specialty Court
6. Ensure Specialty Courts use a clinical assessment and the results of a risk and needs assessment to identify appropriate candidates and restrict participation in specialty courts to those with higher risk of recidivism and higher needs that influence the risk and can be addressed through the specialty court program