

**MINUTES OF THE 2017-2018 INTERIM
ADVISORY COMMISSION ON THE ADMINISTRATION OF JUSTICE'S
SUBCOMMITTEE ON PRE-TRIAL AND SENTENCING
IN THE CRIMINAL JUSTICE SYSTEM**

November 29, 2018

The meeting of the Advisory Commission on the Administration of Justice's Subcommittee on Pre-Trial and Sentencing in the Criminal Justice System was called to order by Chair James Hardesty at 9:08 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):

Justice James W. Hardesty, Nevada Supreme Court; Chair
Christine Jones Brady, Deputy Public Defender, Washoe County
Mark Jackson, Douglas County District Attorney
Amy Rose, ACLU of Nevada, Inmate Advocate
Judge Jim Wilson, Carson City District Court

COMMITTEE MEMBERS PRESENT (LAS VEGAS):

Paola Armeni, Representative, State Bar of Nevada
Chuck Callaway, Police Director, Las Vegas METRO

COMMITTEE MEMBERS EXCUSED:

Assemblywoman Lisa Krasner, Assembly District No. 26
Julie Butler, Representative, Central Repository

STAFF MEMBERS

Nicolas Anthony, 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
Quentin Weld, Policy Specialist, Community Resources for Justice
Sam Packard, Data and Policy Specialist, Community Resources for Justice
Maura McNamara, Policy Specialist, Community Resources for Justice

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

I will now open the first meeting of the Advisory Commission on the Administration of Justice's Subcommittee on Pre-Trial and Sentencing in the Criminal Justice System. This is a lot of fun. A smaller group of people, kind of an intimate opportunity to have great conversations about the issues we've been talking about. We do have a quorum. I will open agenda item III, public comment.

Paul Corrado:

I believe you have a handout (Agenda Item III A-1). The first issue is the charge of the Advisory Commission on the Administration of Justice (ACAJ) was to identify and make recommendations to possibly shift resources to more cost-effective public safety strategies. In other words, gone are the days when an inmate who expired his sentence was given \$50 and put on a bus and dropped off in front of a liquor store in Reno, and that has happened. As Stephen Covey, the author of *The 7 Habits of Highly Effective People*, once said, "Most people spend their whole lives climbing the ladder of success, only to realize when they get to the top, the ladder has been leaning against the wrong wall." I think incarceration may be in that category also. Perhaps the most important thing I've read in the last year or maybe 5 years is the next paragraph. From the consultant's report (Agenda Item IV A), we know from page 2, review of the findings and research principles, "research has found that incarceration is more effective at reducing recidivism than noncustodial sanctions like probation, and that for certain types of offenders it results in higher rates of future criminal behavior as measured by both rearrests and re-convictions." To me, that's a big deal. Issue two: sentencing inconsistency does not mean judges have to be exactly the same in the application of the law within the state. It does mean that measurable, sensible sentencing guidelines must be established and gross inconsistency eliminated with a review process that is both fair and just no matter where you live within the State of Nevada. Of course, my question is, are judges evaluated annually and is there a process in order to ensure that consistency? If not, why not? Issue three: I have not seen anywhere where the coordination of the Sentencing Commission and the Advisory Commission on the Administration of Justice has been identified and used in this process, except by the duplication of the five members of both committees. These five crossover members, however, I believe hold some of the highest and most demanding positions in Nevada governance, including yourself, Justice Hardesty,

Attorney General Laxalt, Director Dzurenda, Director Callaway and Chair DeRicco. Thank you for listening and not texting during this presentation.

Chair Hardesty:

Thank you, Mr. Corrado, for your presentation, and I appreciate it. I have another handout I believe you provided, which is a two-page document that is dated as of today's date in addition to the testimony that you provided (Agenda Item III A-2).

Mr. Corrado:

If you would just make that part of the record, sir.

Chair Hardesty:

We will do that.

Mr. Corrado:

Thank you, Judge Hardesty.

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

I just want to speak on behalf of the inmates. On page 8 (Agenda Item IV A), the sentencing habitual criminal has—I think just a couple of you have known for the last several years it has been our goal as advocates to have a 20-year limit on a life sentence with the possibility of parole, not 30 or 40 years down the road. The jury is the factfinder. If they believe the person should be found guilty and they are sentenced with the possibility of parole, there should be a term of 20 years maximum on a life sentence with the possibility of parole. I think that's all I have to say for today. Thank you.

Chair Hardesty:

Thank you, Ms. Brown. Mr. Corrado stepped out, but he did raise an important point, and it had to do with the relationship and coordination between the Advisory Commission and the Sentencing Commission. Leading up to today's subgroup meeting, I think as most of you know, I have asked Mr. Anthony to circulate to the members of the Sentencing Commission all of the presentations that have been made to the Advisory Commission throughout our process, so the Sentencing Commission has all of that information in addition. I'm very appreciative of the efforts of the Crime and Justice Institute (CJI) staff. They have reached out to members of the Sentencing Commission and had a number of meetings with individuals on that Commission to include them in the information stream, so it isn't as though they've been closed off. The Legislative Counsel Bureau (LCB) staff

was kind enough to divide the staffing responsibilities between the two subgroups. The subgroup that met on Tuesday was staffed by Bryan Fernley, who as you all know staffs the Advisory Commission on a regular basis, and then they imposed on Nicolas Anthony here to staff today's subgroup. He will be assisting us in our work as we work up to January 11. As you all know, Mr. Anthony is the staff member for the Sentencing Commission, so I am confident that there is a coordination of information, and ultimately, as I have discussed with the Chair, we will invite the Sentencing Commission to participate in a joint meeting with the Advisory Commission on January 11 to hear what suggestions and recommendations and ideas have come out of the subgroups and will be considered by the Advisory Commission going forward. As well, I wanted to mention to you that the bill draft for the primary recommendation from the Sentencing Commission has been prepared Mr. Anthony and the LCB, and as you know, it urges the establishment of full-time staff within the Governor's Office to undertake this data-monitoring process that we've all been talking about so that, if approved, we can carry on the work that CJI has been doing of all of their staff work and we can have a mechanism to monitor whatever recommendations the Advisory Commission proposes to the Legislature and the Legislature adopts. I think this is a really positive step for the state if it should be enacted for us to be able to track what measures the Legislature ultimately approves, assuming that they do. To Mr. Corrado's point, there's a lot of coordination taking place, and I wanted of course to bring the subgroup into that conversation, and the Advisory Commission as a whole has been as well. Both commissions are actively involved in this process.

That said, we have been called together, and again, I want to thank everybody for dedicating your time to this Commission. You've all sat through hours of presentations and poured over literally hundreds of slides. All of that work has led us to this point in the process where we will use the data and system findings presented to us to debate and develop recommendations as appropriate that would improve Nevada's criminal justice system. What the data has told us over this process is that Nevada's prison population has grown significantly, resulting in higher spending on prisons, and while there remain gaps in funding for effective treatment and interventions to address behavioral health changes like substance abuse, addiction and mental illness, we have an opportunity over the next two meetings to come up with recommendations that can influence or perhaps change the trajectory and ensure that prison resources are reserved for the most serious and violent offenders. As I have said before, I think our prisons are housing more and more serious and violent offenders appropriately while shifting resources to programs and treatment services that address the underlying causes of behavior. Today, we will be discussing a number of topics, including specific offenses, sentencing practices and current responses to individuals with behavioral health needs. During the first meeting of the subgroup, we will begin by reviewing key data findings that were developed during the course of the presentation, of the slides and corresponding research. Then, we will discuss how sister states have responded to similar challenges faced by Nevada, and then we will begin a discussion about what policy recommendations we want to make or

we want to address as part of the challenges to improve our criminal justice system. The Advisory Commission's reinvestment charge, as you know, began with the state's leadership soliciting the assistance of CJI and their selection of the state for this study. Our state leaders have asked the Commission, frankly, to conduct a comprehensive analysis of Nevada's criminal justice system and use criminological research and Nevada's own criminal justice data to inform and motivate the development of comprehensive crime and recidivism reduction strategies while shifting resources toward more cost-effective public safety strategies. I hope each of you approach this discussion with our charge in mind and think about the overarching goal of implementing measures that make our community safer while using the resources we have, many times limited, in the most effective way. I also know that there have been some questions raised regarding the data that has been generated in the presentations that have been offered. We should discuss that as well.

With that, let's get to work. You all should have a package of information in front of you that summarizes many of the key data and system assessment findings, as well as policy worksheets focused on certain topics we will discuss today (Agenda Item IV A). Quentin Weld from the Crime and Justice Institute will lead us in a review of key data findings and research, and other members of the CJI staff that we have had the benefit of working with throughout the past few months will also join him at the dais so that they are available to be a resource and answer questions as we have them come up during this process. The meetings that we are having today and again in December are intended for us to discuss the issues ourselves, to encourage questions and Mr. Weld and his colleagues as I said before will do their best to answer them today or develop some additional information that we can have available to us in December. With that said, as you probably noticed from the material, we have broken down these areas, and I would be remiss in saying that I want to thank the entire CJI staff again for all of their hard work and their input. Both Chair Yeager and I have had an opportunity to visit with them about these issues and these policy areas, but I want to make clear to the members of the subgroup that these are areas identified by CJI by their data. Neither the Chair nor I have directed CJI about any outcome or any conclusion, so what is being conveyed here are areas that they have identified that are generated from the data they have taken from our data systems and compared with other states, and so it produces a panoply of policy issues or recommendations that we might consider. As you see from the data, just to give you an overview again, they have identified sentencing issues involving burglary, theft, drug possession, drug trafficking, habitual criminal, sentencing processes, felony B offenses, pre-trial diversion, and I think that will give us some direction in those areas. If there are other areas that the subgroup would like to get into, we certainly can add that to the list, but these were developed primarily as the result of what the data has shown about Nevada's criminal justice information, its data and the key findings that CJI has identified. With that, Mr. Weld, unless members of the Commission have any comments or questions before we get started? Chuck, are there any questions or comments before we get started?

Chuck Callaway (Police Director, Las Vegas METRO):

No.

Chair Hardesty:

Okay. I apologize for referring to members of the group by your first name, but I can't help myself many times because we're all friends here and know each other so well. But in any event, as I said before, the smaller group provides an opportunity for a more intimate discussion, so I don't mean to be so familiar. Are there any other introductory comments by Commission members before we get started? Seeing none, Mr. Weld, are you ready to go with the first area of policy worksheets?

Quentin Weld (Policy Specialist, Community Resources for Justice):

I am joined at the table today by my colleagues Maura McNamara, who everyone is very familiar with at this point already, Colby Dawley and Sam Packard. As Chair Hardesty mentioned, the purpose of this group is really to discuss the policies that the data really pointed to as areas that the ACAJ was wanting to discuss. But before we get there, I know you've heard a lot of data so far in the form of the previous data presentations, but we wanted to give a quick recap of some of the most significant findings from that whole process. As you know, the prison population is up in the past 10 years, and that's been driven by an increase in sentences across the board from any of these low-level offenses, as well as an increase in admissions. That admissions increase has been driven largely by individuals who are failing on supervision of some kind and then entering prison. Another significant fact is the change in female admissions over the past 10 years or so. Female admissions grew by about 40 percent. Another point is that about 66 percent of the standing population is in prison as a result of a nonviolent conviction as measured by Nevada statutes. With regard to mental health needs in the state, specifically with regard to people who are entering prison, that cohort is up by 35 percent over the past decade, and from our file review of pre-sentence investigation reports, 79 percent of those individuals were found to have a behavioral health need of some kind, and despite the increase in incarceration and criminal justice spending, recidivism is still a problem in Nevada. For example, of the over 1,500 people released from prison in 2014, around 29 percent of those returned to custody within 3 years. Just a brief review of research findings, I know you've heard a lot of them over the past presentations, but significant for the purpose of the subgroup today is that there have been many findings that suggest that for low-level offenders, incarceration is often not an effective sanction as compared to probation with respect to reducing recidivism. That's the quick review of the data. Moving on to the first area that has been identified for review, that's the burglary statute. Everyone I'm sure is very aware of it by now. It was the top driver of admissions to prison in 2017, followed by attempted burglary.

Chair Hardesty:

Sorry to interrupt you, but I just wanted to mention to the members of the subgroup that I had asked Mr. Anthony to provide an additional packet (Agenda Item IV B), I presume you have it, just as a reminder. It's helpful to have it in front of us, the actual statutes that we can refer to. So, you've got burglary and theft. I failed to mention that before, and I apologize, Mr. Weld, for interrupting, but I want to make sure everybody knew that they had the statutes in front of us.

Mark Jackson (Douglas County District Attorney):

Before we move on, if I had some questions or comments on that first overall part of the presentation, do you want me to wait until the end?

Chair Hardesty:

If we could wait until Mr. Weld finishes that section of burglary, then yes. Please bring your questions up then, if you would. Is that acceptable?

Mr. Jackson:

Yes. It's not specific to burglary. It was on page 2 of our packet (Agenda Item IV A).

Chair Hardesty:

Okay, then let's address that now.

Mr. Jackson:

Mr. Weld, thank you. This morning I went up to you to talk about some of this, and I appreciate over that 10-year period the data that you've all collected shows that we've had an increase in the prison population. We also received information from the Director of Prisons that in 2017 there were more people going out and leaving prison than there were coming in, and we're experiencing that same type of data currently here in 2018. With that, it is my understanding there may be information coming forward at our next meeting of the subgroup as to what the trend will be or projections as to the trend over the next 10 years, and the only reason I'm bringing that up is that information previously provided to the ACAJ had some projections from the JFA Institute that showed a significant increase in the prison population in 2017 to 2018, so that's the first question I would ask you to address.

Mr. Weld:

It's a good point, District Attorney Jackson, and releases were up last year. Who can speak to that more is my colleague, Sam Packard.

Sam Packard (Data and Policy Specialist, Community Resources for Justice):

There was a slight decrease in the prison population in 2017, largely driven by an increase in the number of releases. In terms of trying to figure out the exact trend, it's a bit difficult in terms of the parole grant rates have fluctuated greatly depending on the past couple of years, as well as the number of parole hearings in Fiscal Year 2017 based on the increase in both the number of hearings and the increase in the parole grant rate. That's one of the things that my colleague Alison Silveira and I will be looking at when we are creating the projections moving forward, and I know it's something that the JFA projections also take into account, but it's hard to figure out a specific trend based on those numbers.

Mr. Jackson:

So, with that for 2017, we may not see the full effect of any of the recidivism that has occurred about returning those individuals back to the prisons, but it would be less than the 29 percent that is in that bullet point that were released in 2014?

Mr. Packard:

Yes. For recidivism rates, they normally are calculated using a 3-year window, so for the 2017 releases, we wouldn't know that exact recidivism rate until at least 2020.

Mr. Jackson:

One of the concerns, and I know that Mr. Callaway has spoken to this before, is that we are all aware of the number of murders that occur down in Clark County, and those numbers have been staggering over the last several years, and unfortunately they keep breaking records as to the number of murders. Those individuals are still in the system and sitting in the jail or detention facility. They are awaiting trial or whatever their processes are, but ultimately we are going to expect a large number of individuals sentenced on murders, which carries life imprisonment, going into the prison. Unless there are changes about reducing those specific murders, we could have up to 200 people a year being sentenced to our prisons on murders. I know it's kind of hard to project that, but that would have an impact on the prison population moving forward over the next 10 to 20 years also.

Mr. Packard:

The crime rate throughout the state is something that we will be taking into account for the prison population, but you are correct. The more serious violent crimes that carry a life sentence, you're not going to find those in the release data. Those are spending their entire lives in prison. It's what we call the stacking effect. They have a large impact on the size of the prison population.

Mr. Jackson:

The last bullet point there under the research-based principles for reducing recidivism, there has been a lot of research as you are well aware starting in the 1990s and continuing through now on whether or not incarceration is more effective at reducing recidivism than other types of sanctions such as probation. There have been some studies, even in some other countries, that show for certain types of crime and based upon certain demographics, it really doesn't matter whether or not the person is incarcerated or put on probation. It doesn't have an effect on reducing recidivism one way or the other, and I just wanted to point out, Justice Hardesty, and this is not really directed towards you, it's just to the members of this subcommittee, Justice Hardesty was talking about the overarching goals, and he did state the first part of that is community safety. Public safety to me is paramount, and recidivism is very important to look at. There are certain types of crimes that, because of public safety, incarceration is really the only true option that is available, so part of this all started when we started talking about what data was available in the state. We have been missing this for years until you all came along and have done this for our state, and again, thank you very much. But before then, we were trying to focus on do we have the right people in prison, and I think that's going to carry some of our discussion on any recommendations moving forward about can we make a decision about putting the right people in prison and looking at alternatives as to those that are less of a risk and would have a higher chance of making it on the outside by some means other than incarceration.

Chair Hardesty:

Does that cover it, Mr. Jackson? I did want to make a comment before Ms. McNamara responds or offers her input. I would add one other thing though, Mr. Jackson, to your comment. It isn't just looking at putting the right people in prison, it's also looking at putting them in there for what length of time. We can't put everybody in prison for life, at least that seems unreasonable, so one of the debates, as you know and as Mr. Callaway knows, that we have had repeatedly on past Advisory Commission meetings and commissions, I should say, what are the appropriate sentencing lengths? What I am encouraged to see from this material is that it offers some alternatives to sentencing lengths that have been adopted by the Legislature in the past without a debate as to why

we do or don't do these sentencing lengths, so I'm hoping we can have that conversation in this subgroup. I'm sorry, Ms. McNamara, were you going to say something?

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

No, I was just going to respond to Mr. Jackson's comment, and I think you completely, accurately identified that it is a conversation about the right people going to prison, and as Justice Hardesty added, and agreeing to the length of time. But relevant to the discussion of who should go to prison and the question of public safety is also the notion that sending certain types of offenders to prison, studies have shown, increases the likelihood to reoffend, so that's a big question that all of the members should be thinking about when discussing these policy options.

Chair Hardesty:

Yes, and I just had one other thing, and that has to do with the murders out of Clark County. I would ask if CJI could check with the Administrative Office of the Courts (AOC) and with the Eighth Judicial District Court. I don't want to quote numbers here, but I'm not sure that the Advisory Commission is completely aware of the statistics. Perhaps Mr. Callaway is, but I would be surprised if he has them in his mind, but maybe he does. But I know that in the Eighth Judicial District Court, the judges there catalogued all of those pending murder cases, and Mr. Wolfson, the District Attorney down there, was very concerned, and rightfully so, that many had been sitting there—I'll say sitting there, had been in the court system and they've been sitting in the district court for more than 5 years in some cases, maybe longer than that. I'm not sure, Mr. Callaway. But in any event, the District, with Chief Judge Gonzalez, undertook a new process where they assigned four judges, very experienced criminal judges, to supervise all of the pre-trial activity in those cases. It's been represented to the Supreme Court that they started off—and please don't hold me to the numbers, but I'm speaking of approximates—with roughly something like 390 pending murder cases, and that many of those cases still have a lot left, over 200, I think, but many of those cases resolved, and they ultimately got settled. Not all, but some, for less than murder. Some went to manslaughter and so forth, but I think to your point, Mr. Jackson, earlier, what would be helpful is if the AOC and the Eighth Judicial District Court could give us a status. The court got one recently, I just don't have it in front of me. I know we're monitoring that, so that could be provided to this subgroup. Maybe in the next meeting we could assess the impact on the prison. To the extent that there have been guilty pleas, and a large number of those were resolved that way, they probably resulted in incarceration, but I'm not sure that they were all there for life, so we will have to go through and take a look at that. The overall impact to the prison is being influenced by roughly that 309 now, but there have been of course as we know several murders since then, but I don't know if they're going at a clip of 200 a year. Maybe they are. Mr. Callaway, do you have any further information on this?

Mr. Callaway:

Yes, Justice Hardesty. This year, as of the statistics that I saw this morning from our analytical section, we have 113 murders in Metro's jurisdiction, which ironically is the exact same number that we had for 2017 at this time. The murder rate right now is pretty consistent with what it was last year, and of course those numbers don't count homicides that we have had that have been ruled justifiable or self-defense. We've had a few cases where the District Attorney's Office has said those were self-defense, so they're not included in those numbers. As far as stay at the jail goes, I don't have that data in front of me, but just from conversations I've had, I do know that we've had folks in our facility for up to 8 years I think was the longest awaiting sentencing and trial. I don't want to misspeak, but I believe the person who allegedly several years ago attacked a woman with an ax who was walking down the street pushing her baby in a cart and I believe killed the infant, I believe that person at last I heard was still in our custody, and that crime was 6 or 7 years ago. A lot of these cases, obviously as this body well knows, are awaiting competency hearings either at Lake's Crossing or they are waiting for the court to move forward with their case, so it's not uncommon for those folks to sit for a long period of time in our custody before eventually they are convicted.

Chair Hardesty:

Thank you, Mr. Callaway. The numbers you provided, are those on a fiscal year or calendar year basis?

Mr. Callaway:

They are on calendar year, and I should also mention that our homicide detectives, we have a very high solvability rate compared to the rest of the country. That fluctuates 70 to 80 percent solvability rate, so out of that 113 murders—I'm not a mathematician—they can guess that probably about 90 of those folks, if they haven't already been captured and arrested, they will be, so it's probably about 90 a year maybe that are actually getting into our custody that we are solving those murders.

Chair Hardesty:

Okay, thanks a lot. We will get some additional court stats to see how this is playing out, but if the number is 90 or 100 a year, that's still awful, but about half of what we were talking about once the backlog gets cleared up. But I do think it's important to add to something that Mr. Callaway has referenced before. What we do here influences the jail population, and there are several things on this agenda that will influence all of the jail populations around the state. I'm sorry Ms. Brady, I haven't reached out to you yet and I know you wanted to have a comment.

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

Thank you, Justice Hardesty. The other thing I wanted to say was that in order to reduce recidivism is also that aspect of shifting the resources, so by just having people spend less time in prison or jail, that's not enough. We need to then put resources in Parole and Probation so that they can expand things like their Day Reporting Centers or supportive centers, money for mental health services. I know that from what my colleagues are saying, the Mobil Outreach Service Teams (MOST) are a group of police officers that try to put people in mental health services rather than jail, and then they also this year started a mobile mental health unit so families could call for help. So, things like that, if we can get more resources. If we just have less time in jail but no more resources in the community, I don't know that we will see the recidivism go down like we would like.

Chair Hardesty:

Thank you. I think you are right about that. Maybe Ms. McNamara can give us briefly an overview of the other subgroup's discussions 2 days ago that are focused on these very programs and others. That group, as you know, is the Community Supervision and Reentry Group chaired by Chair Yeager, and they had a 2-plus hour meeting where they were talking about those issues. Ms. McNamara, do you mind giving kind of a brief overview so that all of us have context?

Ms. McNamara:

Absolutely. I think Ms. Jones Brady completely articulated the purpose of the Justice Reinvestment Initiative (JRI). It's shifting the resources within the system. Both the work of these two subcommittees are reliant on one another, so what the Sentencing Subcommittee does impacts the resources that go into release and community supervision. That subgroup is discussing exactly the things that you identified: expanding use of the Day Reporting Centers, identifying what high-risk offenders exist on community supervision and focusing resources on those individuals, looking at probation supervision length, and again, looking for that opportunity of focusing resources on those individuals who have been identified as high-risk, and then in terms of technical revocations, thinking about ways to respond to those and assist those individuals in their supervision.

Chair Hardesty:

So, Mr. Weld, if you can remember where you left off, let's proceed forward.

Mr. Weld:

Absolutely, and those are all excellent points. I would just add, in terms of reinvestment, this group also has a chance to think about those areas in which cost savings can be

used to strengthen certain responses because we will be discussing at some point pre-trial policies if we get there today, but that is an area where, as Ms. Jones Brady mentioned, a lot of the things that work really well in Nevada now like Forensic Assessment Services Triage Teams (FASTT) and MOST and some of the community triage centers that the state has had in the past, you can use some of those savings to invest in such programs.

Chair Hardesty:

I imagine the efforts in Clark County were also discussed on Tuesday, right?

Mr. Weld:

That's right.

Chair Hardesty:

Okay. In light of the conversation, Mr. Jackson had asked about delaying; let's not delay. There's a limited number of people here. If you've got something to say, raise your hand and fire away. Let's get after it.

Mr. Jackson:

I just wanted to add that I also sit on the Statewide Commission on the Rules of Criminal Procedure. We had a meeting on October 8, and there was another update from Judge Douglas Herndon on the pilot program there. We also received our minutes from the June 11, 2018 meeting, and from the minutes of that report, which is getting close to the end of the fiscal year, the minutes read that Judge Herndon in talking about the Eighth Judicial District Court homicide case pilot project that at the end of the program's first year, there were 235 homicide cases pending trial. Of those, 61 were capital cases, 30 cases were pending sentencing, and there were still 10 to 15 cases that were unassigned that were being held temporarily in Judge Herndon's department. During the second half of 2017, the large bulk of cases assigned were pre-existing cases, so in 2017, 189 homicide cases were assigned out as pre-existing, 3 were dismissed, 41 were set for trial and then resolved, and in the first 6 months of 2018, 57 cases were assigned and pending trial, 5 were dismissed, 28 were set for trial and then resolved. One of the goals that they had put forward is an overall resolution of homicide cases for the first year of 100, and they met that goal. They had completed 24 murder trials as of June 11. Their goal was to have completed 25 by July 1, and there were actually several trials that were going to be going to trial in the latter part of June. So, those were the numbers, to kind of give you somewhat of an idea.

Chair Hardesty:

Thank you.

Mr. Weld:

Thank you for those, District Attorney Jackson. Something that you were suggesting, Justice Hardesty, we definitely will look into that with the Eighth Circuit and the AOC. I think it's relevant definitely for knowing that that might be coming down the road, that those murder offenders might be entering the prisons, and also with respect to future projections that this group will probably do with regard to prison population. It would certainly be relevant, so we appreciate that.

We were at burglary, and just going back to that offense, it's on page 3 of your packet here ([Agenda Item IV A](#)). I think I had mentioned that it is the top driver of admissions to prison. Time served has increased, and there are some interesting data points that were found from the group's file review of the burglary convictions from 2017. It was found that 63 percent of those involved a structure other than a home or residence, so that would be a store or car or warehouse or similar, 73 percent of burglaries occurred with no victim present and 78 percent did not involve forced entry. There is a little chart on page 3 that just lists in brief the elements of Nevada's burglary and home invasion statutes, all the many different types of structures that it could include and the various crimes that the offender needs to intend to commit once they enter those structures. What we have done on the next page is given a representative sample of how other jurisdictions deal with burglary offenses. As the subcommittee is well aware, Nevada statute is extremely broad compared to other states. This chart gives an idea of the different penalties in other states for breaking into a motor vehicle, a building that is not a home, a dwelling without a victim present and a dwelling with a victim present. These states were chosen really because they're comparable to Nevada in some way and because they give a good illustration of how most other states do it. There's usually either a step up after motor vehicle or a step up once it gets to the dwelling stage. With that review of those state examples, Justice Hardesty, I will turn it over to the group to discuss this data and possible policy.

Chair Hardesty:

Going back, I think, 4 years ago, perhaps, we've had conversations about burglary at the Advisory Commission meetings. The Sentencing Commission also talked about that this past session. I guess the question for this group is to talk about whether we should make recommendations or policy suggestions about revising our burglary statute that would improve and better align penalties depending upon the nature of the conduct within burglary. So, I will open that discussion and invite comment from members of the subgroup.

Amy Rose (ACLU of Nevada, Inmate Advocate):

To kick it off here, I think it's pretty obvious, and I think probably, hopefully, most of us are on the same page, that it is just too broad. I would certainly be in favor of breaking it down by all four different categories, motor vehicle, building non-dwelling, dwelling no victim present, dwelling victim present, or even adding a victim element to the other motor vehicle and building non-dwelling as well, just so I think we want to make sure that the sentence is commensurate with the actual crime that is being committed. Another suggestion that I think we might want to look at on page 3 under the penalty for a second offense for burglary and for the home invasion, there is no probation, so that might be something we want to reconsider breaking down the categories, whether some of them are probationable or not, thinking again about whether or not people should be going to prison right away, what are the options. I think that is another good place to start, and breaking down the categories, making the lesser offenses misdemeanors like in Utah and Oregon, I think, would be really helpful.

Mr. Jackson:

First of all, I had a question. Mr. Weld, you stated the reason that you picked these other three states for comparison, and this kind of goes to the next slides. The next two slides have Utah, but nowhere else in the other slides we're talking about is Oregon or Ohio used. So right now on burglaries, the comparison is Utah, Oregon and Ohio. The next slide on theft, you've used Georgia, South Carolina and Texas. The slide after that, you use Tennessee, Oklahoma and West Virginia, and the slide after that, you used Idaho, federal and Oklahoma. I'm not seeing any consistency, and I guess I just wanted to make sure why those were chosen. There are some states that have different sentencing ranges than Nevada for these types of offenses, and it doesn't appear that those states were chosen, that there were states that were targeted that were a more lenient type of a sentence.

Mr. Weld:

It's a fair point, Mr. Jackson. We can explain our reasoning in developing these charts. When we make them, they are really intended to represent the range of penalties that different states impose for these offenses. It's not really possible to give you every state for every given offense. We're happy to look into any that you might be interested in for a particular offense. What can be said, at least about burglary, drug possession and the larceny threshold, is that Nevada in all three of those respects would be at the far left of the chart in every case. That is, the highest penalty for these offenses. There were other sort of boring reasons why states were left out of certain charts. We wanted to give examples, for example in burglary, of other states that have sentencing ranges. Arizona and Kansas used to be on this chart, but they have term-certain instead of ranges, so we thought it would be better just to compare states that were more apples to apples in

terms of the kind of sentence imposed. These were, again, chosen—we're happy to get more examples for you. They were chosen because they provided a good capsule of how states do these things differently.

Mr. Jackson:

Following that apples to apples analogy that you just used, I want to make sure we are talking apples to apples. One of the things that we have all learned about is our prison math and about the credits for our C, D and E felonies, and even with the B felonies, about how someone earns credits and whether those go off the frontend or the backend. With respect to the sentencing ranges on this slide, Utah, Oregon and Ohio, do they use the same type of statutory credit time that Nevada has? If so, I want to make specific as to these felonies with respect to burglary whether or not those would go off the frontend of the sentence or just off of the backend so that we are talking apples to apples as opposed to apples to oranges.

Ms. McNamara:

Absolutely. I think it is important to think about with these charts, and the purpose of these worksheets is to identify a topic area and additional alternatives to all of you. These aren't being included here for the suggestion that this is the course of action. This is how several other states have addressed the burglary statute. Nevada has a different structure, and they are here for you to think about in terms of how you want to address the Nevada burglary statute. Most states do have a time credit scheme. I can't speak to the specific one for each of these states, but that is something we can come back with. But generally, there is usually good time associated in most states.

Mr. Jackson:

Now kind of to the heart of the matter, and kind of more of a response to Ms. Rose, I can't speak for every community, and you all know that Douglas County is a fairly conservative County, maybe one of the most conservative in the state, and I know that the people in Douglas County, and I would expect really across the state, that they realize if we're going to talk about all of the differences of burglaries that can occur, from an airplane to an outbuilding to a tent to a residence, is that everyone understands the risks associated with someone burglarizing a residence. These residences are inhabited. Whether or not a person is home at the time, if this is the old common-law type of a burglary in the middle of the night and someone is woken from their sleep, the chances of someone being injured or killed from that type of a burglary is significant, but if the person burglarizes a house and it's just fortunate for them that no one's home, first, they are going to have obviously a lot more time to burglarize a house, but I understand that risk, but our judges are still given discretion within the sentencing ranges currently. I think that they would potentially look at that as an aggravator as to whether someone was home. I don't know

that I would be in favor of differentiating between a burglary of a residence whether the victim was present or not. I think there are a lot of risks associated with that, and I think that should be left to the discretion of that sentencing judge. There's no doubt, I think, and Mr. Callaway is aware of this also. There have been discussions through the last several interims and even through the last several sessions about looking at our burglary statutes. The two statutes that really stood out are the drug trafficking and burglary, and I think we should probably focus some attention on that and have these discussions and debates. My standpoint is whether we're looking at different tiers or classes or degrees, whatever you want to call it, I do have a concern, and I don't know that the information from Utah and the recidivism or an increase in motor vehicle burglaries, I don't know if Clark County/ Las Vegas is still leading the nation in the number of vehicle burglaries and stolen vehicles that are then taken down across the border, and I think Mr. Callaway can respond to that, but I do like opening this up for a debate.

Ms. Jones Brady:

What I would like to see is maybe look at some low-hanging fruit and start with the vehicle burglaries. I would like to see vehicle burglaries become a category C felony. That's with no one in the car. If someone's in the car, I think that's more akin to some sort of carjacking or robbery or something. That may be a different category of crime, but I think in the situation where you have someone just sort of rifling through a car looking for change, I would like to see that at most as a category—technically, I would like to see it even lower than that, but I'm thinking a category C might be something that could get through the Legislature.

Judge Jim Wilson (Carson City District Court):

I don't have any particular objection to refining, but my question is, if we are going to refine the burglary statute for the purposes of reducing prison population, is there currently a problem with the burglary statute? Are judges somewhere sentencing motor vehicle burglary defendants to 10 years? If there are, then we probably need to refine it. If they are not, and I don't have any idea if they are or are not, I still don't have an objection necessarily to refining it, but I'm not sure if we're meeting the goal of reducing the prison population.

Chair Hardesty:

Mr. Weld, do you have any observations on that?

Mr. Weld:

I can speak to that, Judge Wilson. Between the last meeting and this meeting, we did look at the burglaries from 2017 in response, actually, to a comment you made on a phone

conversation about whether or not judges are in fact sentencing based on the conduct, so for more severe burglaries, really targeting the high end of the range, and for less severe, the low end of the range. Mr. Packard can speak to the findings in that area. My understanding is that there wasn't a strong correlation between those two things.

Mr. Packard:

We were able to compare the different types of burglaries from the file review to the sentences that were imposed by the judge. There is no discernible difference between a residential burglary or any of the other types of burglary. In fact, it seemed that most of the different types of burglary were all being sentenced in the same manner. In terms of burglary's impact on the prison population, if you look at a snapshot of the 2017 population, burglary was the third most common crime of those currently in the Nevada Department of Corrections' (NDOC) custody at the time of that snapshot.

Judge Wilson:

So, there are judges that are sentencing somebody that is convicted of a motor vehicle burglary similar to somebody that's breaking into a home?

Mr. Packard:

Yes.

Judge Wilson:

That answers my question.

Chair Hardesty:

Mr. Callaway, did you want to comment on this area, and your thoughts about any modifications to the burglary statute or approach?

Mr. Callaway:

Burglary is a huge topic. Again, this body could debate burglary for a whole interim, just this topic alone. I have a lot of thoughts going through my head, but before I jump into it, first of all, I guess I'm seen as the obstructionist here or the bad guy for some of the comments I make, but I want to say I'm all for cost efficiency, I'm all for consistency, I want accountability, fairness, impartialness. I want people to receive services and be diverted from prison. But at the same time, I don't want to see a sacrifice of public safety to save money. I don't want to see career criminals enabled to continue to further their criminal careers at the expense of our community, and what I don't want to see is people

that would normally serve a 365-day sentence at NDOC serve a 364-day sentence at the Clark County Detention Center. With that being said, on the topic of burglary, in and of itself, it is an issue that we have debated back and forth for the last 10 years that I'm aware of, and probably before me. There have been some minor changes made to burglary. In 2013, Speaker Jason Frierson brought a bill that put the language in that you see in Nevada Revised Statutes (NRS) 205.060 in your packet (Agenda Item IV B) that differentiates commercial burglaries, where you have to have a previous felony conviction before you can be charged with commercial burglary, and that section there. We've had discussions. There was one bill that didn't pass at the Legislature that would have reduced burglary, I think, in and of itself to a category C felony. I don't remember who sponsored that bill, but it didn't gain traction at the Legislature. For me, a comment was made earlier about low-level offenses or low-level offenders, and I kind of get maybe a little frustrated or a little rubbed wrong when that comment is used, because if you're on vacation and somebody crawls through the window of your home and they steal grandma's jewelry that's been in your family for 20 years and they take your handguns out of your safe and they rummage through your wife's underwear drawer and they eat the food in your refrigerator and then you come home and you find your home broken into and you report this to the police and the officer that shows up, tell that person that that's a low-level offense. Tell that person that's not a serious offense and see what kind of reaction you get. Like I said last meeting, you want to get some angry folks at a town hall, have a series of burglaries in their neighborhood, have their homes being broken into and then show up and tell them, "Hey, sorry, we think this should be a lower crime than what it currently is."

Which takes me to my next area of frustration, which I've raised in a couple meetings and I still haven't seen an answer on. I'll go to the comment made I think either by Ms. Rose when she said people going to prison right away or the comment made by Judge Wilson. I'd like to know how many auto burglars do we have sitting in NDOC right now serving a prison sentence that that's all they did? First offense, they committed an auto burglary. They rummage through someone's car for change, and they're sitting in prison serving a sentence? I'm not aware of one. Maybe there is one, and if there is, then that's an area obviously where we can maybe fix that. That's an area where, yes, somebody rummages through somebody's car to get some change. First offense, they get caught, I agree that person doesn't necessarily need to go to prison. But, I would be shocked if that person exists in our prison system. I heard for years about the grandma that baked marijuana brownies that's sitting in prison and nobody could show me that person. As far as I know, it's like Bigfoot. They don't exist. With that being said, back to burglaries, burglaries run a wide gamut. It is a huge vague area, and burglaries also progress a lot of times. A lot of times, burglars progress to higher offenses such as sexual assault, such as murder. I'm aware of two murders I believe within the last year where a homeowner came home while their home was being burglarized and were shot and killed by the burglar. I'm also aware that this year we've had over 2,000 firearms stolen in the Las Vegas community. Those firearms are stolen primarily 90 percent of the time in residential burglaries, and

unfortunately, there is an education component, because people leave their firearms unsecured. They leave them in vehicles and they're stolen in vehicle burglaries. Those firearms that are stolen are very often used in homicides and gang-related crimes and murders. They turn up in those other crimes, so burglary in my mind is not necessarily although it's a property crime, yes, it's not a low-level offense in my mind.

Finally, to the comment that Mr. Jackson made, I agree wholeheartedly that when I look—and I get the rationale from CJI. I'm certainly not trying to attack CJI, and I appreciate all the hard work they've done gathering this data, but I do get the impression when I look at these slides, that some of these states were cherry-picked. I find it ironic when I pulled up Pew's information on the internet to look at what other states have for their threshold for felony theft, which Nevada did make changes to our felony theft threshold in, I don't remember what year it was, 2011 or 2013, we raised it from \$250 to \$650, what it is today. When you look at that Pew data, there are 2 states that have a \$200 threshold, New Jersey and ironically Florida, which Florida was the state that CJI was using in their data at the last meeting comparing Nevada to Florida, but Florida is not included in this data when it comes to threshold comparisons. There are also 4 states that were listed in Pew's data that have a \$500 threshold, and then 8 states that are comparable to Nevada that have a \$650 to \$950 threshold. It listed 21 states with a \$1,000 threshold and upward. So again, when we say comparing apples to apples, I don't see an apple to apple comparison here. In my mind, and again, not an attack on CJI, but the burglary category—and then the final comment I'll make is I'm certainly open to looking at maybe category C felony for an auto burglary versus the current category B. I've always been a proponent, and I know this is another whole topic of discussion we could have about every case is different, and I believe that judges need discretion just like a law enforcement officer in the field needs discretion. Not everybody you stop on a car stop needs a ticket. Some people just need to get a stern talk. Some people have run 10 stop signs in the past month and they need a ticket. Sometimes they need to go to jail because their behavior is not changing. An officer has to have that discretion, and I don't think we want to live in a society where discretion doesn't exist, where everybody gets a ticket every time you get stopped. I think that applies to judges as well. Every case that gets on a judge's desk is different, and the judge needs to have the discretion to say, "Wait, this guy's a first-time offender. He got some change out of the dashboard, and he did this and he did that. Let's give this guy services, let's get him into a program, let's divert him," versus this person who's got six other burglaries. I know we're going to talk about habitual crimes here in a little bit, but maybe this person does need to go to prison for a period of time to attempt to curb their behavior, and then we can get into that whole debate that we had last time about what's the punitive component of this, what does society say is the penalty for this crime, which again is subjective. We can debate that until the end of time about what's appropriate for a burglary. Is it 2 days in jail or is it 6 months in prison or 10 years in prison? Then, what is the punitive component of that versus—I get that just putting them in jail is not necessarily going to stop them from recidivism, and in some cases it increases recidivism, but the opposite side of the coin is you can't base prison stay solely on recidivism,

because there are some crimes that, in and of their nature, the offender won't recidivate. Murder's one of the lowest crimes for recidivism. Most crimes of murder are crimes of passion and the person is unlikely to recidivate, but does that mean we shouldn't put murderers in prison because they're not going to recidivate, and let's put them in some other program? These are obviously subjective issues that this body and society needs to discuss of what's appropriate. I know I've rambled on a long time, Justice Hardesty, but it's a very broad topic and it kind of hits home with me to a number of levels, so thank you.

Chair Hardesty:

You bet. Let me say at the outset, you're not an obstructionist; you're a contributor. We welcome your input and thoughts. That's why you're on this Commission, Mr. Callaway. But I think the problem with Nevada's statute is that it is so broad. There is no guidepost really for judges to use that creates a clear understanding of the breakout of certain crimes or certain burglaries that would distinguish them from other burglaries, nor is there a breakout that recognizes that some burglaries might even be misdemeanors or category C offenses, and frankly, other than our statute that says that if you have a firearm or you have a second burglary do things get enhanced. I want to see if we can break this down a little bit, because I think there is a tendency when we talk about the burglary statute, it being so broad, that there's a risk that one conflates the seriousness of one issue or one crime or one example and it extends over into other areas that qualify for burglary that are not as serious. That's the area that I would ask the subgroup to think about. So, for example, let's be clear about what our current statute says. I think it's fair to say that our statute, with the exception of subsection 5 of NRS 205.060, incorporates within the burglary statute not only residential but also commercial crimes. We have carved out, as Mr. Callaway noted earlier, the entering of a commercial establishment during business hours. Now, keep in mind these elements. It's pretty narrow. First, it's a commercial establishment, then it has to be during business hours, and then it has to be for the purpose of committing a petty larceny. There are no prior convictions. Under those circumstances, those very limited circumstances, the person is not committing the crime of burglary but that is about as narrow as one could get, so the point I want to make is—and I recognize all these things have to be taken into context at the end of the day, but it seems like let's go to the other end. From my perspective, we are not debating the seriousness of a home burglary. I agree with Mr. Jackson. Whether the victim's there or not, this statute should be intended, I think, to assure the public that this is a serious offense that has serious consequences, and that a person who commits that offense should be incarcerated not only for society's protection but hopefully because the crime is so serious that it is a deterrent, one would hope, and it doesn't matter from my standpoint that that crime occurred whether you've got priors or not. At that end of the spectrum, our statute says that crime is a 1 to 10. Under our sentencing statute, a judge is limited to a 6 to 10-year sentence for that crime, so why would we have the most serious circumstance equate to a judge who decides to send someone who commits a

commercial burglary at night, not during business hours, crawling down through the ceiling of some place and end up with the exact same sentence? That makes no sense to me. I think, frankly, the first example I gave, the sentence in our statute, is too light. Why wouldn't we give the judge the opportunity to imprison that individual up to 15 years? I recognize that someone who is saying we're trying to hold down the prison population, that's the offender we should be targeting to go to prison for serious offenses. On the other side of the spectrum, though, the commercial burglary, we don't distinguish that in our statute. When you look at the definition of what is included in the types of entities that are described in paragraph 3, it is so broad that almost anything would result in the equivalence of a home burglary with a victim present. So, I would ask the subgroup to think about separating out the consequences for commercial burglary and the consequences for residential burglary and recognizing that there is a difference in those two areas. I know that the Retail Association of Nevada will go crazy over this discussion, and I respect their point of view and I respect the business owners' concerns, that they don't want people coming into their businesses and creating an issue, but you know what? They should not be equated to the most serious burglary I've just talked about, but that doesn't mean we shouldn't seriously consider incarcerating people who ratchet up their behavior in commercial establishments, and our burglary statute does that to a degree. But why not consider steps in that process? Why not consider those steps? I'll never forget the guy I sentenced who came in and he had 10 of these, and they were all the same. He entered into a mall, he grabbed money, usually it was a small dollar amount, and he grabbed money out of the till and then he'd leave the store. The dollar amounts probably never got more than about \$50 and no one was ever injured, and the guy did it and he kept doing it 10 times. I can tell you that I gave that guy habitual criminal status. This was enough, way more than enough, so what I'm saying is that I think within the nature of our burglary statute, instead of having one-size-fits-all, which is what our statute currently does, let's break this out and create gradations depending upon the conduct that we are actually trying to address. I would like to go back to the point I made earlier. The most serious crime in this area gets a 1 to 10. Does that make sense? I don't think it makes sense, certainly not in comparison to other more serious crimes, to Mr. Callaway's point, having someone come home and there's a burglar in your home and you end up getting shot or attacked or sexually assaulted. I realize there are other crimes you could charge, but we're talking now about the burglary offense. Why not create a fairly serious incarceration for that circumstance? Then, let's look at the other end. We're not talking about grand theft auto here. we're talking about the burglary of the vehicle. I think that at that end of the spectrum, things like should it be a misdemeanor, should it be a category C offense, and then begin to work toward the middle in different gradations. I offer that suggestion to the group to see whether or not anybody has any interest in that kind of approach. I appreciate Mr. Callaway's point. You can talk about burglary until the cows come home, but part of the problem with that is it's such a broad statute. It frankly is an all or nothing, and I think that's fundamentally a problem. It would have a downstream impact, I think, on putting the most serious in prison and not incarcerating people who have a burglary of a motor vehicle. I throw that out there.

Ms. Jones Brady:

I was just going to comment on what Mr. Callaway was saying in terms of the firearms, and as you can see with the firearms, possession of a stolen firearm is 1 to 10. Burglary with a firearm, and it doesn't have to be burglary using the firearm, it can be stealing the firearm in the course of a burglary, that's 2 to 15, I believe in NRS 205.060(4), so I think that I would agree with him that anything with a firearm, that's adding another dimension. I would just say that that's already codified in Nevada law, the firearm built-in enhancement there. In terms of what you were saying, Justice Hardesty, making home burglaries without a stolen firearm or anything like that a 1 to 15, I see your point. That would be rough, making it all the way up to a 15, but I suppose if we were to suggest that then the auto burglaries were a misdemeanor or a gross misdemeanor, then maybe that would be palatable to some of the legislators, some give-and-take in there. I don't know.

Chair Hardesty:

Here's the thing: I recognize that there are politics surrounding all of these decisions. The real question for this subgroup is what in our minds is going to be the best for public safety and the best for addressing the prison population and reinvesting into our system? What stands out to me regardless of what state you use, I don't care if it's Utah, Oregon, Ohio, I don't care what state it is, what I see in Nevada's column is everything is the same. The punishment is the same. Everything is the same, whether it's a commercial burglary, whether it's a home burglary. There are slight gradations. On the extreme side, you've got subsection 5, that under very limited circumstances during the day, blah, blah, blah, you might end up with a non-burglary, and on the other side of the coin, if there's a firearm, then all of a sudden it's 2 to 15, but everything else in between is treated exactly the same. My concern with that is this: it allows for judges to sentence inconsistently, and that, I think, contributes to days in prison. So, if we were to ratchet back some of these things, it would at least limit the inconsistencies in the decision making that occurs.

Ms. Rose:

I just had a question about what should be our end goal after today and at our next meeting. Are we looking to give general recommendations, or do we want to have specific numbers, or does it just depend on what we all come up with?

Chair Hardesty:

For today, I didn't expect us to take any votes on any of this stuff. I would hope everybody would think about the conversations. We may have some requests of CJI to do some follow-up information, if we have those kinds of requests. But at the next meeting in December, do we want to make recommendations in this area? The breadth or the specifics of that recommendation, we will have to decide. I don't know that it's productive

to anybody if the subgroup were to say, "You guys ought to look at burglary." I don't think we've done our job and I don't think we've offered any service in that area. Ms. Armeni, to bring you up to date, we are on pages 3 and 4 of the material provided by CJI (Agenda Item IV A). That is identifying data findings regarding burglary, the burglary and home invasion statute, and then page 4, CJI offered comparisons to 4 selected states. There have been some objections raised, I guess criticisms offered, why these states versus other states, and CJI's response is, "Look, we're just offering examples of what other states do. If you want other examples, we can get other examples." But the one point that I think stands out, all the examples from other states you plug in here, Nevada's is among or at least one of the harshest in the country. To me, Nevada's is the broadest. If not the broadest, it's among the broadest in the country. Is that what we want to do? Do we want to continue to have the statute the way it is, or do we want to make refinements to the statute, and what would be the purpose behind the refinements? I think you may have heard my comments, but I want to give you an opportunity though to weigh in or offer suggestions or comments. I know your background is pretty extensive in all of these areas, so I wanted to see if you had any observations or questions for CJI staff, most of whom are here to help us today. So, Ms. Armeni, do you want to offer your thoughts on burglary?

Paola Armeni (Representative, State Bar of Nevada):

Justice Hardesty, I actually agree 100 percent with everything you said. I walked in as you were talking about it, and I do agree that it's very broad and should be broken down, and I think this is the right time to do it. We're given a great opportunity, and I'm in 100 percent agreement that I think there is a very big difference between commercial and residential, whether there is a victim in the house or not in the house, and I think that to accomplish our goals, if we delineate the burglary statute, it will accomplish everybody's goals.

Chair Hardesty:

We have a lot to cover today, and I don't want to cut off discussion, but here's what I would ask. It's sort of a homework assignment. I would ask each member of the subgroup to take a look at this and, on a clean slate, what would you do? You don't have to write a statute. We don't have to get that specific, but for this category of behavior, what would I put the sentencing ranges at? Where would I put them and what would I assign them to? I think, Ms. Rose, to your point, it will be more productive if we can talk about some specifics. And by the way, I respect—believe me, at the Supreme Court we get this all the time, and I'm sure we drive our central staff crazy. "What is a 50-state survey on this legal question?" All of a sudden, the central staff goes, "Oh my God, here we go again. What do they want to know all 50 states for?" At least we only have to look at 49 because we have none in Nevada. What I'm saying in all of these areas is what happens in other states are examples. We should make our decision for Nevada. What do we want to do

for our state? I think that's the debate we ought to have. And why did we set that? The threshold question I have for the subgroup is should we have a one-size-fits-all burglary statute? I'm not sure that's the wisest thing to do or the best use of our resources, so if we're going to change that, how would you change it? This subgroup, as Ms. Armeni just mentioned, has a unique opportunity. We've got a clean slate. Let's put it out there. If the politics is different, if somebody shows up and they complain, and as Mr. Callaway says, the room's full of people who are mad at people, you know what? That's the business we're in, so let's debate the policy and talk about the policy. If you are all up for it, I would ask between now and the next meeting that you consult your constituencies, you talk about it, think about it yourselves. I'm going to do the same. Let's take a look at subject matter areas and break them out into categories to see what the burglary statute from our perspective ought to look like. You can make differences between misdemeanor, gross misdemeanor or felony, differences between commercial and noncommercial, differences between victim or no victim. Breaking and entering is an interesting issue. But one thing that's clear, Nevada has gotten completely away from common-law burglary. We're so far away from that it isn't even funny. So if you're up for it, that's what I would ask that we consider doing. Does that sound reasonable? Mr. Callaway, what do you think?

Mr. Callaway:

I agree 100 percent with you, Justice Hardesty. I think that's a great place to start, is to put our thoughts on paper of where these should fall, because I do 100 percent agree that our statute is very broad and a one-size-fits-all statute. I think where some of the concern or frustration comes is when you look at the totality of the circumstances, and it's not necessarily what the statute reads, it's all these other variables that play into it, like the plea-bargaining, for example, under our current system. If someone is charged with this five times and it's always plea-bargained down to something less and now we want to lower it to a lower crime, what's the impact to public safety? Are we really doing justice? So, I think that's a great place to start, but then we have to look at how this impacts those other factors, and those factors need to be fixed as well. I know that, again, we're all aware of that. We've talked about it for many interims, but just a thought.

Chair Hardesty:

You and Mr. Jackson raised great points about credits. You know, we've had that discussion in the Sentencing Commission, and I don't know whether I'll be on the Sentencing Commission in future sessions, but I am absolutely convinced that our credit system on the frontend, there is an awful lot of information that shows that it needs to be reevaluated. Quite frankly, I think that subject matter is on the table for this subgroup to look at, and I think there are some really good suggestions that came out of the Sentencing Commission's presentations. I hope the Legislature will take that up and take a look at it. But we need to have a starting point.

Mr. Callaway:

As we look at this, I think it might be helpful too in my mind, because I know we're also going to talk about habitual criminal, and I know that you had made the comment about the person that stole a bunch of change but he did it 10 or 15 times and he was convicted as a habitual criminal, so if we're also looking at that statute, I think it might be important to maybe consider—I'm not saying it's the answer, but maybe consider gradated offenses when it comes to some of these burglary offenses, where your first auto burglary is a gross misdemeanor or a category C felony, and then if you do it again, the penalty goes up to where you're back at the category B that it currently is. Just a thought, if we're going to change the categories and tier levels.

Chair Hardesty:

I think you're right on. I think you're spot on, Mr. Callaway, because right now, the guy that I talked about earlier, he had been in front of five different district court judges before he got to me. Anywhere along the line, frankly, under our habitual criminal statute, he could have received that sentence but didn't. Why not gradate these? If you're going to be a perpetual burglar, commercial or otherwise, you know what? Your rear end ought to be in prison, and for a fairly long time, because you are a public safety hazard. That's just me speaking. I agree that there should be some gradation here, and we should think about incorporating that in the conversation. So, Ms. Armeni, are you up for that homework assignment also?

Ms. Armeni:

I am. I'm working on it as we speak.

Chair Hardesty:

Perfect. Unless there are any other comments about burglary or unless CJI staff would like to offer suggestions or ideas or you have any follow up, we will move to theft.

Ms. McNamara:

Just to discuss the homework assignment, we too will come considering everything we've heard today, all of the concerns, the ideas about the gradations, and put forth some recommendations for the next meeting for us to look at on a similar worksheet.

Chair Hardesty:

I do have an assignment for you folks, though that goes a little bit beyond that. I don't know if it's possible, but I think it's a fair point and Judge Wilson brought it up earlier. Are

judges sentencing motor vehicle defendants to prison, and the answer was yes, and there's not a big distinction. That's not my question. My question is, if you modify the burglary statute, is there a way based on the data that we have to say, "Well, if this was our burglary statute, this would have been the impact on the people that are in prison in 2017." Would you have had people get, as an example, probation versus prison? I understand Mr. Callaway's point about plea bargains, and we can't solve that in this process. There's no way to be able to do that, but just on the face of it, if the burglary statute looked like this and we applied it to these guys and gals, what would have happened to the—because that helps us, it seems to me, identify the reinvestment amount. The accountant in me tells me if there are fewer days in prison because of this kind of statute, then there's some money floating around somewhere that somebody ought to be able to grab onto and reinvest.

Mr. Packard:

The next part of Alison and my data colleagues' part of the process is we are constructing a projection for the prison population over the next 10 years. As part of that, once we establish a baseline, we conduct policy impacts for each of the policies considered by the working group and can show the potential bed changes and costs associated with each of those policies. In determining specific policy impacts, we meet with the rest of the policy team on our staff and try to come up with what we consider the most conservative assumptions possible to try to figure out what the impacts would actually be. In order for there to be an impact, you have to be definitively able to say there would be a reduction in admissions for this particular category or a significant reduction in time served. So, if there is a way that the specific policy can be designed so that us on the data side can say definitively that we would anticipate a reduction in admissions or a reduction in time served, then that is something we'd be able to project going forward.

Chair Hardesty:

Great, that would be very helpful.

Mr. Weld:

To your earlier point that we have a lot to get to, I think this has been a really productive conversation about the appropriate policies, but with your permission if we could move onto the next area.

Chair Hardesty:

If the Commission is ready to go?

Judge Wilson:

I think the next time we meet, it might be more productive if we had shared some ideas before that meeting on the thoughts so that my constituency is not limited to my thoughts only.

Chair Hardesty:

And I think if we can, our next meeting is December 18, so would it be fair for everybody to send to Mr. Anthony—we've got open meeting issues that we've got to keep in mind here, and there are going to be homework assignments in each of these areas. Would it be fair to send your suggestions to Mr. Anthony by, say, the Monday before that meeting? Which would give you until—no, that's not going to work. How about December 12? Then, your work can be shared with other members on the subgroup and CJI. Is that a reasonable thing to do? Mr. Callaway, Ms. Armeni, is that okay with you, that deadline?

Ms. Armeni:

Yes.

Chair Hardesty:

Mr. Anthony will collect them and send them out unedited.

Ms. McNamara:

What it be possible if we look at all of those suggestions, and then for the next meeting we can include the recommendations on the worksheet so that that can be what we're looking at and discussing moving forward? So, maybe on the December 12, we will correspond with Mr. Anthony about them and synthesize something for the worksheet based on all of those options.

Chair Hardesty:

Of course. Perfect. I want to keep it in these categories, sentencing, theft, habitual criminals and so forth, and then send them to Mr. Anthony and he will share them with the rest of the subgroup and CJI. I will ask CJI to kind of compare and crunch. Who knows, maybe the homework assignments will produce uniform agreements? That's the eternal optimist in me.

Mr. Weld:

Before we move onto theft, there was one last point about burglary I wanted to make that we didn't touch on at length, just so the Commission is aware. It is here on the page, but there is one other way in which Nevada differs in that it does not require actual affirmative forced entry for the burglary statute. Many other states do. It's not depicted on this chart, but that is another way in which Nevada differs, just to put that in your minds when you're coming up with those policies. I wanted to make sure it was said.

Chair Hardesty:

Let's talk about that just a moment, because it's a very good point. I apologize for digressing, but I think it's a very important point. Forced entry: what would it add to the element of burglary in Nevada if that were an element? What would the district attorney have to show? What would defense be arguing? Let's talk a little bit about forced entry because—forget the because, I asked a question, so I'm going to throw it out there. Think about this a little bit. What would that element in the statute create in the system in determining burglary convictions?

Mr. Jackson:

I think it was in the late 1980s when the Legislature added the home invasion, which has the forcible entry, so it's just that additional element, although they kept the sentencing range the same as 1 to 10. But it is defined by the Legislature as to what that "forcibly enters" means, and it defines also what an inhabited dwelling is. As you are well aware from reviewing that, it doesn't matter whether or not the resident or lawful occupant or person was present at the time of the entry when we talk about what an inhabited dwelling is. You really can't look at all of this without looking at the home invasion and burglary, I think, as part of the homework assignment. Could they be put into the same statute ultimately? Absolutely.

Chair Hardesty:

You've caught my point. This is what I was leading up to. Why do we have home invasion as a separate crime from burglary? Just throwing it out there.

Ms. Jones Brady:

Maybe that's the one that can be increased from 1 to 15.

Chair Hardesty:

Perhaps. I want people to think about that. It was a great point you made, Mr. Weld, and we have this other crime on the page here, and we need to take that into account when we are rewriting the burglary statute. Because one of the things that—I'm sorry, Mr. Callaway, you were going to comment. I had asked a question and then we took off and didn't give you a chance to comment.

Mr. Callaway:

Thank you. From a law enforcement perspective, to give an example, I don't think that no forced entry diminishes the crime of burglary. Forced entry may in my mind make the crime seem to the victim more severe, but for example, I dress up in a service outfit and I have a lock pick gun and I come to your house and pick the front door lock of your house and I go in and steal all your stuff, and as I'm leaving, I reset the lock. You come home, there doesn't appear to be any forced entry, you go in and find all your belongings stolen, and now you've been burglarized just like the guy up the street who had somebody ring the front doorbell, nobody answered, kicks the front door and goes in and steals all of his stuff. The crime is the same; both people had all their stuff stolen from their residence. In one, the guy was clever and used a lock pick, and on the other, the guy kicked the front door. The crime to the victim is the same. When it comes to the home invasion, I can tell you that most cops on the street, if the people are in the home, and I'm not aware of cops on the street taking a crime report necessarily for home invasion. Typically, home invasion in our minds is a robbery where someone boots the door in with guns and gets the people on the ground and robs them at gunpoint in their home while they're watching TV. You typically hear cops say home invasion/robbery or burglary. I don't typically hear cops say home invasion/burglary. There may not be a wide knowledge among officers that there's even this distinction in the law when it comes to the home invasion versus regular burglary. It's just burglary. Was there forced entry, or was there not forced entry? But to the victim, I think you still had all your stuff stolen, so the crime is the same to you whether they busted a window, if that makes sense.

Chair Hardesty:

Sure. I will say, in fact, the case originated out of Douglas County and we published an opinion on this issue, where someone entered an unoccupied at the time of the entry vacation home, and the question was whether or not that constituted home invasion, and the Supreme Court's opinion said yes, it does absolutely. But it is interesting, because the issues raised in that opinion also raised a little bit of ambiguity within the statute, so it's something that needs to be looked at, I would submit. Let's move onto theft offenses, and if we can go through the theft offenses, then we'll take a very short break and come back.

Mr. Weld:

I'll be brief in just talking about the page on theft, which is page 5 (Agenda Item IV A), an explanation of the felony theft threshold, which you are all aware of. A theft offense in excess of \$650 is a felony, and anything below that is punishable as a misdemeanor. In Nevada, you will recall from past data presentations that we broke up offenses based on the case caption by NDOC. So, for example, larceny or theft or embezzlement or possession of stolen property. We thought it was a more useful thing to do for the purposes of this discussion to combine all of those offenses that actually have that threshold so you can get a sense of how big of a number that is within the system, as opposed to just larceny by itself, just theft by itself, and that is the second data point here. If you combine those offenses, and that would include larceny, theft, embezzlement, possession of stolen property, a few others, it's the second most common set of offenses at admission, or least it was in 2017. The next thing we have here on the page is a chart with some other state examples of where that felony threshold is. I want to apologize; the formatting on this chart, there's intended to be two colors and I'm not sure that they show up very well. But there is a first threshold in the lighter shade of red, and that's when the felony threshold kicks in for each of these states. It's \$650 in Nevada, as you know. It's \$1,500 in Utah, \$1,500 in Georgia, \$2,000 in South Carolina and \$2,500 in Texas. We tried to also indicate for the Committee's understanding that the second level of larceny, and in Nevada that's the category B felony, that kicks in at \$3,500. That also differs from other states where that kicks in usually at a higher level, and you can see that from the darker shade that it is \$5,000 in Utah, \$5,000 in Georgia, \$10,000 in South Carolina and \$30,000 in Texas. I just wanted to point that out in case those colors weren't particularly clear on that page. Without further ado, I think the chart is pretty self-explanatory, and I would turn it back over to you to discuss.

Chair Hardesty:

My understanding from the data findings and the felony theft offenses is that that generated about the second most common set of offenses for admission in 2017. Is that right?

Mr. Weld:

Yes, that's right.

Chair Hardesty:

I have a note here that our threshold is one of the lowest in the country, and then you indicate here, I think this was from previous slides, that 43 states have a higher felony theft threshold than Nevada. We're picking a dollar amount, so the question is what would be the impact here. What improves public safety? I think really more importantly in this

area, where does the threshold cut off between misdemeanors and category C's and category B's and so forth? Reasonable minds can differ, but it seems like our amounts are low. What does the subgroup think about that? This is really the establishment of the dollar amount. I do think it's interesting, though, that to Mr. Callaway's point earlier, this area doesn't really take into account gradations either, if you have repeated thefts, except in the circumstances of habitual criminal, so maybe that's an area where that's appropriate? Let's just stick with the base offenses. Does anybody have any observations or comments about whether we should reevaluate our thresholds for these?

Ms. Rose:

I think we have to raise that threshold. It just seems so incredibly low to have a category C felony for only \$650. Just in and of ourselves, I know there's a lot of discussion about other states and what do we think is important here in Nevada, so I think just by itself that seems really low to be charged with a felony. Obviously, it's time in jail, collateral consequences, there are a lot of issues that come with being convicted of a felony. In addition to that, obviously looking at all of the other states, Justice Hardesty, you mentioned 43 other states have a higher felony theft threshold. I think it's certainly something that I would be in favor of recommending and increasing that amount, I think fairly significantly. Even if we doubled it, we would be right around where Utah is with \$1,500 for a felony theft. I think that's definitely something I would like to recommend to the Legislature, to increase that by a significant amount so we are only capturing thefts that are very serious. I understand Mr. Callaway's point earlier. When you're the victim of a crime, everything is serious to you, and I don't mean to diminish that or to think that it's not impactful or changes someone's life or doesn't make a difference, but I think we also need to look at objectively what our goal is here and to punish appropriately for the crime. I think that's a good place to start is to definitely raise that.

Chair Hardesty:

For everybody's information, and one of the really beautiful things about having Mr. Anthony and staff available to us is you get some really prompt information. Mr. Anthony says Assembly Bill (A.B) 142 in 2011 was the last time the threshold was raised, from \$250 to \$650, and then from \$2,500 to \$3,500. We're looking at 7 or 8 years later with respect to these dollar thresholds.

Ms. Rose:

Maybe one of the things that we can do in helping us to determine this, as opposed to me just throwing out a number of what I think is appropriate, we can also look at inflation and what that would be based on inflation to today, and possibly even adding into the statute an increasing adjustment based on inflation. Just something to think about too.

Chair Hardesty:

Okay. What do other members of the subgroup think about this area?

Mr. Jackson:

I'm going to ask a question. I don't know if Mr. Weld or anyone can respond to this, because I know you looked at pre-sentence investigation reports primarily, I think, in Washoe and Clark County. I'm having a hard time thinking of a specific case in Douglas County, and we have had some category C felony theft cases between \$650 and \$3,500, but I can't think of a single one of those cases that was actually that case specific. All of those cases, as I can recall, were negotiated down from either a burglary, and I'm not talking about a commercial or a vehicle burglary, but there may have been some particular issues with the case or no prior criminal history where it was negotiated down to a category C felony theft, or we actually had the category B felony theft well in excess of \$3,500 and it was negotiated down. So, I really have always looked at these category C thefts truly as a negotiation tool for the prosecution and the defense. If those thresholds are raised, there's less likelihood that it would be negotiated, perhaps, by the prosecutor, and again, then we would have an increase in our burglary convictions or in whatever that higher threshold is. My question is, in your review of pre-sentence investigation reports, did you find that the majority of those category C felony thefts were actually negotiated to that particular offense?

Mr. Packard:

Currently in the data that we have, we are unable to observe any sort of plea behavior regarding those. In some cases, people enter the system with attempted theft, and I think that's what our best proxy for maybe negotiated down, but we don't have specific data regarding pleas. It's something we can look into regarding offenses that are labeled attempted, but I don't know if that's something you would be interested in in terms of that being a good proxy for plea-down behavior.

Mr. Jackson:

With that, and I know that Judge Wilson does not represent all of the judges across the state, and perhaps how he looks at these cases are a lot different, but I have a hard time believing that a person coming before a judge, even if it was a category C felony, first felony offense of \$1,000 or \$2,000, that that person is sent to prison. I'm not aware of that case anywhere in the state that may exist. I would love to hear Judge Wilson comment on whether that's the type of person with no criminal history that he would sentence, but it just kind of brings about that there's a lot of factors that go into not just the offense while the person is in prison, but why that particular person is in prison. It goes back to what I've stated, what Mr. Callaway always hammers home about public safety first, and we're

not going to sacrifice public safety just to save some dollars. I hope that everyone that's part of the subcommittee will always look at that public safety first.

Ms. Jones Brady:

I see it all the time, actually. A cell phone is usually categorized as over \$650, so depending upon whether we want to keep the cell phone at a category C felony or not, but a lot of times someone will find a cell phone in a casino or somewhere and they'll keep it and use it, and that will often be charged as the felony. I try to negotiate that down to conspiracy to theft, or if I'm lucky and they don't have any criminal history, I'll try to get it to a petty larceny or a misdemeanor theft. But conspiracy, if you could look at that as well as the attempted theft, see how many conspiracies to theft there are. The other thing is that in terms of—I like the idea of, I guess, looking at inflation. I don't know how else to look at it, but I do see a lot of—what happens, though, and I don't know if this matters, is that I get a lot of young clients between the age of 18 and 25. It will be their first theft. They'll get the felony, but then maybe I'll get them diversion, but on the felony and then they fail the diversion, and then they fail the probation because they are using drugs, and then they go to prison. I don't know if it matters that they get prison right out of the gate. I don't think you're looking at or if you are looking at the people who get the category C theft felony and then go to prison after failing probation. That happens a lot with my younger clients.

Ms. Rose:

If it's okay, Justice Hardesty, if I could ask a question of Ms. Jones Brady? I'm interested to know, when you were saying that you see people who stole a cell phone and that's considered over \$650, and Mr. Jackson had made the comment that it's hard to think a judge would sentence that person to that many years for something like that, and I imagine that that's kind of what we're thinking of. Someone finds a cell phone at a casino, you're not violently taking it off a person, something like that. Can you share with us kind of what you have seen in sentencing just so we can get a better sense? I realize you're just one person and it's just your individual experience, but I think that might help us kind of be informed.

Ms. Jones Brady:

This is anecdotal, of course, because it's just me. In terms of it being their first time ever doing any crime, I'd like to think I'm pretty good at getting them probation, so they usually do get probation if it's their first time out of the gate. But then if they are young kids, so many of these young people have heroin addictions, and it's awful. Anyway, if they've got an addiction, then they fail probation, they test dirty, and then they do a lot of times end up going to prison at 18, 19 years old. It was their first. There are some judges in Washoe County that only give one chance. Not all of them, but a lot of times if they fail probation

or they test dirty or they drop out of drug court or what have you, they do send them to prison. That is common. I've stood next to a lot of very young mostly men, but sometimes women, and they go to prison. Theft is a category C, obviously. If they have prior thefts or prior burglaries or prior felonies, then they will often go to prison for that category C theft, but that is when they have priors. Does that answer your question?

Ms. Rose:

Yes, it does. Thank you. If they are failing probation and they are getting a prison sentence, would it be normally 1 year, 2 years, 3 years, or is it just kind of varied?

Ms. Jones Brady:

I'm seeing 12 to 36 if it's their first.

Ms. Rose:

Thank you.

Chair Hardesty:

I have a question for CJI staff. These numbers are all over the map. What considerations do policymakers make in setting these numbers? What is it we are trying to address when we set these numbers? For example, if Nevada were to change its range from \$0 to \$1,000 instead of \$650, and it were to change from \$1,000 to \$5,000 for category C, the accountant in me says, "Okay, what does that translate to?" If we were to say, for example, that category B, 1 to 10, is \$5,000 or above, what is the impact? Because this theft discussion is driven by it being, as you had noted in your data, the second most common set of offenses that drives the prison population. So, two questions. If you adjust these numbers and you do it to the numbers that I suggested, then the second question is why \$650 or why \$500 or why \$1,000? What is it you are trying to identify? Ms. Jones Brady puts it in context. If someone takes my cell phone, seems to me that first time, why wouldn't that be a misdemeanor? I personally don't necessarily have a problem with that, unless Mr. Callaway or somebody else can come up with some ideas of what I'm missing. But what I found interesting when I read the statistic from Mr. Anthony, and maybe he's got some legislative history behind this, why did the Legislature in 2011 pick \$650? Where did that come from? What was the value trying to address? Why \$3,500? What an odd number, to me. I don't know what the rationale is behind these dollar amounts. I don't know that it's a proper place to have a discussion about cost of living or that sort of thing. I understand cost of living when we're talking about economics and the stock market, but I'm not sure I understand cost of living when we're talking about stealing people's stuff. Otherwise, these things seem kind of arbitrary, unless it really translates to an impact on the prison population. Now you're making a trade-off on public safety, and to another

degree, Mr. Jackson's point about plea deals. Is there a way to address those two questions? Maybe I need to restate them.

Mr. Weld:

I can address them both. With respect to the first, in terms of projections with regard to the felony theft threshold, that's something that's been done in a lot of states when states are considering this kind of policy change. We can and probably will run some impacts on that. I'm not sure if it would be for the next meeting or in the future, but what kind of savings that kind of change would lead to. That is definitely within our capabilities to do. Your second question is a really good one, in terms of how each state thinks about this misdemeanor to felony step. I think it just varies hugely between all the states. I think it's surprising how common the cell phone example comes up as kind of the possession that people think about that perhaps shouldn't necessarily put an offense in the felony category as opposed to a misdemeanor, but I think the answer is that it's not really uniform. I think every state has different considerations when they talk about it. A lot of states have raised their thresholds recently. There's been a lot of research on the effect on public safety that has resulted in such a change, and it's been very firmly in the result that crime rates have not gone up as a result of these thresholds. It's an interesting point with regard to cost of living. I think that most have come up in other states when they discussed this kind of thing, and we could look into that more. I think it's a great question as to what the Legislature would have talked about in 2011 as well.

Chair Hardesty:

Mr. Callaway, from a practical law enforcement standpoint, let's say—and I'm throwing out arbitrary numbers, obviously, I'd like to have a better database decision-making process, but if the thresholds were raised to \$1,000 for a misdemeanor, what does that mean on the streets? What does that mean for law enforcement and what does that mean for public safety from your point of view?

Mr. Callaway:

First, let me say I was working up at the Legislature when that bill passed that changed it from \$250 to \$650, and if memory serves me correctly, I think the bill originally in its original draft was higher. I think it was \$1,200 or something like that, and as things go at the Legislature through negotiation or whatnot, it came down to kind of in the middle, \$650. I want to say it might have been Assemblyman Ohrenschall's bill, but I don't remember. Here's my point with that is when I got feedback from our detectives and our folks that work the street, to put it quite bluntly, they thought this is going to be the end of the world. You're raising the threshold up, the criminals on the street are smart, they're going to know, "I'll just steal something that's \$649 instead of \$650 and then I won't get a felony." Now, we have officers out there doing their job, and many of them have been

hired over the last few years. They don't even know that the threshold used to be \$250, so I don't see a concern necessarily from a street perspective of raising the threshold. But I think what would be interesting to me is if CJI's going to look at impacts, I think they could take that snapshot of when it was \$250 in Nevada, and then since it was changed to \$650, what has been the impact in Nevada? I think I'd rather see what the impact was here in our own state when that threshold was raised versus crimes reported, and that's another key factor. What I'm told often by victims is that if something is a misdemeanor, it's like I said before. The detective has a stack of 500 reports on their desk that they have to investigate, and we focus on felony crimes. If your cell phone gets stolen and it's a misdemeanor, or any property gets stolen and it's a misdemeanor, the likelihood of that being fully investigated unless you saw the guy steal it and you know his name and you know where he lives, it's probably not going to happen, and so people don't report. That may be why oftentimes we see no increase in crime as a result of the threshold going up, because probably people aren't reporting it. "If somebody stole my phone, I'll just go to Sprint and get another one because it's not worth the hassle of calling the cops. Nobody's going to do anything about it." I would like to see maybe an impact look at that area of Nevada and what happened when we raised it from \$250 to \$650 here in our own state, but I'm not necessarily opposed to raising it to a higher level that we feel is more appropriate. I think it's correct that cell phones, bicycles—you could name 50 different things off the top of your head—would that be appropriate, to send someone to prison for stealing a bicycle? There are a lot of bikes out there now that are worth more than \$650.

Chair Hardesty:

What I was going to suggest in the interest of time here, if people are open to it, is this: I think the impact that Mr. Callaway mentioned is worth looking at, if it's possible, but also I think that the impact that the subgroup should be looking at is what would happen in the prison population under these theft admissions had the number been \$1,000 or \$2,000 on the misdemeanor, and then \$1,000 to \$5,000 on the category C, and \$5,000 and up on a category B? Or other adjustments on a sliding scale, if you will, because my point is this: if you adjust the thresholds and effectively the admissions are the same, then it didn't make a difference. It didn't really accomplish anything. If we're going to do something in this area, I would want to accomplish something. It's entirely possible that no changes would've occurred, because a lot of this is being influenced by plea bargains. Who knows? I think we're really kind of dependent on some evaluation in this area. I know it's a task to look at, but of those theft offenses, what would have been the differences between the category C's and the category B's if the thresholds had changed? I know that, again, plea-bargaining influences that, but just based on the information that you've got from the cases that you've looked at, what would the difference have been? Because the impact would be on days served. If you take a group of category B's, because of that threshold change, and now they're category C's, that has a financial impact. I keep coming back to this. I'm looking for the reinvestment dollars, and that's one where there would be a significant reinvestment dollar. Does anybody else have any other comments in this area?

Ms. Armeni:

I just wanted to add that I agree with the comments that have been made. Looking at Utah, South Carolina and Texas, their sentencing ranges actually appear to be what we would normally categorize as a gross misdemeanor, some of them, so I would be interested in maybe elevating if we change the dollar amounts included in there a category, maybe for a gross misdemeanor charge depending on the dollar amount. The other thing that I would like to add is, I think when I'm looking at public safety, I think I'm doing it a little bit broader. I understand that Mr. Jackson was saying, that we have to look at public safety, but one of the things I think happens is if you have a young person that gets a felony at a very young age, that will potentially impact public safety because that person is now labeled a felon and it makes it very difficult for them to become a productive member of society because there are a lot of barriers they have to overcome. Although we're looking at keeping the dollar amounts the same and they're category C and it's highly unlikely that a judge would put somebody in prison for a low-end theft, they are still labeled a felon, and I think, yes, we need to look at the prison population as one of the aspects that we are looking at when you look at public safety. But I do think we need to look at public safety a little bit broader, and if we're labeling people felons right off the bat how that is going to impact them and ultimately impact society.

Chair Hardesty:

Great point.

Judge Wilson:

I think consideration should be given to increasing the maximum penalty. Currently, if someone steals \$3,500 or if someone steals \$350,000, the maximum is 10 years. I don't have any specific cases in mind, but where somebody defrauds an older person out of their life savings, hundreds of thousands of dollars, 10 years seems inadequate to me.

Chair Hardesty:

That's a great point, Judge Wilson. I remember the case I had where there was an embezzlement of \$475,000, and I just thought 10 years at the topside was pretty low considering the impact that had on people. I think it's a great point, and one we ought to consider.

THE CHAIR CALLED FOR A BRIEF RECESS.

Let's move on to drug possession, Mr. Weld, if you'd like to proceed with that subject.

Mr. Weld:

Thank you, Justice Hardesty. The drug possession examples are on page 6 of the packet (Agenda Item IV A), just a couple of initial data findings related to drug possession. In the 10-year period that's been looked at in the past, the most common type of simple possession, that is for heroin, cocaine or meth, increased by 53 percent. People convicted of this offense make up a disproportionate amount of supervision failures. In 2017, for example, 11 percent of individuals admitted to prison for probation violations were on probation for this offense. The chart on this page just gives a few states in comparison to Nevada and what their penalty is for simple drug possession. As you can see, other states frequently categorize this as a misdemeanor for the first or second offense, and occasionally there is a step up to the felony level at the third offense. Another thing worth noting about simple drug possession in Nevada is, of course, its status as a category E felony, which means that an offender is presumed to receive probation on their first two offenses, unless they meet one of several statutory exceptions to that benefit. I would turn it back over to you to discuss.

Chair Hardesty:

To the subgroup, and we've seen this information in the past, I guess it poses the threshold question to the subgroup, should possession be a felony offense in Nevada either on the first offense or the second offense, and then thinking about that, should possession offenses be treated as a basis for enhanced penalties when you're talking about habitual criminal statutes? Those questions I'd like the subgroup to talk about, if they would. There may be others that you all want to raise. So, I'll throw that out there.

Judge Wilson:

The 11 percent of individuals admitted, how many people is that?

Mr. Packard:

Admitted via probation revocation?

Judge Wilson:

Yes.

Mr. Packard:

I don't have numbers immediately on me but I can check and get back to you.

Judge Wilson:

Do you have a ballpark figure? Are we talking hundreds?

Mr. Packard:

I don't have the exact ballpark number at this point. I'm sorry.

Judge Wilson:

It's not uncommon to have a case where a young man is a passenger in a vehicle that is stopped for traffic violations, and he, the passenger, has some small amount of controlled substance. So, he gets arrested, he's charged with a category E felony and the only offense is simple possession. Typically what would happen in the First Judicial District is he would go to diversion, being drug court, and then sadly, sometimes the drug court program doesn't satisfy his needs for treatment. I guess that's one way of looking at it. But he's terminated one way or the other, and the drug court policy is to use leverage over those participants in the program to try to increase compliance or to complete the program. This 19-year-old who had this small quantity, after being terminated, ends up going to prison, and that makes no sense to me on any level. I think the first and second offense should be misdemeanors with the opportunity for treatment. We have in the First Judicial District a misdemeanor drug court program, I think a third offense should be a gross misdemeanor, and I don't actually know beyond that. It doesn't make sense to me that addicts, if we consider that to be a disease, who on their first try or second try or third try at overcoming the addiction or at least getting it under control, I see absolutely no benefit, and potentially great harm, in sending those people to prison.

Mr. Packard:

I just wanted to step in here. I kind of psyched myself out by not having the specific number, then realized I could take 11 percent of the total. The probation revocations for drug offenses is 167 individuals, and for the new prisoners it's around 100 individuals for drug possession.

Chair Hardesty:

Did you want to clarify that further? So, it's a substantial number of folks that Judge Wilson's comments apply to. Does anyone else on the subgroup have differing views or other views from those expressed by Judge Wilson?

Mr. Callaway:

I agree with Judge Wilson. I believe that we have two categories here, obviously. We have people that, in my mind, maybe they're breaking the law because they are in possession, but yet they are a victim. They have a substance abuse addiction, and they need help and they need treatment. And then you have on the other side of the coin the folks that fall into that trafficking realm or possession with intent to sell realm, which are our dealers which are contributing to those folks that are victims, and in some cases causing a lot of the problems that they're facing and suffering from. We can debate or talk about the levels, misdemeanor or gross misdemeanor, but I can tell you that drug arrests typically for minor possession are walk-throughs of the jail, so the person doesn't even get booked into the jail. They get their photo taken and fingerprints, and they're walked out the backdoor. We don't have the space to house them, so they're not serving time in the Clark County Detention Center in most cases awaiting court. I would like to see the ability for officers, regardless of what level crime we decide is appropriate for this, and it would be automatic, I guess, if we make it a misdemeanor, but for officers in the field to be able to cite for low-level possession, if that's the only crime. If it's low-level possession of heroin or methamphetamine, that the officer could cite that person even if we decide to leave it a category E felony or gross misdemeanor, be able to cite. Finally, the only other comment I would make is that my concern about lowering it to a misdemeanor is that then we may take away the incentive for folks to get help and treatment, because a lot of times, my understanding is—and where we see this a lot is also with the homeless. If somebody gets a trespassing charge or somebody gets a charge related to homelessness, there are services and stuff that are available to them, but often it's easier just to get credit for time served or whatever. If you get a bench warrant and you don't go into court, you get a bench warrant, you sit 4 days in jail before you go to a judge, credit for time served, it's done. Or if somebody pays the fine because it's a misdemeanor versus going through some kind of treatment program. So, as Judge Wilson said, I think if we are going to look at a misdemeanor, there need to be programs implemented that provide mandatory treatment for folks that are charged with a misdemeanor, because I don't know typically with misdemeanors that those services trickle down to the misdemeanor level.

Chair Hardesty:

That's a great point. Quite frankly, it connects with what is the other objective of the other subgroup, and that is to find some resources from all of this that can be reinvested into those programs. It does no good, frankly, and Ms. Jones Brady mentioned it earlier, you can't just change the sentence and not do something about the resources to help. I think Judge Wilson's observations are shared by most drug court judges in the state, all of them, I think, that using a felony to hammer people into curing their substance abuse addiction is not productive and is actually harmful at the end of the day. So the gradations

that he's suggested, I think, are really worthwhile. Mr. Jackson, as a prosecutor, what do you think about that? You may have a different point of view we should hear about.

Mr. Jackson:

It's kind of hard to look just at the possession without also considering the trafficking, because part of that gradation is to consider whatever those thresholds would be. I had asked at the very beginning of Mr. Weld as to why he picked certain states, and with respect to the possession and the trafficking, the only state for comparison that we can look at that's the same would be Oklahoma. The same type of question comes up whenever we talk about sentencing ranges or why we're talking about a certain quantity in levels of grams. It begs the question for Oklahoma as to why did they pick the 10 grams, for example, on heroin, 28 grams on cocaine, and the 20 grams on meth? Every state is unique, and every county is unique. Methamphetamine is still the primary drug of choice in Douglas County, but the opioids, without a doubt, are the most devastating. We've had 28 deaths in the last 5 years related to opioid abuse, and a couple of those included some suicides. A couple of those opioids were heroin, two were fentanyl and the others were primarily hydrocodone or oxycodone abuse, but we also know that most of our heroin addicts start out as prescription drug abuse, which is a whole different issue. I understand that. But that is significant because it is so devastating to think about, just in Douglas County of 50,000 population, to have that many deaths in the last 5 years is significant. Unfortunately, the Nevada District Attorneys Association, our next meeting is scheduled for the December 19, which is the day after we're going to be meeting and hopefully come up with some recommendations. I'm going to try to set up a teleconference with the district attorneys across the state. On this particular one, I think it would be premature for me to comment. I understand the comments and I appreciate them, from Judge Wilson, and even Mr. Callaway down in Las Vegas, as to looking at this. I can tell you, I think the District Attorney's Association is expecting that there is going to be some push for some reform, definitely with respect to trafficking and obviously working down to possession. Justice Hardesty, I'd prefer to hold those comments until December 18, if I may.

Chair Hardesty:

Sure, no problem. I join Judge Wilson's point. When we talk about shifting resources, from my perspective and my vantage point, I can't think of a better place to shift resources than this crime type. If we were to make—and Mr. Callaway's point is outstanding about citations as opposed to running them through and going through booking and all that sort of stuff. That's really a great point, because how much time are law enforcement resources being consumed treating a first or second drug possession as if it was the same as, not to return to an old version, a burglary? That makes no sense. The cops out there, they know what they're doing, they can assess those, cite them if they need to be. I just think it makes a huge difference in how we apply our resources, and I can see a real benefit coming out of this that could be extended into the ongoing efforts to try to help

people get better. All of us here know that those with substance abuse problems are not cured on the first time the second time, and sometimes not even ever. It's an ongoing problem, but to have them in prison as felons, and then here's the other problem. We don't have the resources within the prison to help them once they are there. I don't want to overstate this, but we're housing drug addicts. Is that the best use of our dollars? No, of course not. I don't know that it really has a huge impact on public safety to be housing the numbers that were mentioned a moment ago. What I would suggest here, does anybody have any additional comments in this area from your vantage point?

Ms. Jones Brady:

Back to Ms. Armeni's comment about being a felon, I think it does negatively impact public safety when you take someone with simple possession, you felonize them and then their life just keeps tanking from there. If we were able to get more resources into treatment, the research also shows that, after a certain age, they become better prepared for the treatment to take, so to speak. If you keep felonizing them between 19 and 25, they can rack up a few felonies, and by the time they are 30, nobody wants to give them probation after that.

Ms. Rose:

I agree with almost everything that has been said, and I think changing the first offense or second offense to misdemeanors will make a really big difference to people's lives individually, and also in saving money. I agree with Mr. Callaway, I think it's a great idea to give citations in the field and not have people come to the jail. I think even going through that process, that's time, that's money and it also makes a difference to people's psyche and how they're going to recover from this too. I think that's a fantastic idea that I'd support. I'm also interested in what Mr. Callaway said about changing it to a misdemeanor, then they're not going to enter drug court or diversion. Maybe this is the opportunity that we have to help people. I agree with that in a certain sense. I don't think that means we need to keep things as felonies to use that as a coercive tactic, but I would be interested in exploring maybe some other ways for the possession charges, to try to get them into some other type of program or have the judge assess or perhaps some type of assessment to be able to see, does this person have a drug problem? Here they are. Is this a way for us to get them some help? I do think that could be useful in thinking about how we are changing that. Also, if we do reduce those to misdemeanors, I think I agree with everything everyone has said.

Chair Hardesty:

Just as a reminder to everybody, the Sentencing Commission recommended to the Legislature that it add another \$3,000,000 a year to specialty court funding out of the general fund, which would bring general fund funding to \$6,000,000 per year. The

Specialty Court Funding Committee could really then apply that to this effort. This change might help persuade the Legislature that this is an obvious reinvestment area. The other point about specialty courts, there are misdemeanor specialty courts in our system and very effective ones. Maybe as part of this process, we need to look at strengthening that misdemeanor area for the access to those courts and their resources and their availability.

Ms. Jones Brady:

Have you reached out to Judge Pearson in Washoe County? He probably will have some good input in terms of the misdemeanor courts. For people who don't know, I don't want to give him all the credit if he's not the only one that did it, but it's my understanding that he really was a major impetus behind getting the Community Compliance Court in Washoe County, and they have a lot of people go through that. I don't know what his success rates are, but if you do, Justice Hardesty, maybe that is something that could be shared with the group.

Chair Hardesty:

Sure, we have stats on that, and I would add that the judges in the Las Vegas Justice Court, there are a couple of different operations going on there that are focused on these misdemeanor or potentially misdemeanor drug possession questions. I think what we're doing in part is changing the dynamic from having felons in district courts with limited resources and shifting those to misdemeanor courts with increased resources. If you couple that with law enforcement being able to cite those folks instead of going through the massive booking system or even the incarceration in jail system, and you can get them—everyone tells me over and over again, from Judge Breen to whomever does this, "The sooner I get them, the better chance I've got to fix them," or work with them, anyway. In the misdemeanor area, what better way to do that? What if the citation response was that you have to show up at drug court on Monday? Wouldn't that be something? That would really be impactful, I think.

Ms. Armeni:

I agree with what everybody said. We may want to consider, I know currently with felony treatment there is the opportunity through the 3363 treatment that a case can get dismissed at the end. So at any point through our negotiations, if there's still a felony component to that, I think that is an important part to the felony component. We may want to even consider, if we do these different grades of misdemeanors, maybe even with the first misdemeanor if they successfully complete a program, allowing them to withdraw their plea and that case being dismissed, just as another way to incentivize them to do the program.

Chair Hardesty:

You make a great point, Ms. Armeni. I'm going to ask you and Judge Wilson specifically to look at our qualifications for specialty court and our diversion statutes. I think we have some knots in the hose in those statutes that we need to undo. It is in many instances too restrictive and the incentives that you just mentioned, Ms. Armeni, are not always present, and I think we need to fix that. I would ask if you folks—and anybody else, of course, can evaluate this, but I think we need to take a look at the access issues in the statute and the blocks that exist there for us to be able to move forward on this. Why can't the state be proactive and say, "Let's go after these people and see if we can help them?"

Mr. Callaway:

Something popped into my head while we were having this conversation. I sit on the Attorney General's Substance Abuse Working Group as well, and someone testified during one of the meetings that I thought was interesting, and I don't know how this impacts long-term incarceration, but for short-term incarceration in Clark County Detention Center or other detention facilities, what happens a lot of times is if a drug offender or a substance abuser of drugs is booked into the jail and they are there for several weeks waiting to go to trial or see a judge, they are cold turkey off of their heroin, let's say, and then eventually they are released. When they go back out on the street, the very first thing they do is they want to get a hit or shoot up, and they assume that they can use the same amount that they were using before they were booked in a week or two ago, and what happens is they overdose. There are a number of cases where folks have actually overdosed, and in some cases died, because they were cold turkey during that period that they were incarcerated without any type of treatment or program, and then they are released and they go right back to their old ways and assume they can use an amount that is above what their body can take. An interesting note.

Chair Hardesty:

I think that's a great point, Mr. Callaway, and I would add to that what a number of specialty court judges tell me is that the longer they are in your facility, they think they're cured. They walk out of there and they think they're cured. Of course, obviously, they're not even close. It gets back to the point you were making earlier, which is a great suggestion, that if you can cite them, get them into a program and have that program have the resources it needs to be productive, I think we would be proactive in this instead of reactive, and probably divert a lot of these folks into misdemeanor, I'll call it supervised context, rather than felony supervised context. Is there anything else on this topic anybody would like to talk about at this time? I'm going to assume based on our conversations, and subject to Mr. Jackson's qualifications, that the subgroup is generally interested in a policy on drug possession. Is that fair? Let's move on to drug trafficking, Mr. Weld, and that's, of course, a much different topic.

Mr. Weld:

That's on page 7 of the packet (Agenda Item IV A), a couple of initial data findings with regard to trafficking. Time served for this offense grew by nearly one-third between 2012 and 2017. Category B-level trafficking was the fourth most common offense at admission last year in 2017. With regard to some of the file review findings, 46 percent of these cases contain no indication of active sale or intent to sell, at least that was apparent in the PSI, and the conviction was based solely on the threshold weight. Also, 74 percent contained an indication of substance abuse by the offender, and that is also going by the PSIs for these convictions. With regard to state examples for trafficking, drug distribution and similar offenses, states vary hugely in this regard, as you know. The ones we selected for this page are those states that have thresholds but have varying amounts from Nevada's and mean different things. Those first three jurisdictions, Nevada, Idaho and the federal system, there is a pure weight threshold. That is, someone can be convicted of a trafficking offense based only on the amount of contraband that they have in their possession. In Oklahoma, there are also thresholds, but they require some other evidence of intent to sell or sale as well. I'll leave it there. There's a lot to discuss on this subject, so I'll turn it back over to you.

Chair Hardesty:

Can I ask if you or any of the members of the subgroup are familiar enough with the pending crime reform statute in Congress, the criminal justice reform statute? I don't remember the exact name, but it is potentially to come before Congress before the end of the year. There's been a lot of information about its progress there, and my understanding is that it does deal with the trafficking subject. Do you have enough information, Mr. Weld, about that legislation that you could inform the subgroup today, or maybe we could get some additional information about it at our next meeting as to what that legislation is trying to do on the trafficking side?

Mr. Weld:

My knowledge, like yours, is really limited to the types of categories that legislation is going to look at, and I believe that trafficking is part of it, and mandatory minimums in particular. Beyond that, I actually don't know the content of the bill. I would ask if anyone else did, but we are happy to look into that for you before the next meeting.

Chair Hardesty:

Does anybody on the subgroup have any knowledge of that federal bill? Mr. Callaway, do you have any information on that one?

Mr. Callaway:

Justice Hardesty, just very cursory knowledge. I received some emails from some national organizations. I believe the National Sheriffs Association and Major County Sheriffs Association expressed some concern over some of the language in the bill, and I've had some very brief conversations with the lobbyists for the Major County Sheriffs Association, but I can get the language and get it to Mr. Anthony, if you'd like. I think I have it on my computer.

Chair Hardesty:

That'd be great. Thank you very much. I'll ask Mr. Anthony to follow up and send it out once he gets it. That aside, the reason I brought it up is that if Congress were to make some significant changes in the drug trafficking area, then I think we would need to address whether or not that influences any of our decisions at the state level. Maybe it does, maybe it doesn't. I would like to break down this subject a little bit further than what we have from Mr. Weld and CJI. It seems to me that there are at least three components to this subject that the subgroup might want to talk about. I would put them in a different order than they're set out here. My order would be mandatory sentencing first. I offer this perspective as a former trial judge. There are just way too many instances in which I was compelled to send someone to prison for trafficking when the facts of the case just did not warrant it and it was only the weight of the drug. I don't want to suggest for a moment that I would minimize trafficking. I think my record as a sentencing judge and my comments made in sentencing hearings when I had true traffickers would demonstrate that I was pretty harsh and probably contributed mightily to the people who are in prison, and should stay there, because the consequences of those people's activities are just enormous. We all can offer our own points of view on that, but I just think it's incredible the impact that it has on society and it's infuriating, frankly, to see traffickers in this situation, what they do. That said, it is like the burglary statute to a degree. One size doesn't fit all in these trafficking cases. There are differences. I have mentioned this in Pardons Board meetings and I'll mention it here, and I've mentioned in the Advisory Commission meetings in the past. When you've got a kid who takes \$250 to drive a car from Sacramento to Salt Lake City who gets pulled over for a traffic ticket and the cops ask him if they can search his vehicle and he says, "Of course you can," and it turns out that you have a trafficking-level quantity of drugs, we now get to house that kid mandatorily for a long period of time. That has never made sense to me. I am not saying every trafficker is a mule. I'm not saying that at all. I am saying that people are serving trafficking sentences who weren't mules. I don't know why we wouldn't allow the judges in our state, the district attorneys and the public defenders in our state, to identify those cases and create exceptions when they're present. So, I throw out there the mandatory sentencing issue in our trafficking statutes. Now, CJI has added and identified two other points. One has to do with weights. One can probably debate until the cows come home whether the weights are too low, the weights are too high, but what stands out to me in

Nevada is these drugs have different impacts, yet our weights are all the same. That doesn't make much sense to me. Mr. Jackson commented earlier about the distinction between opioid impact and methamphetamine impact. I'll tell you what, methamphetamine as a drug of choice is a disaster, and so if you're going to actually go after and try to do something about the impact of drug use, you identify the drug and then you assign weights that will have an impact when you're dealing with trafficking areas, it seems to me. The last point that's raised is should intent to sell be an element. Should mere possession of a weight translate into a mandatory sentence? I throw these topics out, and I'm not trying to limit anybody's thinking about other topics, but I throw these three out for all of you to think about and comment about. There you have it. I will be quiet and see if anyone has any observations about those issues.

Judge Wilson:

Regarding mandatory sentencing, I would just say that a lack of judicial discretion in those cases sometimes results in unjust sentences. Whether intent to sell should be an element, I think it depends on the quantity. I think you reach a certain level where, because of the amount of controlled substance, that it maybe would be easy to prove because of the quantity, but it seems to me that intent to sell would not need to be an element at some certain level.

Chair Hardesty:

Does anybody else have any observations on these?

Ms. Rose:

I agree with the comments about the mandatory sentencing based on the weight, and just generally across the board, I think we need to make the weight relative to what the actual drug is. I am in favor of making sure there is an intent to sell requirement. I think the concept of trafficking is you have the purpose to get a whole bunch of drugs to other people, and if that's not present, it doesn't make sense to convict someone of trafficking. I think, Justice Hardesty, your example of a kid driving a car even though it's only weight and we don't have any intent requirement there, I think, results in very unjust sentences and also us, again, keeping someone in prison and paying for them to be there. I think that's something we should definitely suggest. I have a question. Like probably most people here, I have no idea what 4 grams of heroin is or 4 grams of anything else. But I do think that we can all agree, like if I saw a whole bunch of drugs here on the table, I would say that's a lot, and this person is probably trafficking. A whole lot of drugs is not specific. We can't put that into a statute, but is it possible for us either to get from the Legislative Counsel Bureau (LCB) or from somebody, what does this translate to and how much is that? I don't know if 4 grams of heroin is this much and that means this person is not trafficking, so I think that would help us to know, especially when we come back and

we want to make some specific recommendations if we are going to change those weights with specific numbers, what that would be, just as a practical matter.

Mr. Jackson:

I just went over to where the coffee is. Here's a Sweet'N Low packet. This is 1 gram. When we're talking about 4 grams, we're talking about 4 Sweet'N Low packets, and it's based upon the weight. A \$1 bill also weighs exactly a gram, so if we're talking about true weight, we're talking about the weight of 4 \$1 bills. But to put it in context, because heroin, methamphetamine, cocaine, so often it can be ground down to that type of a granular substance in many instances.

Ms. Rose:

Thank you, Mr. Jackson, for that. This is helpful for me to visualize. I appreciate the visual aid. I think you raised some other important points too, just from a practical manner. Is this a lot of heroin? This isn't a lot to me. It's just one little Sweet'N Low packet. It doesn't seem like a lot, but I don't know how much people take. I don't have any concept of that, so I think for us to make informed decisions if we are going to do something more specific than just that we want it to be weighted differently or something, if we want to get into actual numbers, I'm not sure of the best way for us to go about that without us getting into the granular level of drugs and what that all means. But if someone has an ability to get us some type of overview or something, that would help us make a more informed decision. That would be helpful to me.

Chair Hardesty:

Let me just add something, Ms. Rose, because your question raises another important point that I have presented to the Advisory Commission before, and maybe Mr. Callaway remembers because I think we did this a couple years ago or 4 years ago. What has frustrated me about our trafficking statutes is we talk in terms of weights, but man, there are some drugs that frankly weigh less than that Sweet'N Low packet that have an impact that is well beyond a huge quantity of methamphetamine. What bothers me is that we look at states that address this topic in terms of weights, but why aren't we looking at this subject in terms of its impact on the user? Is weight the right measure depending upon the drug we're talking about? To Mr. Jackson's point earlier, opioid use, it doesn't take a lot of weight in opioid use. If you get addicted to it, you're on the road to dying. I just wonder why we don't look at these subjects by drug and determine its impact by drug rather than by weight. I'm throwing that out there and I'm looking for input from Mr. Callaway and others who have dealt with this subject, but what about that, Mr. Callaway? What does law enforcement think about this?

Mr. Callaway:

Justice Hardesty, I think you hit the nail on the head. To go back to the comments that Ms. Rose made, a small packet of sugar doesn't look like a lot, but I guarantee you if that was heroin and you injected that into yourself, you'd be dead. I'm no drug expert, I'm not a narcotics detective, obviously, but in my years working the street, I encountered a lot of folks using these substances, and typically heroin users have a very tiny little balloon with their heroin in it. I just did a brief Google search while I was sitting here, and it says average street use, and this varies greatly depending on how often someone uses, but 500 milligrams of heroin is like a typical dose for someone, typical usage according to Google so 4 grams would probably be way above and beyond what a typical user would use in a day on the street. To Justice Hardesty's point, other substances like fentanyl, a slight little tiny powder of it can knock you out or take you out, or GHB. Which brings up another topic: what's the purpose of some of these drugs? Is it for me, personal recreational use to get high, or is it for me to knock someone else out so I can take advantage of them in a club for whatever reason, sexual purposes or stealing what they have? I think when we look at the totality of this, we have to look at, again, marijuana is one of the exceptions to the weight. It was 100 pounds, I believe at one time, and the Legislature a few sessions ago lowered it to 50 pounds for trafficking marijuana, and then they added concentrated cannabis, which is the liquid, the extracted cannabis, which is a lot more powerful than a joint, for example, and I believe a pound now of concentrated cannabis is trafficking, which is a huge amount, because I'm told—again, I'm not a user and I don't know about this stuff, but I'm told that a drop of concentrated cannabis could equal several marijuana joints, so I think it's a huge topic of discussion that in my mind, to get our hands around it, and I know as Justice Hardesty said, we did this in the past where we had some experts come in, detectives or former drug users come in and give us some ideas about what they're using in a day, what detectives see on the streets, if we're really going to make an educated decision about what weights should be and start carving out different weights for these substances. Finally, the only other thing I would add is I'm not opposed to maybe adding some elements into the trafficking statute, but I do agree with what Judge Wilson said. It gets to a point where if I have 100 pounds of marijuana in my car, unless I'm going to a big party and I'm the guy bringing it, I'm probably selling it. At some point, the amount you have is indicative of the fact that you are probably selling it.

Chair Hardesty:

Great comments, Mr. Callaway. Thanks.

Mr. Jackson:

The drug world has changed and it continues to change every decade, and law enforcement is always trying to catch up. Three decades ago, maybe even two decades ago, you'd hear things about scales and pay and owe sheets. You rarely ever see those

anymore. That's the type of evidence that prosecutors would perhaps rely upon if they're trying to show an intent to sell, but I do agree that, at some point in time, whatever that weight is for that particular substance is that the intent should be presumed just based upon that weight, and effectively that's what our trafficking is now but it starts at these minimum thresholds regardless of the schedule I substance at the 4 grams. I do like your suggestion, Justice Hardesty, about looking at the specific drug type, putting in those other elements of evidence of intent to sell, again because we just really are not seeing that with today's drug traffickers, absent a statement or a confession by them, which of course we would have to provide some other evidence of it other than just that statement. For the most part, it would, I think, weaken it and lessen it. One of the things that I have found over the years, because in Douglas County, as you all know, the state line corridor, the casino corridor up at the lake, gets a lot of people that vacation there throughout the year, whether it's gambling or skiing, but with respect to some of the drug trade that's going on there, there are people that will not cross over into Nevada from South Lake, for any drug transaction because of our trafficking laws. That is a deterrent, and if we lessen that, then one of my concerns would be that there would be no reason to stop those individuals at that gate. Again, this is another topic I will be discussing with the district attorneys when we have a telephonic talk about the possession of controlled substances.

Chair Hardesty:

Let me ask everybody to turn in your packet that Mr. Anthony has distributed to the heading "Trafficking of a Controlled Substance" which has the statute (Agenda Item IV B). I want to use this as an example. First of all, to a degree, we already have an intent to sell in subsection one: "Except as otherwise authorized by the provisions of NRS 453.011 to NRS 453.552, a person who knowingly or intentionally sells, manufactures," etc., and then goes on forward to ultimately get to the weights. What the weights in our statute do is they impact the length of the sentence. As I said before, to a degree, our statute already has an intent to sell in it, and the statute is what creates the problem for the length of the sentence, but these are mandatory so these provide no basis on which the judge can adjust this. But here is the thing that I was raising: "4 grams or more, but less than 14 grams, for a category B felony by imprisonment" not less than 1 year and up to 6 years. What if that's heroin? Really, you're going to sentence from 1 to 6 for 4 grams of heroin? Given the seriousness of the drug, why would we do that? Why wouldn't that sentence be longer? Why wouldn't it be more serious, is my point. These weights are arbitrary in many instances. The sentencing lengths bear no relationship to the seriousness of the drug and the impact that the drug has. What I would like, and it may not be possible in this subgroup by December or for this Commission to address it by January except in a general policy sense, but Nevada's drug trafficking statutes need to be revised in order to recognize judicial discretion in this area, and secondly, to make the drug trafficking consequences relevant to the drug that is being used, because as you all know, the statutes that we use to define controlled substances don't distinguish between those. We say if it's a controlled substance schedule I then she's brought in here, now we

look at the weights and it doesn't matter what the impact is of that drug, so it makes the whole process, from my point of view, ineffective in terms of really trying to target this. Why not address this from the standpoint of what's relevant and what's happening? I think, frankly, going forward, maybe the Sentencing Commission, and I throw this out there, and Mr. Callaway, I would really be interested in your thoughts on this, maybe the Sentencing Commission needs to hear from the group that we heard from 4 years ago, hear from the cops on the street, hear from the experts in these drugs and reassign these schedules and revisit how we determine this and these weights. But in the meantime, give judicial discretion on this and then see how we go from there, test this through data accumulation. Once judges now have discretion in the trafficking area, I have no doubt in my mind that most district court judges in this state, if they've got a trafficker, that individual's headed to prison and probably for a sustained period of time. Why not place faith in our judges to exercise their discretion in trafficking cases, monitor their results and their work over the next couple of years and ask the Sentencing Commission to do a deep dive into these drugs and not be so limited in our assessment of weights? Let's take a look at the drugs' impact. That's my suggestion, just throwing it out for the group to consider as a policy direction. Does anybody have any comments or thoughts about that?

Mr. Jackson:

When you talk about asking the Sentencing Commission to do a deep dive into these drugs, are you talking solely about the trafficking or also the possession of a controlled substance that we just talked about?

Chair Hardesty:

No, just trafficking. And when I say a deep dive, some of you may not know what I'm talking about. I think Mr. Callaway does. When we had those presentations, that was a very insightful, useful expert testimony, if you will, on a plethora of drugs. As I recall you mentioned, the one that I had forgotten that was called generally the date rape drug and its impact. It was incredible what a small quantity of that substance, the impact that it would have on someone's ability to resist or even be able to defend themselves. It was incredible, and yet the consequences of that is horrific. That's my thought.

Ms. Jones Brady:

I like that approach. The other thing is that, in addition to sort of looking at for the lower-level weights just the indicia of sales, also giving the parties and the judges discretion to analyze (a) indicia of sales, but (b) evidence of use and addiction, to put that in there. I agree with Mr. Jackson in that it has changed in that you don't always see the scales and where they are getting the sales. Convictions these days are from confidential informants and direct buys from detectives, that sort of thing.

Ms. Rose:

I agree, Justice Hardesty, with your approach. I think that makes sense. I also wanted to add in kind of what Ms. Jones Brady was saying, that from the key data here, 74 percent of the people convicted of trafficking had some type of indication of drug abuse themselves, so I think we might also want to consider looping in people who are charged with trafficking into a drug court program somehow or some other type of substance abuse program and asking judges to look at that as well, because most likely, there are some drug abuse problems there too and we can also catch them if they are coming to the criminal justice system on a trafficking charge.

Chair Hardesty:

True, but I will say that in the context of trafficking, I think Mr. Jackson's got a great point. You want to deter that behavior, and I think you want to punish that behavior because that individual is a public safety risk. There's just no two ways about it, they are. Ms. Armeni, do you have any comments or thoughts on this area?

Ms. Armeni:

Just to add that I think we may want to consider, I think, from a commonsense approach, and I don't know what that would be, but I think there is an amount of weight that is so much that there is indicia there that it is probably being used for a sale, but like you said, I don't want to handcuff anybody. I don't know if we would maybe want to consider doing a rebuttable presumption, that if you have this many grams or this much weight of a drug, there is a rebuttable presumption that your intention is to sell this, and then a person can rebut that presumption if they've got evidence to the contrary.

Chair Hardesty:

I think it's a great point, and I actually think that is similar to what Mr. Jackson was saying, but we really don't have presumptions now. We have presumptions on sentencing length, but we don't have presumptions on trafficking. I would like to see us consider that. Why not have rebuttable presumptions in some of these areas too? That makes sense to me. Why make law enforcement try to demonstrate that the guy who's bringing 100 pounds of marijuana to a party is there to share it for recreational purposes? Quite a party, Mr. Callaway, you're talking about. May we move onto a different topic? On this particular area, I don't know if CJI could maybe capture some of what I was outlining and we could maybe reduce that to some understandable thoughts instead of stream-of-consciousness from me? That would be very helpful.

Mr. Weld:

We will definitely do that.

Chair Hardesty:

Thanks. Let's move on to the habitual criminal statutes, Mr. Weld.

Mr. Weld:

These are on page 8 of the packet (Agenda Item IV A), just a couple of relevant data points. To start, admissions for these offenses—and just to be clear, this excludes habitual felony. This is only the official criminal offenses. They increased by 10 percent since 2008. These next 2 bullets are from the file review of these cases: 48 percent of all habitual criminal admissions in 2017 had no violent prior offenses as defined by the Nevada statute, and 40 percent had no violent offense whatsoever. The difference in those 2 bullets would be that, for the 48 percent, their prison offense probably was a violent offense, but 40 percent had none in terms of those crimes that qualified them for this charge. Just an outline of the elements or the requirements for this charge, the first level of habitual criminal lesser is essentially your third felony conviction of any kind, and that bumps up your penalty from whatever it would be for their prison offense to a 5 to 20-year category B felony, and then there's the greater level, which is essentially your fourth felony conviction. In that case, your sentence becomes a category A felony punishable by any of those 3 punishments listed there: life without parole, life with parole eligibility or a definite term of 25 years with eligibility for parole after 10. That's the State of Nevada's law now. We have instead of a chart just a couple of examples of how other states utilize this kind of repeat offender law that differ from Nevada's approach. Ohio's applies only to repeat violent offenders, and Oklahoma reduces the habitual enhancement for certain repeat nonviolent crimes as compared to repeat violent offenses, so there are certain property and drug offenses that have a different enhancement. Another thing to note about Nevada statute that makes it sort of an outlier from other states is the fact that there's no look-back period, meaning there's no limit as to the age a conviction can be to be used for this offense. As I'm sure many of you are aware, there is a limit in case law. There's a staleness doctrine, that sometimes if a case is too old, a court will find that it shouldn't have been used for the habitual enhancement. But most states do have that in statute. They have, for example, a period of 5 years or 7 years. Louisiana has a period of 5 years. Once that elapses, that can no longer be used for this enhancement. That's just a brief rundown of differences between Nevada statutes and other states. I'll turn it back to you, Judge Hardesty.

Chair Hardesty:

It does raise the question about whether we should draw distinctions. It seems to me that it addresses two areas that the subgroup may want to look at. One is a distinction between habitual criminal status for violent offenders versus nonviolent offenders. Okay, I get the fact that people will immediately leap forward and say, "What's the difference between nonviolent and violent," and we have a big debate about that, but for now, let's keep that generic. Secondly, whether some offenses are just too old to be used to invoke habitual criminal status. Those are the areas I think in this category that we might want to think about. I throw it out for people to offer your comments as to whether you want to get into this area or not. Ms. Armeni, do you want to begin? Do you have any observations or suggestions in this area?

Ms. Armeni:

I'm just trying to think of the federal sentencing. They have armed career criminal and career criminal act, so it's set up similarly, but it normally has to be a violent felony or a controlled substance offense. Those are the two categories. My concern is if we are going to attack this and we are going to use the phrase "violent felony," there has been a lot of litigation in federal court on that term and what that means. I think, as you're probably aware, as probably many of the people in this room are aware, the Nevada robbery statute is not considered a violent felony anymore for federal purposes. If we are going to take that direction, I think within our recommendation we need to delineate what is considered a violent felony.

Chair Hardesty:

I think that's a great point. Ms. Jones Brady, what's your view on this area of the sentencing statutes?

Ms. Jones Brady:

I don't know about touching some of the violent offenses. To me, that's a different category than the nonviolent offenses. Looking, though, at one of the things I think might be helpful if we are going to keep nonviolent habitual enhancements would be if there was some way for them to earn good time credit off of that 5 years on the bottom end or something, because once they are enhanced to the habitual and they go away for 5 years, it just seems like there's no incentive for them to behave in prison. It's a point at which that 5 years isn't helpful to the community and to the defendant. Other than that, I need to think through it a little bit more. This topic was challenging to me. I like the idea of the staleness, like if something is 30 years old that it should be codified. I know that a lot of times I can argue that away at sentencing to the judge because I think the case law is that the judge may find it stale, but codifying it would be nice.

Chair Hardesty:

Let me offer this suggestion to the group to think about on the subject of staleness. We have a statute that allows you to seek the sealing of your criminal records at certain time periods depending upon the nature of the offense. That's already in place. Some of the offenders end up with habitual criminal offenses simply because they didn't go in and seek the sealing of their records, and had they done so, it wouldn't have been able to be used for that purpose. What if the staleness of the use is connected to the existing statute related to sealing? I think it's a great statute. It recognizes differences in offenses and crime types, but it seems like you've got a statute in place that we could use where a habitual criminal offense, if it otherwise could have been sealed under the sealing statute in that time frame, then it gives guidance to the judge. It gives guidance and certainty to the outcome there, and I think it has a huge impact, frankly, on the multiplier effect of these prior offenses.

Ms. McNamara:

I don't mean to interrupt, but just in terms of the look-back period in other Nevada statutes, for the domestic violence enhancement it's 7 years, and for driving under the influence (DUI), it's the 7-year look-back period as well. I just wanted to put that out there in terms of your consideration of staleness and the look-back period.

Ms. Rose:

Just so I understand, Justice Hardesty, what you're saying is not that we would require people to have sealed their records, but rather we would use that number? We'd look at that and say if they could have sealed it under this time period, but we're not necessarily saying sealing, we're just using that language?

Chair Hardesty:

What I'm getting at is the Legislature has already stated as a matter of public policy that you can seal your criminal history at certain timeframes depending upon certain crimes. Why wouldn't that be the same measure that we would use for determining the staleness of a crime for use in a habitual criminal statute? I know you don't have this in front of you, so I'm going to ask Mr. Anthony to pull up the sealing statute and circulate it so you can all take a look at it and get a copy if you don't already have it, Ms. McNamara, and your team. But it seems like it's a useful starting point if you're going to address the subject matter of staleness. On the issue of violent and nonviolent, I don't know. I have misgivings there, because I come back to the example I used before about the repeat guy who just comes in and takes change. That goes beyond an annoyance, that person should be incarcerated, period. That's just the end of the day. I don't know if I would support the idea of trying to go into that violent and nonviolent distinction. Let the public defender

argue it if they want to and let the district attorney argue it and let the judge decide it as to whether he or she wants to use it. I'm not sure it's something I would want to legislate. I think there are too many instances where the facts of the case, sort of like the drug trafficking, let judicial discretion take hold here on those kinds of situations.

Ms. Jones Brady:

On nonviolent crimes, I will admit I rarely see or have the deputy district attorneys seeking a habitual enhancement on a third nonviolent felony. Usually by the time they're seeking the habitual enhancement, it's after at least five prior nonviolent felonies, and I was wondering if that's the same for other parts of the state or if the research bears that out.

Chair Hardesty:

I don't know about research. Do you have any information on that, Ms. McNamara?

Ms. McNamara:

I think we did see distinctions within different jurisdictions on the use of the habitual criminal statutes. I don't know if Mr. Packard has specific numbers.

Mr. Packard:

Yes. The use of habitual criminal, around 85 percent of those come from Clark County, so the majority are coming from there.

Chair Hardesty:

And in doing so, Mr. Packard, are they using what I will call nonviolent offenses? It takes us full circle, I guess, to an issue we had when we began the subgroup meeting. My guess is that it's occurring in a lot of burglary cases, where burglary is being used as a habitual criminal basis.

Mr. Packard:

Unfortunately with the data we have, the NDOC has entered it as habitual criminal. I think we could go back, because we did do a file review of these and look at the underlying conduct, but currently in the data we have, it's just listed as habitual, so it's under this. We can't tease that out at this point.

Chair Hardesty:

Okay. I would imagine, generically speaking, burglary would be considered to be a nonviolent offense.

Mr. Jackson:

I learned from Ms. Armeni that the robbery is not considered a violent felony in the federal system, so I'm sure that they would exclude also even residential burglaries. That's just it, we all have to speak the same language. In my jurisdiction, I consider a residential burglary a violent offense, and I also consider a robbery obviously a violent offense. Ms. Jones Brady made a comment about incentives under the habitual criminal, and her comment was that if we don't offer something up or do something about this then there's no incentive for that person to behave in prison. That kind of identifies the overlying issue here about public safety. That's the exact type of person that we need in prison. If there's no incentive to someone behaving and not committing crimes while they're in prison, what do you think they're going to do if they are within our communities? Because they won't have someone watching over them and they're not being protected within the realms of their own prison cell. But that's the exact type of person we want to make sure we do have in our prisons. I agree with Justice Hardesty about not real distinction between the nonviolent versus the violent. I do have a concern on the policy discussion, for example, like Louisiana. I know of cases where individuals have been in prison for a period of 5 years or more, they get released from prison, within a matter of a couple weeks they commit another felony offense, but because the time they served in prison would exceed that 5 years, you wouldn't be able to use that felony to put them in prison. But again, that's a risk to the community. We need to know that if a person's been released from prison, they served a significant amount of time. They get released, they commit another felony offense, and we have the two or the three previous felony convictions, that's something that we should be able to look at here in the State of Nevada.

Chair Hardesty:

Does anybody have any further comment on this subject?

Mr. Callaway:

First of all, I think that there's a lot of discretion built into this when I'm looking at it through the district attorney's ability to charge and the judge's ability to dismiss, and I think that's one of the key things that you brought up with the trafficking statute, so I think we have that discretion built in already into the law to look at these. From a cop perspective, I think it's hard for me when someone is out there committing crimes, and in a lot of cases they commit a crime, they're arrested, maybe the victim doesn't want to press charges so the charges are dropped, and then they go out and commit another crime. Maybe that one

they get convicted for and they get out of prison and they go commit another crime, and by the time you get to number two or three, how many chances do we have to give these folks before we send a message when we're getting up into the multiple conviction rate? I think the key for me is that person has been offered an opportunity for some type of diversion or some type of treatment or some type of program, vocational skills, while they were in prison or whatever, and they turned their back to that and say, "No, I want to go back out and commit some crimes." In my mind, they fall into that habitual category. I'm not so sure that in my mind I see a real need to play with this statute. Just my opinion.

Chair Hardesty:

Could I just add one thing and ask about all of your views? If we were to make changes to the possession statutes, I don't think we want the possession statutes to be used to create habitual criminal outcomes. That's not the people we're targeting. I was thinking, Mr. Callaway, for example, that if we were to consider the staleness issue, connecting it to the sealing statute periods, and then, as well, recognize that if we made changes in the drug possession statutes that those would not become enhancement statutes for habitual criminal purposes. Is that something that all of you would find reasonable, or at least consider?

Ms. Jones Brady:

The only thing about connecting the staleness statutes to the habitual criminal statutes is that, if I recall, the staleness statutes are fairly low, and there may be instances where, as Mr. Jackson was saying, they have been in prison for 10 years and then they get out, but the staleness statute would apply, and that may be a carve-out exception or something. Then, there are other instances where maybe they have a crime from 30 years ago but they've had a felony every 2 years after.

Chair Hardesty:

We may not be communicating. What I am saying is that when the judge is going to determine whether a prior conviction can be used for purposes of habitual criminal, if that conviction is older than the period when it would have otherwise been sealed under the sealing statute, the presumption is that it should not be used. I think when you see the sealing statute, it may make a little more sense as to what I'm trying to convey. The example that Mr. Callaway was talking about, no one's going to ever get to the sealing there yet. If over the course of even a 5-year period, if you commit 3 felonies, you're history. You're not going to get saved by that, violent or nonviolent. I'm suggesting the tweaks we consider, and then maybe the Sentencing Commission can look beyond this, but at least for purposes of now, it seems to me there are two areas we could address: codify the staleness issues and connect it with the sealing statutes, and then get drug possessions out of the convictions that can be used for habitual criminal status.

Ms. Rose:

I agree with you, Justice Hardesty, and I think tying it to the time that is in the criminal record sealing statute would be very helpful. Obviously, we want to be clear to whoever we're recommending that we're not saying to seal the record, it's just the time. It's an interesting point about carving out one specific crime, and I think it might be useful for us to think, are there other ones besides possession that we might want to say are not eligible for habitual criminal offense? Nothing comes to mind at this particular moment. I don't know if anyone has any other suggestions, but I think that might be helpful. I understand it seems like a lot of people have a concern about violent versus nonviolent and leaving that discretion to the court, but I think there might be some crimes that we just want to make sure are carve-outs for that.

Chair Hardesty:

I think this discussion and your points form the basis for the Sentencing Commission to look at going forward. That Commission can look at other potential exceptions, if any. That Commission could look at other alternatives to this approach, but here's the thing: there's no way that CJI has the time to develop the kind of data that we need to address some of these things by January 11 or whatever that date is. But the Sentencing Commission, if they get their staff, can do a lot deeper data dive, at least with some guidance from CJI, that could make a big difference here, I think.

Ms. McNamara:

Just one last comment on this conversation. In terms of what the Sentencing Commission might look into, and to Ms. Rose's point about the possession offense, one of the things we did find when we did the file review of habitual offenders was that a high prevalence of those offenders have behavioral health needs. Mr. Packard, do you have the specific number?

Mr. Packard:

Yes. So, 90 percent have either mental health or substance abuse, and 37 percent have co-occurring mental health and substance abuse issues.

Chair Hardesty:

It's not surprising. It is something that the Sentencing Commission could really expand on. Once again, judges are opting to this or having to default to this because the absence of resources to address those questions. We are in a cycle we can't get out of until we are prepared to invest to fix that.

Mr. Weld:

I think everyone on the Commission understands this, but this isn't a matter of someone not going to prison if they're convicted of a new offense, just a matter of how long and whether, for example, someone who did have—you discussed the carve-outs like possession, who had maybe a couple of possessions, maybe a larceny, as compared to someone with a couple of domestic batteries or some other kind of offense. I just wanted to make that point. I think a lot of great points were made, but the person is obviously still going to be going to prison.

Chair Hardesty:

I think, Mr. Weld, for the present, if judges have discretion to decide whether to use it or not, and right now if you look at our statute, they don't. We need to allow for that. They need to be able to independently decide whether they want to make that determination in a given case. I think we also need to allow for further research and expansion of the possible exceptions to the use of those crimes, but I think that's going to require further work next year. Let's go to the next section.

Mr. Weld:

We're on page 9, which is the sentencing process (Agenda Item IV A). This is really mostly focusing on one feature of Nevada's sentencing process, just a couple initial data points with regard to sentencing. As has been mentioned, sentences have increased in the past 10 years. Minimums are up 15 percent and maximums are up 7 percent. Time served is up 31 percent since 2012 for new prisoners, driven by that increase in sentences. Most of the information on this sheet is geared towards the sentencing recommendation that appears in PSIs in Nevada, so that is the recommendation that is made in there by the Parole and Probation specialist of whether or not a person convicted of the incident offense should be incarcerated or put on probation. We had put in here an example of the PSI scoring matrix that leads to that recommendation and some of the different factors that are considered before that recommendation is made. This is an unusual process compared to other states. There are other states that do require in statute the probation department to make some kind of assessment of an offender, but there is no other state that recommends incarceration or probation based on these kinds of factors. A lot of them are there at the bottom of the page, for example resource availability, honesty and cooperation, attitude and supervision, other things. So in any case, the purpose of this page is just to inform the group, as has been discussed in the past, that this process in Nevada is pretty unusual. I'll hand it back to you, Chair Hardesty.

Chair Hardesty:

I would like to build on Mr. Weld's comment in this area. For those of you who have been on the Advisory Commission in the past, and even this year, we have repeatedly urged the Division of Parole and Probation to be using evidence-based risk assessment tools in developing their recommendations in their PSIs. I don't understand the explanations, all I know is that it's going to happen, it's going to happen, but it doesn't happen. I agree completely with CJJ's point that there are a number of items in here that are scoring things that really don't have any reason to be in here in the score for deciding probation versus sentencing. For those of you who served or worked on the pre-trial release process, we learned a lot about validated risk assessment tools and what they produce and information that is useless in making bail decisions. I would urge that the subgroup entertain that we want to see sentencing decisions based on validated risk assessment tool recommendations, period, that it should be implemented immediately, because it is influencing, quite frankly, decisions and I think judges are being misled about certain recommendations. I don't know if you recall this, maybe Mr. Callaway will remember this because it goes about back about a decade, but we discovered that the scoring hadn't even been made available to the district attorneys or public defenders. What happens to an individual where someone added up the scores wrong and all of a sudden they're going to prison? Nobody even litigated that with the judges. It was incredible. Forget what the factors are that they're scoring, the math wasn't even necessarily correct. I think this is something we've got to do something about. I hope the subgroup will agree.

Mr. Jackson:

That second bullet point at the very bottom, West Virginia not relying upon anything and just allowing that report writer just to draw the recommendation is definitely not the direction that I would like to see Nevada go, but I do appreciate you including that. I had no idea that was going on. I have no problem with what you are recommending, Justice Hardesty, but I think before we get there, there should at least be some discussion as to whether or not specific sentencing recommendations should be even a part of the pre-sentence investigation reports. I would like to know how everyone thinks about that. We do have that second to last bullet point, Montana and Idaho, for example, do not include specific sentencing recommendations, but if they are going to be included, they should be based upon validated, evidence-based tools. Again, that's something you have been talking about for as long as I can remember.

Chair Hardesty:

What are your views about whether that recommendation should be in the PSI? What do you think about that?

Mr. Jackson:

The fourth bullet point caught my attention at the top, that judges concurred with the Parole and Probation sentence recommendation 75 percent of the time. That number is higher than I would have anticipated across the state. It tells me that that sentencing recommendation does have a significant impact on three-quarters of the cases that come in for sentencing across the state. Part of that sentencing is just about everything else that's in those reports identifies all the demographics of that defendant, an offense synopsis. It's going to talk about the substance abuse and mental health history, their employment history, family relationships, whether or not there was military service. There's a lot of really good information in that, and from that, the defense attorney, they're going to be arguing about all the mitigation and the prosecutors are going to be talking about most likely aggravators. Recommendations will be made with that. I try to talk to my prosecutors going in to just agreeing before we even see the pre-sentence investigation report to agree to concur with Parole and Probation. I prefer that that not be part of our negotiated plea. Nevertheless, sometimes it is. To a certain degree, I think sometimes prosecutors get caught up into this also. It's just so much easier to allow Parole and Probation that does have a lot of information obviously available, but that particular report writer to make that recommendation to have this much of an impact on our criminal justice system is somewhat eye opening.

Chair Hardesty:

Ms. Jones Brady, what do you think? You're in there fighting every day for your clients.

Ms. Jones Brady:

I have a lot of pet peeves about this, although I'm very glad that they share it with us now so we can argue the specifics on it or address the specifics on it. Certain things, like it says attitude/supervision, so the Parole and Probation writer goes out, they interview them for 45 minutes and they can really tell their attitude? Setting aside those pet peeves, a lot of this information is useful. I would say we don't need like a recommendation from them, but getting a validated risk assessment score would be great. The recommendations I would like to see from Parole and Probation, of course, I think we need someone from Parole and Probation to weigh in on this, but the kind of recommendations I would like to see are conditions of probation. When they recommend probation, then they also recommend conditions of probation, but if they don't recommend probation, then it's blank as to the conditions and then they don't have that input if the judge does give them probation. The input from Parole and Probation is blank at that point. I would like to see them have more input as to the conditions. I would like to see, for the record, Parole and Probation have more money for their probation officers and for supervision. I would really like to see that. I don't know how much money they get so far. I was talking to a Parole and Probation officer, a report writer, and I don't remember what

she said her income was, but it seemed extremely low for the gravity of that position. That's my input.

Chair Hardesty:

Let me put a couple of things in context from what both you and Mr. Jackson have said. We have pre-sentence investigation reports that are making recommendations for probation or sentencing or prison that are using an instrument that would not be a validated risk assessment instrument, and it is impacting 75 percent of the sentencing decisions in the state. At a minimum, we should be using a validated risk assessment that is asking the right questions and is not basing scores on attitudes or not risk assessment-based elements. The other point I would make is this: that information, whatever it is, should be available to the judge, to the lawyers who are arguing the case. The other point I would make is this: given this level of dependency, and I'll call it dependency, by trial judges on these PSI recommendations, if we don't change the way we educate our judges for sentencing purposes, you could blow the lid off this place in terms of sentencing ranges. It would just go everywhere. Unless you have a validated risk assessment that discloses to the prosecution and the defense validated risk assessment evaluations and scores, you're going to run the risk if you don't include recommendations for sentencing of having judges being all over the map about how they would sentence the same crime type with the same criminal history. I'm not suggesting that we should recommend eliminating the recommendations, but the system is clearly broken. You are not working on a current—in fact, the risk assessment we are using is 1991. It hasn't been validated since that time. That is problematic. But I worry about the consequences of not having some education for judges about how to sentence. I don't know, Judge Wilson, what your experience was when you got on the district court bench, but when I got on the district court bench, I had a full criminal calendar on Tuesday which included a whole pile of sentencings, and I hadn't sentenced anybody. I had been a criminal defense lawyer during one part of my career, but I hadn't sentenced anybody in my life, and yet I'm going to hear 50 cases. Human nature would tell you I'm going to look at that PSI and I'm going to give it a lot of weight, especially if I don't know what I'm doing yet. I think we need to look at this holistically. It is definitely, though, I think having an overall impact on the prison population. What I would urge we think about is recommendations that are kind of policy based, that you've got to have a risk assessment tool, the tool and the scoring's got to be provided to counsel and the judge, whether you include the recommendation or not, probably continue with the recommendation, but you need judicial training on sentencing so that you can wean yourself off of this dependency. We have a different kind of substance abuse here we're dealing with. I don't know if any of this makes sense to you, but that's my vantage point perception of this. Judge Wilson, you're involved with this. I know of some judges in the Second Judicial District, the reason those percentages are so high is they're 100 percenters. I'm not kidding. They're 100 percenters. Ms. Jones Brady practices there. Judge Wilson is not a 100 percenter, but Judge Wilson, what do you think about this? You might be 100 percent the other way.

Judge Wilson:

There are validated risk assessment tools, right? I have not understood why we don't have one.

Chair Hardesty:

I don't know. Mr. Callaway has heard the same explanation from the Division of Parole and Probation, and maybe Ms. McNamara has talked to them. I think this may have come up during the subgroup on Tuesday, didn't it?

Ms. McNamara:

Yes. There are different tools being used at different stages of the process. Parole and Probation just got a new tool, the Nevada Risk Assessment System (NRAS), to be used to identify the particular level of supervision that an individual is on, and I know NDOC has been using the NRAS for classification and programming. The Probation Success Probability (PSP) tool that is involved in the PSI sentencing, as Justice Hardesty indicated, I believe that Parole and Probation mentioned they were talking with the University of Cincinnati about developing a new tool, but I don't believe there's been any timeline established for that. In terms of just the world of research, there's been a lot of research on the use of risk assessment tools at sentencing, and there has been a lot of mixed findings in terms of a tool having a negative racial bias in terms of sentencing, so I think jurisdictions currently nationally are thinking about whether or not that's the right place for risk and needs assessment tools, so I think that's where jurisdictions are deciding if they should make that transition to using a tool at that juncture in the criminal justice process or think about different methods. It's kind of like a stalemate in the research world about using a risk and needs assessment tool at sentencing because some of the studies have shown negative biases.

Chair Hardesty:

Is the subgroup open to entertaining policy recommendations along the lines that I've suggested? Maybe, Ms. McNamara, your team can draft something that is similar to that, if they are. Mr. Callaway, we haven't heard from you or Ms. Armeni about this subject.

Mr. Callaway:

I'm in complete agreeance, Justice Hardesty, with everything that was said.

Ms. Armeni:

I am in agreeance as well. At the end of the day, I just want whatever risk assessment tool they end up using—once they gave us the risk assessment tool, I think it turned around a lot of things because we were able to educate the courts as to how they came up with the point system. We could challenge some of the points that they calculated, so I think it is just really, really important that all of the parties get whatever tool that they're utilizing to make their recommendation.

Chair Hardesty:

I have a question for you. When you are arguing sentencing in state court, do you find it difficult to get a judge off the recommendation of the pre-sentence investigation report?

Ms. Armeni:

I've had it both ways. I've had it where Probation has made a really good recommendation for me, but I was just telling Mr. Callaway that I have been in court many, many times where the judges will say, "I don't even look at the PSI. I don't even care what the PSI says, or the recommendation." We have quite a few judges on the Clark County bench in the Eighth Judicial District Court that are former district attorneys and practice in the criminal world, so that's maybe why they don't give as much credence to the report as maybe somebody that doesn't have that background. But no, I don't think so. I've been successful in talking them off the recommendation. I'm wondering if the 75 percent comes also from the prosecutors also making the same recommendation that's in the PSI. Not so much that the judge is following what the recommendation from probation is, but also that the district attorney and prosecutor that are in court that day are also making the same request and the judge is following the district attorney's request.

Chair Hardesty:

The subject also creates an opportunity for resources. Rightfully so, Chief Wood and her predecessor have complained about not having enough PSI writers, and they are investing a lot of money—not a lot for salaries, but they're investing a lot of money in getting PSI writers. In fact, there was a period of time in Clark County where they were way, way behind in getting their pre-sentence investigation reports. Maybe they still are. I don't know the current status, but they were super far behind and couldn't fill the positions and so forth. To the extent that we are devoting budget resources, and I would ask for CJI to include a discussion about this in the policy, to the extent that we are devoting resources to PSI writers or PSI efforts that either are being ignored by judges, not used by judges or not being used by the system, that seems to be a waste of money, and I don't expect anybody to be able to quantify that, but it's obvious that it's there. Why are we writing a bunch of PSIs if judges are going to ignore them? I think in Clark County,

Ms. Armeni, correct me if I'm wrong, but at least Phil Kohn would tell me that the PSI was useless because the information was useless, so they didn't have much respect for the content of the report.

Ms. Armeni:

I think the times have changed, because now some of the judges are well aware when we make objections to the PSI and we are able to edit those. There are still some judges that have been on the bench a long time and when you file an objection to a PSI, they say, "Why are you filing this? What am I supposed to do with it?" But I think there has been a change with us now being able to get these scoring sheets and challenging some of the information that is in the PSI, but I think there's still a lot of judges that don't understand the importance of changing the facts that are maybe incorrect or the information that is in the PSI.

Mr. Weld:

We also of course over the summer spoke to a lot of different stakeholders in our system assessment review and asked a bunch of judges and other people what they thought of the PSI in general. I think it might be useful to remind the group that there was sort of a difference in terms of the value of the PSI, as District Attorney Jackson was just mentioning, as something that has a lot of information about the case. It has biographical information about the defendant, it of course has the offense synopsis. All of those things are critical to the sentencing determination and they are argued by the parties when sentencing comes along. There's obviously a distinction between that critical information, and then a recommendation that might be made by a non-lawyer who won't be at the sentencing hearing with regard to exactly what sentence that person should receive, so I just want to make that distinction, I know other people have, but between the very useful content in the PSI and the recommendation.

Chair Hardesty:

Did you get the impression in those interviews, though, that judges while they welcome that additional information that is contained really don't care too much about the recommendation or wouldn't focus on it?

Mr. Weld:

I wouldn't want to make any blanket statement about any of that. I think judges have their own individual opinions on it understandably, but there was just sort of a difference in those two elements. One other thing I wanted to mention, and I think we didn't include it simply because we couldn't fit it on the page, but in terms of your comments earlier, Justice Hardesty, about what potential impact the recommendation might have, Nevada

has a much higher rate of incarceration than the national average. It's somewhere around 50 percent, where the national average is somewhere around 30 or 35 percent. I don't think there's been any data collected to suggest that's because of the sentencing recommendation or anything, but it's just another piece of sentencing data to keep in mind.

Judge Wilson:

First, Nevada judges receive very little training on sentencing. We had some in the Judicial College in the general jurisdiction courts way back in the beginning. There have been a few things at the annual conferences, but we're talking about an hour every however often. Your point about training for judges on sentencing I think is very, very important. The way that I have used the PSIs is as a reality check. I do my own evaluation of the case before, and then if I'm way off from what Parole and Probation is recommending and way off from what the attorneys are recommending, then I need to reevaluate what I've done. You made a comment about if we don't have recommendations that that might lead to a lot of inconsistency throughout the state. I think that's true. I'm not sure how much the PSIs, though, assure or promote consistency. In fact, I think I asked Ms. McNamara at some point about that, but I had one day a sentencing of the same crime, two different individuals and really disparate sentencing recommendations. The one who was older and had more criminal history and the facts of the crime were more egregious had a lesser recommendation than the younger person with less. I met with Parole and Probation and asked them about how this could happen, and they basically did not have an explanation for it. I think the explanation is that some of these factors are subjective, and if you have two different PSI writers, you're going to get a different result. I'm not sure how consistent the PSI recommendations are across the state for the same kind of crimes, same kind of circumstances, which again brings it back to the training for judges. We need to be able to figure out what factors we should be considering, how they should be applied, and we have not had that.

Chair Hardesty:

Good to know. I think this will be the last topic for today. Let's go to the felony B offenses.

Mr. Weld:

We've already talked about a couple of individual category B offenses today, but this is a page that considers the category as a whole and its impact on Nevada's prison population and other things. Felony B offenses accounted for over half of the prison admissions in 2017. Burglary, as we know, is a felony B. Felony B offenders are serving 10 months longer in prison than they did 6 years ago, so time served has increased considerably for felony B offenders in recent years. Just a little review of the kinds of offenses that are included in this category, I know the Advisory Commission has discussed this in separate

efforts they have made in the past, but the B category includes things like burglary, larceny by false pretenses over \$650, the trafficking statutes we were mentioning earlier, possession of a firearm by an ex-felon. Also in there are more serious offenses like battery with intent to kill and involuntary manslaughter as well, so there's a very big range of the kind of offense that is punished in these categories. As the Committee I'm sure is aware, the range is 1 to 20 years. There is flexibility within that for a given offense. It will usually be something more specific like a 1 to 10 or 2 to 10 within that range. It's a significant category as compared to felony C, because people convicted of felony B offenses are not eligible to earn credits off their minimum sentence, so effectively that minimum is more of a hard floor than it would be for lesser categories. That's just a brief overview of the category. It's sort of hard to do state comparisons in this area, but a couple examples of other states that treat offenses that are Nevada's category B quite differently. Theft between \$3,000 and \$4,000 is a class III in Arizona, the third lowest. Arizona has six different felony classifications. Felony possession is the lowest felony level in New Mexico. Non-residential burglary is the state's lowest felony category in Utah. Just a couple of points on the system of earning credits and how it compares to other states. New Mexico allows credit accrual basically identically for violent and nonviolent offenders, and Maryland allows all offenders to earn credits at the beginning of their sentence. That's the overview of that category, and I'll turn it back to the group.

Chair Hardesty:

Most of the discussion here focuses on things that we have already talked about: trafficking, burglary and the like. Unless somebody has some comment they'd like to make about these points, I would like to defer this subject to the next meeting when we get into the meat and potatoes over the burglary and trafficking and so forth. As Mr. Jackson and Mr. Callaway know, I have always expressed concern about the 212 felony B offenses. We tried in the last session, Mr. Jackson, or maybe two ago, to take some of the category B offenses and move them to category C. I think there was an agreement about maybe 10 or so of the 212. We might revisit those 10 crimes. I don't know how material they would be in terms of their impact on incarceration given the crime types. Maybe Mr. Anthony can identify those minutes and we can take a look at those, but I think it would be a tall task for us to walk through all 212 and reclassify them. I would rather focus our efforts on the bigger pictures we've been talking about now and the subjects we've been discussing most of the day up to this point and then circle back to the discussion. Actually, Mr. Jackson was a huge contributor on that point, because you really dug in and identified them. I think 10 came from Mr. Jackson's recommendations, so we'll circle back. We may just pick those up and throw them into the recommendation for now and then urge the Sentencing Commission to continue this category B debate with additional data. Does anybody else have any comments about this particular subject or area?

Ms. Jones Brady:

The only thing I was going to say is that there are hardly any category D's. I don't know that there is a huge distinction between C's and D's other than the 1 to 4 versus the 1 to 5. On the other hand, the category B is like the junkyard.

Chair Hardesty:

It's an apt description. You're right. I don't know if we have time to look at this, but there are some crimes in category B that I think have sentencing ranges less than 1 to 10. I'm not positive about that, but I believe that's the case. My question is this: as to those crimes, why don't we move them to C's? Maybe Mr. Anthony or Ms. McNamara, you guys can identify those and we can take those up in December also. I think I'm right about that. Why are they in B when they're not in the—when you go back to the way the original truth in sentencing was structured, we set up categories A through E and they were supposed to be sentencing ranges that defined those categories. I'm with you, Ms. Jones Brady. I don't know what the material difference is between C and D, other than 1 year on the topside, but that said, all of a sudden B became this dumping ground for a whole bunch of crimes with sentencing ranges that didn't necessarily connect with why they were a B, so I think we need to look at that. I don't know, until we saw the list it would be difficult to debate whether maybe that crime should have been 1 to 10 but it ended up 1 to 6 and got stuck in B for some reason. I don't know. Maybe we can figure out that list, Mr. Anthony, and take it from there. Does anybody have any other comments in this area? Seeing none, is there anything else, Mr. Weld, on this topic?

Mr. Weld:

No, and I would just like to thank the group as always for their time and attention, and I think we will probably save pre-trial for the next meeting.

Chair Hardesty:

I think that's a good idea. Thanks, everybody, for your effort today. I really appreciate it. Our next meeting is December 18 at 1 p.m. Can everybody make that meeting? I hope so. It's really critical that we refine our thinking and make our recommendations then. We will, of course, be extending that to the January 11 final Advisory Commission meeting. With that, Ms. McNamara and Mr. Weld and everybody, thanks for the effort by CJI and your team. I will close this agenda item for now and ask then if there is any public comment to the sentencing group.

Ms. Brown:

I just want to make a few comments. Dealing with the habitual and sentencing and embezzlement, I'll start with the embezzlement first. You talked about the theft and the sentencing on the theft. Some years ago, probably about 10 years ago, I presented to the Advisory Commission inconsistencies in sentencing in different areas of different crimes and embezzlement. I found in the information that I provided that if you embezzled, you received a lot less time. For example, Craig Swope embezzled \$500,000 and his sentence was 180 days with weekend time. There were others that embezzled \$44,000 who received probation, and I think this is a major problem because they are committing crimes. It affects people's lives. They're destroying their lives, compared to someone who breaks in and steals the TV or the VCR. I don't think they have VCRs anymore, so the DVD player. When you're dealing with a lot of money, they tend to get less time, if no time at all, and I think that needs to be looked into, because if that is the way they're going to sentence it, then that is like a D category when it is a B. Also, the drug issue. Have you ever considered looking at the Dutch or the Netherlands on how they deal with drug trafficking and the tickets and how they deal with their people, because it's a problem. Maybe you want to look outside the country.

Chair Hardesty:

No, I haven't. But that sounds like a pretty good idea, at least on the surface.

Ms. Brown:

Also, under the habitual violent offenders and the nonviolent offenders, you're looking at that stale area. Some of you may not be aware of this, but over the years we've had studies and presentations brought here to this Committee dealing with offenders under the age of 25 and that have shown particularly the male brain doesn't mature until the age of 25, and so when you are looking at that area for the courts to look at that stale area, I think they need to look at the defendant, the offender, at age 25 and under and see the crimes that he had committed and then do a comparison between, say, age 25 and 30 and what crimes they have committed. I think the age of 25 and under should be considered not to be looked at based on statistics and the presentations that have been presented to this Committee. If you take a look at a person who is 35 years old and now he's going to be arrested who's got a felony, and then they look at this and they go back and say, "Oh my God, when you were 17, 18, 19, 20, you were committing burglaries. You were doing this, you were doing that." In part, that is because the brain has not matured, so I think that needs to be looked into as a consideration, also in the same way with the PSI report because, for example, I'm sure you've heard about the memorial that was vandalized, the Fallen Officers Memorial, \$45,000 in damages they are looking at for juveniles. You know somewhere down the road something's going to come up if they commit more crimes, and they're going to look at that and they're not going to realize and

they're going to say property damage. Well, to me, when I read about this, and this memorial meant a lot to me. I look at the kids who had done this and I think it was just something that they didn't really intend to do. I think it was something stupid that they did and they caused damage, but I'm thinking down the road when you're looking at a habitual criminal coming up, they might look at that and say that's property damage. That was something stupid that they did. I guess that's kind of pretty much it, but I really would like for you to consider the embezzlement and the cap of a 20-year maximum. That even includes an A felony. If you have been convicted of a crime and you have got life sentences with the possibility of parole, 20 years is the maximum you should be able to serve, because if the jury finds them guilty with life with the possibility of parole, you need to put a definite timeframe on that, and that's 20 years, not 25. Anything after that, anything again on habitual, if you haven't learned by the time you're 30 years old, you've got nothing coming.

Chair Hardesty:

Thank you, Ms. Brown. Seeing no additional public comment, we will adjourn the subgroup meeting at 1:38 p.m. until the next meeting. Thanks, everyone, for your participation. I don't know about the rest of you, but this is about as quality discussion as I've heard in over a decade on these subjects. Thanks a lot. It was really, really good.

RESPECTFULLY SUBMITTED:

Jordan Haas, Interim Secretary

APPROVED BY:

Justice James Hardesty, Chair

Date: _____

Agenda Item	Witness/Agency	Description
A		Agenda
B		Attendance Roster
Agenda Item III A-1	Paul Corrado	Public Comment #1
Agenda Item III A-2	Paul Corrado	Public Comment #2
Agenda Item IV A	Staff of the Crime and Justice Institute	Discussion Materials on Pre-Trial and Sentencing
Agenda Item IV B		NRS Citations

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